

17011718A FOURTH AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TUSCANY/EAST POINTE RESIDENTIAL COMMUNITY

THIS FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY/EAST POINTE RESIDENTIAL COMMUNITY (this "Fourth Amendment") is made and entered into as of this 28 day of November 2017, by and between (i) **C.M. GATTON, TRUSTEE OF THE C.M. GATTON TRUST UNDER AGREEMENT DATED JANUARY 7, 1995**, having a mailing address of 1000 West State Street, Bristol, Tennessee 37620 ("Gatton"), and (ii) **HAYMAKER DEVELOPMENT CO., LLC**, a Kentucky limited liability company, having a mailing address of 3120 Wall Street, Suite 300, Lexington, Kentucky 40513 ("Haymaker"). Gatton and Haymaker are hereinafter collectively referred to as the "Declarants" and each individually as a "Declarant".

WITNESSETH:

WHEREAS, the Declarants entered into that certain Declaration of Covenants, Conditions, and Restrictions for Tuscaney/East Pointe Residential Community, dated as of June 27, 2005, and recorded in the Fayette County Clerk's Office in Lexington, Kentucky, as Document No. 200507050287, in **Deed Book 2564, Page 124** (the "Original Declaration"); and

WHEREAS, the original Declaration has been amended by the parties hereto on three (3) occasions, as follows:

(i) pursuant to that First Amendment thereto dated September 3, 2013, recorded in **Deed Book 3182, Page 539**, in the Fayette County Clerk's Office (the "First Amendment");

(ii) that Second Amendment thereto dated March 31, 2015, recorded in **Deed Book 3301, Page 383**, in the Fayette County Clerk's Office (the "Second Amendment"); and

(iii) that **Second** Amendment thereto (erroneously titled "**Second** Amendment" even though it was actually the **third** amendment) dated May 16, 2017, recorded in **Deed Book 3493, Page 360**, in the Fayette County Clerk's Office (the "Third Amendment");

(the original Declaration, as amended by the First Amendment, the Second Amendment and the Third Amendment, are hereinafter collectively referred to as the "Declaration"); and

Fayette County Clerk Recording  
Related Documents  
From 238  
To 239

16101566

WHEREAS, pursuant to Section 7 of the Original Declaration (and as confirmed by the First Amendment, the Second Amendment and the Third Amendment), the Declarants have the right to amend the Declaration for any reason at any time so long as either of them still own any portion of their respective Property (as defined in the Original Declaration) and such amendment is evidenced by a written instrument executed by both Declarants; and

WHEREAS, the First Amendment was to have had two (2) Exhibits attached (namely Exhibit "D-1" and Exhibit "E"), but through inadvertence, both of those exhibits were left off of the First Amendment document which was recorded in the Fayette County Clerk's Office; and

WHEREAS, the purpose of the Third Amendment (erroneously titled "Second Amendment") was to record an amendment to the Declaration attaching both of the Exhibits (Exhibit "D-1" and Exhibit "E"), which should have been attached to the First Amendment, but through an act of further inadvertence, the wrong document was attached as Exhibit "D-1" to the Third Amendment, and the parties hereto are desirous of entering into this Fourth Amendment for the purpose of attaching the correct versions of the aforementioned Exhibits "D-1" and "E".

NOW THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarants hereby agree as follows.

1. Recitals; Definitions. The foregoing Recitals are hereby incorporated by reference as if fully restated herein. Capitalized terms used herein and not otherwise defined shall have the meanings attributable to such terms in the Original Declaration.
2. Amendments to Original Declaration.
  - a. The By-Laws attached as Exhibit "D" to the Original Declaration were amended by the First Amendment to By-Laws of East Pointe Homeowners Association, Inc., and attached hereto as Exhibit "D-1".
  - b. Notwithstanding anything in the Original Declaration to the contrary, the second paragraph of Section 6 of the Original Declaration shall not apply to that portion of the Property described on Exhibit "E" attached hereto (the "Continental Property").
3. Ratification. Except as otherwise modified herein, the Original Declaration, as amended by the First Amendment, the Second Amendment and the Third Amendment, shall continue in full force and effect. All references to the "Declaration"





STATE OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing ~~Fourth Amendment~~ to Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community was acknowledged before me by Timothy L. Haymaker, in his capacity as the duly-authorized Managing Member of Haymaker Development Co. LLC, a Kentucky limited liability company, on this the day of \_\_\_\_\_ 2017.

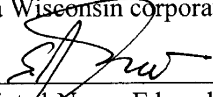
My Commission expires: \_\_\_\_\_

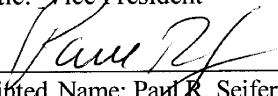
\_\_\_\_\_  
NOTARY PUBLIC, KY, STATE AT LARGE

Accepted and Agreed to:

CONTINENTAL 245 FUND LLC, a Wisconsin limited liability company

BY: CONTINENTAL PROPERTIES COMPANY, INC., a Wisconsin Corporation, its Manager

*KAT*  
BY:   
Printed Name: Edward J. Madell  
Title: Vice President

*JAK*  
BY:   
Printed Name: Paul R. Seifert  
Title: Vice President

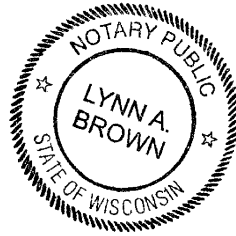
[ACKNOWLEDGMENT ON NEXT PAGE]

STATE OF WISCONSIN     )  
  )  
COUNTY OF WAUKESHA)

The foregoing Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community was acknowledged before me by Edward J. Madell and Paul R. Seifert, in their capacity as the duly-authorized Vice Presidents of Continental Properties Company, Inc. the manager of Continental 245 Fund LLC, a Wisconsin limited liability company, on this the day of \_\_, 2017.

My Commission expires: 9/14/18

Lynna A. Brown  
NOTARY PUBLIC, WI, STATE AT LARGE



THIS INSTRUMENT  
PREPARED BY:

Glenn A. Hoskins

GLENN A. HOSKINS  
GLENN A. HOSKINS, P.S.C.  
P.O. Box 55254  
1077 Eastland Drive  
Lexington, Kentucky 40555  
glennhoskins@windstream.net

EXHIBIT "D-1"

First Amendment to By-Laws

**FIRST AMENDMENT TO BY-LAWS  
OF  
EAST POINTE HOMEOWNERS ASSOCIATION, INC.**

This FIRST AMENDMENT TO BY-LAWS OF EAST POINTE HOMEOWNERS ASSOCIATION, INC. ("Amendment") is made and entered into as of this 30 day of ~~August~~ September 2013.

WITNESSETH:

WHEREAS, the By-Laws of East Pointe Homeowners Association, Inc. (the "Bylaws") were adopted by the Directors of the East Pointe Homeowners Association, Inc. (the "Association") on June 28, 2005;

WHEREAS, Continental 245 Fund LLC purchased that certain property located at the intersection of Winchester Road and Patchen Wilkes Drive and more particularly described on Exhibit A attached hereto (the "Continental Property"), which Continental Property is subject to the Association;

WHEREAS, pursuant to Article VI, Section 6, of the Bylaws, Haymaker Development Co., LLC, as Developer ("Developer"), still owns property in the Subdivisions subject to the jurisdiction of the Association, and therefore may unilaterally amend the Bylaws;

WHEREAS, Developer desires to amend the Bylaws as more fully set forth herein; and

WHEREAS, the directors of the Association have executed this Amendment to indicate their consent to the amendments contained herein.

NOW THEREFORE, in consideration of the foregoing, the Developer hereby amends the By-Laws as follows:

1. Recitals; Definitions. The foregoing Recitals are hereby incorporated by reference as if fully restated herein. Capitalized terms used herein and not otherwise defined shall have the meanings attributable to such terms in the Bylaws.
2. Membership. Article II, Section 1 is hereby deleted in its entirety and replaced with the following:

Section 1. Membership. The membership of the Association (the "Membership") shall consist of each person or entity who is the owner of record of a fee simple interest in any lot in the "Tuscany" Subdivision in Lexington, Fayette County, Kentucky, and any other residential subdivisions in the Hamburg vicinity of Lexington, Kentucky, developed in the future by Developer and added to Association pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community dated as of June 27, 2005 and recorded in the land records of Fayette County, Kentucky as Document No. 200507050289, Deed Book 2564, Page 124 (as amended, the

“Declaration”), including, but not limited to, that subdivision named “Summerfield” and any annexations thereto (the “Subdivisions”), which are subject to the Declaration and related Restrictions. Each person or entity is hereinafter referred to as a “Member.”

3. Voting and Control Rights. Article II, Section 8 is hereby deleted in its entirety and replaced with the following:

Section 8. Voting and Control Rights.

A. Voting Rights. The owner(s) of each lot in the Subdivisions shall have, in the aggregate, one (1) vote for each lot owned; provided, however, that the owner of the Continental Property shall have one (1) vote for every four (4) multi-family housing units constructed on the Continental Property, not to exceed sixty-three (63) votes, which votes must be cast in one (1) combined voting bloc.

B. Control Rights. **The Developer shall be vested with total control rights regarding the Association, notwithstanding the number of lots in the Subdivisions which may have been conveyed to Members, until the Developer no longer owns any property within any of the land components comprising the Subdivisions (including any additional land which may be annexed and become subject to the scope of the Restrictions at a later date pursuant to Article VI, Section 7 hereof), or the date upon which the Developer relinquishes control of the Association to the Association’s Members via a written instrument, whichever event or date occurs first. For so long as all control rights of the Association remain vested in the Developer, the Developer shall have the sole right to appoint Directors to the Association’s Board of Directors, establish the Association’s annual budget, and make all decisions regarding the affairs of the Association, notwithstanding any votes or actions by the Members of the Association taken to the contrary. The provisions of this Section shall supersede any other provisions of these Bylaws to the contrary, except that any amendment to these Bylaws shall comply with Article VI, Section 6, hereof.**

4. Election of Directors. Article III, Section 5 is hereby deleted in its entirety and replaced with the following:

Section 5. Election and Term of Office. Notwithstanding any other provision contained herein:

At the first annual meeting of the Membership after the Developer has relinquished the right to appoint all of the Directors, and at each annual meeting of the Membership thereafter, all directors shall be elected by the Members pursuant to Article III, Section 6, hereof.

All directors shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been

elected by the Association. Directors may be elected to serve any number of consecutive terms.

5. Meetings. Article III, Section 9, and Article III, Section 10, are hereby amended to increase the notice required prior to any meeting to seven (7) days, regardless of the method of delivery.

6. Amendments. Article VI, Section 6, is hereby amended by adding the following after the last sentence thereof:

“Notwithstanding anything herein to the contrary, these Bylaws may not be amended without the affirmative vote or prior written consent of the owner of the Continental Property, which consent shall not be unreasonably withheld.”

7. Annexation. Article VI, Section 7 is hereby amended by adding the following after the last sentence thereof:

“Notwithstanding anything herein to the contrary, neither the Developer nor the Association shall annex any property to or remove any property from the Association without the prior written consent of the owner of the Continental Property, which consent shall not be unreasonably withheld.”

8. Assessment Cap. Article VI is hereby amended by adding the following as Section 10:

Section 10. Assessment Cap. Notwithstanding anything herein to the contrary, costs and assessments for the Continental Property shall not exceed \$55.00 per year for each multifamily housing unit constructed on the Continental Property for the first three (3) years following receipt of the certificate of occupancy for each such unit. The obligation to pay such costs and assessments for each unit shall commence on the date on which a certificate of occupancy is issued for such unit by the local municipality. Charges for the first and last calendar years in which the foregoing three (3) year period falls shall be prorated on a daily basis based on the number of days in that calendar year that fall within said three (3) year period. After the expiration of said three (3) year period, costs and assessments for each unit shall not exceed 23.913% of the costs and assessments charged to each single family residence in the Association.

9. Except as otherwise amended herein, the Bylaws shall continue in full force and effect. All references to the “Bylaws” shall be deemed to be references to the Bylaws as amended by this amendment.

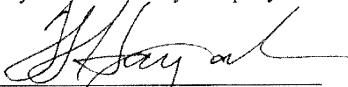
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[signatures on following page]

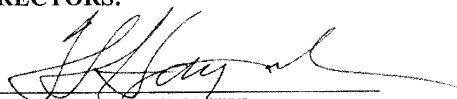
IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

**DEVELOPER:**

HAYMAKER DEVELOPMENT CO., LLC,  
a Kentucky limited liability company

By:   
Timothy L. Haymaker  
Managing Member

**DIRECTORS:**

  
TIMOTHY L. HAYMAKER

  
SUSAN MULLINS

  
CAROL S. MOSES

EXHIBIT A

Continental Property

Being all of Tract A, as shown on Final Record Plat of Tuscany Tract A recorded in Plat Cabinet R, Slide 95, in the Office of the Clerk of Fayette County, Kentucky, and located on the South side of Winchester Road (US60) and the East side of Patchen Wilkes Drive in Lexington, Fayette County, Kentucky.

EXHIBIT "E"

Continental Property Description

Being all of Tract A, as shown on Final Record Plat of Tuscany Tract A recorded in Plat Cabinet R, Slide 95, in the Office of the Clerk of Fayette County, Kentucky, and located on the South side of Winchester Road (US60) and the East side of Patchen Wilkes Drive in Lexington, Fayette County, Kentucky.

I, Donald W Blevins Jr, County Court Clerk  
of Fayette County, Kentucky, hereby  
certify that the foregoing instrument  
has been duly recorded in my office.

  
\_\_\_\_\_

By: MELISSA STELTER ,dc

201711280238

November 28, 2017      15:02:03    PM

Fees	\$43.00	Tax	\$ .00
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Total Paid	\$43.00
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14 Pages

169 - 182