

BY-LAWS
OF
OAKMONT PLANNED DEVELOPMENT HOMEOWNERS' ASSOCIATION #2, INC.

ARTICLE I

Section 1. Name. The name of this corporation is Oakmont Planned Development Homeowners' Association #2, Inc. Its principal place of business is 7520 Capital Drive, Germantown, Tennessee 38138. This corporation may have such other offices within or without the State of Tennessee as the board of directors or the Members may from time to time designate.

ARTICLE II

Section 1. Applicability. These By-Laws and each provision thereof shall be applicable to all Lots and Members, as defined, within Oakmont P.D., Parcel 2, Phase 2 (the "Subdivision"), described more particularly in the Declaration of Covenants, Conditions and Restrictions of Oakmont P.D., Parcel 2, Phase 2.

ARTICLE III

The following sections of this Article III shall apply to membership in the Association.

Section 1. Members. Every person, as defined, who is a record Owner of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association; provided, however, that anyone who holds such interest solely as a 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 Subdivision. 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 as defined in Article III, Section 1, 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 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. Lien and Other Rights. The Association shall have a lien on the outstanding Class A memberships in order to secure payment of any sums which may become due from the holders thereof to the Association for any reason whatsoever. In addition, for such time as any sums may be due, the Member who fails to pay such sum shall not be entitled to any rights or privileges appertaining to such membership, including use of any recreational facilities, the Common Areas or ingress or egress to the Property.

ARTICLE IV

Section 1. Place of Meeting. Meetings of the membership shall be held at the principal office or place of business of the Association or at such other suitable place convenient to the membership as may be designated by the board of directors.

Section 2. Annual Meetings. The first annual meeting of the Members of the Association shall be held within two (2) years of the date on which the Declaration of Covenants, Conditions and Restrictions is recorded in the Register's Office of Shelby County, Tennessee. Thereafter, the annual meetings of the Members of the Association shall be held on the first Monday in March of each succeeding year at the hour of 7:00 p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. At such meeting there shall be elected by secret written ballot of the Members a board of directors in accordance with the requirements of Section 5 of Article V of these By-Laws. The Members may also transact such other business of the Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the board of directors or upon a petition signed by Members representing at least one-fourth (1/4) of all of the votes of the Class A membership having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the date, time and place where it is to be held, to each Member of record, at his address as it appears on the membership book of the Association, or if no such address appears, at his last known place of address, at least fifteen (15) but not more than ninety (90) days prior to such meeting. Service may also be accomplished by the delivery of any such notice to the Member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 5. Quorum. The presence, either in person or by proxy, of Members representing at least twenty-five (25%) percent of the vote 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. 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 the Declaration of Covenants, Conditions and Restrictions of the Subdivision, the Articles of Incorporation of the Association or these By-Laws. In determining whether a quorum is present, proxies may be counted as persons present.

Section 6. Lack of Quorum. If a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present or be represented. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, provided that the period of adjournment shall not exceed thirty (30) days.

Section 7. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote as defined by Article III, Section 2, on each question. The vote of the Members representing a fifty-one (51%) percent majority of the total votes entitled to be 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 provision of statute or of the Articles of Incorporation, or the Declaration, or of these 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 any 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 8. Proxies. Any Member may appoint any other Member or the Declarant or any other person permitted by law or by these By-Laws as his proxy. In no case may any Member (except the Declarant) cast more than one (1) 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 these By-Laws. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 9. Written Consent. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these By-Laws, such meeting and vote may be dispensed with if all Members who would have been entitled to vote upon such action consent in writing to such action being taken.

Section 10. Order of Business. The order of business at all regularly scheduled meetings of the Members shall be as follows:

- a. Roll call and certificates of proxies;
- b. Proof of notice of meeting or waiver of notice;
- c. Reading of minutes of preceding meeting;
- d. Reports of officers, if any;
- e. Reports of committees, if any;
- f. Unfinished business;
- g. New business;
- h. Election or appointment of inspectors of election;
- i. Election of directors.

In the case of a special meeting, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Section 1. Number and Qualification. The affairs of the Association shall be governed by the board of directors composed of at least three (3) natural persons and not more than nine (9) natural persons, a majority of whom (after the first annual meeting of Members) shall be Members of the Association or officers or designees of the Class B Member.

Section 2. Initial Directors. The initial directors shall be selected by the Declarant and need not be Members of the Association. The names of the directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Shelby County, Tennessee, until the first annual meeting of the Members or until such time as their successors are duly chosen and qualified are as follows:

Ray Harvey
Marion Waldrup
Patsy Dotson

Section 3. Power and Duties. The board of directors shall have all the powers and duties necessary for the administration of the affairs of the Association and the residential community and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the Members. The powers and duties of the board of directors shall include, but not be limited to, the following:

To provide for the:

a. Care and upkeep of the Common Areas and to administer the activities and enforcement of the Architectural Review Committee and any other properties or activities charged to the care of the Association.

b. Establishment and collection of assessments and/or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.

c. Designation, hiring and/or dismissal of the personnel necessary for the good working order of the residential community and to provide services for the Subdivision, in a manner consistent with law and the provisions of these By-Laws, the Charter and the Declaration.

d. Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the residential community and Common Area as are designated to prevent unreasonable interference with the use and occupancy of the Subdivision, by the Members, all of which shall be consistent with law and the provisions of these By-Laws, the Charter and the Declaration.

e. Appoint an Architectural Review Committee.

Section 4. Nomination. Nomination for election to the board of directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall be a member of the board of directors, and two or more Members of the Association. The nominating committee shall be appointed by the board of directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the board of directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from Members or non-members.

Section 5. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many

votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 6. Term of Office. The term of the directors named herein and in the Articles of Incorporation shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of directors, consistent with these By-Laws, who shall constitute the board of directors, and shall elect a board of directors to serve until the next annual meeting. The terms of office of each director shall be as specified in accordance with those provisions of the Charter of the Association.

Section 7. Vacancies. Vacancies in the board of directors caused by any reason other than the removal of a director by a vote of the membership shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until a successor is elected by the Members at the next annual meeting.

Section 8. Removal of Directors. At a regular meeting, or special meeting duly called for such purpose, any director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. The term of any director who becomes more than thirty (30) days delinquent in payment of any assessments and/or carrying charges due the Association shall be automatically terminated and the remaining directors shall appoint his successor as provided in Section 7 of this Article.

Section 9. Compensation. No compensation shall be paid to directors for their services as directors. After the first annual meeting of the Members, no remuneration shall be paid to any director who is also a Member of the Association for services performed for the Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the board of directors before the services are undertaken.

Section 10. Organizational Meeting. The first meeting of a newly elected board of directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, provided a majority of the whole board of directors shall be present.

Section 11. Regular Meetings. Regular meetings of the board of directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the board of directors shall be given to each director, personally or by mail, telephone or

telegraph, at least six (6) days prior to the date named for such meeting.

Section 12. Special Meetings. Special meetings of the board of directors may be called by the President on three (3) days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the board of directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) of the directors.

Section 13. Waiver of Notice. Before or at any meeting of the board of directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the board of directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the directors are present and remain present at any meeting of the board of directors, no notice shall be required, and any business may be transacted at such meeting.

Section 14. Quorum. At all meetings of the board of directors a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors. If at any meeting of the board of directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 15. Action Without Meeting. Any action of the board of directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the board of directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board of directors.

Section 16. Fidelity Bonds. The board of directors may require that all officers and employees of the Association handling or responsible for Association or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

ARTICLE VI

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, who shall at all times be Members of the Board of Directors, a Secretary and a Treasurer, all of whom shall be elected by the board of directors. Prior to the first annual meeting of Members, the officers of the Association need not be Members of the Association. The directors may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary. The

offices of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the board of directors at the organizational meeting of each new board following the annual and shall hold office at the pleasure of the board of directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the board of directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the board of directors, or at any special meeting of the board of directors called for such purpose. Any officer may resign at any time by giving written notice to the board of directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Members and of the board of directors, and shall see that orders and resolutions of the board of directors and Members are carried out. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including, but not limited to, the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his 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 of directors shall appoint some other member of the board of directors 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 6. Secretary. The Secretary shall record the votes, keep the minutes of all meetings and proceedings of the board of directors and Members of the Association; he shall have charge of the membership transfer books and of such other books and papers as the board of directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the board of directors; shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income

and expenditures to be presented to the membership at its regular annual meeting and deliver a copy to each of the Members.

ARTICLE VII

Section 1. Liability and Indemnification of Officers and Directors. The Association shall indemnify every officer and director of the Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then board of directors of the Association) to which he may be made a party by reason of being or having been an officer or director of the Association, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors of the Association shall not be liable to the Members of the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association or the Subdivision, (except to the extent that such officers or directors may also be Owners of Lots within the Subdivision) 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 of the Association or former officer or director of the Association may be entitled.

Section 2. Common or Interested Directors. The directors shall exercise their powers and duties in good faith and with a view to the interests of the Association and the residential community. No contract or other transaction between the Association and one or more of its directors, or between the Association and any corporation, firm or association (excluding the Declarant) in which one or more of the directors of this Association are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such director or directors are present at the meeting of the board of directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

a. The fact of the common directorate or interest is disclosed or known to the board of directors or a majority thereof or noted in the minutes, and the board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and

b. The contract or transaction is commercial reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested directors may be counted in determining the presence of a quorum of any meeting of the board of directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

ARTICLE VIII

Section 1. Management and Common Expenses. The Association, acting by and through its board of directors, shall manage and operate the Subdivision, and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein elsewhere provided for, the following:

a. The cost of such insurance as the Association may effect.

b. The cost of providing such legal and accounting services as may be considered necessary to the operation of the Subdivision.

c. The cost of the maintenance or repair of any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the board of directors to protect the Common Areas or to preserve the appearance or value of the Subdivision, or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the board of directors and not without reasonable written notice to the Owner of the Lot proposed to be maintained and provided, further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of said Lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in these By-Laws.

d. The cost of the maintenance, repair or construction as called for in the Declaration.

Section 2. Duty to Maintain. Except for maintenance requirements herein imposed upon the Association, if any, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot within the right-of-way which is contiguous to his Lot and all driveways and any and all equipment and fixtures therein situated, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances, in addition, if any, as called for in the Declaration.

Section 3. Access at Reasonable Times. For the purpose solely of performing any of the repairs or maintenance required or authorized by these By-Laws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

ARTICLE IX

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January every year, except for the first fiscal year of the Association, which shall begin at the date of incorporation. The commencement day of the fiscal year herein established shall be subject to change by the board of directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practice. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting the Subdivision, and its administration and shall specify the maintenance and repair expenses incurred. The amount of any assessment required for payment of any capital expenditures of the Association shall be credited upon the books of the Association to the "Paid-in-Surplus" account as a capital contribution by the Members.

Section 3. Auditing. At the close of each fiscal year, the Board of Directors may require that the books and records of the Association be audited by an independent certified public accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards. If such report is required and prepared, the Association shall furnish its Members, and the holders of any mortgages or deeds of trust, requesting same within ninety (90) days from date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 4. Inspection of Books. The books and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any mortgage on any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as Members.

Section 5. Execution of Association Documents. With the prior authorization of the board of directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other persons as are from time to time so authorized by the board of directors.

ARTICLE X

Section 1. Amendments. These By-Laws may be amended at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy.

ARTICLE XI

Section 1. Resident Agent. The resident agent shall be designated as the person authorized to accept service of process in any action relating to two or more Lots or to the Common Area.

Section 2. Notices. Unless another type of notice is herein elsewhere specifically provided for, any and all notices called for in the Declaration and in these By-Laws shall be given in writing.

Section 3. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 4. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 5. Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 6. Gender, Etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 7. Conflicts. These By-Laws are subordinate to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as in the Declaration. In the event of any conflict between these By-Laws and the Charter, the provisions of the Charter shall control; and in the case of any conflict between the Declaration and these By-Laws, the provisions of the Declaration shall control, and in the event of any conflict between the aforesaid Declaration and any of the laws of the State of Tennessee, the provisions of the statute shall control.


Secretary

