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Doc ID: 026361610006 Type: GEN
Kind: RESTRICTIVE COVENANT
Recorded: 08/28/2012 at 11:36:14 AM
Fee Amt: \$32.00 Page 1 of 6
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2013-00019069

BK 14413 PG 798-803

RETURN TO:

This document was prepared by, and when recorded return to: Jennifer Drake, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, IA 50266, (515) 280-2057

SPACE ABOVE THIS LINE FOR RECORDER

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

THIS FIRST MODIFICATION OF DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS APPLICABLE TO TUSCANY, ALTOONA, POLK COUNTY, IOWA is made this 27th day of August, 2012, by **TUSCANY RESERVE, LLC**, ("Declarant"), an Iowa limited liability company.

WHEREAS, Declarant, as owner of Tuscanly as defined in Section 1.02(m) thereof, subjected Tuscanly to that certain Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscanly, 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, (the "Declaration");

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

WHEREAS, Declarant desires to amend Section 2.02(b) of Article II to remove the requirement that exterior foundations be painted or covered;

WHEREAS, Declarant desires to amend Section 2.02(j) of Article II regarding sump pump drainage and to attach the stated Exhibit;

WHEREAS, Declarant desires to amend Section 2.15 of Article II to modify the restriction on number of dogs or cats, collectively, to be maintained on any one Single-Family Lot at any onetime;

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

1. Article II, Section 2.02(b) of the Declaration is hereby deleted in its entirety;

649035 (172)

2. Article II, Section 2.02(j) of the Declaration is hereby deleted in its entirety and a new Section 2.02(j) is substituted in lieu thereof as follows:

(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 A 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 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.

3. Article II, Section 2.15 of the Declaration is hereby deleted in its entirety and a new Section 2.15 is substituted in lieu thereof as follows:

2.15 Livestock and Poultry Prohibited; Exterior Animal Houses. 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 that they are not kept, bred or maintained for any commercial purposes or sale to the public and except that nuisance dogs, such as Rottweilers, Doberman Pinchers and Pit Bulls, are prohibited. The number of pets in each household shall be maintained at a level where they are under complete control and care by the occupant and are of no nuisance from noise, odor or trespass to all other Lots within the Property. 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. Any person owning or keeping a pet shall be responsible for 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. 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 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.

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

Dated this 27th day of August, 2012.

TUSCANY RESERVE, LLC

By: Hubbell Realty Company, Managing Member

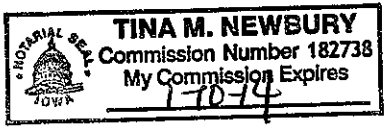
By: [Signature]
Dan Cornelison, Vice President

By: [Signature]
Jennifer L. Drake, Assistant Secretary

STATE OF IOWA)
) SS.
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 27th day of August, 2012 by Dan Cornelison and Jennifer L. Drake, as the Vice President and Assistant Secretary, respectively, of **Hubbell Realty Company**, the managing member of **TUSCANY RESERVE, LLC**, an Iowa limited liability company, on behalf of whom this instrument was executed.

[Signature]
Notary Public in and for the State of Iowa



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, and any amendments or modifications thereto, (collectively the "Mortgage"), which Mortgage creates a lien on portions of Tuscany. FAB hereby consents to the within and foregoing First Modification to Declaration of Covenants, Conditions, Easements and Restrictions Applicable to Tuscany, Altoona, Polk County, Iowa, (the "First Modification"), and agrees that the lien of its above-described Mortgage is subordinate to the easements and appurtenant rights created in the Declaration.

Dated this 21st day of August, 2012.

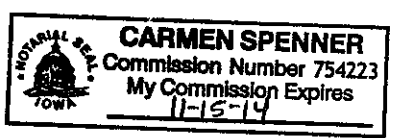
FIRST AMERICAN BANK, Mortgagee

By: [Signature]
John Hollingsworth, Senior Loan Officer / Market President-Des Moines

By: [Signature]
Paul Waltz, Chief Operating Officer

STATE OF IOWA)
) SS.
COUNTY OF POLK)

On this 21st day of August, 2012, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared John Hollingsworth and Paul Waltz, to me personally known, who, being by me duly sworn, did say that they are the Senior Loan Officer/Market President-Des Moines and Chief Operating Officer 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 John Hollingsworth and Paul Waltz, as such officers, acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



[Signature]
Notary Public in and for said State

