



Shelby County Tennessee

Willie F. Brooks Jr

Shelby County Register

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Office of the Shelby County Register.



23036238

05/08/2023 - 08:36:06 AM

326 PGS	
ALLYSON 2570280 - 23036238	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	1630.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	1632.00

WILLIE F. BROOKS JR
REGISTER OF DEEDS SHELBY COUNTY TENNESSEE

PREPARED BY AND RETURN TO:
M. Wayne Mink, Jr.
Dinkelspiel, Rasmussen & Mink, PLLC
1669 Kirby Parkway, Suite 106
Memphis, Tennessee 38120
DRM File No.: 151180.0000

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

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OAKMONT P.D., PARCEL 2, PHASE 2 (this "Amendment") is made as of this 1st day of May, 2023, by **OAKMONT PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION #2, INC.**, a Tennessee non-profit corporation (the "Association"), for that certain residential development situated in the Town of Collierville, Shelby County, Tennessee, more commonly known as **OAKMONT PHASE #2** ("Oakmont Phase 2").

WITNESSETH:

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions for Oakmont P.D., Parcel 2, Phase 2 (as amended, the "Declaration"), dated March 5, 1996, recorded as Instrument No. GK 7317 in the Register's Office of Shelby County, Tennessee (the "Register's Office"), as amended by Instrument No. 18037682, governs that certain residential development situated in the Town of Collierville, Shelby County, Tennessee, more commonly known as "Oakmont Phase 2", which is administered by the Association; and

WHEREAS, the Association was formed pursuant to that certain Charter of Oakmont Planned Development Homeowners Association #2, Inc. (the "Charter") filed with the Tennessee Secretary of State as Control No. 0327630, a copy of which is recorded in the Register's Office as Instrument No. GM 0188; and

WHEREAS, as of the date of this Adoption the Association has not formally adopted bylaws for its governance; and

WHEREAS, the Association intends to adopt the Bylaws of Oakmont Planned Development Homeowners Association #2, Inc., attached hereto and made a part hereof as **EXHIBIT "A"** (the "Bylaws"), formally as the bylaws of the Association; and

WHEREAS, pursuant to Tenn. Code § 48-52-106(a), the Board of Directors of the Association shall, in its sole discretion, adopt initial bylaws for the governance of the Association; and

WHEREAS, the Board of Directors have formally elected to adopt the Bylaws as the governing bylaws of the Association pursuant to their statutory powers as evidenced by all the signatures of the President and Secretary below; and

WHEREAS, Oakmont Phase 2 is more particularly shown on those certain plats (collectively, the "Plats") recorded in the Register's Office in: (i) Plat Book 161, Page 53, re-recorded in Plat Book 165, Page 55, Plat Book 189, Page 38, and (ii) Plat Book 193, Page 31, with Oakmont Phase 2 consisting of one hundred sixteen (116) residential lots (each a "Lot") as more particularly shown and depicted on the Plats; and

WHEREAS, the Plats contain certain restrictive covenants (the "Plat Restrictive Covenants"), which pursuant to Paragraph 13 of the Plats may be amended by the vote of a majority of the Lots in Oakmont Phase 2 (being 59 Lot Owners); and

WHEREAS, as amended herein, a majority of the Lot Owners at Oakmont Phase 2 ratify and confirm that the Plat Restrictive Covenants apply to and are binding upon the Lots in Oakmont Phase 2 as of the recordation of this Amendment; and

WHEREAS, the Association intends to amend the Declaration and the Plats as more particularly provided herein; and

WHEREAS, Article XI, Section 6 of the Declaration provides that the Declaration may be amended at a meeting of the membership of the Association by an instrument signed by Owners holding not less than seventy-five percent (75%) (being 87 Lot Owners) of the votes at any time; and

WHEREAS, as of the recordation of this Amendment, restrictions on long-term leasing in Declaration shall be governed by the provisions of Tenn. Code § 66-27-701, *et seq.* (the "Act"); and

WHEREAS, the terms and provisions of this Amendment comply with the Act; and

WHEREAS, a meeting of the membership of the Association has been held, or this Amendment has been approved by the Association in accordance with the terms and provisions of Tenn. Code § 48-57-108 without a meeting, and: (i) with regard to those amendments to the Declaration, this Amendment to the Declaration was properly approved and signed by Owners holding not less than seventy-five percent (75%) of the votes of the membership with their signatures evidenced by those certain attachments attached hereto and made a part hereof, collectively, as **EXHIBIT "B"**; and (ii) with regard to those amendments to the Plats, this Amendment to the Plats was properly approved by a majority of the Lot Owners at Oakmont Phase 2, as confirmed by the signatures of the President and Secretary of the Association below.

NOW, THEREFORE, the Declaration and the Plats are hereby amended as follows:

1. **REVISION ON RESTRICTIONS REGARDING BUSINESS ACTIVITIES:** The second (2nd) sentence of Article I, Section 5 of the Declaration; the first (1st) sentence of Article VIII, Section 1 of the Declaration, and Paragraph 1 of the Plat Restrictive Covenants are hereby deleted in their entirety with the following substituted in their place:

Anything in the Declaration to the contrary notwithstanding, no recurring business activity of any kind whatsoever shall be conducted on any Lot (for the purposes of this Amendment and the Declaration, "recurring business activity" does not prohibit telecommuting, but does prohibit any nuisance or increased business traffic to and from the Lot as determined by the Board in its sole and reasonable discretion).

2. **VOTING RIGHTS IN THE DECLARATION AND THE BYLAWS:** The fifth (5th) sentence (being the final sentence) of Article V, Section 3 of the Declaration is hereby deleted in its entirety.

3. **PROXIES:** Article V, Section 4 of the Declaration is hereby deleted in its entirety with the following substituted in their place:

Every Member entitled to vote at a meeting may do so either in person or by written proxy, which proxy shall be filed with the Secretary before being voted. Such proxy shall entitle the holders thereof to vote at any adjournment of such meeting, but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise provided in the proxy.

4. **MAXIMUM ANNUAL ASSESSMENTS:** Article VI, Sections 3(B) and (C) of the Declaration are hereby deleted in their entirety, it being the intent of the membership that annual assessments solely be determined by the Board of Directors, in its absolute discretion.

5. **SPECIAL ASSESSMENTS:** Article VI, Sections 4 and 6 of the Declaration are hereby deleted in their entirety with the following substituted in its place:

In addition to the regular, annual assessments authorized by the CCRs, the Association may, from time to time, 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, unexpected repair or replacement of an improvement for which the Association is specifically responsible, or for such other purposes as the Board may consider necessary, provided that such assessment is not disapproved or otherwise vetoed by the vote of Members holding two-thirds (2/3rds) of the total number of Member votes eligible to be cast. A special meeting of the Members shall be duly-called for this purpose within sixty (60) days of the Board levying such assessment if requested by the Members. The failure of a quorum to be achieved at such a special meeting shall not in any way impact or otherwise affect the validity of the Board's decision to levy such a special assessment. If the special assessment is not disapproved or otherwise vetoed at a duly-called meeting of the Association within sixty (60) days of the Board levying such special assessment, then the membership shall no longer be permitted to disapprove or veto such special assessment approved by the Board (though it will retain such authority as to future special assessments as provided herein). Anything in these CCRs to the contrary notwithstanding, the Board shall not be authorized to levy any special assessment in excess of **ONE THOUSAND AND 00/100 DOLLARS (\$1,000.00)** per Lot (which amount shall increase by three percent [3%] annually per year commencing on the year after the recordation of this amendment, i.e., 2024) unless such special assessment is approved by a majority of the Members.

6. **ORDER OF PAYMENT IN THE EVENT OF NON-JUDICIAL FORECLOSURE:** The sixth (6th) sentence of the third (3rd) paragraph of Article VI, Section 9 of the Declaration is hereby deleted in its entirety with the following substituted in its place:

The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied as follows: (i) to the payment of all costs, charges, and expenses of executing this conveyance and enforcing said lien as herein provided; also, an attorneys' fees which arise on account of the execution of this conveyance, or the enforcement of said lien and the expenses of any such litigation; (ii) to the payment of all the Assessments herein secured, and any sums expensed in the protection of the Lot as herein authorized; (iii) to the payment of all taxes and other recorded liens which may be unpaid on the Lot; and (iv) the residue, if any, will be paid to Trustors, their order, representatives, or assigns.

7. **REMOVAL OF ACCELERATION OF INSTALLMENTS:** Article VI, Section 10 of the Declaration is hereby deleted in its entirety.

8. **SUBORDINATION AND MORTGAGE PROTECTION:** Article VI, Section 12 of the Declaration is hereby deleted in its entirety with the following substituted in its place (it is the intent of the Association and its Members that this amendment to Article VI, Section 12 of the Declaration only apply to those holders of deeds of trust or mortgages on Lots that are recorded after the date of recordation of this Amendment):

The lien of the assessments provided for herein shall be subordinate to the lien of *ad valorem* real estate taxes and of any prior recorded first mortgage or first deed of trust on any Member Lot (but only if such assessments and all costs associated therewith, including attorney's fees, were paid in full prior to the date of recordation of the mortgage or deed of trust). The lien established by the Declaration shall have preference over all other mortgages, deeds of trusts, assessments, liens,

judgments, or charges of whatever nature. Foreclosure, sale, or other conveyance (such as a deed in lieu of foreclosure) pursuant to any such first mortgage or first deed of trust shall extinguish such lien for assessments due prior to such foreclosure or sale but only if such assessments and all costs associated therewith, including attorney's fees, were paid in full prior to the date of recordation of the mortgage or deed of trust (but such assessment lien shall attach to any excess proceeds of the foreclosure), and no such foreclosure or sale shall relieve such Lot from liability for any future assessments or liens.

9. CLARIFICATION REGARDING LANDSCAPE CONTROLS: Article VII, Section 2 of the CCRs is hereby amended to add the following to the end of the existing first (1st) paragraph:

For the purposes of this Amendment and the CCRs, "landscaping" and the authority of the Association or the Architectural Committee to review and/or approve landscaping shall be limited to the planting of new trees, grading, removal of live trees, the landscaping or re-landscaping of the majority of an existing front yard as determined by the Architectural Committee, installation of irrigation systems, and the sodding or re-sodding of yards. The replacement (with substantially the same plantings) or removal of the remains of dead or damaged trees or vegetation does not require the consent or approval of the Architectural Committee.

10. PARKING OF CERTAIN VEHICLES: Article VIII, Section 2(L) of the Declaration is hereby deleted in its entirety with the following substituted in its place:

No recreational or commercial vehicles, including but not limited to commercial trucks, boats, modular storage units, trailers, boat trailers, house trailers, camping trailers, or similar type vehicles and items shall be kept on any portion of Oakmont Phase 2 or any Lot unless within the enclosed garage. It is strictly prohibited to store or park junk or inoperable automobiles on or about any of said Lots. All motorized vehicles parked at Oakmont Phase 2 must be licensed and in operating condition.

11. COVENANTS REGARDING PETS: Article VIII, Section 2(V) of the Declaration is hereby deleted in its entirety with the following substituted in its place:

No animals of any kind shall be raised, bred, or kept on any Lot, except that cats or other household pets may be kept, provided that they: (i) are not kept, bred, or maintained for any commercial purpose and (ii) do not become an unreasonable nuisance or annoyance to neighbors. For the purposes of the Declaration, "household pets" shall include such traditional animals, such as dogs, cats, rabbits, birds, and fish. No reptiles, wildlife, or domestic variations of farm animals shall be kept in or on Lots at Oakmont Phase 2. The Association may promulgate reasonable rules and regulations regarding the keeping of pets at Oakmont Phase 2. Lot Owners must pick-up all solid wastes of their pets and dispose of such wastes appropriately. All pets must be kept on a leash when not confined either within the improvements or the fence located upon a Lot. Without limiting the generality of Article VIII hereof, violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to require any pet to be permanently removed from Oakmont Phase 2. This Article VIII, Section 2(V) shall not prohibit the keeping of fish or a caged household-type bird(s) on a Lot, provided that a bird(s) does not become a nuisance or annoyance to neighbors. Notwithstanding any of the foregoing, however, neither this Article VIII, Section 2(V); any other provision of the Declaration; nor any rule or regulation of the Association shall be enforced, adopted, or amended so as to prohibit or unlawfully restrict any right of the Owner or occupant of a Lot to keep and use a seeing-eye dog or other properly certified assistive or service animal for purposes provided for in any local, state, or federal law, statute, or ordinance protecting the applicable person's right to do so.

12. INDIVIDUAL INSURANCE: Article X, Section 1 of the Declaration is hereby deleted in its entirety with the following substituted in its place:

By virtue of taking title to a Lot subject to the terms of the Declaration, each Owner covenants and agrees with all other Owner and with the Association that each individual Owner may carry blanket all-risk casualty insurance on the Lot and structures constructed thereon for the full replacement cost thereof. In the event of damage or destruction by fire or other casualty, the Owner shall, with the concurrence of the mortgagee, if any, upon receipt of any insurance proceeds, construct to repair or rebuild such damage or destroyed portions of the improvements in a workmanlike manner in conformance with the original plans and specifications of the building (including landscaping) or plans otherwise approved in accordance with the Declaration. In the event the Owner refuses or fails to commence to repair or rebuild any and all such damage to his improvements in a timely manner as determined by the Board of Directors in its reasonable discretion, the Association, is hereby authorized by such Owner, upon written notice, to repair and rebuild the improvements in a good and workmanlike manner in conformity with the original plans and specifications. The Owner shall then repay the Association in the amount expended for such repairs, including any and all costs, expenses, attorney's fee, and reasonable interest related thereto, and the Association will have a lien securing the payment of the same identical to that provided in Article VI, above, securing the payment of said sums expended and subject to the power of sale and foreclosure as set forth in said article.

13. **ENFORCEMENT**: Article XI, Section 3 of the Declaration is hereby deleted in its entirety with the following substituted in its place:

The Association shall have the right to enforce the covenants and restrictions, and any applicable rules and regulations, contained in this Declaration or applicable to Oakmont Phase 2, 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 covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expenses of enforcement, including court costs, expenses, and attorney's fees, by the Association or Member 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.

14. **AMENDMENT**: The second (2nd) and third (3rd) sentences of Article XI, Section 6 of the Declaration is hereby deleted in its entirety with the following substituted in its place:

Amendments to the Declaration shall be effected as follows: notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either (i) by a majority of the Board of Directors of the Association or (ii) by not less than ten (10%) of the Members of the Association. Proposed amendments must be approved by the affirmative vote of Lot Owners holding sixty-seven percent (67%) (being at least 78 Lot Owners) of all Owner votes. In order to be effective an amendment must be (i) executed by the President and Secretary of the Association and (ii) recorded in the Register's Office.

15. **PROHIBITION AGAINST LEASING**: The Declaration is hereby amended to add the following Article XII and Paragraph 18 of the Restrictive Covenants is hereby deleted in its entirety:

ARTICLE XII **PROHIBITION AGAINST LEASING**

(i) Notwithstanding anything to the contrary herein stated, any person (including any individual or business entity permitted by Tennessee law to hold title to real estate) who becomes an Owner of a Lot at Oakmont Phase 2 after the date of recordation of this Amendment is prohibited from leasing, or entering into a lease-purchase or similar contract for, that Lot or any portion thereof. It shall be a violation of this Article subject to written waiver by the Board of Directors, in their sole and

absolute discretion, if an Owner, or if more than one Owner, at least one of the Owners (including an Owner who may own less than 100% of the ownership interest in any Lot) shall not occupy the Lot on a permanent basis. It shall also be a violation of this Article, subject to written waiver of the Board of Directors in their sole and absolute discretion, if any person lives on any Lot without paying any rental or lease payment unless an Owner also occupies such Lot. For purposes of the preceding sentence, it shall not be a violation of this Article if, while an Owner is temporarily absent from the Lot, a person who is not an Owner of that Lot temporarily resides in such Lot. A person who "temporarily resides" in the Lot without violating this Article is meant to include persons commonly known as house sitters or other persons who stay in the Lot while the Owner is absent for the purpose of providing security, or caring for pets, or the like which belong to the Owner, and remain in the Lot while the Owner is absent. Such "Temporary Residence" by a person not an Owner shall not exceed a total of six weeks in any one calendar year.

(ii) Notwithstanding the foregoing, in the event that an Owner, due to medical or health reasons, or for any other good cause, desires to lease a Lot or any part thereof, or if an Owner wishes to extend any period of Temporary Residence as described in the preceding paragraph for a period longer than six weeks, then such Owner shall make application to the Board of Directors which may, by a majority vote, grant to such Owner an exception to the prohibition against leasing set forth in this Article upon such conditions and under such circumstances as the Board of Directors, in its sole and absolute discretion, may deem proper or necessary. The Board shall provide written approval or disapproval to any Owner who makes application for an exception to the prohibition against leasing under this Article.

(iii) It is the express intent of this Article that the prohibition against leasing shall apply only to persons who obtain title to their Lot subsequent to the date of recordation of this Amendment. Lot Owners who acquired title to their Lot prior to the date of recordation of this Amendment or who are otherwise exempted from the prohibitions of this Amendment shall be permitted to lease such Lot acquired prior to the date of recordation of this Amendment except as expressly provided in Article XII(vi) below.

(iv) Further, the prohibition contained herein shall not apply to institutional holders of a mortgage or deed of trust who obtain title to a Lot pursuant to foreclosure of such mortgage or deed of trust, as a result of a judicial sale, or any proceeding in lieu of foreclosure (the provisions of this prohibition against leasing shall apply to the holders of a mortgage or deed of trust, involved in seller financing or a similar transaction, who obtain title to a Lot pursuant to foreclosure of such mortgage or deed of trust, as a result of a judicial sale, or any proceeding in lieu of foreclosure). The prohibition against leasing herein contained shall also not apply to: a) individual persons who acquire title to a Lot by devise, inheritance, or operation of law from an Owner who is an Owner on the date of recordation of this Amendment in the Register's Office of Shelby County, Tennessee; b) to any person who is an Owner on the date of recordation of this Amendment and who conveys their Lot to a living trust the beneficiaries of which are the Owners or their spouse, child, parent or sibling; or c) to any spouse, child, parent, or sibling of an Owner who acquires title by *inter vivos* conveyance from an Owner who is an Owner on the date of recordation of this Amendment. In the event of any inconsistencies or contradictory language between this Article and any other provisions of the Declaration, then the provisions of this Article shall control.

(v) If a Lot is owned by a limited liability entity (the "Limited Liability Entity") including, but not limited to, a corporation, whether for profit or not for profit, a limited liability company, limited liability partnership, professional corporation or professional limited liability company, it shall be a violation of this Article, subject to written waiver by the Board of Directors, if the Lot is not occupied on a permanent basis by one of the following: an officer, director, shareholder, member or partner of such Limited Liability Entity.

(vi) The foregoing notwithstanding, all Lot Owners, including those who took title prior to the recordation of this Amendment, are prohibited from leasing all or any portion of their Lot for any period of less than thirty (30) days (the "Temporary Leasing Prohibition"). It is the intent of this

paragraph to prohibit transient or short term rentals under arrangements such as a home exchange or time share, and also under such programs commonly known as "vacation rental by owner" (VRBO), Airbnb, and the like. Notwithstanding the provisions of this Article XII(vi), any Lot Owner may apply for a waiver under Article XII(ii) to the Temporary Leasing Prohibition of this Article XII(vi).

(vii) In the event of any violation of this Article by an Owner, the Association shall be entitled to any remedy available at law or in equity from such Owner including, but not limited to, damages and injunctive relief together with any attorney's fees incurred by the Association and all costs and expenses of whatever type, kind or nature expended by the Association to enforce any of the provisions of this Article, whether such enforcement is by way of non-judicial or judicial action.

16. DEVELOPER CONTROL OF ARCHITECTURAL APPROVAL: Paragraphs 2 and 16 of the Plat Restrictive Covenants are clarified and amended to provide that any and all approval rights and authority vested in the "developer/joint venture" is vested in the Association's Architectural Review Committee.

17. SATELLITE DISHES: Paragraph 11 of the Plat Restrictive Covenants is hereby deleted in its entirety with the following substituted in its place:

Except as otherwise provided herein, radio, television transmission receiving towers, and/or antennae are not acceptable and will not be approved or allowed. Without prior written approval and the authorization of the Architectural Review Committee, as such term is defined in the Declaration, no exterior satellite dish or antennae shall be placed, allowed, or maintained upon any portion of the improvements located upon a Lot in Oakmont Phase 2 nor upon any structure situated upon a Lot in Oakmont Phase 2. In the event such approval is granted, the size and location must be approved by the ARC with such satellite dish or antennae being placed at the rear of the improvements constructed upon the Lot. This section is intended to comply with existing OTARD (Over the Air Reception Device) regulations as such may be amended from time to time. Anything in the CCRs to the contrary notwithstanding, a Lot Owner may install or have installed one (1) satellite dish or antennae designed to receive video programming services, of less than one (1) meter in diameter, on the improvements on his or her Lot without any authorization or approval from the ARC provided such satellite dish is installed on the rear of such improvements and is otherwise not readily visible from right-of-way to the front of such improvements.

18. WINDOW REQUIREMENTS: Paragraph 12 of the Plat Restrictive Covenants is hereby deleted in its entirety with the following substituted in its place:

All windows installed on improvements in Oakmont Phase 2 shall be made of materials approved by the Association's Architectural Review Committee.

19. RECITALS: The foregoing recitals are true and accurate.

20. CAPITALIZED TERMS: All capitalized terms not otherwise defined in this Amendment shall have the same meanings provided for in the Declaration and Bylaws.

21. FULL FORCE AND EFFECT: Except as modified herein, all other terms and provisions of the Declaration, Plats, and Bylaws shall remain in full force and effect as if this Amendment had been incorporated in the Declaration, Plats, and Bylaws as originally executed.

22. CONFLICT: In the event of any conflict between the terms and provisions of this Amendment and the Declaration, Plats, or the Bylaws, the terms and provisions of this Amendment shall control.

23. **CERTIFICATION OF MAILING:** By executing this Amendment, the President and Secretary of the Association acknowledge and certify that, in accordance with the Bylaws of the Association, all members of the Association were mailed notice of this Amendment prior to any vote being held on this Amendment in accordance with the Act.

IN WITNESS WHEREOF, a meeting of the membership of the Association has been held, or this Amendment has been approved by the Association in accordance with the terms and provisions of Tenn. Code § 48-57-108 without a meeting, and: (i) with regard to those amendments to the Declaration, this Amendment to the Declaration was properly approved and signed by Owners holding not less than seventy-five percent (75%) of the votes of the membership with their signatures evidenced by those certain attachments attached hereto and made a part hereof, collectively, as **EXHIBIT "B"**; and (ii) with regard to those amendments to the Plats, this Amendment to the Plats was properly approved by a majority of the Lot Owners at Oakmont Phase 2, as confirmed by the signatures of the President and Secretary of the Association below.

[THE FOLLOWING PAGES ARE THE SIGNATURE PAGES]

THE ASSOCIATION:

OAKMONT PLANNED DEVELOPMENT HOMEOWNERS
ASSOCIATION #2, INC.

a Tennessee non-profit corporation

By:

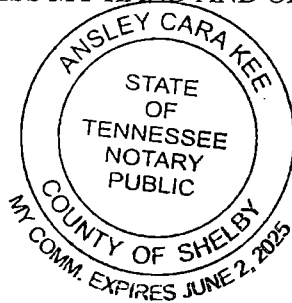
Name: Douglas Smith

Title: President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, of the state and county mentioned, personally appeared Douglas Smith, President of OAKMONT PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION #2, INC., a Tennessee non-profit corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the President of OAKMONT PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION #2, INC., a Tennessee non-profit corporation, the within named bargainor, a corporation, and that she/he as such President, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as its President.

WITNESS MY HAND AND OFFICIAL SEAL at office, this 1st day of May, 2023.



NOTARY PUBLIC

My Commission Expires: 6/2/25

By:

Name: Josh Creason

Title: Secretary

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, of the state and county mentioned, personally appeared Josh Creason, Secretary of OAKMONT PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION #2, INC., a Tennessee non-profit corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the Secretary of OAKMONT PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION #2, INC., a Tennessee non-profit corporation, the within named bargainor, a corporation, and that she/he as such Secretary, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as its Secretary.

WITNESS MY HAND AND OFFICIAL SEAL at office, this 1st day of May, 2023.



NOTARY PUBLIC

My Commission Expires: 6/2/25

EXHIBIT "A"
THE BYLAWS

**BYLAWS OF OAKMONT PLANNED DEVELOPMENT HOMEOWNERS
ASSOCIATION #2, INC.**

ARTICLE I
NAME AND GUIDELINES

Section 1. **NAME.** The name of this Association will be: Oakmont Planned Development Homeowners Association #2, Inc., a Tennessee nonprofit corporation.

Section 2. **GOVERNING LAW.** The Association is and shall remain a non-profit organization, governed by the provisions of the Tennessee Nonprofit Corporation Act, Tenn. Code § 48-51-101, *et seq.* (the "Act"), as amended from time to time, except as otherwise provided in these Bylaws, and no part of the net earnings thereof shall inure to any individual Member, except as expressly provided in that certain Declaration of Covenants, Conditions and Restrictions for Oakmont P.D., Parcel 2, Phase 2, dated March 5, 1996, of record in the Register's Office of Shelby County, Tennessee (the "Register's Office"), as Instrument No. GK 7317 (as amended, the "Declaration"), as amended by Instrument No. 18037682.

Section 3. **NON-POLITICAL.** The Association shall not endorse or align with any political party or candidate for public office.

Section 4. **PURPOSES.** The Association is formed to serve as the means through which the Members administer, manage, and operate Oakmont Phase 2, under the provisions of Act and the Declaration, as amended from time to time.

Section 5. **PRINCIPAL OFFICE.** The principal office of the Association shall be located at: 627 Warwick Oaks Lane East, Collierville, Shelby County, Tennessee 38017, or such other place as may be designated by the Association.

ARTICLE II
MEMBERSHIP

Section 1. **MEMBERS.** Membership in the Association shall be limited to the Members as such term is defined in the Charter and/or Declaration of the Association. Every person, being an individual, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof, who is a record owner of a fee or undivided fee interest of any Lot within Oakmont Phase 2 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 within the Property. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 2. **VOTES.** The Owner(s) of record in the Register's Office of each Lot within Oakmont Phase 2 each shall be entitled to one (1) vote per Lot owned. If two spouses are the Owners, collectively, of a Lot in Oakmont Phase 2, such spouses, while both Members, will have one (1) vote between them in all matters put before the Membership. If a corporation, partnership, limited liability company, or any other such legal entity shall own a Lot, then such entity shall register with the Secretary

the name and office of the individual whom will represent such entity at any meeting of the Members and cast such entity's vote.

Section 3. ROSTER OF MEMBERSHIP. The Secretary of the Association shall maintain a roster of the Membership entitled to vote at the meetings as hereinafter provided.

Section 4. PROXIES. Every Member entitled to vote at a meeting may do so either in person or by written proxy, which proxy shall be filed with the Secretary before being voted. Such proxy shall entitle the holders thereof to vote at any adjournment of such meeting, but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless otherwise provided in the proxy.

ARTICLE III **BOARD OF DIRECTORS**

Section 1. BOARD OF DIRECTORS. The Association shall be governed by a Board of Directors consisting of seven (7) persons (each being a "Director"). Each Director shall be a Member, as such term is defined in the Charter or these Bylaws. No Member who is delinquent in the payment of his or her assessment or otherwise in default of the Declaration may serve on the Board (in the event a Director becomes delinquent or otherwise in default of the Declaration, then he or she must resign from the Board and the remaining Directors shall elect a Director to fill such position until the next annual meeting of the Members at which time the Membership may elect a replacement to fill such Director's unexpired term).

Section 2. ELECTION OF DIRECTORS. Election of Directors shall be conducted in the following manner:

Except as otherwise provided herein, the Members of the Board of Directors shall be elected by written ballot or written proxy at the annual meeting of the Members and shall serve for two (2) years or until their successors are elected and qualified. In addition, the terms of the Directors are to be staggered to ensure that Directors with corporate knowledge of the Association remain on the Board. In order to establish the staggered Board of Directors, beginning with the annual meeting in 2024, the Association shall elect seven (7) Directors, of which four (4) Directors shall serve for a two (2) year term and three (3) Directors shall serve for a one (1) year term. Subsequently, all Directors shall be elected to two (2) year terms with the Association electing at least one (1) Director annually. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another association mailing or delivery, including regularly published newsletters, to each Lot Owner entitled to vote, a first notice of the date of the election. Any eligible Lot Owner or other eligible person desiring to be a candidate for the board of Directors may give written notice to the Secretary not less than forty-five (45) days before a scheduled election. Additional nominations may be taken from the floor at the annual meeting, but will not be included on any ballot or ballot/proxy sent to the Members in accordance with the notice provisions contained in these Bylaws. Anything in the Bylaws to the contrary notwithstanding, Directors may be elected by a plurality of the Members at a duly-called meeting, with the candidates receiving the most votes being elected Directors.

Section 3. ELECTION OF OFFICERS BY BOARD OF DIRECTORS. The Board of Directors shall elect a President, Vice President, Secretary, and Treasurer. The Board of Directors may, in its discretion, from time to time by a majority vote remove an officer from office with or without cause.

Section 4. QUORUM; VOTING. The attendance of a majority of the Directors of the Board shall constitute a quorum. A simple majority will be required for any binding action, except as otherwise provided herein. Each Director shall be entitled to one (1) vote on all matters before the Board of Directors.

Section 5. QUALIFICATIONS; REMOVAL OF DIRECTORS. To be eligible for or to hold elected office in the Association, a person must be a Member. Each Director shall be a Member. No Member who is delinquent in the payment of his or her assessment may serve on the Board (in the event a Director becomes delinquent, then he or she must resign from the Board and the remaining Directors shall elect a Director to fill such position until the next annual meeting of the Members at which time the Membership may elect a replacement to fill such Director's unexpired term). Except as otherwise provided herein, any Director may be removed at a special meeting of the membership called for such purpose by a vote of three-fifths (3/5th) of the entire Membership. If a Director is removed by the Members, then a replacement shall be elected at such meeting by the Members as provided herein.

Section 6. VACANCIES. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by the vote of the Members of the Association shall be filled by the vote of the majority of the remaining Directors or by the sole remaining Director. Each individual so elected shall serve as a Director until a successor is duly-elected to fill the unexpired term at the next annual meeting of the Owners of the Association or at a special meeting of the Owners of the Association called for that purpose. Any Director filling a vacant position shall serve until their successor is duly-elected.

Section 7. NO COMPENSATION. Directors shall serve without compensation.

Section 8. POWERS/DUTIES OF BOARD OF DIRECTORS. Powers and duties of the Board of Directors shall include:

A. The appointment of the Architectural Control Committee (the "ACC"), as such may be established under the Declaration, and all other standing committees and chairpersons thereof. This power can be delegated to the President. All committees shall derive their direction from the Board of Directors.

B. The appointment of all persons or organizations to serve the Association, including, but not limited to, any professional management company.

C. The filling of vacancies on the Board of Directors until the next annual meeting.

D. The approval of expenditures of Association funds.

E. The establishment of policy for the Association.

F. The dissolution of all standing and other committees. This power can be delegated to the President.

G. The setting and collection of all annual assessments provided in the Declaration.

H. Such other powers and duties as given to them by the Members; or established by the Declaration; or which may be exercised for, on behalf of, and in the best interests of the Association.

I. Promulgation of reasonable rules and regulations (the "Rules and Regulations"), after written notice to the Members.

J. Any and all other corporate powers (see specifically Tenn. Code § 48-53-102(a)) delegated to the Board of Directors of a non-profit corporation pursuant to Tenn. Code § 48-58-101(a).

Section 9. LIMITATION OF LIABILITY. Pursuant to the provisions of Tenn. Code § 48-52-106(d), as such may be amended from time to time, a Director shall have no liability to the Members for money damages for any action taken or any failure to take action as a Director except liability for: (i) the amount of financial benefit received by the Director to which the Director is not entitled; (ii) an intentional infliction of harm; (iii) a violation of Tenn. Code § 48-58-302, as such may be amended from time to time; or (iv) an intentional violation of criminal law.

ARTICLE IV OFFICERS

Section 1. OFFICERS. Following the annual meeting of the Members, the Directors shall elect the following officers by a majority vote of the Directors: President, Secretary, and Treasurer.

Section 2. PRESIDENT. The President shall preside at all meetings of the Association and the Board of Directors and shall perform such duties as directed by the Board of Directors.

Section 3. VICE PRESIDENT. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 4. SECRETARY. The Secretary, or another Board Member as designated, shall be the official custodian of all records of the Association except Membership records, shall keep the minutes of the Association and Board of Directors meetings, shall send all official correspondence in the name of the Association, and shall give all required notices. In no event may the President and Secretary be the same individual.

Section 5. TREASURER. The Treasurer shall keep and be responsible for all funds of the Association and shall keep the Membership records. The funds shall be deposited in an account in the name of "Oakmont Planned Development Homeowners Association #2, Inc." The Treasurer shall make a list of all Members which shall include each Member's name, and date joined. The Treasurer shall provide a current list to the Secretary on a periodic basis. Designated Board members shall have signature authority on bank accounts of the Association. All monies belonging to the Association shall be delivered to the Treasurer and all bills shall be submitted to the Treasurer for payment. The Treasurer shall provide regular reports of transactions and prepare financial statements as directed by the Board of Directors. In the event the Association is professionally managed, the Board may authorize such management company to have signature authority on bank accounts of the Association.

Section 6. DUAL OFFICES. A Director may also serve as an officer and on the ACC.

Section 7. EXECUTION OF INSTRUMENTS. Provided any such document has been approved by the Membership, if necessary and as provided herein, and evidence of such approval is kept with the Association's records, all agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by a resolution of the Board of Directors and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the President and Secretary. All checks shall be signed by the designated Board members or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE V **MEMBERSHIP MEETINGS**

Section 1. ANNUAL MEETING. The annual meeting of the Membership of the Association in each year shall be held between the months of January and April, inclusive, on the particular day, hour, and location as determined and designated by the Board of Directors. Written notification of the Annual Meeting shall be given to the Members as provided in the Bylaws.

Section 2. SPECIAL MEETINGS. Special meetings of the Membership for any purpose may be called (1) by the President or (2) by the Secretary upon written request of ten percent (10%) of the Membership.

Section 3. QUORUM. The presence, either in person or by proxy, of Members representing at least twenty percent (20%) of the total votes entitled to be cast shall be requisite for and shall constitute a quorum for the transaction of business at all meetings of the Members. If the number of Members at a meeting drops below the required quorum level and the question of a lack of quorum is raised, no business may thereafter be transacted. After two (2) successive adjourned meetings of the Members, held with due written notice, at which a quorum is not obtained; howsoever many Members as may attend the third consecutive adjournment of the meeting shall constitute a quorum.

ARTICLE VI **ASSOCIATION RESPONSIBILITIES**

Section 1. INDEMNIFICATION. The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer or Director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which such officer or Director may be made a party by reason of being or having been an officer or Director, whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance or malfeasance. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled, including the provisions of Tennessee Code Annotated Sections § 48-58-501, *et seq.* The Association shall maintain adequate general liability insurance and if, obtainable, officers' and Directors' liability insurance to fund this obligation.

Section 2. INSURANCE. The Association shall, as determined by the Board of Directors in its sole discretion, obtain, and maintain at all times as a common expense insurance as required by the Declaration, including, but not limited to commercial general liability insurance and directors' and officers' insurance.

ARTICLE VII **PROCEDURE**

The President shall regulate and govern all debate and action by the Board of Directors and the Membership at any meeting in a manner, which promotes a fair exchange of views, and the efficient dispatch of business. When resort to rules of procedure becomes necessary, business may be governed by Robert's Rules of Order.

ARTICLE VIII AMENDMENTS

Section 1. AMENDMENTS. Except as elsewhere provided herein, amendments to these Bylaws may be effected as follows:

Section 2. BY THE ASSOCIATION. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either (i) by a majority of the Board of Directors of the Association or (ii) by not less than ten percent (10%) of the Members of the Association. Except as elsewhere provided, approvals of proposed amendments must be by the affirmative vote of Members holding sixty-seven percent (67%) of all Member votes. Records of all votes authorizing an amendment to these Bylaws shall be kept with the minutes of the Association.

Section 3. EXECUTION AND RECORDING. In order to be effective an amendment must be (i) executed by the President and Secretary of the Association, with evidence authorizing such execution placed with the minutes of the Association and (ii) recorded in the Register's Office.

ARTICLE IX FINANCES

Section 1. FISCAL YEAR. The fiscal year shall commence on January 1st and end on December 31st of each year. The Board of Directors may establish a different fiscal year and must notify each of the then existing Members of the change.

Section 2. DEPOSITORY AND CHECKS. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. All checks or demands for money and notes of the Association shall be signed by one (1) of the following officers: President, Treasurer, Secretary, or any person so designated by the Board. The Board of Directors, by resolution, may require more than one (1) signature.

Section 3. ANNUAL BUDGET. The Board of Directors shall propose an annual budget each year and shall post a copy of the Association's proposed annual budget of common expenses to the Association's website not less than seven (7) days prior to the meeting of the Board of Directors at which the budget will be considered together with a notice of that meeting. Hard copies of the proposed annual budget shall be available upon request. Such meeting of the Board of Directors shall be open to all Members.

Section 4. FIDELITY BONDS. The Board of Directors, in its sole and absolute discretion, may require fidelity bonds on all or any officers, employees, and agents of the Association or the Board and any other persons responsible for funds of the Association. The Board of the Administration shall determine the amount of such bonds. Premiums on such bonds shall be paid by the Association.

ARTICLE X NOTICES

Section 1. NOTICE. Written notice shall be given to all Members of annual and special meetings, stating the time, place, and purpose for which the meeting is called. Such notice shall be in writing and shall be mailed to each Member at his or her address as it appears on the books of the Association or may be delivered to his or her Lot not less than seven (7) days nor more than forty-five (45) days prior to the meeting.

Proof of such mailing or delivery may be given by the written statement of the Secretary or other person giving the notice. Whenever, under the provisions of the Act, the Charter or these Bylaws, notice is required to be given to any Director or Member, it shall be construed to mean either personal notice, or notice given in writing by mail by depositing the same in the Post Office or letter box in a postpaid envelope addressed to such Director or Member as their name appears on the books of the Association.

Section 2. WAIVER OF NOTICE. Whenever any notice is required to be given under the provisions of the Act, the Charter, the Declaration, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed to be equivalent to the required notice.

ARTICLE XI **OFFICIAL RECORDS**

The Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:

- A. A photocopy of the Plats and the Declaration for Oakmont Phase 2.
- C. A photocopy of the recorded Bylaws of the Association and all amendments thereto.
- D. A certified copy of the Charter and all amendments thereto.
- E. A copy of the current Association's rules and regulations, if any.
- F. A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of the Members, which minutes shall be retained for a period of not less than seven (7) years.
- G. A current roster of all Members, their mailing addresses, lot identifications, voting certifications, e-mail addresses (if possible), and if known telephone numbers.
- H. All current insurance policies of the Association.
- I. A current copy of any management agreement, lease, agreement, or other contract to which the Association is a party or under which the Association or the Members have an obligation or responsibility.
- J. Bills of sale or conveyances for all property owned by the Association (if any).
- K. Accounting records for the Association according to generally accepted accounting practices.
- L. Voting proxies, which shall be maintained for a period of one year from date of the meeting for which the proxy was given.

ARTICLE XII
WRITTEN INQUIRIES BY MEMBERS

When a Member files a written inquiry by certified mail with the Board of Directors, the Board shall respond in writing to the Member within thirty (30) days of receipt of the inquiry. The Board's response shall either give a substantive response to the inquirer, or notify the inquirer that a legal opinion has been requested. If a legal opinion is requested, the Board shall, within sixty (60) days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the complaint.

The Association may through its Board of Directors adopt reasonable rules and regulations regarding the frequency and manner of responding to Member inquiries, one of which may be that the association is only obligated to respond to one written inquiry per Lot in any given thirty (30) day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent thirty (30) day period, or periods, as applicable.

ARTICLE XIII
MISCELLANEOUS

Section 1. CHOICE OF LAW. These Bylaws have been executed in the State of Tennessee, and shall be construed, performed and enforced in accordance with the laws of the State of Tennessee.

Section 2. SEVERABILITY. In the event any provision of these Bylaws shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of these Bylaws shall nonetheless remain in full force and effect so long as the substantial benefits of the parties to be derived from these Bylaws and the performance hereof are not adversely affected by the elimination of such provision(s).

Section 3. ENTIRE AGREEMENT. These Bylaws constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, writings, and agreements.

Section 4. BINDING EFFECT. The terms of these Bylaws and the respective covenants, provisions, terms, conditions, and agreements herein contained shall be binding upon the parties hereto, their heirs, devisees, successors, and assigns.

I certify that these Bylaws were adopted by the Association as of this 1st day of May, 2023.

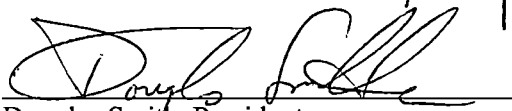

Douglas Smith, President

EXHIBIT "B"
SIGNATURES OF APPROVING MEMBERS