

BA 9344

This Instrument Prepared By:
Griffin, Clift & Burns
855 Ridge Lake Blvd., Suite 102
Memphis, Tennessee 38119

BYLAWS FOR THE ADMINISTRATION
OF
BIRDSONG ESTATES
HOMEOWNERS ASSOCIATION, INC.

These Bylaws are set forth for the administration of The
Birdsong Estates Homeowners Association, Inc.

ARTICLE I.

COUNCIL OF OWNERS

Section 1. Membership. All of the owners of lots in
Birdsong Estates as shown in plat of record in Plat Book 126,
Page 66, in the Shelby County Register's Office as may be revised
and be amended to include additional development shall constitute
the Council of Owners and be members of the Association.

Section 2. Purpose. The purpose of the Council of Owners
is to administer on a nonprofit basis, through a Board of
Directors, Birdsong Estates Homeowners Association, Inc.; to
elect the Board of Directors; to amend and supplement from time
to time these Bylaws and the system of Administration; and to do
and perform any and all other things, matters, or acts required
by or permitted by the owners or the laws of the State of
Tennessee.

BA 9344

ARTICLE II.

MEETINGS AND VOTING RIGHTS OF OWNERS

Section 1. Eligibility. The owner or owners of a lot, who have become such in compliance with all the requirements and conditions contained in the Declaration of Covenants, Conditions and Restrictions, including these Bylaws and corporate Charter for Birdsong Estates Homeowners Association, Inc., shall be entitled to attend and vote at all meetings of the Council of Owners. The Declarant shall be considered the owner of each lot which is unsold by it.

Section 2. Voting Rights. The owner or owners of a lot shall be entitled to one (1) vote at all meetings of the Council of Owners. Where two or more persons own a lot, the vote allocated to that lot shall be cast by the one authorized by such two or more owners, and in the event of failure of such authorization, no vote shall be recorded for that lot. Where only one of two or more owners of a lot is present in person at a meeting, the Owner present shall be presumed to be authorized by all owners of such lot and shall be entitled to cast the vote with respect to that lot. Where one person or group of persons owns more than one lot, such person or group shall be entitled to cast one vote for each lot owned.

Section 3. Corporation as Owner. In the event a partnership, trustee, corporation or other entity owns a lot or lots, after having complied with all conditions contained in the Declaration, including these Bylaws, the vote of such may be cast by a partner, trustee or officer of the same or by any person

BA 9344

authorized in writing by a partner, trustee or officer thereof, to represent the same.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies, to be valid, shall be in writing for the particular meeting designated therein and any adjournments thereof and shall be filed with the secretary of the meeting prior to voting.

Section 5. Annual Meetings. The annual meeting of the Association shall be held at 7:00 o'clock p.m. on the First Monday in March of each year, beginning in 1990, or on such other day chosen by a majority of the owners of lots, for the purpose of electing a Board of Directors and of transacting any other business authorized to be transacted by the members; provided, however, that if such day is a legal holiday, then the meeting shall be held at the same hour on the next following Monday.

Section 6. Special Meetings. Special meetings of the Council of Owners shall be held whenever called by the President and Secretary of the Board of Directors, by a majority of the Board of Directors or by the written request of one-third (1/3) of the entire membership of owners. When a special meeting is so called, the Secretary shall mail or deliver written notice of the meeting to all owners.

Section 7. Notice. Notice shall be given to all owners of meeting of owners, stating the time, place and purpose of which the meeting is called. Such notice shall be in writing and shall be mailed or delivered to each member at his address as it appears on the books of the association, or may be mailed or delivered to his lot, not less than ten (10) days nor more than

BA 9344

fifteen (15) days before the meeting. Proof of such mailing or delivery may be given by the written statement of the secretary or other person giving the notice. Notice of a meeting may be waived before, at or after the meeting.

Section 8. Quorum. A quorum at any meeting of the Council of Owners shall consist of persons entitled to cast at least ten percent (10%) of the votes of the entire number of lot owners. The affirmative vote of a majority of owners present, being more than fifty percent (50%) of the total number of lots in attendance, is required to adopt any resolution, elect any director, make any decision or take any action; except that these Bylaws and the system of administration may be modified only in the manner hereinafter set forth.

Section 9. Presiding Officer. The President of the Board of Directors shall preside over all Council meetings; and the Secretary of the Board of Directors shall take and keep the minutes and minute books of all Council meetings, wherein adopted resolutions shall be recorded, and shall serve as Secretary at such meetings.

Section 10. Amendments. The Council of Owners may, at any duly called, held and convened meeting, modify or amend the system of administration of Birdsong Estates Homeowners Association, Inc. and these Bylaws for the administration of Birdsong Estates Homeowners Association, Inc. by the affirmative vote of owners representing at least seventy-five percent (75%) of the total lots in Birdsong Estates Homeowners Association or as otherwise provided for in the Declaration of Covenants, Conditions and Restrictions as recorded in the Register's Office

BA 9344

of Shelby County, Tennessee for Birdsong Estates Homeowners Association (hereinafter "Declaration"). The system of administration and these Bylaws, however, may only be amended so that all of the provisions required by the Tennessee Code Annotated shall be within the contents of the Bylaws or no such modification or amendment of a system of administration or of these Bylaws shall be operative unless and until it is embodied in a written instrument and is recorded in the Register's Office of Shelby County, Tennessee, in the same manner as was the Declaration and these original Bylaws which are a part of the said Declaration.

ARTICLE III.

BOARD OF DIRECTORS

Section 1. Administration. The Administration of Birdsong Estates Homeowners Association, Inc., its business and affairs and of the general common elements therein shall be vested in its Board of Directors, which shall consist of not less than two (2) nor more than five (5) persons. Except for the initial members of the Board of Directors, each member of the Board of Directors shall be either the owners of a lot or of an interest therein, or, in the event of ownership of a lot by a partnership, trustee, corporation or other entity, a partner, trustee, officer or other designated representative thereof.

Section 2. Election of Directors. The Council of Owners shall, at its annual meeting, elect the Board of Directors. Each owner or owners of a lot shall be entitled to vote as provided in the Declaration, with no cumulative voting. A majority of those voting shall be necessary for the election of a Director. Each

BA 9344

owner or owners of a lot, on each ballot, is required to cast his vote for as many persons as there are Directors to be elected. In the event a sufficient number of persons fails to receive a majority of votes, additional ballots will be taken with the name of the person receiving the lowest number of votes being dropped after each ballot, until a sufficient number of Directors is elected.

Section 3. Vacancies. Vacancies in the Board of Directors may be filled until the date of the next annual meeting by the remaining Directors.

Section 4. Term. The term of each Director's service shall extend until the next annual meeting of the Council of Owners and thereafter until his successor is duly elected by the Council of Owners and qualified or until he is removed in the manner elsewhere provided.

Section 5. Organization Meeting. The organization meeting of a newly elected Board of Directors shall be held within three (3) weeks of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary, providing a quorum shall be present.

Section 6. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, by a majority of the Board. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting, unless such notice is waived.

BA 9344

Section 7. Special Meetings. Special meetings of the Board may be called by the President and must be called by the Secretary at the written request of a majority of the members of the Board. Not less than five (5) days' notice of the meeting shall be given, personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

Section 8. Waiver of Notice. Any Director may waive notice of a meeting before, at or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

Section 9. Quorum. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as otherwise provided in the Declaration or elsewhere in these Bylaws. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10. Presiding Officer. The President of the Board of Directors shall preside at all meetings of the Board; the Secretary of the Board shall serve as Secretary of all meetings, designate one of their number to preside or to serve as Secretary, as the case may be.

BA 9344

Section 11. Compensation. No compensation shall be paid to any member of the Board or to any officer for services as such, unless approved by a majority of owners. Any member of the officer may be reimbursed for expenses actually incurred by him, upon approval by the Board.

Section 12. Removal. Any member of the Board may be removed by the vote of owners representing a majority of the total of lots at any regular or special meeting of the Council of Owners. The vacancy created by such removal may be filled by the Council of Owners at the meeting at which such Director was removed.

ARTICLE IV.

OFFICERS

Section 1. Generally. The Board of Directors shall elect, from its members, a President, Vice President, Secretary and Treasurer.

Section 2. President. The President shall be the chief administrative officer of the Board and shall execute contracts and agreements in the name and on behalf of the Board when directed by the Board. The President shall preside at all meetings and shall perform such other duties as the chief administrative officer as the Board may, from time to time, direct.

Section 3. Vice President. The Vice President shall, in the absence or disability of the President, preside at all meetings and perform all duties of the President.

Section 4. Secretary. The Secretary shall keep the minutes of all meetings and proceedings of the Association and of the

BA 9344

Board of Directors. The Secretary shall serve all notice to the owners of meetings of the Association, and to the Directors of meetings of the Board of Directors. The Secretary shall keep all other records of the Association and of the Board. An Assistant Secretary may also be elected to perform the duties of the Secretary when the Secretary is absent; and

Section 5. Treasurer. The Treasurer shall have the custody of all property of the Board, including funds, securities, evidences of indebtedness, books, assessment rolls and accounts of the owners. The Treasurer shall keep in accordance with good accounting practice, and shall perform all other duties incident to the office of Treasurer.

ARTICLE V.

BOOKS AND RECORDS

Section 1. Money. All moneys and funds of the Association shall be deposited in such bank or banks as may be designated from time to time by the Board of Directors. Withdrawals of moneys from such accounts in banks shall be only by checks or drafts signed by such persons who are authorized by the Board of Directors. At least two signatures shall be required for any check or draft.

Section 2. Audit. Commencing December 31, 1989, an audit of the accounts and books of the Board of Directors shall be made annually by a certified public accountant, and a copy of the report shall be furnished to each owner not later than March 31st of the year following the year for which the report is made.

Section 3. Bonds. With the exception of the initial Board of Directors, fidelity bonds shall be required by the Board of

BA 9344

Directors covering all officers and employees of the Board and any agents or managers handling or responsible for funds of the Association. The amount of such bond shall be determined by the Board of Directors, but shall be at least in the amount of the total annual assessments for common expenses. Premiums on such bonds shall be paid by the Board of Directors as a Common Expense.

Section 4. Procedure. Robert's Rules of Order (latest edition) shall govern the conduct of meetings of the Association and of the Board of Directors, subject to any paramount provisions of the statutes of Tennessee and provisions of the Declaration, including these Bylaws.

ARTICLE VI.

POWERS OF THE BOARD OF DIRECTORS

Section 1. Generally. In addition to the rights, powers and duties conferred upon the board of Directors by the Declaration, the laws of Tennessee and by other provisions of these Bylaws and without in anywise limiting the same, the Board of Directors shall have the following additional and cumulative rights, powers and duties:

A. To hold title and possession to funds and property, including the maintenance funds and other assessments and including title to any purchased lot or purchased leasehold interest pursuant to the powers herein conferred, as trustee for the use and benefit of the owners of lots;

B. To make and collect maintenance fund assessments against owners to defray the costs of the Association, including,

BA 9344

without limitation, all costs and expenses of maintaining, repairing, replacing, improving, altering, operating and administering the improvements on the common area and the perimeter fence and any service to be provided under the Declaration, and of engaging all necessary services and employees therefor;

C. To use the proceeds of assessments in the exercise of its powers and duties;

D. To oversee the maintenance, repair, replacement, operation and administration of the improvements of the common area and any services to be provided to the individual lots under the Declaration;

E. To oversee the reconstruction of improvements after casualty and the further improvement of the property, including buildings and common area;

F. To make and amend regulations respecting the use of the property; including the buildings and common area;

G. To enforce by legal means, or otherwise, the provisions of the Declaration, including the Bylaws and the regulations for the use of the Property;

H. To contract for the management of the Association and to delegate to a manager the management duties of the Board of Directors, to be performed by such manager under the supervision of the Board of Directors;

I. To pay any taxes and assessments which are liens against any part of the property other than individual lots and the appurtenances thereto and to assess the same against the lot

BA 9344

subject to such liens; and to oppose the levying of any such taxes;

J. To carry insurance for the protection of lot owners and the Board of Directors against casualty and liabilities;

K. To pay the cost of all power, water, sewer and other utility services rendered to the Association and not billed to owners of individual lots; and

L. To employ personnel to perform services required for proper administration of the Association, including, without limitation, auditors, attorneys, bookkeepers and managers.

ARTICLE VII.

VOTING

Section 1. Amount of Votes. Members of the Council of Owners shall be entitled to cast one (1) vote for each lot owned by them. Declarant shall be entitled to six (6) votes for each lot owned and unsold until such time as ninety percent (90%) of the lots are sold; or three (3) years from the date of recording of the Declaration, whichever shall first occur, after which time Declarant shall be entitled to one (1) vote for each Lot owned and unsold.

ARTICLE VIII.

INDEMNIFICATION

The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Director or officer of Birdsong Estates

PA 9344

Homeowners Association, Inc. against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

No indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of this duty to the Association, unless and only to the extent that the Chancery Court of Shelby County, Tennessee, or the Court in which such action or suit was brought, shall determine upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court shall deem proper. To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article, or in defense of any claim, issue or matter

therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under this Article (unless ordered by a Court) shall be made only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth herein. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable, or even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized the the Board of Directors in the specific case upon a secured receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized herein.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the Council of Owners or disinterested Directors or otherwise, both as to an action in his official capacity and as to an action in another capacity while holding office, and shall continue as

BA 9344

to a person who has ceased to be a Director or officer, and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE IX.

CONSTRUCTION

These Bylaws are intended to be read in conjunction with the Declaration, and if there is any conflict between the Bylaws and the said Declaration, the Declaration shall control.

Robert S. Brown

Secretary

corpdocIV/a:bird-by

SHELBY COUNTY
REGISTER OF DEEDS

BA9344

1993 MAY 17 10 15 AM '93

BA 9344	
No.	_____
STATE TAX	_____
REGISTER'S FEE	_____
RECORDING FEE	<i>9.90</i>
TOTAL	_____
STATE OF TENNESSEE SHELBY COUNTY GUY B. BATES REGISTER	
By	<i>[Signature]</i> OR

526