

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

This Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany/  
East Pointe Residential Community (this "Fifth Amendment") is made and entered into as of this  
**21<sup>st</sup>** day of ~~November~~ **November** 2017 by and between C.M. GATTON, TRUSTEE OF THE C.M.  
GATTON TRUST UNDER AGREEMENT DATED JANUARY 7, 1995 ("Gatton") and  
HAYMAKER DEVELOPMENT CO., LLC, a Kentucky limited liability company  
("Haymaker"). Gatton and Haymaker are hereinafter collectively referred to as the "Declarants"  
and each individually as a "Declarant."

WITNESSETH:

WHEREAS, Declarants entered into that certain Declaration of Covenants, Conditions and  
Restrictions for Tuscany/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.  
200507050289, Deed Book 2564, Page 124 (the "Original Declaration") and that certain First  
Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe  
Residential Community dated as of September 3, 2013 and recorded in the Fayette County  
Clerk's Office in Lexington, Kentucky in Deed Book 3182, Page 539 (the "First Amendment")  
and that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions  
for Tuscany/East Pointe Residential Community dated March 31, 2015 and recorded in the  
Fayette County Clerk's Office in Lexington, Kentucky in Deed Book 3301, Page 383 (the  
"Second Amendment") and that certain Second Amendment (erroneously title "Second  
Amendment") even though it was actually the Third Amendment) to Declaration of Covenants,  
Conditions and Restrictions for Tuscany/East Pointe Residential Community dated May 16, 2017  
and recorded in the Fayette County Clerk's Office in Lexington, Kentucky in Deed Book 3493,  
Page 360 (the "Third Amendment") and that certain Fourth Amendment to Declaration of  
Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community dated  
**November 21, 2017** and recorded in the Fayette County Clerk's Office in Lexington, Kentucky in Deed  
Book **3542**, Page **169** (the "Fourth Amendment");

WHEREAS, pursuant to Section 7 of the Original Declaration as amended by the terms and  
conditions of the First Amendment, the Second Amendment, the Third Amendment and the  
Fourth Amendment, the Declarants have the right to amend the Declaration for any reason at any  
time so long as (i) either of them still own any portion of their respective Property (as defined in  
the Declaration); (ii) such amendment is evidenced by a written instrument executed by both  
Declarants; and (iii) provided, that, Declarants shall not amend the Declaration: (a) to add  
additional parties as Declarants or transfer any of the rights of either Declarant, (b) to annex any  
property to or remove any property from the Properties, or (c) in any way that might affect the  
Continental Property (as such term is defined in the First Amendment and the Third  
Amendment), without the prior written consent of the owner of the Continental Property, which  
consent shall not be unreasonably withheld;

Fayette County Clerk Recording  
Related Documents

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From 238  
To 239

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WHEREAS, Declarants desire to further amend the Declaration as set forth in this Fifth Amendment;

WHEREAS, as of the date of this Fifth Amendment the owner of record of the Continental Property is Continental 245 Fund LLC, a Wisconsin limited liability company (“C245”) and C245 joins in this Amendment for the limited purpose of providing its prior written consent in accordance with the terms and conditions of the Original Declaration as amended;

WHEREAS, the Original Declaration as amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment and this Fifth Amendment are collectively known as the “Declaration”; and

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 Declaration.

2. Amendments to Declaration.

a. The By-Laws attached to the Original Declaration as Exhibit “D” are hereby amended by the Second Amendment to By-Laws of East Pointe Homeowners Association, Inc. attached hereto as Exhibit “A”.

b. Notwithstanding anything in the Declaration to the contrary, the second paragraph of Section 6 of the Original Declaration (as previously amended) shall not apply to that certain parcel of real property legally described as: Being Lot 1, as shown on amended final record plat Tuscany Unit 5-A, Section 1, of record in Plat Cabinet R, Slide 668, in the Office of the Clerk of Fayette County, Kentucky (the “**C385 Property**”).

c. Section 7 of the Original Declaration (as previously amended) is hereby deleted in its entirety and replaced with the following:

“7. Amendments. The Declarants shall have the absolute right to amend this Declaration for any reason at any time for so long as either of them still own any portion of their respective Property, provided that the amendment is evidenced by a written instrument executed by both Declarants (or their successors or assigns). Notwithstanding the foregoing, Declarants shall not amend the Declaration: (i)(a) to add additional parties as Declarants or transfer any of the rights of either Declarant, (b) to annex any property to or remove any property from the Properties, or (c) in any way that might affect the Continental Property, without the prior written consent of the owner of the Continental Property, which consent shall not be unreasonably withheld; and the Declarants, without the prior written consent of the Owner of the C385 Property (which consent shall not be unreasonably withheld) shall not amend the Declaration to (ii)(a) to add additional parties as Declarants or transfer any of the rights of either Declarant, (b) to annex

any property to or remove any property from the Properties, or (c) in any way that might affect the C385 Property.”

3. Ratification. Except as otherwise expressly modified herein, the Original Declaration as previously amended by the First Amendment, Second Amendment, Third Amendment, Fourth Amendment shall remain unmodified and continue in full force and effect. All references to the “Declaration” shall refer to the Original Declaration as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment as further amended by this Fifth Amendment.

4. Counterparts. This Fifth Amendment may be executed in counterparts, each of which shall be deemed an original. The signatures to this Fifth Amendment may be executed and notarized on separate pages and when attached to this Fifth Amendment shall constitute one complete document.

[Signatures on Following Page]





**CONSENT TO FIFTH AMENDMENT TO  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TUSCANY/EAST POINTE RESIDENTIAL COMMUNITY**

Continental 245 Fund LLC, a Wisconsin limited liability company, hereby expressly consents to the execution of the foregoing Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community and the recordation of such Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany/East Pointe Residential Community.

CONTINENTAL 245 FUND LLC, a  
Wisconsin limited liability company

By: Continental Properties Company, Inc.,  
a Wisconsin corporation, its Manager

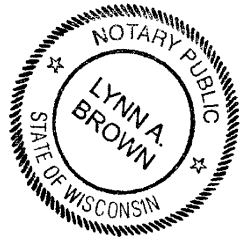
By: *[Signature]*  
Name: Edward J. Madell  
Title: Vice President and Chief Financial Officer

By: *[Signature]*  
Name: Paul R. Seifert  
Title: Vice President and Chief Legal Officer

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF WAUKESHA        )

The foregoing Consent to Fifth 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, each as Vice President of Continental Properties Company, Inc., as Manager of Continental 245 Fund LLC on this 20<sup>th</sup> day of November, 2017.

My Commission Expires: 9/14/18  
*[Signature]*  
Notary Public



**EXHIBIT A**  
**SECOND AMENDMENT TO BYLAWS**

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

This SECOND AMENDMENT TO BY-LAWS OF EAST POINTE HOMEOWNERS ASSOCIATION, INC. ("Second Amendment") is made and entered into as of this 21<sup>st</sup> day of November, 2017.

WITNESSETH:

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

WHEREAS, Continental 385 Fund LLC is under contract to purchase that certain property located at the intersection of Sir Barton Way and Meeting Street and more particularly described on Exhibit A attached hereto (the "C385 Property"), which C385 Property is subject to the Association;

WHEREAS, pursuant to Article VI, Section 6, of the Original 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 with the prior written consent of the owner of the Continental Property (as such term is the First Amendment as defined below);

WHEREAS, Developer unilaterally amended the Original Bylaws pursuant to the terms and conditions of that certain First Amendment to By-Laws of East Pointe Homeowners Association, Inc., on September 3, 2013 (the "First Amendment");

WHEREAS, Developer desires to further amend the Original Bylaws (as previously amended by the First Amendment) as more fully set forth in this Second Amendment; and

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

WHEREAS, the Original Bylaws, the First Amendment and this Second Amendment are collectively known as the "Bylaws".

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. 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 (i) the Owner of the Continental Property (as such term is defined in the First Amendment and Third Amendment) 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 block; and (ii) the owner of the C385 Property shall have one (1) vote for every four (4) multi-family housing units constructed on the C385 Property, not to exceed sixty (60) 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.**

3. Amendments. The language added after the last sentence of Article VI, Section 6, pursuant to the terms and conditions of the First Amendment, is hereby deleted and the following language is added in replacement thereof after the last sentence of Article VI, Section 6:

“Notwithstanding anything herein to the contrary, these Bylaws may not be amended without the affirmative vote or prior written consent of: (i) the owner of the Continental Property, which consent shall not be unreasonably withheld; and (ii) the owner of the C385 Property, which consent shall not be unreasonably withheld.”

4. Annexation. The language added after the last sentence of Article VI, Section 7 pursuant to the terms and conditions of the First Amendment, is hereby deleted and the following language is added in replacement thereof after the last sentence of Article VI, Section 7:

“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 (i) the Continental Property, which consent shall not be unreasonably withheld; and (ii) the C385 Property, which consent shall not be unreasonably withheld.”

5. Assessment Cap. Article VI is hereby amended by adding the following as Section 11:

Section 11. Assessment Cap-C385 Property. Notwithstanding anything herein to the contrary, costs and assessments for the C385 Property shall not exceed \$55.00 per year for each multifamily housing unit constructed on the C385 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 then current maintenance fee assessment charged to each single family residence in the Association.

6. 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.

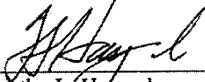
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[signatures on following page]

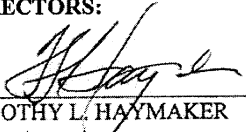
IN WITNESS WHEREOF, the undersigned have executed this Second Amendment as of the date first written above.

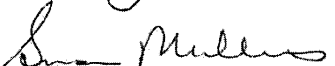
**DEVELOPER:**


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

By:   
Timothy L. Haymaker  
Managing Member

**DIRECTORS:**

  
TIMOTHY L. HAYMAKER

  
SUSAN MULLINS

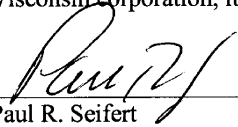
  
CAROL S. MOSES

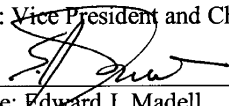
**CONSENT TO SECOND AMENDMENT TO  
BY-LAWS OF  
EAST POINTE HOMEOWNERS ASSOCIATION, INC.**

Continental 245 Fund LLC, a Wisconsin limited liability company, hereby expressly consents to the execution of the foregoing Second Amendment to By-laws of East Pointe Homeowners Association, Inc. and the recordation of the Second Amendment to By-laws of East Pointe Homeowners Association, Inc.

CONTINENTAL 245 FUND LLC, a  
Wisconsin limited liability company

By: Continental Properties Company, Inc.,  
a Wisconsin corporation, its Manager

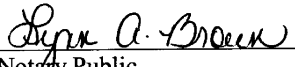
*YSA*  
By:   
Name: Paul R. Seifert  
Title: ~~Vice President~~ and Chief Legal Officer

*YSA*  
By:   
Name: Edward J. Madell  
Title: Vice President and Chief Financial Officer

STATE OF WISCONSIN            )  
  ) SS  
COUNTY OF WAUKESHA        )

The foregoing Consent to Second to By-laws of East Pointe Homeowners Association, Inc. for Tuscany/East Pointe Residential Community was acknowledged before me by Paul R. Seifert and Edward J. Madell, each as Vice President of Continental Properties Company, Inc., as Manager of Continental 245 Fund LLC on this 30<sup>th</sup> day of November, 2017.

My Commission Expires: 9/14/18

  
Notary Public

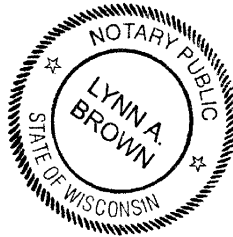
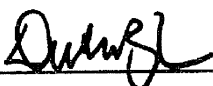


EXHIBIT A

C385 Property

BEING LOT 1, AS SHOWN ON AMENDED FINAL RECORD PLAT TUSCANY UNIT 5-A,  
SECTION 1 OF RECORD IN PLAT CABINET R, SLIDE 668, IN THE OFFICE OF THE  
CLERK OF 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

201711280239

November 28, 2017      15:03:18    PM

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

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