

FILE 1st Choice

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SCARLET RIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made this 10<sup>th</sup> day of October, 2014, by JETZ DEVELOPERS, LLC, a Tennessee Limited Liability Company ("Declarant").

Article 1 Creation of the Community

1.1 Purpose and Intent

Declarant as the owner of the real property described in Exhibit "A" intends by Recording this Declaration to establish a general plan of development for the residential subdivision known as Scarlet Ridge ("Scarlet Ridge"). This Declaration provides a flexible and reasonable procedure for Scarlet Ridge's overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of Scarlet Ridge Owners' Association, Inc., an association comprised of all owners of real property in Scarlet Ridge, to own, operate and/or maintain various common areas and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

1.2 Binding Effect

All Property described in Exhibit "A" shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such Property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by two-thirds (2/3) of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Nothing in this Section 1.2 shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

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MISC RECORDING FEE \$310.00  
DATA PROCESSING FEE \$2.00  
Total Fees: \$312.00  
User: KST  
Date: 10/10/2014  
Time: 4:00:49 PM  
Contact: Pam Hurst, Register  
Hamilton County, Tennessee

### 1.3 Governing Documents

Scarlet Ridge's Governing Documents consist of the following, as they may be amended:

- (i) Charter: Establishes the Association as a non-profit corporation under Tennessee law;
- (ii) Bylaws: Governs the Association's internal affairs, such as voting, elections, meetings, etc.;
- (iii) Declaration: Creates obligations which are binding upon the Association and all present and future owners of the property in Scarlet Ridge;
- (iv) Architectural Guidelines: Establishes architectural standards and guidelines for improvements and modifications to Units, including ancillary structures and landscaping;
- (i) Rules and Regulations: Governs the use of property, activities, and conduct within Scarlet Ridge; and
- (ii) Board Resolutions: Establishes rules, policies and procedures for internal governance and Association activities, regulate operation and use of Common Area.

The Governing Documents apply to all Owners and occupants of property within Scarlet Ridge, as well as to their respective tenants, guests and invitees. If a Lot is leased, the lease shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

## Article 2 Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

**"Architectural Guidelines"**: The guidelines and standards for architecture, design, construction, landscaping and exterior items on Units adopted pursuant to Article 4, as they may be amended.

**"Area of Common Responsibility"**: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any amendment to this Declaration, or other applicable covenants, contracts, or agreements.

**"Association"**: Scarlet Ridge Owners' Association, Inc., a Tennessee nonprofit corporation, its successors or assigns.

**“Base Assessments”:** Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

**“Board of Directors” or “Board”:** The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Tennessee corporate law.

**“Builder”:** Any person who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within Scarlet Ridge, for further subdivision, development and/or resale in the ordinary course of its business.

**“Bylaws”:** The Bylaws of the Scarlet Ridge Owners’ Association, Inc., as they may be amended. A copy of the initial Bylaws is attached to this Declaration as Exhibit “B”.

**“Charter”:** The Charter for the Scarlet Ridge Owners’ Association, Inc., filed (or to be filed) with the Tennessee Secretary of State, as it may amended.

**“Class “B” Control Period”:** The period of time during which Declarant is entitled to appoint a majority of the members of the Board as provided in the Bylaws. The Class “B” Control Period shall terminate on the first to occur of the following:

- (A) When one hundred percent (100%) of the total number of Lots have been conveyed to Owners other than Declarant;
- (B) December 31, 2039; or
- (C) When, in its discretion, the Declarant so determines.

**“Common Area”:** All real property, personal property and easements, which shall include without limitation an entrance sign, other signage, any streets not accepted as public, storm water drainage/retention systems, and the related easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

**“Common Expenses”:** The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development or other original construction costs.

**“Community-Wide Standard”:** The standard of conduct, maintenance, or other activity generally prevailing at Scarlet Ridge or the minimum standards established pursuant to the Architectural Guidelines, Rules and Regulations, and Board resolutions, whichever is the highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard

may evolve as development progresses and as the needs and desires within Scarlet Ridge change.

**“Declarant”**: Jetz Developers, LLC, a Tennessee Limited Liability Company, or any assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument that the immediately preceding declarant executes.

**“Governing Documents”**: A collective term referring to this Declaration and any applicable amendment to this Declaration, the Bylaws, the Articles, the Architectural Guidelines, the Rules and Regulations, and Board resolutions, all as they may be amended.

**“Lots”**: Shall be an inclusive term referring to a portion of the Property, whether developed or undeveloped, intended for the development, use, and occupancy as a residence, as well as vacant land intended for development as such, all as may be developed, used and defined herein or as provided in a later amendment to this Declaration covering all or a part of the Property. When the context requires, the term shall include all portions of the Lot owned as well as any structure thereon.

**“Member”**: A person subject to membership in the Associations pursuant to Section 6.2.

**“Mortgage”**: A mortgage, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

**“Mortgagee”**: A beneficiary or holder of a Mortgage.

**“Owner”**: One or more Persons, including Declarant, or a Builder, who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

**“Person”**: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

**“Record,” “Recording” or “Recorded”**: the filing of a legal instrument in the Hamilton County, Tennessee Register of Deed’s Office or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

**“Rules and Regulations”**: The initial rules and regulations set forth in Exhibit “C” as they may be supplemented, modified, and repealed pursuant to Article 3.

**“Scarlet Ridge”**: The residential subdivision located on the Property, and being more particularly described as Lots 4 thru 18, Scarlet Ridge, Final Plat, Lots 4 thru 18, as shown on that plat recorded in Plat Book 100, Page 98, in the Register’s Office of Hamilton County, Tennessee.

**“Special Assessment”**: Assessments levied in accordance with Section 8.3.

**“Specific Assessment”:** Assessments levied in accordance with Section 8.4.

**“Unit”:** Any residential structure constructed on a Lot or Lots.

### **Article 3 Use and Conduct**

#### **3.1 Framework for Regulation.**

As part of the general plan of development for Scarlet Ridge, the Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions that govern Scarlet Ridge. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article 3 establishes procedures for modifying and expanding the initial Rules and Regulations set forth in Exhibit “C”. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1 (c), nor to administrative policies which the Board may adopt to interpret, define or implement the Rules and Regulations.

#### **3.2 Rule Making Authority.**

(a) Subject to the terms of this Article 3 and the Board’s duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Rules and Regulations. The Board shall send notice to all the Owners concerning any proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. The Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with Section 3.2 (c), unless the Owners representing more than fifty percent (50%) of the total Class “A” votes in the Association and the Class “B” Member, if any, disapprove such action at a meeting. The Board shall have no obligation to call a meeting of the Owners to consider disapproval except upon receipt of a petition of the Owners as required for special meetings in the Bylaws. Upon such petition prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, more than fifty percent (50%) of the total Class “A” votes in the Association at an Association meeting duly called for such purpose, may vote to adopt rules that modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect. Such action shall require approval of the Class “B” Member, if any.

(c) Prior to any action taken under this Section 3.2 becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Rules and Regulations to each Owner. The effective date shall be not less than thirty (30) days following distribution to the Owners. The Association shall provide, without cost, a copy of the Rules and Regulations then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article 3 shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Rules and Regulations set forth in Exhibit "C". In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control.

(e) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures.

### **3.3 Owners' Acknowledgment and Notice to Purchasers.**

All Owners are given notice that use of their Lots and the Common Area is limited by the Rules and Regulations as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Rules and Regulations may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes. Copies of the current Rules and Regulations may be obtained from the Association.

### **3.4 Protection of Owners and Others.**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules and Regulations set forth in Exhibit "C", all Rules and Regulations shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) **Household Composition.** No rule shall interfere with the Owner's freedom to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) **Activities within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create

unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

**(e) Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 8.

**(f) Alienation.** No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease or transfer of any lot greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

**(g) Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in a Unit or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

**(h) Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop Scarlet Ridge.

The limitations in subsections (a) through (g) of this Section shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article 12.

#### **Article 4 Architecture and Landscaping.**

##### **4.1 General.**

No Structure or thing shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Scarlet Ridge, except in compliance with this Article 4 and the Architectural Guidelines.

No approval shall be required to rebuild in accordance with original approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, material modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

This Article shall not apply to Declarant's activities or to the Association's activities during the Class "B" Control Period.

#### **4.2 Architectural Review.**

By accepting a deed or other instrument conveying any interest in any portion of Scarlet Ridge, each Owner acknowledges that, as the developer of Scarlet Ridge, and as an owner of portions of Scarlet Ridge, Declarant has a substantial interest in ensuring that the improvements within Scarlet Ridge enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article 4 shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article 4 shall continue so long as Declarant owns any portion of Scarlet Ridge or any real property adjacent to Scarlet Ridge unless earlier terminated in an instrument the Declarant Records.

#### **4.3 Architectural Review Committee.**

Throughout the Class "B" Control Period, Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article 4 to an architectural review committee, to be comprised of person(s) chosen by Declarant (the "ARC"). Upon delegation, the ARC shall assume jurisdiction over architectural matters and all matters shall be approved by a majority of the members of the ARC. After the termination of the Class "B" Control Period, the Board shall appoint a minimum of three (3) persons to the ARC. In Declarant's sole discretion, Declarant may transfer its authority under this Article 4 to the Association by Recorded instrument prior to the termination of the Class "B" Control Period. For purposes of this Article 4, the persons or committee (i.e. either the Declarant or the ARC) having jurisdiction over architectural matters shall be referred to as the "Reviewer".

#### **4.4 Guidelines and Procedures.**

(a) **Architectural Guidelines.** Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of Scarlet Ridge. The Architectural Guidelines are intended to provide guidance to the Owners and Builders regarding matters of particular concern to Declarant in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the Property. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such



amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

Reviewer shall make the Architectural Guidelines available to the Owners and Builders who seek to engage in development or construction within Scarlet Ridge. In Declarant's discretion, such Architectural Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

**(b) Procedures.** Except as otherwise specifically provided in the Architectural Guidelines, no activities shall commence on any portion of Scarlet Ridge until an application for approval has been submitted to and approved by Reviewer. Such application, in Reviewer's sole discretion, may be required to include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. Notwithstanding anything to the contrary in the Architectural Guidelines and/or this Declaration, Reviewer, in its sole discretion, may waive any procedural guideline or requirement relating to architectural review or may also require the submission of such additional information as may be reasonably necessary, in Reviewer's sole opinion, to consider any application.

In Reviewing each submission, Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in a good faith and in accordance with procedures set forth herein.

If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Reviewer or any aggrieved Owner.

Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article 4, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### **4.5 No Waiver of Future Approvals.**

Each Owner acknowledges that the persons reviewing applications under this Article 4 will change from time to time and that opinions on aesthetic matters, as well as interpretation and applications of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **4.6 Variances.**

Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude Reviewer from denying a variance in other circumstances.

#### **4.7 Limitation of Liability.**

The standards and procedures established by this Article 4 are intended as a mechanism for maintaining and enhancing the overall aesthetics of Scarlet Ridge; they do not create any duty to any Person. Review and approval of any application pursuant to this Article 4 may be made on the basis of aesthetic considerations only, and Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the ARC, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Reviewer has approved such contractor; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall indemnify the Board and the members as provided in Section 7.6.

### **Article 5 Maintenance and Repair.**

#### **5.1 Maintenance of Lots.**

Each Owner shall be responsible for maintaining, at their sole cost and expense, his or her Lot and Unit, in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants.

#### **5.2 Responsibility for Repair and Replacement.**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the Property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 4. Alternatively, the Owner shall clear the Unit and maintain the Lot in a neat and attractive landscaped condition consistent with the Community-Wide Standard.

## **Article 6 The Association and its Members.**

### **6.1 Functions of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Tennessee law.

### **6.2 Membership.**

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of the Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time by the Owner in a written instrument provided to the Secretary of the Association.

### **6.3 Voting.**

The Association shall have two classes of membership: Class "A" and Class "B".

(a) **Class "A"** Class "A" Members shall be all the Owners except the Declarant. Class "A" Member shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one (1) vote per Lot. No vote shall be exercised for any property that is exempt from assessment under Section 8.8.

(b) **Class "B"** The sole Class "B" Member shall be the Declarant. The Declarant, as Class "B" Member, may, as provided in the Bylaws, appoint all the members of the Board of Directors during the Class "B" Control Period. Additional rights of the Declarant as Class "B" Members are specified in the relevant sections of the Governing Documents. After termination

of the Class "B" Control Period, the Declarant, as Class "B" Member, shall have a right to disapprove actions of the Board and committees as provided in the Bylaws.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one (1) vote for each Lot which it owns.

In any situation where there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

## **Article 7 Association Powers and Responsibilities.**

### **7.1 Acceptance and Control of Association Project.**

(a) The Association may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, easements or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of the Owners, occupants and residents of Scarlet Ridge.

(b) Declarant and its designees may convey to the Association and the Association shall accept, personal property and fee title, leasehold or other property interests in and to any portion of the Property, improved or unimproved. Declarant may at any time convey the Common Area to the Association. Upon Declarant's written request, the Association shall re-convey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

### **7.2 Maintenance of Area of Common Responsibility.**

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area;

(b) Lot maintenance and landscaping within public rights-of-way within or abutting Scarlet Ridge.

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, and amendment to this Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(d) all ponds, streams, and/or wetlands located within or adjacent to Scarlet Ridge which serve as part of the stormwater drainage system for Scarlet Ridge; including improvements and equipment installed therein or used in connection therewith; and

(e) any property and facilities which Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless the Owners representing seventy-five percent (75%) of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any portion of the Property.

The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

### **7.3 Insurance.**

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf if generally available at reasonable cost; such coverage shall have the liability limits established by the Board of Directors from time to time, with respect to bodily injury, personal injury, and property damage.

(iii) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, including without limitation officers and directors’ liability insurance as set forth more specifically in Section 7.6.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses.

(b) **Policy Requirement.** As deemed necessary by the Association, but no less than every three (3) years, the Association shall arrange for a review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in Hamilton County. All Association policies shall provide for a certificate of insurance to be furnished to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more of the Owners, their guests, invitees, or lessees, than the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Tennessee which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage markets agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by the Owners, occupants, or their Mortgagees individually; and

(iv) contain such other endorsements and provisions as deemed appropriate and/or necessary by the Board.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty-day period, then the period shall be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members, as appropriate, and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

#### **7.4 Compliance and Enforcement.**

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided,

however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

- (ii) suspending an Owner's right to vote;
- (iii) suspending any Person's rights to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;
- (iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;
- (v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- (vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owners Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 4 and the Architectural Guidelines from continuing or performing any further activities in Scarlet Ridge; and
- (viii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the



Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement actions.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable county ordinances and permit Hamilton County, Tennessee to enforce ordinances within Scarlet Ridge for the benefit of the Association and its Members.

#### **7.5 Implied Rights, Board Authority.**

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing documents specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board Members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

#### **7.6 Indemnification of Officers, Directors, and Others.**

Subject to Tennessee law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Charter and Tennessee law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **7.7 Safety and Security.**

Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Scarlet Ridge. The Association may, but shall not be obligated to, maintain or support certain activities within Scarlet Ridge designed to enhance the level of safety or security which each provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within Scarlet Ridge, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Scarlet Ridge assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

### **Article 8 Association Finances.**

#### **8.1 Budgeting and Allocating Common Expenses.**

Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from

prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in Section 8.5

The Association is authorized to levy Base Assessments equally against all Lots subject to assessment under Section 8.5 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy ( in addition to any amounts paid by Declarant under Section 8.6(b)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws. Any such petition must be presented to the Board within ten (10) day after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessment shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

## **8.2 Budgeting For Reserves.**

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The Budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect to both amount and timing by annual contributions over the budget period.

**8.3 Special Assessments.**

In Addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Owners representing more than fifty percent (50%) of the total vote allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.4 Specific Assessments.**

The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested services; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection (b).

**8.5 Authority to Assess Owners, Time of Payment.**

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article 8 and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article 8, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for the Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied

on his or her Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

**8.6 Obligation for Assessments.**

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of Scarlet Ridge is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of ten percent (10%) per annum or such higher rate as the Board may establish, subject to the limitations of Tennessee law), late charges as determined by Board resolution, cost, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, Declarant may satisfy its obligation for assessment on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions, of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

**8.7 Lien for Assessments.**

The Association shall have a lien against each Lot including Lots owned by Declarant to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Tennessee Law), and costs of collection (including attorneys' fees). Such liens shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from the Owners of all Lots subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

**8.8 Exempt Property.**

The following property shall be exempt from payment of Base Assessments, Special Assessment, and Specific Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, Declarant or the Association, or both shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section

501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

**8.9 Capitalization of Association.**

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to \$250. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

**Article 9 Additional Rights Reserved to Declarant.**

**9.1 Withdrawal of Property.**

Declarant reserves the right to unilaterally amend this Declaration for the purpose of removing any portion of Scarlet Ridge that has not yet been improved with structures from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn, if not Declarant.

**9.2 Additional Property.**

Declarant reserves the right to unilaterally amend this Declaration to add additional property that may be located adjacent to or in close proximity of the Property.

**9.3 Marketing and Sales Activities.**

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

**9.4 Right to Develop.**

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in Scarlet Ridge acknowledges that the development of Scarlet Ridge is likely to extend over a number of years, and agrees not to protest, challenge, or otherwise object to changes in uses or density of property.

**9.5 Right to Approve Additional Covenants.**

No Person shall Record any declaration of covenants, conditions and restrictions, declaration of condominium, or similar instrument affecting any portion of Scarlet Ridge without

Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

**9.6 Right to Approve Changes in Scarlet Ridge.**

No amendment to or modification of any Rules and Regulations or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Property.

**9.7 Right to Transfer or Assign Declarant Rights.**

Any or all of Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons: provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

**9.8 Easement to Inspect and Right to Correct.**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Scarlet Ridge, including Lots, and perpetual nonexclusive easement of access throughout Scarlet Ridge to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner, and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**9.9 Termination of Rights.**

Notwithstanding anything in this Declaration to the contrary, the rights contained in this Article 9 shall not terminate until the earlier of: (a) forty (40) years from the date this Declaration is Recorded; or (b) Recording by Declarant of a written statement that all sales activity has ceased or that Declarant desires to terminate its rights.

**Article 10 Easements.**

**10.1 Easements in Common Area.**

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;



(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend an Owner's right to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Lot remains delinquent; and (B) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the Bylaws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

## **10.2 Easements of Encroachment.**

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Units or any Lot due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

## **10.3 Easements for Utilities, Etc.**

(a) **Installation and Maintenance.** So long as Declarant owns any portion of the Property or any property adjacent to or in the vicinity of the Property, Declarant reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Scarlet Ridge (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure, including streets, to serve Scarlet Ridge, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats.

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure, and other improvements described in Section 10.3(a)(i); and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easement as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any portion of the Property. The Owner of any property to be burdened by any easement granted pursuant to this Section 10.3(b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not be unreasonably withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section 10.3 shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

#### **10.4 Emergency and Enforcement.**

The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in any emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### **10.5 Easements for Flood Water and Storm Water.**

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and

wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water and storm water run-off; and (C) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of Scarlet Ridge abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section 10.5.

**10.6 Easement to Inspect and Right to Correct.**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Scarlet Ridge, including lots, and a perpetual, nonexclusive easement of access throughout Scarlet Ridge to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent.

The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**Article 11 Changes in Common Area.**

**11.1 Condemnation.**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of the Owners representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyances. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property subject to the Declaration, and the Owners representing at least seventy-five percent (75%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply; or

(b) If the taking or conveyance does not involve any improvement on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**11.2 Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section 11.2 shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**11.3 Transfer or Dedication of Common Area.**

The Association may dedicate portions of the Common Area to Hamilton County, Tennessee or to any other local, state, or federal governmental or quasi—governmental entity.

**Article 12 Amendment of Declaration.**

**12.1 By Declarant.**

Notwithstanding anything herein to the contrary, so long as Declarant owns any portion of the Property, it may unilaterally amend this Declaration for any purpose.

**12.2 By Members.**

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmatives vote or written consent, or any combination thereof, of the Owners representing seventy-five (75%) of the total Class “A” votes in the Association, and Declarant’s consent, so long as Declarant owns any portion of the Property.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**12.3 Validity and Effective Date.**

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

JETZ DEVELOPERS, LLC, A  
TENNESSEE LIMITED LIABILITY  
COMPANY

BY: Thomas A. Getz  
Thomas A. Getz, President

BY: William D. Jensen, II  
William D. Jensen, II, Chief Manager

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Before me, a Notary Public of the state and county mentioned, personally appeared THOMAS A. GETZ AND WILLIAM D. JENSEN, II, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be PRESIDENT and CHIEF MANAGER, respectively, of JETZ DEVELOPERS, LLC, the within named bargainer, a Tennessee Limited Liability Company, and that such persons, as officers, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the company by such persons as PRESIDENT and CHIEF MANAGER, respectively.

WITNESS my hand and seal, at office in Hamilton County, Tennessee, this 9th day of October, 2014.

Shana Knight  
Notary Public  
My commission expires: 7/9/18

THIS INSTRUMENT PREPARED BY:  
Jetz Developers, LLC  
6120 Shallowford Road, Ste. 107  
Chattanooga, TN 37421



**EXHIBIT "A"**

**Property**

All that tract or parcel of land lying and being in the Second Civil District of Hamilton County, Tennessee, being Lots 4-18, Final Plat, Scarlet Ridge Lots 4 thru 18, as shown by plat recorded in Plat Book 100, Page 98, in the Register's Office of Hamilton County, Tennessee.

Being a portion of that property conveyed by Deed recorded in Book 10051, Page 880, in the said Register's Office.

**EXHIBIT "B"**

**By-Laws**

**BYLAWS  
OF  
SCARLET RIDGE OWNERS' ASSOCIATION, INC.**

**ARTICLE 1 NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

1.1 Name.

The name of the corporation is Scarlet Ridge Owners' Association, Inc. (the "**Association**").

1.2 Principal Office.

The Association's principal office shall be located in Hamilton County, Tennessee. The Association may have such other offices, either within or outside Scarlet Ridge, as the Board may determine or as the Association's affairs may require.

1.3 Definitions.

The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for Scarlet Ridge as it may be amended (the "**Declaration**"), unless the context indicates otherwise.

**ARTICLE 2 MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES**

2.1 Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in Article 6 of the Declaration. The provisions of the Declaration pertaining to membership are incorporated into these Bylaws by this reference.

2.2 Place of Meetings.

Association meetings shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 Annual Meetings.

The Association shall hold its first meeting, whether a regular or special meeting, within one year after the date of the Association's incorporation. The Board shall set the date and time of subsequent regular annual meetings. Annual meetings may be conducted electronically (i.e., via the Internet, intranet, or teleconference) if, and to the extent, permitted by law.

2.4 Special Meetings.

The President may call special meetings. It shall also be the President's duty to call a



special meeting if so directed by Board resolution or upon a petition signed by Members representing a majority of the Class "A" votes of the Association or at the request of the Class "B" Member.

2.5 Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be posted or delivered, either personally or by mail, to each Owner entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Posted notice shall be in a conspicuous place within Scarlet Ridge, which the Association establishes for the posting of notices relating to the Association.

In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the Owner at his address as it appears on the Association's records, with postage prepaid.

2.6 Waiver of Notice.

Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by an Owner shall be deemed waiver by such Owner of notice of the time, date, and place of such meeting, unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless as to a particular item of business an objection on the basis of lack of proper notice is raised before the particular item of business is put to a vote.

2.7 Adjournment of Meetings.

If the Association cannot hold a meeting because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time certain. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting.

Members' voting rights shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference. Unless the number or percentage need to approve an action or decision by the Members is otherwise specifically set forth in the Declaration, any such action or decision shall be deemed approved by Members representing at least a majority of the total Class "A" votes of the Association.

2.9 Proxies.

Members are entitled to cast a vote for his or her Lot, such vote may be cast in person or by proxy, subject to the limitations of Tennessee law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these Bylaws.

Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was given, (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Majority.

As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number of the applicable group.

2.11 Quorum.

Except as otherwise provided in these Bylaws or in the Declaration, the presence (including by proxy) of Members representing 33% of the total Class "A" votes in the Association shall constitute a quorum at all Association meetings.

2.12 Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action without a Meeting.

Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a ballot in writing or by electronic transmission to every Member entitled to vote on the matter.

A ballot in writing or by electronic transmission shall:

- (1) Set forth each proposed action; and
- (2) Provide an opportunity to vote for or against each proposed action.

Approval by ballot in writing or by electronic transmission shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by ballot in writing or by electronic transmission shall:

- (1) Indicate the number of responses needed to meet the quorum requirements;
- (2) State the percentage of approvals necessary to approve each matter other than election of directors; and
- (3) Specify the time by which a ballot must be received by the Association in order to be counted.

A ballot in writing or by electronic transmission may not be revoked.

**ARTICLE 3 BOARD OF DIRECTORS; SELECTION, MEETINGS, POWERS**

**A. Composition and Selection.**

3.1 Governing Body; Composition.

The Board shall govern the Association's affairs; each director shall have one vote. Except for directors appointed by the Class "B" Member, directors shall be Owners. However, no Owner and resident representing the same Lot may serve on the Board at the same time. If a Member is not a natural person, any officer, director, partner or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. However, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 Number of Directors.

The Board shall consist of a minimum of three (3) and a maximum of five (5) directors, as

provided in Sections 3.3 and 3.5. The initial Board shall consist of three (3) directors.

### 3.3 Class "B" Directors.

Notwithstanding anything herein to the contrary, during the Class "B" Control Period, the Class "B" Member shall have the right to appoint all three (3) directors. Class "B" Member-appointed directors shall serve at the pleasure of the Class "B" Member.

### 3.4 Nomination and Election Procedures.

Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient, and cost-effective manner. Nominations also may be permitted from the floor.

Except with respect to directors appointed by the Class "B" Member, a nominating committee may also make nominations for election to the Board. The nominating committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. Members of the nominating committee shall be appointed by the Board not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election.

The nominating committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

### 3.5 Election and Term of Office.

Within six (6) months after termination of the Class "B" Control Period, the President shall call for an election by which the Members shall be entitled to elect the directors. The Directors elected by the Members shall serve until the first annual meeting following the election. At the time of the initial election, the candidate receiving the most votes shall be elected for an initial term of two (2) years, and the candidates receiving the second and third most votes shall serve for a one (1) year term. Members shall have the right to cast the number of votes equal to the number of director spaces available. After the termination of the Class "B" Control Period, the Members may, but shall not be required to, increase the number of directors from three (3) to five (5).

### 3.6 Removal of Directors and Vacancies.

Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term.

This Section 3.6 shall not apply to directors appointed by the Class "B" Member. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

## **B. Meetings.**

### 3.7 Organizational Meetings.

The first Board meeting following each annual meeting of the Association shall be held within 10 days thereafter at such time and place as the Board shall fix.

### 3.8 Regular Meetings.

Regular Board meetings may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year, with at least one per quarter.

### 3.9 Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

### 3.10 Notice; Waiver of Notice.

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(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii)

telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiber optics or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, electronic mail, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### 3.11 Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

### 3.12 Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time certain. If a quorum is present at the reconvened meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice.

### 3.13 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

### 3.14 Open Meetings; Executive Session.

(a) After the termination of the Class "B" Control Period, except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within Scarlet Ridge, which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 Action without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

**C. Powers and Duties.**

3.16 Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those the Governing Documents or Tennessee law require to be done and exercised exclusively by the Members or the membership generally.

3.17 Duties.

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of

such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Lot, any Owner, and the

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Tennessee law, the Charter or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.



### 3.18 Compensation.

The Association shall not compensate any Director for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

### 3.19 Right of Class "B" Member to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any proposed action to be considered at a meeting, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Class "B" Member or Builders under the Declaration or these Bylaws, or interfere with development or construction of any portion of Scarlet Ridge, or diminish the level of services being provided by the Association.

(a) Notice. The Association, the Board, and each committee shall give the Class "B" Member written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting). Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Association's Secretary, and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) Opportunity to be Heard. The Association, the Board, and each committee shall give the Class "B" Member the opportunity at any meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) have been met.

(d) The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association

is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management.

The Board may employ a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Class "B" Member or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by

- (a) accounting and controls should conform to generally accepted accounting principles;
- (b) cash accounts of the Association shall not be commingled with any other accounts;
- (c) the managing agent shall not accept remuneration from vendors, independent

resolution specifically determines otherwise:

- (a) accounting and controls should conform to generally accepted accounting principles;
- (b) cash accounts of the Association shall not be commingled with any other accounts;
- (c) the managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; the Association shall benefit from anything of value received;
- (d) any financial or other interest the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and
- (e) an annual report setting forth receipts and disbursements.

3.22 Borrowing.

The Association may borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the Association's budgeted gross expenses for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of

Members representing at least 67% of the total Class "A" votes.

3.23 Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, within and outside Scarlet Ridge. Any common management agreement shall require the consent of a majority of the Board.

3.24 Enforcement.

The Association may impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article 3, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

3.25 Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Tennessee corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose.

3.26 Board Standards.

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by Tennessee law for directors and officers of nonprofit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director (a) acts within the express or implied terms of the Governing Documents and his or her actions are not ultra vires (Le., outside the scope of the director's authority); (b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in decisions and actions when a conflict exists; and (d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs. A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

3.27 Conflicts of Interest. Code of Ethics.

Unless otherwise approved by a majority of the other directors, no Class "A" Director may enter into a contract or otherwise transact business with a contractor of the Association during his or her term as director or within two years after the term expires if the value of such contract is greater than \$1,500. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. The Board may void any contract which creates a prohibited conflict of interest.

Notwithstanding the above, directors appointed by the Class "B" Member may be employed by or otherwise transact business with the Association or its contractors.

## ARTICLE 4 OFFICERS

### 4.1 Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices, except the offices of President and Secretary.

### 4.2 Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

### 4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

### 4.4 Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

### 4.5 Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

### 4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

The President, Vice-President or such other person(s) as the Board may designate shall execute the Association's agreements, contracts, deeds, leases, and other instruments.

### 4.7 Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.18.

## ARTICLE 5 COMMITTEES

### 5.1 General.

The Board may appoint such committees, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## ARTICLE 6 MISCELLANEOUS

### 6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

### 6.2 Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Tennessee law or the Governing Documents.

### 6.3 Conflicts.

If there are conflicts among the provisions of Tennessee law, the Charter, the Declaration, and these Bylaws, the provisions of Tennessee law, the Declaration, the Charter, and these Bylaws (in that order) shall prevail.

### 6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Scarlet Ridge as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. A director's right of



inspection includes the right to make a copy of relevant documents at the Association's expenses

#### 6.5 Notices.

Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of such Member's Unit;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section 6.5; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section 6.5.

#### 6.6 Amendment.

(a) By Class "B" Member. Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary to (i) bring any provision into compliance with any applicable statute, rule or regulation, or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. Notwithstanding anything herein to the contrary, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no material adverse effect on any right of any Member.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon signature of the party authorized by these Bylaws to amend, unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. No amendment may remove, revoke, or modify any right or privilege the Class "B" Member without the written consent of the Class "B" Member, or the assignee of such right or privilege.

**EXHIBIT "C"**

**Initial Rules and Regulations**

The following restrictions shall apply to all of Scarlet Ridge until such time as they are amended, modified, repealed, or limited pursuant to Article 3 of the Declaration.

1. **General.** Scarlet Ridge shall be used only for residential and related purposes (which may include, without limitation, and information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of any Lot as defined in the Declaration, offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with the Declaration.

2. **Restricted Activities.** The following activities are prohibited within Scarlet Ridge unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Directors:

(a) Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places where they are visible from the street; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pet may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Unit. Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

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(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Lot;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within Scarlet Ridge, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(m) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot, except that Declarant shall be permitted to subdivide or replat Lots which it owns;

(n) Use of any Unit for operation of a timesharing, fraction-sharing, vacation rental, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program of a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

(q) Any business, trade, or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within a Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for Scarlet Ridge; (iii) the business activity does not involve door-to-door solicitation of residents of Scarlet Ridge; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Scarlet Ridge, which is noticeably

greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of Scarlet Ridge and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Scarlet Ridge as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on any ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing of Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of Scarlet Ridge or its use of any Units which it owns within Scarlet Ridge, including the operation of a timeshare or similar program;

(r) Capturing, trapping, or killing of wildlife within Scarlet Ridge except in circumstances posing an imminent threat to the safety;

(s) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Scarlet Ridge or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(t) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 4 of the Declaration;

(u) Any construction, erection, placement, or modification of anything, permanently or temporarily, on the outside portions of the Unit that are visible from the Street, whether such portion is improved or unimproved, except in strict compliance with the provision of Article 4 of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment, clotheslines, garbage cans, woodpiles, and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one (1) meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(ii) an antenna that is designed to receive television broadcast signals; (collectively, "Permitted Antennas") shall be permitted on Lots, subject to such reasonable requirements as to location and screening as may be set forth in the Architectural Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Scarlet Ridge, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. **Prohibited Conditions:** The following shall be prohibited at Scarlet Ridge:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Scarlet Ridge.

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair.

(c) Above ground swimming pools, whether or not visible from the Street.

(d) ATV's and other off road type vehicles are prohibited.

4. **Property Maintenance:** the Builder or Owner shall maintain the property consistent with the character of quality residential neighborhood. Each Owner shall keep foundation, exterior walls, windows, doors and glazing, roofs, structural, mechanical and electrical systems, fences and retaining walls in a high state of maintenance, repair and appearance.

5. **Landscape Maintenance:** Owners, including the Builder prior to sale, are responsible for proper care, maintenance and pruning of their gardens, lawns and landscaping.

## Architectural Design Guidelines

### INTRODUCTION

To ensure that all residences in Scarlet Ridge shall be compatible and so that the value of all the residences are protected, Jetz Developers, LLC ("**Declarant**") has compiled these Architectural Design Guidelines (the "**Architectural Guidelines**") to be utilized by the property owners, developers, designers and builders in the planning and construction of their residences. The Architectural Guidelines are intended to be complementary to and in harmony with Declaration of Covenants, Conditions and Restrictions for Scarlet Ridge, including any supplemental declarations or amendments thereto (collectively, the "**Declaration**"). They are not devised to unduly restrict buyers, but rather to protect all residents against anyone building a residence in Scarlet Ridge which may be built in poor taste and thus would detract from the value of the other residences in Scarlet Ridge.

In order to implement these Architectural Guidelines and as set forth more particularly in the Declaration, an Architectural Review Committee may be established by the Declarant, as set forth in the Declaration to serve as a resource and to guide the owners, builders and designers of the homes within Scarlet Ridge. For purposes of these Architectural Guidelines, the Declarant, or the Architectural Review Committee (the "**ARC**"), if the Declarant has delegated all or a portion of its architectural review rights under the Declaration to the ARC, shall be referred to as the "**Reviewer**".

These Architectural Guidelines are minimum allowable requirements and are in addition to any contractual obligations contained in the owner's purchase contract and the Declaration. In the event of any conflict between these Architectural Guidelines and the Declaration, the provisions of the Declaration shall control. The Reviewer specifically reserves the right to change or modify these Architectural Guidelines or to waive the application of any of their provisions.

### APPROVED BUILDERS

The approved builders for the property are McCoy Homes, Inc. or any other builder specifically approved in writing by the Reviewer.

### MINIMUM SQUARE FOOTAGE RESTRICTIONS

**One Story.** No one story dwelling unit shall be erected or be allowed to occupy any lot or lots unless the main structure, exclusive of garages, open porches and basements is at least 1,400 square feet.

**One and a Half Story.** No one-and-a-half story dwelling unit shall be erected or be allowed to occupy any lot or lots unless the first floor of the structure, exclusive of garages, open porches and basements is at least 1,700 square feet total, and having at least 1,200 square feet on the main level.

**Two Story.** No two story dwelling unit shall be erected or be allowed to occupy any lot or lots unless the main structures, exclusive of garages, open porches and basements is at least 1,700 square feet total, and having at least 1,200 square feet on the main level.

#### STYLE

A residence in Scarlet Ridge will be well designed with respect to appropriateness of form, color and materials to design style. The proportion of the window to wall and wall to total form and appropriateness of detailing are important considerations for approval by the Reviewer. The use of true historical styles is encouraged rather than arbitrary combinations and exaggerations of styles.

#### SCALE AND IMAGE

A well designed residence has appropriate scale and a balanced relationship between the sizes of architectural elements, the size of the overall structure, and the distance to the street. The front entry should be the focal point of the residence and should present an inviting, human scaled image to the street. Exaggerated or oversized entry doorways will not be permitted. Roof forms and massing, window proportion, and chimney elevations are critical elements in design scale.

#### EXTERIOR MATERIALS

**Materials:** The variety and number of primary exterior materials should be held to a minimum. Changes in exterior wall material should have a logical relationship to the massing of the house and may not be made for reasons of economy and function only. PermaStone, exposed asbestos shingles, and exterior vinyl sheathing (except in the case of vinyl soffits) are specifically prohibited.

**Color:** Exterior paints and stains for each residence shall be selected to complement or harmonize with the colors of the other materials with which they are used. Paint and stain colors must be approved by the Reviewer. The color palette of existing adjacent residences will be considered in making approvals in order to avoid monotonous color schemes.

**Architectural Sheet Metals:** All stack vents and attic ventilators shall be installed straight and true and shall be located to minimize street view visibility or hidden in a chase. All exposed roof flashing, stack vents, skylight curbs, attic ventilators or any other metal roof accessories shall be painted to match the roofing color.

**Guttering and Downspouts:** Gutters shall be made of copper, or prefinished extruded aluminum.

**Skylights and Solar Collectors:** The location and design of all skylights and solar collectors shall be approved by the Reviewer.

**Roof:** All roof overhangs shall be a minimum of twelve inches (12") (except for dormers) from the finished face of the exterior wall. All roofs shall have a minimum pitch of 8:12 elevation unless otherwise approved by the Reviewer. All roofing material must be twenty-five



(25) year (or longer) architectural/dimensional shingle, asphalt, shakes or slate and must be black, dark grey, weathered wood or earth toned in color.

**Windows:** All windows shall be wood, vinyl, or aluminum clad. Clad windows are permitted provided such windows have a brick mold surrounding them and are approved by the Reviewer. Cantilevered bay windows are prohibited unless otherwise approved by the Reviewer.

**Main Entrance Doors:** Exterior pedestrian doors visible from the street shall be made of wood or quality materials with a painted finish or stained.

**Siding:** Concrete, hardiplank, smooth horizontal wood, or an approved equal premanufactured clapboard of enduring quality. Artificial, simulated or imitation materials are not permitted unless approved by the Reviewer; however, vinyl soffits are permitted. Fascia and freeze boards must be hardiplank.

**Brick:** Shall be hard-fired, which has an overall appearance of evenness in color and texture. Painted brick may be used where appropriate to the style of the residence. Use of brick with large range of tones is not acceptable.

**Foundations:** Single-family residences shall be placed over crawl spaces or a full basement. Foundations of all residence shall be covered with brick or stone. The intent is to eliminate the exposure of concrete or concrete block from the street view. The use of stucco may be allowed only on the rear elevation of the foundation.

**Exterior Air Conditioning Equipment:** Exterior heating, ventilating and air conditioning units shall be allowed on any residence or garage. Grills, vents, or flues shall not be visible from the street, where practical. All such items must be screened from the street.

**Mailboxes and House Numbers:** No mailbox, newspaper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be used before being approved by the Reviewer. The location of the mailbox must be shown on the site plan when submitted and approved by the Reviewer. House numbers must be legible, simply designed and in an appropriate scale and of "professional quality". The material and color shall be compatible with the architectural style of the residence to which they will be attached. Mailboxes will all be matching and chosen at Chattanooga Lawn and Lighting.

## SITE

**Site Planning:** All residences shall be planned to conform to these Architectural Guidelines, the Declaration, any recorded plat, and any subsequent easements. Site planning and exterior design shall present a sense of individuality while reinforcing an overall image of community.

**Setback Lines:** With the exception of driveways, walks, and mailboxes, no structures shall be allowed on any lot outside the building setback lines. The building setback lines shall be no greater than or less than the following.

Set Back	No Greater Than	No Less Than
Front	N/A	25 Feet
Rear	N/A	25 Feet
Side Street	N/A	15 Feet
Interior Lot Lines	N/A	10 Feet

Side setback requirements for cul-de-sac lots shall be determined on an individual basis due to the irregular shape of such lots. All other lots that have an irregular shape may require different minimum setbacks and where appropriate a variance from the minimum building setback requirements may be granted by the Reviewer.

**Adjoining Lots:** When a Single owner purchases two adjoining lots, the site plan and the house design shall address the resulting composite lot as a single, larger lot.

**Garage size:** All homes must have a garage, and garages shall generally provide space for a minimum of two (2) vehicles unless otherwise approved by Reviewer. Detached garages are not allowed unless otherwise approved by the Reviewer.

**Driveways:** Driveways shall be located a minimum of one (1) foot from the side property line to allow for fencing and landscaping, except in special conditions when approved by the Reviewer and are to be constructed of concrete or other hard surface (i.e. brick or stone) approved by the Reviewer. Driveways constructed of asphalt are prohibited unless otherwise approved by the Reviewer.

**Patios:** All patios and other paving in entry courts or other areas visible from the street view or other public areas shall be unit concrete pavers, tile, stone, wood decking or concrete.

**Swimming Pools, Spas and Hot Tubs:** Swimming pool design and construction details shall be submitted for review and approved by the Reviewer. All swimming pools shall be in ground. Pools will be fenced for safety as per state and/or local laws. Pools shall not be permitted on the street side of the residence, nor shall any portion of a pool, decking or enclosure be permitted to extend outside the building setback lines. Mechanical equipment shall be concealed and located so as not to have an adverse effect on the use of adjacent property.

Spa/hot tubs shall be located in the rear yard away from adjacent property so that the use, presence, and noise of the mechanical equipment do not adversely affect the use of the adjacent property. They should be an integral part of a deck, patio, or landscaping. Mechanical equipment, pipes, and wiring must be concealed. Spas/hot tubs shall be screened from adjacent property and all of the understructure of spas/hot tubs which are set into above ground decks shall be screened.

**Gates, Walls and Fences:** The design for any fence, wall or gate shall be compatible and harmonious with the design of the residence which it serves. Chain link fencing will not be permitted. Fence foundations must be constructed entirely on the owner's property unless there is a written and recordable document reflecting an agreement with respect to the cost, design,

construction, maintenance, and responsibility for the fence. All fence design shall be approved by the Reviewer.

**Fencing for Lots:** Fences on lots shall not exceed six (6) feet in height and shall be appropriately landscaped, if allowed. Fences are allowed no closer to the front lot line than the rear line of the residence. Fences must be approved by the Reviewer before installation.

**Decks:** A deck has a significant impact on the appearance of a house. Decks may also affect the privacy and right of enjoyment of adjacent residents. These two factors are weighted heavily in the review of decks. The deck shall be located at the rear of the house unless otherwise approved by the Reviewer. The configuration, detail and railing design of a deck shall relate harmoniously with the architectural style of the house.

Wood decks shall be constructed with rot-resistant wood or synthetic wood, and, in many cases, may be left to weather naturally. In some instances, the Reviewer will require that the decks be stained to coordinate with the neighborhood design or to help integrate the deck with the house. If decks are stained, the color shall relate to the colors of the house. A Skirt board shall be constructed and landscape planting shall be provided to screen structural elements and to soften the structure visually.

**Non-Architectural Improvements:** Any non-architectural improvements on any lot, e.g. playground equipment (specifically including trampolines), basketball backboards, sculptures, garden ornaments, decorative exterior lighting fixtures, etc., shall be located within the building area of the lot, and shall be screened from street views. Portable basketball goals may be used, but all such goals must be store out of site when not being used.

**Detached Buildings:** The plans and specifications, including the exterior materials, for any detached garages, or bathhouse/pool house (which shall not include sleeping quarters) must be pre-approved by the Reviewer and must relate harmoniously with the architectural style of the house. The square footage of any bathhouse/pool house structure shall not be included in determining the square footage requirements set forth herein.

**TV Cable & Satellite Dishes:** Exterior television and radio antennas are prohibited. Satellite dishes shall meet the requirements as set forth in the Declaration and require the specific approval of the Reviewer for both the location, size and screening requirements.

**Drainage:** Every effort should be made to minimize the surface runoff onto adjacent properties. No fill other than what is necessary to attain finish slab elevation and for final grading and grass (sod) planting is permitted without written approval of the Reviewer.

**Retaining Wall:** Each retaining wall used to form a terrace shall be no more than four (4) feet tall and spaced no closer than four (4) feet apart. Terraces may be allowed to deviate from this requirement with specific approval of the Reviewer.

**Property Maintenance:** The builder or owner shall maintain the property consistent with the character of a quality residential neighborhood. Each owner shall keep foundation, exterior walls, windows, doors and glazing, roofs, structural, mechanical and electrical systems, landscaping and grounds, fences and retaining walls in a high state of maintenance, repair and

appearance. Storage of trash containers shall be in a service court or garage not visible from the street except at time of pick up.

## LANDSCAPE

**Landscape Specifications:** All landscaping design and specification for the street sides of each residence shall require the approval of the Reviewer.

**Sod:** All front yards are to be sodded. If a corner lot, the front and side yard shall be sodded.

**Landscape Maintenance:** Each owner shall submit a landscape plan to the Reviewer as part of the design approval process. All landscaping must be planted by the completion of construction.

**Sidewalks:** The builder shall construct a sidewalk (forty-eight (48) inches wide and two (2) feet from the curb) parallel with the street along each lot (i.e., both front and side if a corner lot).

## DESIGN APPROVAL PROCESS

The design approval process is intended to confirm a correct interpretation of the Architectural Guidelines in order to identify problems with submitted designs. Each of the items listed below should be submitted in accordance with the plan submissions and approval process as outlined in the Declaration. When a buyer's plans are approved, the copies will be signed by both the buyer and the Reviewer. Signed plan approval by the Reviewer is required prior to the undertaking of any site improvements, including clearing, grading, paving, signs, structures, fences, landscaping, building additions or alterations, and subdivisions.

No changes of these approved plans shall be allowed without prior written approval of the Reviewer. Each application will be evaluated on its own merits.

An application checklist shall be included with each submittal.

**Application for Review:** Use for any pre-construction submittal.

**Exterior Materials Selection:** Use to obtain approval of all exterior building materials, And to obtain approval of all exterior colors.

**Landscape Review:** Use for any site improvements not part of the approved residence.

The Reviewer will, at the owner's request, meet with the owner or his or her representatives at a mutually agreeable time for discussion of any submittals. Any required submittals shall be sent to the Reviewer. Copies of all approved plans and approval letters shall be kept on file by the Declarant.

The Reviewer shall review and approve, disapprove or comment on all plans, requests, and other submissions within thirty (30) days after receiving the plans, requests or submissions.

The design approval process should be approached as follows:

### **STEP 1: SKETCH REVIEW SUBMITTAL REQUIREMENTS**

When the builder or owner has completed the basic plans and elevations for a new residence or an alteration of an existing home, the Reviewer shall review the submission of the drawings or sketches. Because the Reviewer has the power to reject those designs, materials or details which it views as inappropriate for the community or neighborhood in which the house will be located, or which fail to comply with appropriate documents, this provision benefits the owner and builder by allowing identification of potential problems at an early stage.

Should the owner or builder have unique site or design conditions which may require a variance, the Reviewer can evaluate the issues in this early stage.

### **STEP 2: PRELIMINARY DESIGN SUBMITTAL REQUIREMENTS**

Approval of the preliminary design shall be taken as approval to proceed with design development work and construction documents based upon the preliminary submission itself. By emphasizing the preliminary design review, the Reviewer hopes that all design issues for each residence will be reached before final construction drawings are submitted for review. The documents to be submitted during this phase of the approval process include three (3) sets of each of the following:

- Preliminary site plan showing locations and finished floor elevations of all proposed improvements (including grading) on the lot, relative to setbacks.
- Preliminary floor plan(s) (at 1/8"=1') with finished floor area calculations regarding square footage.
- Preliminary exterior elevations (all sides)-note colors and materials.
- Preliminary building/site sections.
- Preliminary landscape plan.

### **STEP 3: FINAL DESIGN SUBMITTAL REQUIREMENTS**

Within ninety (90) days after preliminary design approval, the owner/builder shall provide a final submission of three (3) sets of the final construction plans, material samples, and color chips, including the following:

- Site layout plan showing locations of all proposed grading and indications of hardscape materials. Provide area calculations for landscape and hardscape.
- Floor plan(s) (at 1/4" =1') with finished floor area calculations for landscape and hardscape.
- Exterior elevation (all sides)-note colors and materials.
- Roof plan: rooflines and pitches, structure, materials, product photos (or samples), color chips.
- Typical wall sections, showing roof eaves/parapet, window head/jamb/sill and foundation conditions.
- Landscape plan showing tree locations, all plant materials, paving, walkways, pools, accessories and irrigation.

- Exterior doors and garage doors including specifications, materials, product photos and color chips.
- Fences/walls/gates: design details materials, color chips, location.
- Mechanical equipment and exterior lighting details: specifications, product photos.
- Driveways: materials, finish, color chips.

The reviewer may meet with the builder to discuss proposed site improvements, but will not grant verbal approval prior to the submission of the landscape plans.

#### **STEP 4: MINOR CHANGES AND ALTERATIONS**

It is anticipated that owners may wish to make improvements or modifications to their residences or property during the initial construction or at a future date. External modifications to existing construction shall only be undertaken after prior review and written approval of the Reviewer. All plans that are required for a final design submission which are affected by the addition/alteration shall be submitted to the Reviewer. Details as to how the addition will connect to the existing structure or be placed upon the site should be included.

Deviation from approved construction documents during construction without the approval of the Reviewer constitutes a violation of the Architectural Guidelines and the Declaration. All corrections of or to such deviations shall be required as provided in the Declaration.

All requests for variances shall be made in writing to the Reviewer. Any variance granted by the Reviewer will be considered to be unique and will not set any precedent for any future decisions.