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THIS INSTRUMENT PREPARED BY
AND RETURN TO:
H. LEE SHAW, P. C., ATTORNEY
6075 POPLAR AVENUE, SUITE 420
MEMPHIS, TN 38119

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
OAKMONT P.D., PARCEL 2, PHASE 2**

THIS DECLARATION, made this 5th day of March, 1997,
by **SOUTH OAK JOINT VENTURE**, composed solely of Waldo, L.L.C., a
Tennessee limited liability company, and Landmark Builders, Inc.,
a Tennessee corporation, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner in fee simple of certain
property located in the City of Collierville, County of Shelby,
State of Tennessee, described as Lots numbered 142 through 257
inclusive, as shown on Plat of record in Plat Book 161, Page 53, in
the Register's Office of Shelby County, Tennessee (the "Property");
and

WHEREAS, Declarant desires to provide for the preservation
of the values and amenities on the Property and to this end desires
to subject the Property to the covenants, restrictions, easements,
charges and liens hereinafter set forth, each and all of which is
and are for the benefit of said Property and each owner thereof;
and

WHEREAS, Declarant has deemed it desirable, for the
efficient preservation of the values and amenities in said
Property, to create an agency to which should be delegated and
assigned the powers of maintaining, administering and enforcing the
covenants and restrictions and collecting and disbursing the
assessments and charges hereinafter created; and

WHEREAS, Declarant will incorporate under the laws of the
State of Tennessee as Oakmont Planned Development Homeowners'
Association #2, Inc., a non-profit, non-stock corporation, for the
purpose of exercising the functions aforesaid;

NOW, THEREFORE, Declarant hereby declares that the Property
shall be held, transferred, sold, conveyed, hypothecated or
encumbered, used and occupied, subject to the covenants, restric-
tions, easements, conditions, charges and liens (hereinafter
sometimes referred to as "covenants and restrictions") hereinafter
set forth which shall run with the Property and be binding on all
parties having any right, title or intent in the described Property

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or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

Section 1. "Association" shall mean and refer to Oakmont Planned Development Homeowners' Association #2, Inc., a non-profit, non-stock corporation incorporated under the laws of the State of Tennessee, its successors and assigns.

Section 2. "Architectural Review Committee" or "Committee" shall mean the Committee which shall have the responsibility of enforcing the restrictions set forth in this Declaration for the development of each Lot.

Section 3. "Declarant" shall mean and refer to South Oak Joint Venture, with offices at 7520 Capital Drive, Germantown, Tennessee 38138, its successors and assigns.

Section 4. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 5. "Lot" shall mean and refer to the plots of land designated with Numbers 142 through 257 inclusive, as shown on Plat of record in Plat Book 161, Page 53, in the Register's Office of Shelby County, Tennessee (the "Plat"). No Lot shall be used except for private residential purposes except for such non-residential uses as may be permitted by the zoning laws of Shelby County, Tennessee, from time to time. Nothing in this Section or herein elsewhere shall be construed to prohibit the Declarant from the use of any Lot or Lots which Declarant owns for promotional or display purposes as "models." For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recorded deed from and after date hereof.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely

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as security for the performance of an obligation; provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 8. "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 9. "Property" shall mean and refer to that certain real property hereinabove described and such additions thereto as may be brought within the jurisdiction of the Association.

Section 10. "Residential Community" shall mean the development known as Oakmont P.D., Parcel 2, Phase 2.

Section 11. "Class A Lot" shall mean the Lot or Lots owned by an Owner, with exception of Declarant.

Section 12. "Class B Lot" shall mean the Lot or Lots owned by Declarant.

Section 13. "Common Area" shall mean all real property, easements and property rights owned or assigned, now or in the future, to the Association for the common use and enjoyment of the Members of the Association, including, without limitation, (1) the Landscape Easements along White Road and Green Oaks Lane as shown on the Plat (the "Landscape Easements"); (2) common grounds and walkway thereto shown on the Plat as C.O.S. A; (3) a stormwater detention area shown on the Plat as C.O.S. B; (4) an island on Warwick Willow Lane at its intersection with White Road shown on the Plat as C.O.S. C and (5) all improvements on said real property and easements. These improvements shall include, without limitation, an entry way on Green Oaks Lane, landscaping, sprinkler system, fencing (if any) and lighting (if any). The Common Area does not include fee title to any real estate at the time of recordation hereof.

ARTICLE II

THE PROPERTY

Section 1. PROPERTY SUBJECT TO DECLARATION. The Property shall be held and used subject to this Declaration.

Section 2. ROADS AND UTILITIES. The roads within the Property are public property. Pipes, lines, cables, other means of utility service, etc. shall also be public property.

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ARTICLE III**PROPERTY RIGHTS**

Common Area. The Common Area and the Owners' rights thereto shall be subject to the following provisions:

A. The right of the Declarant and of the Association to protect and maintain same.

B. The right of the Declarant and the Association to protect, maintain and inspect the improvements thereon.

C. The right of the Association to regulate the location of all improvements thereon and the use thereof and to provide for and establish easements thereon.

D. The right of the Association to borrow money for the purposes as provided for herein.

E. The right of the Association to merge with any other association.

ARTICLE IV**MAINTENANCE AND REPAIR**

Section 1. ASSOCIATION RESPONSIBILITIES. Except as otherwise stated in this Declaration, the Association shall provide and pay for all maintenance and expenses for the Common Area.

Section 2. Owners. Each Owner shall be responsible for the maintenance, painting, and proper upkeep of his Lot and all improvements thereon. In the event the Owner of any Lot shall fail to maintain his Lot and the improvements thereon in a manner reasonably satisfactory to the Board of Directors, and in keeping with other Lots, the Association, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through agents and/or employees, to enter upon said Lot and to repair, maintain and restore the Lot and the improvements thereon. The cost of said maintenance shall be a binding obligation of the Owner as well as a lien on the Lot in question upon recording of such notice with the office of the Register of Shelby County, Tennessee. Any lien so recorded shall at all times be subordinated to the lien of any deed of trust. In addition to the costs as set forth herein, the Owner shall be responsible for all court costs, reasonable attorneys' fees and interest from the date of any expenditure at the maximum legal rate allowed in the State of Tennessee.

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ARTICLE V**MEMBERSHIP AND VOTING RIGHTS**

Section 1. MEMBERS. Every person who is the record Owner of a fee or undivided fee interest in any Lot within the Property shall be a Member of the Association; provided, however, that anyone who holds such interest solely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

Section 2. CLASSIFICATION OF MEMBERS. Members shall be divided into two classes denominated as Class A Members and Class B Members and defined as follows:

A. Class A Members shall be all Owners, with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. When more than one Person holds such interest or interests in any Lot, all such Persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot. In the event Joint Owners of a Lot have not determined among themselves as to the mode and manner of a vote, then, in that event, the vote associated with that Lot shall be excluded.

B. Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership. The Class B Membership rights shall cease and be conveyed to the Class A Membership upon the happening of either of the following events, whichever occurs earlier:

- i. when all the Lots are deeded to Class A Members; or
- ii. when Declarant formally conveys the Class B Membership to the Class A Membership.

From and after the happening of these events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member, entitled to one (1) vote for each Lot in which it holds the interest required for such Membership.

Section 3. VOTING. At every meeting of the Members, each of the Members shall have the right to cast his vote as defined by

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Article V, Section 2, on each question. The vote of the Members representing a fifty-one (51%) percent majority of the total votes cast with respect to any question, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the By-Laws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any meeting unless an objection or protest by any other Owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Members shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 4. PROXIES. Any Member may appoint any other Member or the Declarant or any other person permitted by law or by the Association's By-laws as his proxy. In no case may any Member (except the Declarant) cast more than one vote by proxy in addition to his own vote. Any proxy must be in writing and filed with the secretary of the Association and must comply with all requirements imposed by law or by the Association's By-Laws. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 5. QUORUM. The presence, either in person or by proxy, of Members representing at least twenty-five (25%) percent of the votes of each Class of Members entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of Members in accordance with the provisions of the By-Laws. The acts approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the act of the Members, except when approval by a greater number of Members is required by this Declaration, the Articles of Incorporation or the By-Laws of the Association. In determining whether a quorum is present, proxies may be counted as Members present.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner at the time of acceptance of a deed therefor, whether or not it shall be so expressed in any such deed

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or other conveyance, is deemed to covenant and agree to pay to the Association:

- A. Annual or monthly assessments or charges;
- B. Special assessments for capital improvements or repairs, such assessments to be fixed, established and collected from time to time as hereinafter provided.
- C. Emergency assessments as provided for in the By-Laws, such assessments to be fixed, established and collected from time to time as hereinafter provided.

Declarant covenants to be responsible for the initial capital improvements for development of the Property, all as shown on the Plat. The annual, special and emergency assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. Each Class A Member shall pay to the Association a sum equal to the Member's proportionate share of the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, payable either in monthly or annual installments as so determined by the Board of Directors, including, but in no way limited, to the following:

- A. The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any;
- B. The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any;
- C. The cost of extended liability insurance and the cost of such other insurance as the Association may determine;
- D. The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements;
- E. The estimated cost of repairs, maintenance and replacements of any easements and improvements to Common Areas as called for herein.

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Section 3. MAXIMUM ANNUAL ASSESSMENT. For 1997, the maximum annual assessment shall be \$200.00 per Lot.

A. After 1997, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

B. After 1997, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes of each Class eligible to be cast in person or by proxy.

Section 5. EMERGENCY ASSESSMENTS. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or property of Members, the Board of Directors; acting pursuant to this section, may declare an emergency assessment in such amount and payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne prorata, as provided for elsewhere herein, by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment was made in good faith.

Section 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all the votes of each Class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same

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notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and will be collected on a monthly or annual basis at the election of the Board of Directors.

Section 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence for 1997 and shall become due on the date of closing of the sale of said Lot from the Declarant to the Owner. Assessments shall be prorated for the year of sale. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. NON-PAYMENT OF ASSESSMENTS. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within thirty (30) days after the date when due shall bear a late charge of \$25.00 and interest at the rate of ten (10%) percent per annum. Such assessment with late charge and interest and the cost of collection thereof, as hereinafter provided, shall thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any assessment levied pursuant to the By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same.

The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Lot or Lots subject to prior mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment which the laws of the State of Tennessee allow. Any such sale shall be made after first advertising the sale of said property for twenty-one (21) days by three (3) weekly publications in a newspaper of general circulation in the County of Shelby, State of Tennessee, giving notice of time and place of such sale and by written notice of the time and place of such sale of the Owner's Lot. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, homestead and dower and all other exemptions, all of which are expressly waived by the Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot, and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the Property and the expenses of litigation, attorneys' fees and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust; and third, to the payment of all amounts due the Association under the terms of the Declaration and By-Laws; and the balance, if any, to the Owner whose Lot is sold. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as the mortgagee entering into possession following default.

All rights, remedies and privileges granted to the Board of Directors or an Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and By-Laws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Declaration and By-Laws or at law or in equity.

The Association may notify the holder of any first mortgage or deed of trust on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other

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obligation hereunder for a period in excess of sixty (60) days. Nothing herein contained shall obligate a holder of any first mortgage to collect any delinquent assessment.

Section 10., ACCELERATION OF INSTALLMENTS. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 11. PRIORITY OF LIEN. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except as herein limited.

Section 12. SUBORDINATION OF THE LIEN TO MORTGAGES. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to, and shall in no way affect the rights of, the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over all other mortgages) upon such interest made in good faith and for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

Failure to pay any assessment provided for herein shall not constitute a default under any such deed of trust or mortgage.

ARTICLE VII

ARCHITECTURAL AND BUILDING RESTRICTIONS

Section 1. ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee shall have the responsibility of enforcing the restrictions set forth in this Article for the development or redevelopment of each Lot.

Section 2., APPROVAL OF DEVELOPMENT. Before commencing the construction, reconstruction, remodeling, alteration or addition of any building or structure, fence, wall, driveway, or other

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improvement of any nature, the Owner shall first submit its building plans, specifications, site layout plans, utility plans, grading and drainage plans, and landscape plans (collectively the "Plans") of all improvements to the Architectural Review Committee for its written approval. The building plans shall include floor plans, design sections, elevations, material selections and color schemes. The Plans shall include all materials for driveways, walls, fences and swimming pools. In the event the Architectural Review Committee shall fail to approve or disapprove in writing the Plans within thirty (30) days after they have been received by the Architectural Review Committee, such approval will not be required and this covenant shall be deemed to have been satisfied. The Plans shall be delivered to the Architectural Review Committee in person or by certified mail at the address to be designated from time to time by Declarant or the Association.

Plans for any improvements must conform to certain restrictions as set forth in this Article, and further must conform to the other requirements of this Declaration. The Architectural Review Committee shall be the sole judge or arbiter of such conformance or non-conformance. Further, the Architectural Review Committee may approve or disapprove Plans when the Architectural Review Committee, in its sole discretion, determines that the proposed improvements or any feature of the Plans are not architecturally or aesthetically compatible with the development of the Property.

If the Architectural Review Committee approves the Plans, the actual construction in accordance with the Plans shall be the responsibility of the Owner; provided, however, upon the completion of the improvements, and prior to occupancy, the Owner shall notify Declarant, who shall have ten (10) days thereafter in which to have the improvements inspected by the Architectural Review Committee to insure that the construction was completed in accordance with the Plans approved by the Architectural Review Committee prior to construction. In the event that the Architectural Review Committee shall fail to approve or disapprove in writing the completed improvements within ten (10) days after receipt of notice from the Owner that the improvements are completed, such approval shall not be required and these covenants will be deemed to have been satisfied. In the event an Owner has made changes from the original Plans approved by the Architectural Review Committee and such changes were not previously approved by the Architectural Review Committee, occupancy of the subject improvements shall be delayed until the necessary corrections have been made.

In the event any Owner shall fail to complete the construction in accordance with the approved Plans or to maintain the improvements situated upon his Lot in a manner satisfactory to the Architectural Review Committee, the Architectural Review Committee may, upon the vote of two-thirds (2/3) of the Committee's members, and after ten (10) days' notice in writing to the Owner, and in the event of his continued failure to commence the correction of the

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matter in issue, enter upon said Lot and complete, repair, maintain or restore the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject and the Owner shall be personally liable for the cost of such maintenance so incurred.

In addition to the approval of Plans and other matters herein set forth, the Architectural Review Committee shall have the right to waive minor violations and allow minor variances where the same resulted unintentionally or without gross carelessness on the part of any Owner and are not materially harmful to the Property. If such waiver is granted in writing, then, thereafter such matters so waived shall no longer be deemed a violation of these restrictions.

The approval of the Architectural Review Committee of the Plans and completed improvements as required above is not intended to be an approval of the structural stability, integrity or design or a completed improvement or of the safety of any component therein, but is required solely for the purpose of insuring compliance with the covenants contained in this Declaration, and further, to insure the harmonious and orderly architectural development and improvement of the Property. Notice is hereby given to any future occupant of any such completed improvement and all invitees, business guests and other persons who may from time to time enter or go on or about such completed improvements that no permission or approval granted by Declarant or the Architectural Review Committee with respect to construction pursuant to this Declaration shall constitute or be construed as an approval by them of the structural stability, design or any building, structure or other improvement and no liability shall accrue to Declarant or the Architectural Review Committee in the event that any such construction shall subsequently prove to be defective.

The Architectural Review Committee shall be Declarant until termination of the Class B membership. Thereafter, the Architectural Review Committee shall consist of three (3) Members appointed by the Association.

Section 3. SETBACK LINE AND BUILDING ENVELOPES. Setback lines shall be no less than those required by Shelby County regulations, and no less than those shown on the Plat. The Architectural Review Committee reserves unto itself, its successors and assigns, the right to control absolutely the precise location and elevation of any house or other structure upon all Lots in the subdivision. Such location shall be determined only after reasonable opportunity has been afforded to the Owner to recommend a specific site.

Section 4. COMPLETION REQUIREMENTS. Before any house may be occupied, it must be substantially complete. Houses shall be completed within twelve (12) months after construction commences.

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Section 5. STANDARD ELEMENTS. At such time the Owner erects his dwelling, he shall construct certain elements by utilizing standard construction details as provided by the Architectural Review Committee and made a part of each formal approval, i.e., driveway intersections with road, house numbering, etc.

Section 6. RIGHT-OF-WAY OBSTRUCTIONS. Excluding mail boxes, Association owned property and natural or approved vegetation, no obstruction shall be allowed within ten (10) feet of any right-of-way.

Section 7. EQUITABLE AND LEGAL RECOURSE. The Association or any Owner of any Lot contained within the Residential Community shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot in the subdivision. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE VIII

COVENANTS AND RESTRICTIONS FOR USE

Section 1. SINGLE FAMILY DETACHED RESIDENTIAL USE. No Lot shall be used except for private residential purposes except for such non-residential uses as may be permitted by the zoning laws of Shelby County, Tennessee, from time to time. Nothing in this Section or herein elsewhere shall be construed to prohibit the Declarant from the use of any Lot or Lots which Declarant owns for promotional or display purposes as "models."

Section 2. PROHIBITED USES AND NUISANCES. In order to provide for congenial occupation of the homes within the Residential Community, and to provide for the protection of the values of the Property, the use of the residences shall be in accordance with the following provisions:

A. **Declarant Uses.** Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of the sale of said Lots or the Property, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, model units and sales office.

B. **Nuisances and Uses.** No billboards, unsightly objects, or nuisances shall be erected, placed or permitted

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to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof.

C. **Business Activity.** No business activity of any kind whatever shall be conducted in any building or in any portion of the Property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns, during the development and sales period of Lots or the Property.

D. **Building Material Storage.** No building material of any kind or character shall be placed or stored upon any Lot until the Owner is ready to commence improvements. Building materials shall not be placed or stored in the street or between the curb and property lines.

E. **Fences/Walls.** Boundary fences and walls for Lots may be erected, provided that the same are approved by the Architectural Review Committee. No fences may be constructed along the street on the front of any Lot unless approved by the Architectural Review Committee. No retaining wall shall extend to a height greater than two (2) feet above the earth being retained and no boundary fence nor any fence enclosing a patio or courtyard, shall extend to a height greater than six (6) feet from ground level except with the consent of the Architectural Review Committee. All boundary fences and retaining walls must be of brick, stone, stucco or other material agreeable to the Architectural Review Committee.

F. **Commercial Excavation.** No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which will materially affect the surface grade of a Lot unless the consent of the Architectural Review Committee is obtained.

G. **Yard Elements.** Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot. Any and all equipment, air conditioner condensers, woodpiles, garbage cans, refuse or storage piles placed on any Lot, whether temporary or permanent, shall be walled in to conceal the same from view of neighboring Lots, roads, streets and open areas. Plans for all screening walls and enclosures must be approved by the Architectural Review Committee.

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H. **Building Materials.** No lumber, brick, stone, block, concrete or other material for building purposes shall be stored on any Lot, except for the purpose of construction on such Lot, and then only for such length of time as is reasonably necessary for the construction of the improvements then in progress.

I. **Swimming Pools.** Swimming pools must be approved by the Architectural Review Committee and built in accordance with applicable laws and regulations. No above-ground pools shall be allowed.

J. **Exterior.** Each Residence must provide treatment of driveway entrances to provide proper drainage, which shall be approved by the Committee.

K. **Utility Meters.** All utility meters, air conditioning compressors, and other like equipment shall be screened with landscaping so as not to be visible from neighboring Lots, roads, streets and open areas.

L. **Vehicle and Trailer Storage.** No recreational vehicles or commercial vehicles, including, but not limited to boats, boat trailers, house trailers, horse trailers, motorcycles, trucks or similar type items shall be kept other than in a garage or screened from the view of adjoining neighbors and the street. No automobile or other vehicle shall be continuously or habitually parked on any street or right-of-way.

M. **Outbuildings, Temporary or Secondary Residences.** No outbuilding, trailer, basement, tent, shack, garage, barn or other outbuilding erected shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence. Further, such outbuildings shall be screened in a manner that they may not be seen from the street.

N. **Clotheslines.** Outside clotheslines and clothes hanging devices shall not be permitted.

O. **Eave Lights.** Eave lights installed on residences must be adjusted so that the rays of any beam or flood light will be directed so as not to cause a nuisance to any Property.

P. **Garage.** No garage may be left open to a street for an extended period of time.

Q. **Signs.** No signs whatsoever (except one "for sale" sign per Lot not to exceed five (5) feet), unsightly

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objects, or nuisances shall be erected, placed or permitted to remain on the Property.

R. **Obstruction.** Excluding mail boxes, Association-owned property and natural or approved vegetation, no obstruction shall be allowed within ten (10) feet of any right-of-way.

S. **Resubdivision.** No Lot may be further subdivided. No portion of any Lot may be conveyed except with the prior written approval of the Committee.

T. **Weeds and Debris.** Grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris, and plants which die shall be promptly removed from such Lots. Until a residence is constructed on a Lot, Declarant, at its option and its discretion, may mow and have dead trees and debris removed from such Lot and the Owner of such Lot shall be obligated to reimburse Declarant for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

U. **Contiguous Lots.** Contiguous Lots may be combined, if the Lots have the same owner, for the purpose of placing an approved building thereon, if a waiver or modification to the easements shall be granted by the Architectural Review Committee.

V. **Animals and Pets.** No animals, reptiles, live-stock, or poultry of any kind shall be raised, bred, pastured or maintained on any Lot, except dogs, cats and other household pets, (exclusive of any reptiles or animals aforementioned) which shall be kept in reasonable numbers as pets for the sole pleasure of the occupants, but not for any commercial purpose or use. Horses shall not be allowed on the Property at any time. No pets shall be permitted outside of the boundaries of the Owner's Lot unless accompanied by their Owner and on a leash. The Association, or any individual resident, may take appropriate measures to insure compliance with these provisions, including having the animal picked up by the appropriate authorities.

W. **No Violation of New Rules.** There shall be no violation of any rules which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby authorized to adopt such rules.

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X. **Noise Pollution.** No exterior intercom sound system or amplification systems shall be used to transmit sounds of any kind so as to create a noise nuisance.

Y. **Landscaping.** A landscape plan shall be submitted to the Architectural Review Committee for approval. No landscape improvement shall be out of character with its setting nor adversely impact a neighboring property now or in the future.

Z. **Timely Completion.** From commencement to completion (occupancy), the development of a residence or any approved structure shall be substantially completed in twelve (12) months. The date of commencement and the required date for completion will be determined in writing with notification to the Owner by the Architectural Review Committee.

AA. **Vehicle Prohibition.** Vehicles which make loud noises or cause excessive pollution are prohibited anywhere on the Property.

BB. **The Subdivision Plat Covenants.** The Restrictive Covenants set forth in the Plat are hereby incorporated herein by reference and shall have the same effect and force as if copied verbatim herein.

DD. **Additional and Separate Restrictions.** The Declarant reserves unto himself the right to impose additional and separate restrictions at the time of sale of any of the Lots sold by the Declarant, which said restrictions may not be uniform, but may differ as to different plots.

Section 3.

A. **Maintenance.** All Lots, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by their respective Owners.

B. **Nuisances and Unsightly Materials.** No houses or other structure on any Lot shall be used for any commercial or business purpose. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No noxious, offensive or illegal activity shall be carried on upon any Lot. Boats may be stored in enclosed or screened areas and must not be visible from neighboring Lots, streets, roads or open areas.

Section 4. GOVERNMENTAL RESTRICTIONS. Each Owner shall observe all governmental building codes, health regulations and all other

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regulations applicable to his Lot. In the event of any conflict between any provisions of this Declaration, the more restrictive provision shall apply.

ARTICLE IX

EASEMENTS

Section 1. COMMON AREA. The Common Area as shown on the Plat shall be for the common use of the Association and its Members, subject to rules and regulations adopted by the Association Board of Directors.

Section 2. EASEMENTS FOR UTILITIES, DRAINAGE AND RELATED PURPOSES. The Association is authorized and empowered to grant (and shall from time to time grant) such licenses, easements and/or rights-of-way for sewer lines, water lines, electrical cables, telephone cables, television and other communication cables, internal and external wiring and antennae, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities and other common services to the Residential Community as may be considered necessary, appropriate or desirable by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Area or for the preservation of the health, safety, convenience and/or welfare of the Owners and the Declarant.

Section 3. GENERAL EASEMENT. The Declarant, so long as it shall retain record title to any Lot, and the Association reserves the right and easement to the use of the Common Areas and any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot or any other Lot or the Common Area.

Section 4. SPECIFIC EASEMENT. An easement is hereby granted to the Declarant and the Association, five (5) feet wide on all Lots of the Residential Community, immediately adjacent to all roads and rights-of-way, as shown on the Plat for the orderly maintenance, preservation and enjoyment of the Owners of the Lots, or for the preservation of the health, safety, convenience and/or welfare of the Owners of the Lots, all as determined by the Association and the Declarant. Provided, however, the Architectural Review Committee shall have the right to review the easement on any Lot, on a lot-to-lot basis, and remove said easement as may be deemed necessary by the Architectural Review Committee.

Section 5. ,INGRESS AND EGRESS. An easement is hereby granted to all police, fire protection, ambulance, garbage collection and U. S. Postal Service persons to enter upon the Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or

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to cross over the Common Area and any dwelling to perform the duties of maintenance and repair of the dwelling or Common Area provided for herein. Should any utility request a specific easement by separate, recordable document as to the Property, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easements on said premises.

Further, an easement is granted to each Owner to enter on or cross over such necessary portion of an adjoining Lot for the sole purpose of repairing, maintaining or restoring each Owner's Lot and all improvements located thereon. Any Owner that shall enter on or cross over an adjoining Lot for such purpose of repairing, maintaining and restoring such Lot and improvements thereon shall at all times be responsible to restore the property of the adjoining Owner to the same condition as it was immediately prior to such entry, and any entry by an Owner upon an adjoining Lot for the purposes herein expressed shall be after written notice has been given the adjoining Owner and the Association at least five (5) days prior to such entry.

ARTICLE X

INSURANCE

Section 1. CASUALTY INSURANCE. There is imposed on the Owner of each Lot the obligation to carry in full force and effect casualty insurance in limits for the replacement value of Lot improvements located thereon. Insurance on the Common Areas shall be carried and paid for by the Association.

Section 2. DAMAGED OR DESTROYED DWELLING. The right is given to the Association to require the Owner of a damaged or destroyed dwelling to make repairs or replacements in order to restore the dwelling to its condition prior to the damage or destruction, including the right to require that insurance proceeds paid to the Owner because of said damage or destruction be applied to the repair or replacement.

ARTICLE XI

GENERAL PROVISIONS

Section 1. CHANGES BY DECLARANT. Notwithstanding anything herein contained to the contrary in addition thereto, the Declarant reserves the right for a period of five (5) years from the date hereof to unilaterally amend this Declaration in whole or in part to conform this Declaration to the requirements of any governmental agency, federal, state or local, for the requirements of any lender

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relative to the development of the Property and/or to insure the reasonable development of the Property.

Section 2. NOTICES. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member on the records of the Association at the time of such mailing.

Section 3. ENFORCEMENT. The Declarant, the Association, or any Member shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants, and failure by the Association or any Member to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

Section 4. Hold Harmless. Each Owner, recognizing that certain risks are inherent in the building of houses and in activities in and about a residential subdivision, does hereby hold harmless the Declarant, the Association and the directors and officers of the Association for any and all losses, liabilities, or damages which said Owner, his family, or guests may sustain resulting from the acts, and/or omissions of said entities, except for their gross negligence.

Section 5. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 6. AMENDMENT AND DURATION. The covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date the Plat is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Owners and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Owners. Any amendment must be recorded.

Section 7. JOINDER OF INTERESTED PARTIES. These Covenants, Conditions and Restrictions are executed by The Peoples Bank, as to

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any interest that it has in the Property and for the purposes of conformity of title, so that all the Property shall at all times be subject to the Conditions, Covenants and Restrictions as set forth in this instrument.

Section 8. ANNEXATION.

Additional adjoining residential property and common area property within the vicinity of the Property may be annexed to the Property by the Declarant.

The addition(s) of additional property shall be made by the filing of record of one or more amendments to this Declaration of Covenants, Conditions and Restrictions. Assessments and votes pertinent to additional property shall be upon annexation, and the Common Areas of the additional property will be deeded to the Association at the time of filing the Declaration as appropriate. All intended improvements of additional property must be substantially completed prior to annexation. All taxes and other assessments relating to additional property, covering any period prior to the addition of such property, must be paid or otherwise satisfactorily provided for by Declarant. In the event of such annexation, Declarant may create easements between the Property and such additional property for the benefit of such additional property without the consent of any Owner or the Association.

In the event of a merger or consolidation of another association with the Association, its properties, rights and obligations may, as provided in its Charter or by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the existing Property, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the existing Property, except as provided herein.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed as of the day and year first above written.

DECLARANT:

SOUTH OAK JOINT VENTURE

**BY: WALDO, L.L.C.,
a joint venturer**

BY: Marion L. Waldrup
**Marion L. Waldrup,
Manager**

**BY: LANDMARK BUILDERS, INC.,
a joint venturer**

BY: William Ray Harvey
**William Ray Harvey,
President**

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JOINDER OF MORTGAGEE

THE PEOPLES BANK, Memphis, Tennessee, as the holder of Deeds of Trust pledging the real property described in the Declaration of Covenants, Conditions and Restrictions of Oakmont P.D., Parcel 2, Phase 2, (the "Declaration"), and being recorded as Instruments Nos. ER 1306 and FT 7496, in the Register's Office of Shelby County, Tennessee, hereby consents to the adoption and recordation of the Declaration and submits said real property to the Declaration. Except as specifically stated herein, The Peoples Bank neither waives any of its rights under said Deeds of Trust nor assumes any of the liabilities of the Declarant in the Declaration. Said Deeds of Trust shall remain superior to any lien created by the Declaration.

This Joinder of Mortgagee executed this 5th day of March, 1997, by the duly authorized representative of The Peoples Bank.

THE PEOPLES BANK

By: Pierce A. Thomas
Pierce A. Thomas, Vice President

STATE OF TENNESSEE, COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for said State and County, personally appeared Pierce A. Thomas, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the Vice President of THE PEOPLES BANK, the within named bargainor, a corporation, and that he as such officer, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

WITNESS my hand and notarial seal at office this 5th day of March, 1997.

Gary A. Robertson
Notary Public

My Commission Expires: 12-07-97

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STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared MARION L. WALDRUP, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the Manager of WALDO, L.L.C., the within named bargainor, a Limited Liability Company, acting as venturer of SOUTH OAK JOINT VENTURE, a Tennessee joint venture, and that he as such Manager being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the joint venture by himself as such Manager of WALDO, L.L.C., as venturer.

WITNESS my hand and Notarial Seal at office this 5th day of MARCH, 1997.

Gary S. Robertson
Notary Public

My Commission Expires:

12-07-97

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, of the State and County aforesaid, personally appeared WILLIAM RAY HARVEY, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged himself to be the President of LANDMARK BUILDERS, INC., the within named bargainor, a Corporation, acting as venturer of SOUTH OAK JOINT VENTURE, a Tennessee joint venture, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the joint venture by himself as such President of LANDMARK BUILDERS, INC., as venturer.

WITNESS my hand and Notarial Seal at office this 5th day of MARCH, 1997.

Gary S. Robertson
Notary Public

My Commission Expires:

12-07-97

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SHELBY COUNTY
REGISTER OF DEEDS

97 APR - 10 1991

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