

Recorded: 1/19/2017 at 8:46:25.307 AM
Fee Amount: \$22.00
Revenue Tax:
Polk County, Iowa
Julie M. Haggerty RECORDER
Number: 201600062847
BK: 16348 PG: 871

Prepared By/Return To: Jennifer L. Schumann, 6900 Westown Parkway, West Des Moines, IA 50266 (515)280-2009
Previously Recorded Documents: Document No. 12850-219; 14413-798; 15945-72, 16272-189-191

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

THIS FOURTH MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO TUSCANY, ALTOONA, POLK COUNTY, IOWA is made and entered into the 17 day of January, 2017, by Tuscan Reserve, LLC, an Iowa limited liability company (the "Declarant").

WHEREAS, Declarant, as the owner of Tuscan, Altoona, Polk County, Iowa, as defined in Section 1.02(m) thereof, subjected Tuscan, Altoona, Polk County, Iowa to that certain Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscan, Altoona, Polk County, Iowa, dated July 2, 2008, and filed for record in the Office of the Recorder for Polk County, Iowa on December 10, 2008, in Book 12850 beginning at Page 219; as amended by the First Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscan, Altoona, Polk County, Iowa, dated August 27, 2012 and filed for record in the Office of the Recorder for Polk County, Iowa on August 28, 2012 in Book 14413, Page 798; and as amended by the Second Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscan, Altoona, Polk County, Iowa, dated March 30, 2016 and filed for record in the Office of the Recorder for Polk County, Iowa on April 1, 2016 in Book 15945 at Page 72 (collectively, the "Declaration"); and as amended by the Third Modification of Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscan, Altoona, Polk County, Iowa, dated November 7, 2016 and filed for record in the Office of the Recorder for Polk County, Iowa on November 16, 2016 in Book 16272, Page 189-191, and

WHEREAS, the Declarant now wishes to amend and ratify the Declaration in the manner described herein.

NOW THEREFORE, Declarant hereby amends the Declaration as follows:

1. The following language from the second and third sentences of Article V, Section 5.01 is hereby stricken and amended as follows:

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, late charges,~~ costs and reasonable attorney's fees related to the collection of such charges or enforcement of 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, late charges,~~ costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Unit at the time when the assessment or charge fell due.

2. Article V, Section 5.04(b) is hereby deleted in its entirety and amended to read as follows:

(b) Any assessments not paid within fifteen (15) days of the due date may be assessed a late fee, in such amount to be determined annually by the Board of Directors (the "Late Fee"). Any such Late Fee on a delinquent payment shall also be part of the assessment against the Unit and subject to the lien for assessments created by this Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the manner provided for foreclosure of a mortgage, or both, and there shall be added to the amount of such assessment all cost and expenses incurred by the Association in collecting said assessments, including reasonable attorney's fees, whether or not legal action is required in connection therewith. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of the Owner's Unit. In addition to the Late Fee, the Association may charge any Owner a fee for any returned check or electronic payment, in an amount to be determined by the Board of Directors.

3. Article II, Section 2.15 is hereby deleted in its entirety and amended to read as follows:

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that pets, specifically dogs, cats, fish and birds may be kept, provided they are not kept, bred or maintained for commercial purposes and the Owner complies with the restrictions set forth in this Section 2.15. Owners shall not keep more than two (2) dogs, or two (2) cats, or one (1) of each a dog and a cat at one time on the Lot. There shall be no weight restrictions on the pets. Any breeds that have been determined by local municipal, county and state laws, regulations, or ordinances to constitute dangerous breeds, or animals that endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners in the sole discretion of the Board shall not be kept on any Lot. Any person owning or keeping a pet shall be responsible for the care and control of, and shall at all times clean up any waste or excrement from such pets on the Commons Areas and Common Elements.

Failure to do so in a prompt or responsible manner shall result in a fine or special assessment by the Association against such Lot on which such pet is kept. Dogs shall be kept on a leash or otherwise confined whenever outside a residence or enclosed portion of the Lot and Owners shall bear full responsibility for animals not under leash. No animal shall be chained or otherwise restrained outside or in the garage. Outside pens or dog runs may be allowed if approved in writing by the Board of Directors, in its sole discretion. Please refer to Article II, Section 2.04g for guidelines. Any complaint shall be brought before the Board, which shall have the right to prohibit them from continued habitation on the Lot if further complaints occur. The Association may, by rules and regulations, prohibit or further limit the raising, breeding or keeping on any Lot, front lot or rear lot of any pet.

4. Add Article VII, Section 7.01 as follows:

ARTICLE VII

7.01 Notice. All notices referenced hereunder shall be in writing and shall be deemed to have been given (a) when delivered by personal delivery, (b) when deposited in the United States Mail (postage prepaid), (c) when deposited with a nationally recognized courier, or (d) on the date sent by facsimile or email transmission. Notwithstanding the foregoing, turnover meeting announcements and annual assessment letters shall be sent via U.S. mail or certified mail.

5. The following language in Article II, Section 2.09 is stricken and amended as follows:

~~“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, or the Association or 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 attorneys’ 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.”~~


6. The following language in the second and third sentences of Article II, Section 2.20 are stricken and amended as follows:


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.

7. Except as provided herein, the Declaration continues unmodified and in full force and effect and Declarant hereby ratifies and affirms the Declaration, as modified herein.
8. Terms capitalized but not defined herein shall have the meaning given to them in the Declaration.

IN WITNESS WHEREOF, this Fourth Modification of Declaration has been executed as of the day and year first above written.

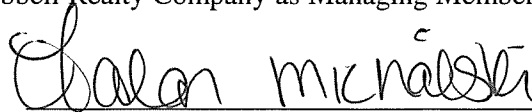
TUSCANY RESERVE, LLC
By: Hubbell Realty Company, Managing Member

By: 
 Dan Cornelison, Senior Vice President

By: 
 Jennifer L. Schumann, Assistant Secretary

STATE OF IOWA)
)ss:
 COUNTY OF DALLAS)

On this 17 day of January, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Dan Cornelison and Jennifer L. Schumann as Senior Vice President and Assistant Secretary respectively of Hubbell Realty Company as Managing Member for Tuscan Reserve, LLC.


 Notary Public in and for the State of Iowa

