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Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2009-00037219

3K 12850 PG 219-251

RETURN TO:

WHEN RECORDED RETURN TO:

Chet A. Mellema  
Tuscany Reserve, LLC  
c/o Hubbell Realty Company  
6900 Westown Parkway  
West Des Moines, IA 50266-2520

This document was prepared by Chet A. Mellema, Hubbell Realty Company, 6900 Westown Parkway,  
West Des Moines, Iowa 50266-2520, (515) 280-20542

SPACE ABOVE THIS LINE FOR RECORDER

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

This Declaration of Covenants, Conditions, Easements and Restrictions Applicable to  
Tuscany, Altoona, Polk County, Iowa (the "**Declaration**"), is made this 2<sup>nd</sup> day of July,  
2008, by **TUSCANY RESERVE, LLC**, an Iowa limited liability company.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of Tuscany (as defined in Section 1.02(m)).

**WHEREAS**, Declarant desires to develop Tuscany as a planned community, which  
includes Open Space Areas, the intention of which is to preserve the existing natural features of  
the development, to preserve the natural drainage features and hydrologic characteristics of the  
landscape, and reduce the impacts of development on the landscape; and

**WHEREAS**, Declarant desires to establish the covenants, conditions, easements and  
restrictions governing Tuscany for the benefit of the Owners (as defined in Section 1.02(k)) of  
Lots (as defined in Section 1.02(j)) in Tuscany and to provide for the Association (as defined in  
Section 1.02(a)) to operate and maintain common elements of Tuscany.

**NOW, THEREFORE**, Declarant hereby publishes and declares that Tuscany shall be held, sold and conveyed subject to the following covenants, conditions, easements, restrictions, limitations and obligations, all of which are for the purpose of protecting the value and desirability of Tuscany, and all of which shall run with the land and shall be a burden upon and a benefit to, any and all parties acquiring or owning any right, title or interest in any part of Tuscany, and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

## ARTICLE I

### INTENT; DEFINITIONS

**1.01 Intent.** It is the intent of this Declaration to provide conditions, covenants, easements, restrictions, and reservations to ensure the proper use and appropriate development of improvements to each Lot in Tuscany so that Tuscany is developed as a harmonious and integrated development, and to protect the value and desirability of property within Tuscany. It is further the intent to provide for the Association to perform the operation, maintenance, repair, replacement, alterations, improvement or modification of the Declarant Improvements (as defined in Section 1.02(f)) and to perform the installation, operation, maintenance, repair, replacement, alteration, improvement or modification within Tuscany, of (a) project signage and entrance features, (b) landscaping on the corners of the intersections, and in the islands in the boulevard entrances, if any, and in the circles, if any, of any streets within Tuscany, if any, (c) the storm water detention ponds, if any, (d) Open Space Areas, if any, in the plats and any bicycle and pedestrian trail(s), to the extent not done by the City, and (e) such other common features for the benefit of Tuscany as said Association shall undertake or as it agrees to perform on behalf of its members, and to enforce this Declaration.

#### **1.02 Definitions.**

- (a) **“Association”** shall mean Tuscany Owners Association, a non-profit corporation organized pursuant to Chapter 504A of the Code of Iowa, and its successors and assigns.
- (b) **“Association Lot”** shall mean a Lot that is owned by the Association for the use and benefit of members of the Association and on which, either by recorded restrictions, recorded plats or zoning, no single-family home may be constructed.
- (c) **“Board”** shall mean the Board of Directors of the Association duly elected in accordance with the Articles of Incorporation and Bylaws of the Association.
- (d) **“City”** shall mean the City of Altoona, Polk County, Iowa.
- (e) **“Declarant”** shall mean Tuscany Reserve, LLC, an Iowa limited liability company, and its successors and assigns as to the entirety of the undeveloped portion of Tuscany that has not theretofore been conveyed to home builders or home owners unless the context indicates otherwise.

(f) **“Declarant Improvements”** shall mean those public streets and improvements Declarant is to construct as part of the platting of any plats within Tuscany, as shown on the Site Construction Plans, those improvements that Declarant is to construct pursuant to this Declaration, and any additional improvements, whether similar or dissimilar to any of the foregoing that Declarant chooses to construct and deliver to the Association for continued operation, maintenance, repair, replacement, alteration, improvement or modification.

(g) **“Hereof”** and **“Herein”** shall refer to the entirety of this Declaration and not only to any particular part of this Declaration, unless the context clearly provides otherwise.

(h) **“Improvements”** shall mean and include a single family home, outbuildings, driveways, parking areas, sidewalks, walking trails, play equipment, swimming pools, tennis courts, fences, walls, hedges, signs, lawns, landscaping, flag poles and any structure of any type or kind, and all additions to any of the foregoing.

(i) **“Lot”** shall mean any platted lot, tract, or portion thereof, or two or more contiguous lots, tracts, or portions thereof in Tuscany, including real estate subject to recorded easements, but shall not include any land deeded to the City or the Association.

(j) **“Owner”** shall mean the person or persons, or entity or entities, who from time to time collectively hold the entire fee title to any Lot, as applicable, in Tuscany, including sellers under executory contracts of sale, (but shall not include any person who holds such fee title merely as security for a loan, unless and until such person has succeeded to ownership by enforcement of its remedies under such loan documents), and the use of the singular shall include the plural.

(k) **“Occupant”** shall mean an Owner and any person from time to time entitled to use and occupy any building, or any part of any building on a Lot, under any lease, deed, license or other instrument or arrangement by which such person has acquired rights with respect to the use and occupancy of any building or part of a building on a Lot in Tuscany.

(l) **“Single-Family Lot”** shall mean a Lot which is platted for the development, use and occupancy as a single-family home in Tuscany.

(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, and 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, 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.

(n) **“Site Construction Plans”** shall mean any construction plans for the streets, sanitary sewers, water lines, storm sewers, surface water detention facilities, trails, and grading plans for any plat or future plat in Tuscany, as the same are approved by the City and placed on file with the Association, and the final plats for any plats in Tuscany, as hereafter filed of record in the Office of the Recorder for Polk County, Iowa.

(o) **“Unit”** shall mean a Single-Family Lot.

(p) **“Zoning Ordinance”** shall mean the zoning ordinances of the City of Altoona, Iowa, including, but not limited to the John Altman Planned Unit Development, Altoona, Iowa, as the same may be amended from time to time.

(q) **“Open Space”** shall mean and refer to all those parcels and tracts of land within Tuscany designated on the Master Plan or on recorded plats as “Open Space”, “Open Space Areas”, or “Outlots”, including, but not limited to, Outlots R, S, T, U, V, and W of Tuscany Plat I, an Official Plat now included in and forming a part of the City of Altoona, Polk County, Iowa, and any Outlots hereinafter platted by Declarant in Outlot X, of said Tuscany Plat I, for this purpose and deeded to the Association.

(r) Words and phrases in this Declaration, including the acknowledgment, shall be construed as in the singular or plural number, unless the context permits only one such number.

(s) Words defined elsewhere in this Declaration shall have that meaning throughout the Declaration and not just in the Section in which such word is defined, unless the definition expressly states otherwise.

## ARTICLE II

### GENERAL USE RESTRICTIONS AND BUILDING SPECIFICATIONS

The Lots in Tuscany shall be held, occupied, sold and conveyed subject to the following use restrictions and building specifications, as well as those restrictions set forth elsewhere in this Declaration:

#### 2.01 Uses.

(a) Single-Family Residences. The use of Single-Family Lots in Tuscany shall be limited to single-family residential dwellings and shall be developed with not more than one single-family dwelling on each Single-Family Lot in the final applicable plat or replat and may be developed only with such other uses of land or structures customarily incidental and subordinate to the single-family residential use as permitted by the City’s zoning ordinance, unless such uses or structures are otherwise regulated or prohibited by this Declaration. No modular, manufactured, or mobile homes are permitted to be built

or used in Tuscany. All Single-Family Lots must be built within twelve (12) months of purchase and closing from Declarant. In the event construction does not commence within said twelve (12) month period, Declarant may, at its option, repurchase the applicable Single-Family Lot at 90% of the previous sales price.

(b) If an Owner does not commence construction within six (6) months after the purchase of a Lot from Declarant, the Owner shall seed the Lot with grass and maintain it in accordance with Section 2.20 and as required by the Iowa Department of Natural Resources and the Environmental Protection Agency.

(c) Business Activity. No full-time or part-time business activity may be conducted on any Lot or in any building or structure constructed or maintained on any Lot, except to the extent of a home occupation permitted by the City's Zoning Ordinance and except that home builders may maintain model homes during construction and Declarant may maintain a sales office during its development and sales of the Lots in Tuscany.

**2.02 Architectural Standards.** The following architectural standards shall apply to the development of all Lots in Tuscany:

(a) Character. No building or structure shall be constructed, altered or maintained upon any Single-Family Lot other than a detached single-family dwelling with an attached private garage and may have such other accessory structures permitted by this Declaration. In order to preserve the general design for development of the Lots in Tuscany as a fine residential subdivision of the City, no single-family dwelling of any kind, or addition thereto, shall be erected upon any Lot unless the plan, design, building materials, exterior colors and location thereof shall have been first approved by Declarant, or if the Declarant no longer owns any Lots in Tuscany or otherwise delegates this responsibility to the Association, by the Board, or such person or persons or entity designated by it for this purpose, which approval shall not be unreasonably withheld or delayed.

(b) Exterior Foundations. Exposed foundations must be painted to blend with exterior wall finishes. Exposed foundations greater than 8" must be covered by an approved exterior wall finish matching the rest of the house.

(c) Siding. Siding material variations on the elevation for accent purposes are encouraged, but the overall character and predominant siding must be consistent on all four elevations of the structure. Siding shall not have a reveal of greater than 8". Exterior colors shall be earth tones, white, or soft, muted tones, which may include muted yellows, greens or blues. No bright colors of any kind are permitted. Exterior materials may be pre-finished.

(d) Roof Materials. Roof material shall be slate, tile, cedar shakes, or composition shingles. Composition shingles shall be architectural grade, minimum twenty-five (25) year warranty. Shingle colors shall be muted earth tones or black and be compatible with and complimentary to the exterior materials and colors. White and white blend, and roof

shingles are not acceptable. All flashing and vents shall closely match or blend with the surrounding roof area. All vents and other roof penetrations should be located on the rear elevation wherever possible. Gutters should be part of the fascia detailing. Gutters and downspouts shall closely match the colors of the surfaces to which they are attached.

(e) Garages. All houses shall have, as a minimum, a two-car attached garage. Each house shall provide off-street parking for two cars on paved surface.

(f) Minimum Single-Family House Sizes. All single-family homes, whether they are standard Single-Family lots, or Alley loaded Single-Family lots shall contain a minimum square footage of living space exclusive of attached garages, breezeways, porches, and finished basement areas as follows:

- (i) All one-story dwellings must have a minimum of 1,400 square feet of finished area directly under the roof.
- (ii) All one and one-half story dwellings must have a minimum total finished floor area of 1,600 square feet.
- (iii) All two-story dwellings must have a minimum total finished floor area of 1,600 square feet.
- (iv) All split-level, raised ranch, or split foyer dwellings must have a minimum of 1,600 square feet of finished area directly under the roof.

(g) Minimum Finished Basement Floor Levels. If a minimum basement elevation requirement is shown on the final plat of the applicable Lot the single-family home constructed on such Lot shall have a finished basement floor elevation as shown on the applicable final plat.

(h) Decks and Porches. Decks attached to a single-family dwelling must be built from cedar, redwood, treated lumber or other products approved by Declarant, or once the Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, approved by the Board. Unpainted natural wood decks, though appropriate for rear yard spaces, are not acceptable as front entry porches. Front entry porches should be designed as integral, yet dominant features that invite entrance to the dwelling. Columns supporting porch roofs should be massive in scale (minimum 6" x 6"). Built up box columns or tapered round columns are encouraged. Handrails shall match the architectural style of the home. All steps to front entry porches must be cast in place concrete. No wood steps or precast steps to front porches are permitted.

(i) Building Elevation and Drainage Standards. The finished grades for single-family homes constructed on each Lot shall be established to permit positive drainage away from such single-family homes.

(j). Sump Pump Drainage. Owners, Occupants, and all persons constructing a home on a Lot that backs up to the proposed Open Spaces shall be required to comply with Exhibit B for the construction, maintenance, repair, replacement and control of sump pump discharge from such Lots. The Declarant shall construct a sump pump collector line for those Lots shown on Exhibit C that do not back up to proposed Open Spaces and the Owners, Occupants and all persons constructing a home on any such Lot shall be responsible to connect the sump pump in the house constructed upon such Lot to said sump pump collector line and to maintain, repair and replace such connection, as necessary.

### **2.03 Landscaping**

(a) Single-Family Lots. On each Single-Family Lot, the Owner at the time the dwelling is first occupied is required to plant, within ninety (90) days following the date of commencement of occupancy, two trees on such lot from any of the following species of trees: Red Maple (*Acer rubrum*), Norway Maple (*Acer platanoides*), Northern Red Oak (*Quercus borealis*), Burr Oak (*Quercus macrocarpa*), or Little Leaf Linden (*Tilia cordata*), or any other species approved by (1) the City, and (2) the Declarant, in writing, or once the Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, approved by the Board, a copy of which additional approved trees shall be kept on file with the Association, (hereinafter such species of trees shall be referred to as "Yard Trees"), with at least one of such Yard Trees in the front yard of the Single Family Lot, outside the public right-of-way, but within any street tree easement, if any, upon such Single-Family Lot, or if there is no street tree easement, as near to the right-of-way as possible and not within an easement area without the consent of the easement holder. Yard Trees shall be a minimum of 2" caliper in diameter, 10' - 12' in height, and have a minimum spread of 4'.

In addition to the Yard Trees required above, the following minimum quantities of landscape plants shall be planted on the applicable Single-Family Lot by the Owner at the time the dwelling is first occupied, within ninety (90) days following the date of commencement of occupancy, 10 deciduous and/or evergreen Shrubs.

This required landscape treatment should be concentrated around the front and entrance of the house. Approximately 75% of all required plant materials should be planted in the front and side yards within view from the street.

Within ninety (90) days after completion of the single-family home upon a Single Family Lot, the front yard, side yards and the twenty-five feet (25') of the rear yard measured from the rear of the dwelling foundation shall be fully sodded, and the remainder of the rear yard to the rear lot line shall be seeded or sodded.

If weather conditions make the time elements of the requirements of this Section 2.03(a) impossible to fulfill, Declarant, or once Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, the Board, shall establish a reasonable period of time for compliance.

(b) Front Yard Requirements; Sodding. A minimum of seventy-five percent (75%) of the front yard of each Lot (excluding driveways and sidewalk areas) must be maintained as a groomed yard. With the exception of permitted landscaping features, the front, sides and back yards of each lot shall be completely sodded following the completion of the single-family home. If weather conditions make it impossible to comply with the foregoing requirement, Declarant, or if Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, the Board, shall establish a reasonable time within which to complete the sodding.

**2.04 Fences And Hedges.** No fences, walls, hedges or barriers shall be permitted upon Lots or adjoining property lines except as follows:

- (a) All fences must be approved by Declarant, or if Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, the Board, in writing.
- (b) Fences that are on rear or side yard lot lines abutting the Open Space Areas must be black vinyl clad chain link and can be no higher than four feet (4') in height above ground level. No solid fences or hedges are permitted along such lot lines. If a Lot contains a swimming pool, a six foot (6') high decorative wrought iron fence will be allowed in the rear and side yards of Lots abutting any such Open Space Areas.
- (c) Walls, fences, or hedges located along the rear property lines and side property lines of Lots not abutting Open Space Areas shall not exceed six feet (6') in height above ground level.
- (d) Notwithstanding anything in this Declaration to the contrary, no Lot Owner shall have the right to erect a fence within or across any easement area shown upon the Final Plats of any plats within Tuscany without the prior consent of the City or utility company or companies for whose benefit such easement runs. Any fence erected within or across an easement area without such consent may be taken down by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Lot Owner to restore or repair such fence.
- (e) The fence fabric or fence screening material shall be mounted on the exterior face of the fence posts or fence framing. Except for animal runs, no chain link fence shall be permitted unless it is black vinyl coated fence. All fences shall be kept in good repair and attractive appearance.
- (f) No fences shall be built forward of the center line of the house built on a lot other than a front yard decorative fence. Except for permitted decorative fences, fences abutting Open Space Areas, and fences described in subsection (g) of this Section below, all fences shall be either wood, vinyl, decorative wrought iron, or black



vinyl coated chain link. All wood fences shall be natural in color, stained, or painted in soft, earth-tone colors so as to blend in with the terrain. Front yard decorative fences shall be either painted wood, metal, or vinyl, open "picket" type fence that is a maximum of 42" high.

- (g) All fences around dog runs must be black vinyl clad chain link, standard galvanized chain link, or as approved by Declarant, or if Declarant no longer owns any Lots in Tuscany or has delegated such approval to the Association, approved by the Board, in writing. Animal runs, animal houses and animal shelters shall not be permitted unless they are located at the rear of the house or garage and abut the house or garage. All animal houses, animal runs and animal shelters shall be screened with landscaping so that they are not visible (i) to neighbors, (ii) from the street or (iii) from any Open Space Area. Any animal house or animal shelter shall have the same external appearance, color and roof material as the single-family home situated on the Lot. No animal house, animal shelter or animal run shall exceed seventy-two (72) square feet in area.

**2.05 Mailboxes.** If required by the City's ordinances or the United States Postal Service regulations, Declarant shall install "cluster-style" mailboxes to serve groups of the Single Family Lots, substantially in accordance with the requirements of such ordinances or regulations, which mailbox, upon installation, shall become the property of the United States Postal Service without any further deed or transaction. Thereafter, the United States Postal Service shall maintain, repair and replace said mailbox. If the United States Post Office fails to maintain, repair or replace said mailbox, then the Owners of each Lot may erect individual mailboxes in the public right-of-way adjacent to their property (or across the street from the Lot on the side of the street on which mail delivery is made) such that the front of the mailbox is at least six inches (6") back of the curb and the mail box is installed in such a manner so as not to lean or tilt. All such mailboxes and mailbox poles serving the Lots shall be of a uniform style and appearance adopted in writing by Declarant, or another equivalent mailbox or mailbox pole approved in writing by Declarant, or once the Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved mailboxes and approved mailbox poles shall be kept on file with the Association and shall be uniformly applied. In the event there is any change in the approved style and appearance of a mailboxes or mailbox poles to be used in Tuscany, then all existing mailboxes and mailbox poles may continue to be used as long as they are maintained in good condition and repair, but any replacements of such mailboxes or mailbox poles shall conform to the revised criteria for mailboxes and mailbox poles.

**2.06 Playhouses, Utility Buildings and Other Accessory Structures.** Playhouses, utility buildings, storage sheds or other similar structures shall be permitted; provided that the exterior and the roof of any such structure shall be constructed of the same material, have the same color and appearance as the residential dwelling on the same Lot and are located only in rear yards. Tennis courts shall be located in the rear yards only. No such improvements shall be located closer than twenty feet (20') from any lot line.

**2.07 Driveways.** No single-family home shall be constructed, altered, or maintained on any Lot unless it has a driveway from a street running to the single-family dwelling. All parking and driveway areas shall be hard surfaced, using a suitable thickness of Portland cement, or clay or concrete interlocking pavers installed in a manner suitable for vehicular traffic.

**2.08 Sidewalks.** Four-foot (4.0') wide public sidewalks are required within the public right-of-way or within the sidewalk easements within the five foot width of the Lot abutting the public right-of-way along all public streets abutting Lots on one side of the public right-of-way, as shown on the Final Plat for such portion of the development, except that the public sidewalks to be constructed along 14<sup>th</sup> Avenue SE shall be six-foot (6.0') in width, provided, however, Declarant may allow a lesser width of sidewalk for such distance as necessary to avoid a conflict between sidewalk and any fire hydrants. At the time a building is built upon such a Lot, the Owner of the Lot shall be responsible for construction of the public sidewalk along the portion of public street frontage(s) abutting said Lot and within any sidewalk easement areas on such Lot according to City specifications. Declarant shall construct the initial sidewalks to be part of any trail system in the Open Space Areas, if applicable, as shown on its approved plans for development of such Open Space Areas and thereafter the Association shall maintain, repair and replace such sidewalks and trail systems, as the case may be. Except for sidewalks to be constructed as part of the trail system in the Open Space Areas to be given to the Association, Declarant shall have no obligation to a purchaser of a Lot to install sidewalks.

**2.09 Garbage Cans and Equipment; Outside Storage; Holiday Displays.** No trash receptacles, garbage cans or recycling bins shall be permitted to be located upon a Lot unless hidden by an attractive screen of suitable height or unless sunken to ground level in a hole lined with permanent cribbing, except that garbage cans, trash sacks, recycling bins, yard refuse bags and other materials for collection by an authorized refuse collector may be placed at the pickup area designated by the City or its authorized refuse collection company on the evening of the day before the scheduled collection and may remain until the evening of the day of the scheduled collection of the same. Items such as compost containers, lawn or garden equipment, building materials, and other similar items shall be placed out of public view. Firewood shall not be stored on the front or side of a house. Stacked firewood in excess of 4' long by 3' high shall be adequately screened from view and must be stacked in the rear yard and be at least twenty feet (20.0') from any rear or side yard lot line. No material of any kind whatsoever may be stored in the front yard or side yard of a house (except that garden hoses may be stored in a side yard adjacent to an outside faucet if neatly coiled or contained on a hose reel), and no material of any kind shall be stored in a rear yard unless appropriately covered or screened from view by neighbors. No clothes lines shall be permitted. No clothing, rugs or other items shall be hung on or from any railing, landscaping or window. All repair of motorcycles, automobiles or other vehicles shall be done out of public view. No exterior holiday decorations shall be erected more than six (6) weeks prior to the holiday and all exterior holiday decorations shall be removed within three (3) weeks following the holiday. If the Owner of a Lot has not removed such holiday display within the foregoing time periods,

and if the Owner of such Lot fails to remove such holiday display within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Declarant, the Association or from any Owner within five hundred (500) feet of such Lot, the Declarant, the Association or such Owner of the applicable Lot within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and remove and dispose of the holiday display at the expense of the Owner of the applicable Lot where such holiday display is located, and shall have the right of action against the Owner of the applicable Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa, until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder, is paid.

**2.10 Motor Vehicles, Boats, Recreational Vehicles, Trucks and Tents.** No inoperable vehicle, and no camper (including fold down camper), motor home, boat, tractor, trailer, three-quarter (¾) ton or larger truck, bus, snowmobile, or all-terrain vehicle, shall be parked or maintained on any Lot (except inside a garage) or on the public street adjacent to any Lot for a period of longer than three (3) consecutive days or for longer than a total of thirty (30) days in any calendar year. No tent shall be maintained on any Lot for longer than a total of thirty (30) days in any calendar year.

**2.11 Temporary Structures; Mobile Homes.** With the exception of temporary sales offices placed by Declarant or its agents, there shall be no temporary structures or partially completed structures shall be erected or occupied on any Lot and no home or other building shall be moved onto any Lot from outside Tuscany. No mobile homes shall be permitted to be located upon or occupied on any Lot at any time.

**2.12 Swimming Pools.** Hot tubs and below-ground swimming pools are allowed provided that any hot tubs which are not below ground are skirted in wood or other materials approved, in writing, by Declarant, or once Declarant has relinquished control of the appointment of the Board, adopted or approved by the Board, which list of approved materials shall be kept on file with the Association and shall be uniformly applied. In the event there is a change in the approved materials for hot tubs, then all existing hot tubs that contain previously approved material may continue so long as such materials are maintained in good condition and repair and all replacements of such material shall conform to the new criteria. All swimming pools and hot tubs shall be located only in rear yards. Any outdoor hot tub must be located within ten (10) feet of the dwelling. No above-ground swimming pools are allowed. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or any other purpose.

**2.13 Satellite Dishes.** Satellite dishes or parabolic devices in excess of 30" in diameter used to receive television or other signals from satellites shall not be permitted. Declarant, or once Declarant has relinquished control of the appointment of the Board of Directors of the Association or delegated this responsibility to the Association, the Board of Directors of the Association may increase or decrease the permitted size of satellite dishes or parabolic devices by a written notice of Declarant or resolution of the Board of Directors of the Association which shall be kept on file with the Association and shall be uniformly applied, except that any previously lawfully existing satellite dish or parabolic device that is in excess of the newly established maximum diameter for such devices may be maintained and repaired, but not replaced. The satellite dishes or parabolic devices shall be mounted on the rear elevation or the rear half of the side elevation of the roofs of single-family homes on the Lots only. In no event shall a satellite dish or parabolic device be mounted on the front elevation or the front half of a side elevation.

**2.14 Towers and Antennas.** No extension tower, projection tower, receiver or antennas of any kind shall be constructed or maintained on any Lot or on the exterior of any building on a Lot.

**2.15 Livestock and Poultry Prohibited; Exterior Animal Houses.** No animal, livestock, pigs or poultry of any kind shall be raised, bred or kept on a Lot except that dogs, cats and other small commonly accepted domestic pets may be kept so long as they are not kept, bred or maintained for commercial purposes or sale to the public. In no event, however, shall more than two dogs or cats, collectively, be maintained on any one Single-Family Lot at any one time. All animals shall be tied, kept on a leash, fenced, confined within an underground electrical fence area which outside perimeters are at least ten (10) feet from all property lines, or kept in an animal run at all times. Animal runs, animal houses and animal shelters shall not be permitted unless they are located at the rear of the house or garage and abut the house or garage. All animal houses, animal runs and animal shelters shall be screened with landscaping so that they are not visible (i) to neighbors, (ii) from the street or (iii) from any Open Space Area. Animal runs must be approved by the Declarant, or once Declarant has relinquished control of the appointment of the Board, approved by the Board, in writing, including, but not limited to, the size, location and fencing. Any animal house or animal shelter shall have the same external appearance, color and roof material as the single-family home situated on the Lot. No animal house, animal shelter or animal run shall exceed seventy-two (72) square feet in area.

**2.16 Sales Office.** Declarant reserves the right to maintain one or more Lots as a model or a sales and display office for itself, for its marketing firm, and/or for builders of homes within its plats; display or post signs of any type or size which are a part of the development and marketing of Tuscan; and to have agents and employees equipment and material on any Lot used as a model or sales office.

**2.17 Utilities and Utility Meters.** All utilities, including trunk and service lines for telephone, electricity and cable television, shall be constructed and located underground. Utility meters shall be hidden architecturally or through the use of remote reading

devices. No private wells or septic systems shall be permitted on any Lot. No window mounted heating or air-conditioning units are permitted.

**2.18 Security Lighting.** Security lighting for driveways, parking and other external areas shall be designed, located and directed in a fashion, which will avoid direct lighting onto adjoining Lots. Other than security lighting, no light poles are permitted on any Lot, except for decorative lights in the back yards for pool lighting and except for any Association Lot on which an Association clubhouse is located, unless specifically approved by Declarant, or if the Declarant no longer owns any lots or has delegated such consent to the Association, of the Board of the Association.

**2.19 Noxious Activities.** No noxious or offensive activity, noise or odors shall be permitted on or to escape from any Lot, nor shall anything be maintained or done thereon which is or may become an annoyance or nuisance, either temporarily or permanently.

**2.20 Maintenance of Lot.** The Owner of any Lot, whether vacant or improved, shall keep the Lot free of debris and shall keep the Lot mowed so that the grass or weeds do not exceed six (6) inches in height. Each Owner of a Lot shall cut such grass or weeds and/or remove such debris within fifteen (15) days after such Owner receives written notice given by certified mail, return receipt requested, or delivered in person, from the Association or from any Owner within five hundred (500) feet of such Lot. If the grass or weeds are not mowed within fifteen (15) days of receiving notice, the Association or Owner within five hundred (500) feet of the offending Lot shall have the right and easement to enter upon the premises and mow or cut the weeds or grass or remove the offending debris at the expense of the Owner of the Lot where such grass or weeds are not so mowed or such debris is located, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

**2.21 Construction Clean Up and Maintenance.** Each Owner shall confine all of its construction activities solely to its Lot, shall keep its construction site clean, shall prevent any damage to any of the Declarant Improvements constructed or to be constructed by Declarant or by anyone else, and shall prevent any dirt, construction debris or other material from its Lot from being washed, blown, thrown, dumped, deposited or otherwise getting into the storm sewers, any storm water detention ponds, any overland flowage ways, the public streets, the public sidewalks or trails, the Open Space Areas, or onto any other Lot in Tuscany. Weekly clean up of trash and debris is required. During construction, the Owner shall install and maintain silt fences or equivalent erosion control on the downhill property line(s) from construction on its Lot. Owners are responsible for their contractors or subcontractors. Such Owner shall promptly repair any such damage and restore all such

facilities, other Lots and public streets to their condition immediately prior to such damage, destruction or deposit of dirt, construction debris or other material. If an Owner fails to adequately keep its construction site or the street clean or fails to repair any such damage and restore such facilities, other Lots or public streets, and such failure continues for more than three (3) days after written notice from the Declarant in whose plat such Lot is located or the Association, then such Declarant or the Association shall have the right and easement to enter upon the premises and perform such clean up, repair or restoration at the expense of the Owner of the Lot where such construction site is not adequately maintained or whose construction activity caused dirt and debris to be deposited upon the Lots of others or the public streets, and shall have a right of action against the Owner of such Lot for collection of the cost thereof, plus the reasonable costs, including attorney's fees, of collecting such amount, plus interest at the lesser of (a) twelve percent (12%) per annum, or (b) the maximum rate allowed by law, from the date such cost is incurred, and shall have a lien against such Lot from the day an affidavit reciting the giving of such notice, the performance of such work and the cost thereof is filed in the Office of the Recorder for Polk County, Iowa until such amount, plus the reasonable costs, including attorney's fees, of collecting such amount and costs of filing of such lien, incurred by the lienholder is paid.

**2.22 Requirement and Limitations with Respect to Public Easements Located upon an Owner's Lot.** Easements for the installation and maintenance of sanitary sewers, public utilities, storm sewers, surface water flowage areas and drainage ponds and related facilities, water mains, and/or public sidewalks are reserved as shown on the recorded plats of any portion of Tuscany as the same hereafter are filed from time to time, or any replat of any portion thereof. The Owner of any Lot in Tuscany shall, at such Owner's expense, keep and preserve that portion of such easements within such Owner's property, at all times, in good condition, and shall neither erect nor permit erection of any building or structure of any kind nor permit any growth of any kind within such easement area nor change the grade of any such easement area in any manner that might interfere in any way with the use, maintenance, repair, restoration or replacement of any of the utility services, drainage, or sidewalks located in said easement area, without the prior consent of the City, or utility company or person or entity for whose benefit such easement runs. Any such building or structure erected, growth permitted, or change in grade made within an easement area without such consent may be removed or regraded by the person for whose benefit such easement runs in the exercise of any rights granted by such easement without any obligation to such Owner to restore, repair or replace such building, structure, growth or change in grade.

**2.23 Signage.** Signage within Tuscany impacts the aesthetics of the neighborhood and property values. All signage shall meet the following requirements and restrictions:

- (a) Declarant or the Association shall erect and maintain Tuscany project identification signage within the signage easements at the entrances into the development and within the development.
- (b) In connection with the development of any plat within Tuscany, Declarant, or any other developer of a particular plat, may erect project signage, real estate signage,

financing signage, contractor, supplier or subcontractor signage related to construction and financing of such plat development and sale of the developed within such plat; provided, however, all such signage, including, but not limited to, the size, location and materials, shall be subject to the written approval of Declarant or if Declarant no longer owns any Lots in Tuscany or otherwise delegates this responsibility to the Association, the approval of the Board.

(c) In connection with the construction of any residence or building upon any Lot in Tuscany the Owner or person constructing such residence or building may erect project signage, financing signage, contractor, supplier or subcontractor signage, or real estate signage related to the construction and financing of such residence or building and the sale of such residence or sale or lease of such building; provided, however, none of the foregoing signs shall be larger than 30" wide by 24" high without the written approval of Declarant or if Declarant no longer owns any Lots in Tuscany or otherwise delegates this responsibility to the Association, the written approval of the Board.

(d) Once a Lot is sold and occupied as a residential dwelling unit, signage on that Lot shall be limited to (i) address signage, (ii) owner identification signs, (iii) signs advertising real estate for sale ("For Sale Signs"), (iv) sign for garage sales ("Garage Sale Signs"), (v) signs for special event signs (such as birthdays, graduations, or anniversaries, hereafter "Event" Signs), (vi) signs for political campaigns and public voting matters ("Political Signs"), and (vii) other signs approved in writing by Declarant or, after Declarant delegates such function to the Association or no longer owns a Lot in Tuscany, approved by the Board. For Sale Signs shall only be displayed while the applicable single-family residence is for sale and must be removed the day following the closing of the sale. Garage Sale Signs and Event Signs shall only be displayed one day before the sale or event, during the sale or event and must be removed by the day following the sale or event. Political Signs shall only be displayed up to two weeks prior to date of the vote or election, the day of the vote or election, and must be removed by the day following the vote or election. Political Signs not related to an election shall only be displayed for a maximum of two weeks. Other signs permitted by Declarant or the Board shall only be displayed for such time as authorized by Declarant or the Board, as applicable. All of the foregoing described signs shall be limited to no more than a 30" wide by 24" high yard sign and shall be professionally constructed. No hand painted signs will be allowed. Except for address and owner identification signs, no signs shall be erected on any building elevation, erected so that it is visible through window or glass openings or, except for vehicles with professionally made business signage on the vehicle, attached to vehicles parked within the neighborhood.

(e) The Declarant or the Association may establish and amend from time to time rules governing any signage, if any, to be erected within the Open Space Areas and all such rules shall be on file with the Association. No one shall erect any signs within the Open Space Areas without the consent of the Declarant or the Association.

**2.24 Drainage Swales.** There are drainage swales constructed within the Lots and/or public rights-of-way on all sides of Lots abutting public streets that are part of the storm

water drainage system of Tuscany. These drainage swales cannot be eliminated by installation of drainage pipe and/or backfill. The Owner of each Lot must build and maintain a culvert under every driveway to the Lot to permit free flow of water under the driveway and through the drainage swale on both sides of the driveway. The Owner of each Lot is responsible for maintaining erosion control and planting of prairie plants and other plants approved by the City and the Declarant, or, once the Declarant has relinquished control of the Association, approved by the Board, within the drainage swales located upon that Lot or in the public right-of-way adjacent to that Lot. The Owner of each Lot is responsible to maintain the drainage swales located upon that Lot or in the public right-of-way adjacent to that Lot in good condition and repair so that it may fulfill its function as a part of the storm water drainage system. The Association is responsible to maintain the drainage swales located upon any Outlot deeded to the Association or in the public right-of-way adjacent to such Outlot owned by the Association. No fences, obstructions or plantings, other than permitted plantings, shall be allowed in any such drainage swale. Should any Owner fail to fulfill its duties under this Paragraph 2.24, and after reasonable notice from the Association, the Association shall have the right to enter upon the Owner's property for the limited purposes of maintaining and/or repairing the drainage swales located thereon and assess the costs of such maintenance and/or repair directly to such Owner. Such assessments shall be subject to all of the applicable provisions related to Association assessments found in this Declaration, the Articles of Incorporation and/or Bylaws of the Association.

### ARTICLE III

#### PRIVATE EASEMENTS

##### 3.01 Signage, Entrance Landscaping Features and Irrigation Easements.

- (a) Declarant hereby grants to the Association, for and on behalf of the Owners of all Lots within Tuscany, an easement for the purpose of installing, maintaining, operating, repairing, replacing and removing signage, flags, other entrance features and landscaping in, on, over, and under such easement areas as are dedicated for such purposes and described in any easement shown on the final plat of Tuscany Plat 1, recorded with the Polk County Recorder's Office and affecting Tuscany, and/or shown on any future plat affecting Tuscany.
- (b) These easements are subject to the following conditions:
- (i) The signs shall be Tuscany identification signs. All such signs shall conform to the ordinances, rules, and regulations of the City. Any electrical service for such signs shall be separately metered or otherwise separately billed by the public utility furnishing such electrical service and charged to the Association. Neither Declarant nor the Association is required to install or maintain signs in any or all of these sign easement areas.



(ii) Declarant shall install initial entrance features, if any, and landscaping and the Association may install any additional entrance features, signs and landscaping it desires and the Association shall maintain, operate and replace all signs, entrance features, landscaping within such signage and landscaping easement areas, including, but not limited to, paying for any electrical or water service for such operation and maintenance.

(iii) Neither Declarant nor the Association shall locate any such signage, entrance features, or landscaping in a manner to obstruct any vision triangles that overlap a portion of any such easement area, if any.

(iv) The Owner of the Lot upon which any such easement is located shall not make any modifications or improvements to any such easement area without the consent of the Association, which consent shall be in the Association's sole discretion.

(v) Any of the easement areas granted in this Section shall terminate (a) by written election of the Declarant, in recordable form, filed in the Office of the Recorder for Polk County, Iowa, provided that Declarant is then the Owner of the Lot on which such easement area lies, but if any sign is then located in such easement area, it shall be removed at the expense of Declarant, or (b) by the vote of the Board of the Association any time on or after January 1, 2018, and the filing of a written memorandum thereof in recordable form in the Office of the Recorder for Polk County, Iowa.

**3.02 Open Space Areas to be Conveyed to and Maintained by the Association.**

(a) Various Outlots will be developed as Open Space Areas within the Tuscan development and will be conveyed to the Association. These areas shall be developed with prairie grasses, wildflowers and other landscaping and pedestrian and bike trails, and may be developed with playground equipment, play fields, benches, garden areas or other amenities as determined by the Declarant or the Association. These Open Space Areas shall be subject to an easement that is hereby granted to the Owners of Lots within Tuscan for the use and enjoyment of the residents of Tuscan and their family members and guests under such written rules and regulations as may be established, modified or repealed from time to time by the Declarant or the Association and distributed to the residents of Tuscan and kept on file with the Association, and the Association may impose reasonable fees for the use of some of the facilities if it determines such charges to be appropriate. The Association shall own, maintain and repair these Outlots and all Improvements located thereon, and may, in its sole discretion replace, relocate or demolish any Improvement that is no longer in good condition and repair. As the Open Space Area is to be maintained and managed in its natural state, neither the Declarant or the Association shall have a duty, affirmative or otherwise, to maintain the Open Space Area with regard to the management and maintenance of rodents, snakes, insects, or any other animal or insect that may inhabit the Open Space Areas and come on to a Lot Owner's property.

(b) Except as provided in the following sentence, nothing in this Declaration shall grant any person, other than an Owner or Occupant of any Lot within Tuscanly or any of their family members or guests, an easement or right to use any of these Open Space Areas or to travel over, through, or across any of these Open Space Areas. Notwithstanding the prior sentence, the Declarant hereby grants the City of Altoona, Iowa, for and on behalf of members of the general public an non-exclusive easement for the members of the general public to walk, bicycle, roller skate or ride a non-motorized scooter over, through and across any pedestrian and bike trails constructed within said Open Space Area, to use any adjacent benches located within four (4) feet of said pedestrian and bike path, subject to such reasonable rules and regulations as the Association may promulgate; provided, in no event shall anyone have the right to operate a motor vehicle or other motorized means of locomotion over, through and across such pedestrian and bike paths.

(c) No Lot Owner or Occupant may maintain the Open Space Areas or make any improvements to the same. No dumping of trash, garbage, sewage, grass clippings, landscaping debris, sawdust, concrete or other construction debris, and no placement of any unsightly or offensive material shall occur upon the Open Space Areas, except as is temporary and incidental to the bona fide improvement of the Open Space Area by the Declarant or Association in a manner consistent with its classification as an Open Space Area.

(d) Declarant, for so long as it owns any portion of Tuscanly, reserves to itself and its successors and assigns, the right to grant perpetual, alienable easements under, through and across any of the Open Space Areas for the construction, maintenance, repair and replacement of any water mains, sanitary sewer lines or storm sewer or surface water drainage facilities to be granted to the City of Altoona or any public utility easements for the construction, maintenance, repair and replacement of any electrical service, natural gas service, telephone service, cable television service or data transmission service to serve or extend service of the same to any Lots in Tuscanly. These reservations and rights expressly include the right to cut trees, bushes, or shrubbery, rights to change the grade of the Open Space Area, or to take any other similar action reasonably necessary to provide economical and safe utility installation and maintain reasonable standards of health, safety and appearance; provided that Declarant shall cause the surface of such Open Space Area and any improvement in such Open Space Area that is damaged as a result of the use of such easement area to be restored to a similar condition to prior to such work or shall place the burden for such restoration upon the grantee of such easement. This right shall not create any obligation on the part of Declarant to provide or maintain any such utility or service.

**3.03 Surface Water Flowage Easements.** The topography of Tuscanly is such that surface water may flow from certain Lots onto other Lots. In regard to all matters concerning surface water, each Lot shall be subject to such easements as may exist for the flowage of surface water under the laws of the State of Iowa, as may be in effect from time to time, and all Owners shall have such rights and obligations with respect thereto as may be provided by such law.

**3.04 Storm Water Detention Facility Maintenance Easements.** Declarant hereby reserves to Declarant, and to the Association, a non-exclusive easement over, through and across any Lot within Tuscany on which there is a storm water drainage ways or detention facilities to the extent reasonable or necessary for the operation, maintenance, repair or restoration of any such storm water drainage ways or detention facilities and any related improvements, which may include stocking any permanent wet detention basins with fish or other wildlife (but not ducks or geese) and controlling any algae or other pests or nuisances associated therewith. The Association shall have the primary responsibility, at its cost, to maintain and keep the storm water detention ponds to be located in Tuscany, if any, in good condition and repair. The Association may, but is not required to, enhance such storm water drainage ways or detention facilities, for example by stocking fish in any permanent wet detention basins.

**3.05 All of These Easements Are Subject to Concurrent Public Utility Easements.** All of the easements granted in this Article III are subject to the following concurrent easements granted in part or all of these respective easement areas: (a) any public utility easements, sanitary sewer easements, storm sewer and/or surface water flowage easements granted to the City, and (b) any public utility easements granted to the electric company or companies providing electrical service within the City, to the natural gas company or companies providing natural gas services within the City, to the telephone company or companies providing telephone service within the City, to the cable television company or companies providing cable television service within the City, and to the data transmission company or companies providing data transmission services within the City.

**3.06 Construction of Certain Improvements and Amenities to Tuscany by Declarant.** The Declarant shall promptly commence and diligently pursue to completion, at their expense, within the plats developed by Declarant, the construction, if applicable, of private storm water detention and flowage facilities and related facilities, the installation of signs, other entrance features and landscaping in the sign easement areas, and the installation of landscaping in the island boulevard medians, if any, and in any future island boulevard medians if and when constructed, and in the island medians in the cul-de-sac circles and in any future cul-de-sac circles, if any, constructed in any future plat or any replat of any portion of Tuscany and in Open Space Areas, if any, included in any plat, and associated irrigation lines and electrical and water services as may be required or appropriate, all substantially as shown on the Site Construction Plans, and such other additional improvements, if any, in such areas as Declarant desires. Upon completion of such work, Declarant shall install any other silt structures or other erosion control facilities required by law by reason of Declarant's work. Declarant may elect, within its discretion, to construct a clubhouse and/or recreational facilities, including, but not limited to, a pool and a sports court for use by the members of the Association and their families, guests and invitees; provided, however, Declarant shall have no obligation to construct a clubhouse or other recreational facilities. Collectively such work performed or to be performed by Declarant is referred to herein as the "Declarant's Improvements". Declarant shall perform all such construction of Declarant's Improvements in a good and workmanlike manner, with first class materials, and in accordance with all applicable laws, rules, ordinances, codes and regulations.

In the event any mechanic's or materialman's lien is filed against any Lot not then owned by Declarant as a result of the construction of Declarant Improvements by Declarant, Declarant shall, within thirty (30) days after such lien is filed, either pay the same and have it discharged of record or post such bond or other security as shall be required by law to obtain the release and discharge of such lien as against such Lot.

Upon completion of the Declarant Improvements, the Association shall operate, maintain, repair, restore and replace all such Declarant Improvements. Declarant shall execute such documents, including, but not limited to, bills of sale to convey title to any of the Declarant Improvements, but not the land upon which they lie, to the Association as may be necessary or desirable to enable the Association to fulfill the duties and obligations delegated to the Association by this Declaration.

**3.07 Conveyance of Lots Prior to Completion of Declarant's Work and Coordination of Construction of Improvements to Such Lots.** Declarant may convey any Lot in its plats in Tuscany prior to completion of the Declarant Improvements to be made to Tuscany pursuant to Section 3.06 of this Declaration. In such event, Declarant shall have an easement to go on such Lot to the extent necessary to complete construction of the Declarant Improvements.

Declarant and the Owner of any such Lot conveyed prior to substantial completion of such Declarant Improvements to Tuscany shall use all reasonable efforts to cooperate and coordinate their respective construction work to the extent reasonably practicable so that each may undertake construction at the same time; provided, however, the Owner of such Lot may not undertake any construction work that materially interferes with the ability of Declarant to complete the Declarant Improvements, that materially delays Declarant in the completion of the Declarant Improvements, or that increases the cost to Declarant of constructing the Declarant's Improvements.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**4.01 Membership.** Every Owner of a Lot in Tuscany shall be a member of the Association. A person who is not an Owner of a Lot in Tuscany may not become a member in the Association and will not be allowed access or use of any Declarant Improvements, other than as a guest or invitee of a member (which shall be subject to the Articles of Incorporation, Bylaws of the Association, and rules and regulations established by the Association from time to time), unless and until such person becomes the Owner of a Lot in Tuscany and becomes a member of the Association.

**4.02 Voting Rights.** The voting rights of members and the reserved rights of the Declarant are specified in the Articles of Incorporation and Bylaws of the Association.

**4.03 Authority and Obligations.** The Association through its Board of Directors, shall have the right, power and authority to:

- (a) provide for the enforcement of this Declaration;
- (b) borrow money and own, mortgage, pledge and convey real property and personal property;
- (c) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of the Declarant Improvements to Tuscany or any Improvements hereafter made by the Association;
- (d) provide for the installation, operation and maintenance of project signage and entrance features;
- (e) provide for the installation, maintenance and care of landscaping on the corners of the intersections, in the islands, in the boulevard entrances, and in any circles of any future cul-de-sac streets within Tuscany;
- (f) provide for the planting of Street Trees in street tree easements;
- (g) provide for the installation, operation and maintenance of landscaping, landscaping features and other improvements within landscaping easements;
- (h) provide for the installation, maintenance and care of signage;
- (i) provide for the installation, operation, maintenance and repair of the storm water detention ponds of Tuscany, if any;
- (j) provide for the installation, maintenance and repair of any barrier wall fences;
- (k) provide for any operation, maintenance, repair, reconstruction, restoration, replacement, or improvement of any recreational facility, constructed by Declarant or the Association in the Open Space Areas;
- (l) provide for the installation, maintenance and repair of all Open Space Areas in Tuscany and of bike and pedestrian trails within and abutting Tuscany, to the extent not done by the City of Altoona, Iowa as provided in Article III, including, but not limited to, snow removal, weeding, mowing of grass, and burning of prairie and natural grasses from and around the bike and pedestrian trails;
- (m) make additional common improvements for the benefit of Tuscany;
- (n) in its discretion, perform services on behalf of the Owners of one or more of the Lots within Tuscany;

- (o) hire accountants, architects, contractors, lawyers, managers, employees, and such other persons as necessary or desirable to carry out its duties;
- (p) purchase such insurance as may be reasonable, including, but not limited to, general liability insurance, property and casualty insurance and officers and directors coverages;
- (q) levy, collect, and have jurisdiction, control and possession of assessments as hereinafter provided; to enter into contracts as may be necessary or desirable to carry out the provisions of this Declaration;
- (r) establish rules and regulations for the use of Association property and easement areas which are established for the benefit of the members of the Association by members of the Association and their guests and invitees, which may include remedies and the imposition of reasonable fines for the violation of such rules and regulations;
- (s) otherwise establish such procedures and policies as may be necessary or deemed desirable to provide for the general welfare of the Owners and Occupants of Tuscany, in accordance with the spirit and letter of this Declaration, including the power to make variances in this Declaration, but only in accord with the intent and purpose of Section 1.01 above; and
- (t) do such other things as are reasonable or necessary to carry out its obligations hereunder or under any agreement with any Owner of any Lot.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**5.01 Creation of Lien and Personal Obligation.** Declarant hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association assessments as provided in this Declaration. The assessments levied by the Association and any other charges against the Owner of a Lot set forth elsewhere in this Declaration, together with interest, costs and reasonable attorney's fees related to collection of such charges or enforcement of this Declaration or any of the rules and regulations promulgated pursuant to this Declaration shall be a charge on the Lot of such Owner and shall be a continuing lien upon such Lot against which each such assessment or charge is made senior to all liens except the first mortgage of record, any ad valorem taxes, and any special assessments levied by the City. Such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time when the assessment or charge fell due. The personal obligation for delinquent assessment or charge, together with interest, costs and reasonable attorney's fees, shall not pass to said Owner's successor in title unless expressly assumed by them.

**5.02 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of carrying out the general duties and powers of the Association, including, but not limited to operation, maintenance, repair, reconstruction, restoration, replacement, or alteration of the Declarant Improvements to Tuscany or the Improvements hereafter constructed by the Association as provided in this Declaration, insurance coverage of the Association and its property, including but not limited to any Association Lot, any legal or other costs of enforcement of this Declaration, and for such reasonable reserves as the Board deems necessary. In making such assessments, the amount to be levied shall be equal and limited to the actual cost to the Association of providing those functions and services set forth in this Declaration.

**5.03 Rate of Assessment.** The assessments levied upon and against Lots within Tuscany and the Owners thereof, shall be a share of the total amount of each assessment prorated equally among such Lots within Tuscany and the Owners thereof as of the beginning of the period for which such assessment applies.

**5.04 Procedures.** All assessments shall be made in the manner and subject to the following procedure, to wit:

- (a) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title of the assessable property and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the assessable property itself.
- (b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided, unless the assessment by its own terms provides for payment in monthly, quarterly or semi-annual installments, in which case each such payment shall be due as stated in such notice. From and after the date when said payment is due, it shall bear interest at lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law, until paid and such payment and interest shall constitute a lien upon the assessable property and said lien shall continue in full force and effect until the assessment is fully paid. A late charge of twenty-five and 00/100 Dollars (\$25.00) shall levied against the Lot Owner to defray the Association's administrative costs associated with and collecting delinquent assessment payments. The Board may also modify the late charge in such amount as it shall establish from time to time and set forth in any notice of assessment to defray the Association's administrative costs associated with and collecting delinquent assessment payments. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board may, in addition, execute and acknowledge with respect to any assessable property and cause same to be recorded in the Recorder's Office for Polk County, Iowa, and the Board may, upon payment, cancel or release any assessable property from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at expense of the Owner of the property affected) a release of such assessment with respect to any assessable property affected, and the Board shall cause to be noted from time to

time in the minutes of their proceedings, the payment made on account of assessments. Notwithstanding any other provision herein, the Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the assessable property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment, the cost of preparation, and filing the petition in such action including reasonable attorney's fees. No Owner of assessable property may waive or otherwise be relieved of liability for the assessments provided for herein by non-use of the common areas or facilities or abandonment of its assessable property.

- (c) The term "assessable property" shall mean all Lots within Tuscany whether or not such Lot have a single-family home constructed on it and whether or not such Lot is vacant or occupied.

## ARTICLE VI

### GENERAL PROVISIONS; DURATION OF DECLARATION

**6.01 Specific Enforcement of Restrictions.** Declarant, the Association and each Owner of a Lot in Tuscany that is subject to the terms and conditions of this Declaration shall have the right to enforce this Declaration and each and every covenant, condition, easement, provision, restriction and term of this Declaration and in the event of the breach of any such covenant, condition, easement, provisions, restriction or term contained in this Declaration, Declarant and each such Owner shall have the right to exercise all rights and remedies available at law or in equity. All Owners of Lots within Tuscany covenant and agree, by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, that monetary damages may not provide adequate compensation for the breach of the restrictions and covenants contained in this Declaration and that this Declaration may be specifically enforced by Declarant or the Board. All remedies provided for in this Declaration or which are otherwise available at law or in equity shall be cumulative. Neither Declarant, the Association nor any Owner of a Lot that is subject to the terms of this Declaration shall have any liability to any person or entity for any failure to enforce any provision of this Declaration.

**6.02 Breaches Deemed to be a Nuisance.** Every act or omission that violates, in whole or in part, any of the covenants, conditions, easements, provisions, restrictions and terms contained in this Declaration is hereby declared to be a nuisance, and every remedy allowed by law or equity therefore shall be applicable against the party who so violates this Declaration and may be exercised by Declarant or by any Owner of a Lot which is subject to this Declaration.

**6.03 Attorneys Fees.** In the event, in the reasonable opinion of the Board or Declarant, it shall be necessary to secure the services of an attorney to enforce the provisions of this Declaration, then the fee of such attorney, and all other costs in connection with the enforcement of this Declaration, including, but not limited to, the



costs of obtaining and/or continuing an abstract of title to the Lot in question, the costs of any contemplated or actual legal proceedings, and the costs of preparation and presentation of any evidence in such connection shall be the obligation of the Owner of the Lot which is the subject of such enforcement action, unless such Owner is found not to have violated any provision of this Declaration, and provided such Owner shall not be obligated for any such attorneys fees and costs incurred by such Declarant or the Association after such Owner offers to settle such matter for an amount equal to or greater than that finally approved by a court of competent jurisdiction and/or by taking or forbearing from the requested action, as appropriate. If such costs and attorneys' fees are not paid within ten (10) days from the date of written notice thereof by the Board or such Declarant to the Owner of such Lot, said fee and costs shall thereupon constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

**6.04 Inspection.** Declarant or representatives of the Association who are authorized by the Board may, from time to time, at any reasonable hour or hours, enter and inspect any Lot subject to this Declaration to ascertain compliance therewith.

**6.05 Failure to Enforce Not a Waiver of Rights.** The failure of Declarant, the Association, or any Owner of a Lot which is subject to this Declaration to enforce any condition, covenant, easement, provision, restriction, reservation or term of this Declaration in any one instance shall not be deemed a waiver of the right to do so thereafter nor shall it be deemed to constitute a waiver of the right to enforce any other condition, covenant, easement, provision, restriction, reservation or term of this Declaration.

**6.06 Rights of Third Parties.** Nothing in this Declaration shall be construed so as to impose or create any duty or obligation on either Declarant, the Association or any Owner of any Lot which is subject to this Declaration to the benefit of the general public, third parties, or invitees, guests, employees, agents, principals or licenses of any Owner or Occupant of any Lot which is subject to this Declaration.

**6.07 Liability.** Neither the Declarant nor the Association, nor their respective members, shareholders, directors, managers, officers, employees, agents and representatives shall have any liability to or for damages of any sort to any Owner or Occupant or to any other person or entity for any exercise or failure to exercise any right or duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval, required or permitted under the terms of this Declaration, except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration. Provided, however, any Owner of a Lot which is subject to this Declaration may exercise any rights such Owner may have against the Declarant or Association or otherwise seek to enforce the conditions, covenants, easements, provisions, restrictions, reservations and terms of this Declaration against such Declarant or the Association, by an action in equity for specific performance or injunctive relief, to which Declarant shall be subject. These

remedies of specific performance and injunctive relief, shall be the only remedies available against Declarant or the Association (except as in Declarant's or the Association's capacity as the Owner of any Lot that is subject to this Declaration) for any exercise or failure to exercise any right, duty or obligation, if any, of Declarant or Association hereunder, or in any manner arising herefrom, or for the granting of approval or withholding of approval required or permitted under the terms of this Declaration, all other remedies being expressly waived by acceptance of a deed to any Lot within Tuscany.

**6.08 Condemnation.** In the event of any partial taking by a governmental body or other entity that has the power of eminent domain that involves a taking of all or part of improvements to be constructed by Declarant, the Owners of each Lot agree, by acceptance of a deed to such Lot, whether or not it is so expressly stated in such deed, that the Association shall have and shall be deemed to have an interest in proceeds to be paid for such taking in the amount necessary to repair, restore or replace the portion of such improvements so taken as near as practicable to a functional whole to serve the same purpose after such taking as the facility so taken served prior to such taking. To the extent that the Association does not receive its own award or payment from the condemning authority or the award or payment received is inadequate to cover the cost of repair, restoration or replacement of such improvements, the Owners of each Lot receiving such award or payment shall pay to the Association pro rata from their awards or payments the amount necessary for the Association to complete such repair, restoration or replacement of such improvements. In the event that the awards or payments received from such condemnation are inadequate to pay the entire cost to complete such repair, restoration or replacement of such improvements, then the remaining cost shall be assessed against all Owners of Lots in Tuscany in proportion to their respective assessment shares. All amounts due to the Association from the Owners of any Lot shall constitute a lien against the property in question, the same as the lien for the general assessment pursuant to the provisions of Article V hereof, and all interest and remedies applicable to such lien shall apply thereto.

**6.09 Estoppel Certificates.** The Association shall issue to any Owner of a Lot or to any mortgagee of, or purchaser from, any Owner of a Lot, an Affidavit Explanatory of Title or Estoppel Certificate in such form as may reasonably be requested stating any or all of the following information:

- (a) whether the Association knows of any default under this Declaration by the Owner of such Lot, and if there are known defaults, specifying the nature thereof;
- (b) the nature of any amounts owed to the Association by any Owner about whose Lot the request is made, and the nature of any amounts owed by the Association to the Owner about whose Lot the request is made;
- (c) the applicable share of any assessments for which the Owner about whose Lot the request is made is liable;

- (d) the nature and amount of any budget or approved expenditures that have been adopted by the Association;
- (e) whether this Declaration has been amended, and if so, the nature of any such amendment;
- (f) whether the Association claims any offsets or defenses to any amounts owed by it under this Declaration to the Owner of such Lot, and if so, the nature of such offsets or defenses; and
- (g) whether this Declaration is in full force and effect, or if it is claimed it is not in full force and effect, specifying the portions of, or manner in which, this Declaration is not in full force and effect.

The Association shall be entitled to establish a reasonable fee for the provision of a certificate in accordance with the foregoing provisions and may condition the delivery of such certificate upon the payment of the applicable fee.

**6.10 Covenants Binding and Running with the Land.** Each of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, and the Owners of each Lot in Tuscany, and their successors and assigns and all parties and persons claiming under any of them, and shall be deemed covenants that run with the land, and shall continue for the applicable periods specified in this Declaration.

It is the intent that, notwithstanding anything in the Code of Iowa to the contrary, all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration shall be covenants running with the land for the full period specified in this Declaration without further action by either Declarant, the Association, or any Owner of any Lot in Tuscany. However, in the event that Section 614.24 of the Code of Iowa, as the same may be amended or replaced, may require that a verified claim be filed in the Office of the Recorder for Polk County, Iowa prior to the twenty-first anniversary of the date of this Declaration or the twenty-first anniversary of the last filing of such verified claim in order to continue all or some of the covenants of this Declaration, including, but not limited to, any covenant, term, provision or restriction that is or may be considered a use restriction, reversion or right of reverter, in effect throughout the applicable periods specified in this Declaration, then:

- (a) the Association, or the Owners of the Lots acting jointly or severally, shall file all verified claims necessary to keep all of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration;
- (b) a verified claim filed by the Association or any Owner of a Lot in Tuscany shall be valid and binding upon the Association and all the then Owners of Lots in Tuscany, (the "Interested Parties"), and their successors and assigns, with the same effect as if

executed by all such persons, and in order to facilitate filing of any verified claim required to so continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, the Association and each Owner of a Lot is hereby irrevocably appointed the attorney-in-fact for all of the other Interested Parties for the purpose of filing any such verified claim;

(c) that in the event of any defect in the verified claim or its filing and recording in the Office of the Recorder for Polk County, Iowa, no interested person or anyone claiming, by, through or under an interested person shall be entitled to assert such defect as a basis to avoid its duties and obligations under this Declaration unless, if such defect is in a claim prepared by any interested party, such defect is not corrected within thirty (30) days after notice of such defect to all interested parties;

(d) that in the event an interested party fails or refuses to cooperate to file any verified claim required to continue all or any of the conditions, covenants, easements, indentures, restrictions and reservations contained in this Declaration throughout the applicable periods specified in this Declaration in full force and effect, such interested party hereby waives and shall be deemed to have waived the right to, and be estopped to, assert any failure to file such verified claim as a defense to its duties and obligations under this Declaration; and

(e) that each interested party by acquisition of its interest in Tuscany or under this Declaration, whether or not expressly provided in any instrument creating such interest, hereby waives its right to assert the failure to file any verified claim required by the Code of Iowa as a legal basis to avoid any duty or obligation upon it and its respective portion of Tuscany throughout the applicable period specified in this Declaration.

**6.11 Duration.** The easements granted in or pursuant to Article III of this Declaration or granted in any other Section of this Declaration, any other provisions of this Declaration expressly incorporated in Article III or such other Section of this Declaration to the extent applicable to such easements, and any other covenants, indentures, restrictions and reservations of this Declaration that are reasonably or necessarily incidental to the benefit or burden of such easement rights, including any rights of assessment or for liens for the payment of costs associated therewith, shall continue in perpetuity, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

Except as provided in the preceding paragraph of this Section, the covenants, indentures, restrictions and reservations in this Declaration shall be for an initial term of twenty (20) years, and shall automatically renew for successive terms of ten (10) years each, unless sooner modified or terminated as provided in Section 6.12 of this Declaration.

**6.12 Amendment of This Declaration.** This Declaration may not be altered, amended, modified, supplemented or terminated, in whole or in part, except in writing and as provided in this Section. Declarant, for so long as such Declarant retains

ownership of any Lot within Tuscany which has no building located thereon, and after Declarant has no interest in Tuscany (other than as an Owner of a developed lot), the Owners possessing sixty percent (60%) or more of the Association voting rights (on issues other than the election and removal of directors) may, by written declaration signed and acknowledged by them and recorded in the Office of the Recorder for Polk County, Iowa, alter, amend, supplement, add to, or terminate such conditions, covenants, indentures, restrictions and reservations of this Declaration, provided, however, that such alteration, supplement, addition, amendment or termination shall insure provisions for the continued operation, maintenance, repair, restoration and replacement of improvements to Tuscany constructed by Declarant, and except that no such alteration, amendment, supplement, addition, or termination may change the manner of assessment of any Owner except in a manner applied uniformly to all Owners. No such alteration, amendment, modification, or change shall reduce or modify the rights or obligations granted to, or imposed upon, the Association with respect to the continued operation, maintenance, repair, restoration and replacement of the Declarant Improvements to Tuscany and the power to levy assessments therefor or to eliminate the requirement that there be an Association unless some other person or entity be substituted for the Association and succeed to all of its rights and duties under this Declaration. It is expressly understood that no such alteration, amendment, supplement, addition, or termination shall require the consent of any Occupant (other than an Owner, and then for such Owner-Occupant only to the extent provided elsewhere in this Section) or any mortgagee of any Lot, or from the City. Notwithstanding the foregoing, neither the Declarant, the Association nor the Owners can amend Article III of this Declaration to amend, terminate or limit the easements granted to the City without the prior written consent of the City nor amend Article III of this Declaration to amend, terminate or limit the easements granted to the City, without the written consent of the City to such amendment.

**6.13 No Public Dedication.** Nothing contained in the Declaration shall be deemed to be a gift or dedication of any portion of Tuscany to general public, or for the general public, or for any public purpose whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the benefit of the Owners of the Lots in Tuscany and the purposes herein expressed.

**6.14 Release Upon Sale.** Subject to the provisions of this Section, if an Owner of a Lot in Tuscany sells, transfers, or assigns its Lot (other than as security for a loan), then it shall be released from its future obligations under this Declaration. It shall be a condition precedent to such release and discharge that any and all amounts that shall then be due and payable by such Owner shall have been paid, and that such Owner shall give written notice to the Association of any such sale, transfer, conveyance, or assignment concurrently with the filing for record of the instrument effecting the same.

Notwithstanding anything in this Declaration to the contrary, it is expressly understood and agreed that any first mortgagee who shall have acquired title to any Lot, or portion thereof, through foreclosure or deed in lieu of foreclosure, shall not be personally liable for any obligations under this Declaration that arose with respect to the obligations of the Owner of such Lot prior to the date such mortgagee acquired title thereto; provided,

however, that any existing lien or right to a lien against such Lot allowed by this Declaration or as a result of the enforcement of this Declaration with respect to matters occurring before such mortgagee so acquired title thereto and shall continue and remain in full force and effect.

**6.15 Severability.** In the event any provision of this Declaration is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Declaration shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Declaration is invalid, illegal or unenforceable as written or applied, but that by limiting such provision it would become valid, legal and enforceable, then such provision shall be deemed to be written or applied and shall be construed and enforced as so limited.

**6.16 Time of Essence.** Time is of the essence with respect to the performance of each of the conditions, covenants, terms and provisions of this Declaration.

**6.17 Governing Law.** This Declaration shall be construed in accordance with the laws of the State of Iowa.

**6.18 Captions.** The captions of the Articles, Sections and Subsections of this Declaration are for convenience only and shall not be considered nor referenced in resolving questions of interpretation and construction of this Declaration.

*{Signatures on the Next Page}*

IN WITNESS WHEREOF, Declarant have duly executed this Declaration as of the date and year first above written.

TUSCANY RESERVE, LLC

By: Hubbell Realty Company, Managing Member

By: *Dan D. Butcher*  
Dan D. Butcher, 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 2, 2008 by Dan D. 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

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**MORTGAGEE'S CONSENT AND SUBORDINATION**

**KNOW ALL MEN BY THESE PRESENTS:** that, **First American Bank** ("FAB") is the present owner of the Mortgagee's interest in that certain Mortgage, granted by Hubbell Properties II, L.C. (Series Altman), a series of a multi-series Iowa limited liability company, as Mortgagor, to FAB, as Mortgagee, September 29, 2006, and filed for record in the Office of the Recorder of Polk County, Iowa on October 2, 2006 and recorded in Book 11882 at Page 95, subsequently assigned by Mortgagor to Tuscany Reserve, LLC by an Assignment and Assumption of Note and Mortgage dated October 31, 2007, and filed for record in the Office of the Recorder of Polk County, Iowa on November 1, 2007 in Book 12433 at Page 28, subsequently modified by that certain First Amendment to Promissory Note and Mortgage by and between FAB and Tuscany Reserve, LLC dated October 31, 2007, and filed for record in the Office of the Recorder of Polk County, Iowa on November 1, 2007 in Book 12433 at Page 333, and for which there appears a Partial Release of Mortgage from FAB dated October 31, 2007, and filed for record in the Office of the Recorder of Polk County, Iowa on November 1, 2007 in Book 12434 at Page 767 (collectively the "Mortgage"), which Mortgage creates a lien on portions of Tuscany. FAB hereby consents to the within and foregoing 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.

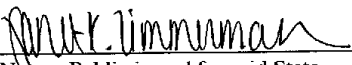
Dated this 1<sup>st</sup> day of July, 2008.

**FIRST AMERICAN BANK, Mortgagee**

By:   
Dean L. Peyton, Executive Vice President

STATE OF IOWA            )  
  ) SS.  
COUNTY OF POLK        )

On this 1<sup>st</sup> day of July, 2008, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Dean L. Peyton, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of **FIRST AMERICAN BANK**, executing the within and foregoing instrument; that the instrument was signed on behalf of said bank corporation by authority of its Board of Directors; and said Dean L. Peyton, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

  
Notary Public in and for said State



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 Tuscan 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 Tuscan. FNBO hereby consents to the within and foregoing Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscan, 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 2nd day of July, 2008.

FIRST NATIONAL BANK OF OMAHA

By: [Signature] Scott W. Dambrow, its Vice President

STATE OF NEBRASKA ) ) SS. COUNTY OF DAWSON )

On this 2nd day of July, 2008, before me the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Scott W. Dambrow, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President of FIRST NATIONAL BANK OF OMAHA, executing the within and foregoing instrument; that the instrument was signed on behalf of said bank corporation by authority of its Board of Directors; and said Scott W. Dambrow, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

[Signature] Notary Public in and for said State

