

**IVY RIDGE ESTATES**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**This Declaration of Covenants, Conditions and Restrictions** ("Declaration") is made as of this 14<sup>th</sup> day of February, 2011, by **IVY RIDGE DEVELOPERS, LLC**, a Virginia limited liability company, who is hereinafter called the "Developer," and **IVY RIDGE ESTATES HOMEOWNERS ASSOCIATION**, a Virginia nonstock corporation, hereinafter called the "Association".

\*\*\* WITNESSETH \*\*\*

**WHEREAS**, Developer is the owner of certain real property near Fishersville in the South River District of Augusta County, Virginia, situated on the south side of Ladd Road near its intersection with Tinkling Spring Road, containing 57.812 acres, more or less, a portion of which Developer has subdivided into twelve lots numbered One (1) through Three (3) and Thirty-three (33) through Forty-one (41) as shown on a plat entitled "**Final Plat of Ivy Ridge Estates, Section One**", made by Lotts & Associates, P.C. (Barry E. Lotts, L.S.), dated December 16, 2010, and revised January 19, 2011, a copy of which is recorded with the Deed of Dedication, Subdivision and Easement dated February 14, 2011, and recorded in the Augusta County Circuit Court Clerk's Office as Instrument No. 110001782; and

**WHEREAS**, the Developer intends that the aforesaid lots shall contain single-family residential and related uses permitted under the terms of the Zoning District Regulations of the County with access to Ladd Road over internal streets to be dedicated to public use and accepted for maintenance by the Virginia Department of Transportation as part of the Augusta County secondary road system; and

**WHEREAS**, this real property, together with such additional land as may be submitted to this Declaration in the manner provided in Article II, Section 2, shall be known as the Ivy Ridge Estates (the "Subdivision"); and

**WHEREAS**, in order to provide for the preservation and enhancement of the property values, amenities, and residential opportunities in the Subdivision, which will contribute to the enjoyment, safety and welfare of the property owners and their families, tenants and invitees, and for the maintenance of the land and improvements thereon and the storm water management facilities to be constructed within the Ivy Ridge Master Plan for the drainage of storm water from the Subdivision, the Developer desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens of this Declaration, said covenants, conditions, restrictions, easements, charges and liens to run with the Subdivision, bind all persons or entities having or acquiring any right, title, or interest in the Subdivision or any part thereof, and inure to the benefit of the County of Augusta, as its interests

may appear, and the owner or owners of each lot in the Subdivision; and

**WHEREAS**, to provide a means for meeting the purposes and intents herein set forth, the Developer has incorporated the Association under the laws of the Commonwealth of Virginia.

**NOW THEREFORE**, Developer does hereby grant, establish, and convey to each Owner mutual nonexclusive rights, privileges, and easements of enjoyment on terms to be held in common with all other Owners in and to the use of the storm water management facilities; and does hereby declare the Subdivision to be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, easements, charges, and liens (hereinafter referred to as "Covenants and Conditions"), hereinafter set forth, which are for the purpose of controlling the flow of storm water from and shall run with the Subdivision and be binding on all parties having any right, title, or interest in the Subdivision or any portions thereof, their successors and assigns, and shall inure to the benefit of each Owner thereof as well as to the County of Augusta, Virginia.

**AND FURTHER**, the Developer hereby delegates and assigns to the Association the powers of owning, maintaining, and administering the common areas and storm water management facilities, administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and charges hereinafter created.

**ARTICLE I.  
DEFINITIONS**

Unless the context clearly indicates to the contrary, the terms listed below shall be construed in accordance with the following definitions:

**Section 1.** "*Association*" shall mean and refer to Ivy Ridge Estates Homeowners Association, its successors and assigns.

**Section 2.** "*Builder*" shall mean and refer to a person or entity that acquires a portion of the Subdivision for improving such portion for resale to Owners or for lease to tenants.

**Section 3.** "*Clerk's Office*" shall mean and refer to the Clerk's Office of the Circuit Court of the County of Augusta, Virginia.

**Section 4.** "*Common Areas*" shall mean and refer to all portions of the Subdivision and all interests therein, including easements and improvements thereon (but excluding the Pump Station Lot to be conveyed to the Augusta County Service Authority and the Storm Water Management Facilities to be managed and maintained as otherwise provided herein), which shall be owned or leased by the Association for the use and enjoyment of the Members, including all street rights of way until such time as the same are taken into the Augusta County system of secondary roads and accepted for maintenance by the Virginia Department of Highways.

**Section 5.** "*County*" shall mean and refer to the County of Augusta, Virginia, a political subdivision of the Commonwealth of Virginia.

**Section 6.** "*Declaration*" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and all other provisions herein set forth in this entire document, as the same may from time to time be amended by Supplementary Declaration.

**Section 7.** "*Developer*" shall mean and refer to Ivy Ridge Developers, LLC, a Virginia limited liability company, its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically assigned by Ivy Ridge Developers, LLC by document recorded among the land records of the County or unless said rights and obligations of the Developer inure to the successor of Ivy Ridge Developers, LLC by operation of law. The rights and obligations of the Developer, in its capacity as Developer as set forth herein, shall cease when the Developer shall have subdivided the entire land area within the Development Limits of the Subdivision into public streets and Lots and shall have conveyed two-thirds of the combined land areas of the Lots to Owners, except as otherwise provided in Article VIII, Section 1.

**Section 8.** "*Development Limits*" shall mean and refer to the total land area of the Subdivision and such additional land as may be submitted to this Declaration by the Developer in the manner provided in Article II, Section 2.A.

**Section 9.** "*Governing Documents*" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, the Supplementary Declarations and the Bylaws of the Association, all as initially drawn by the Developer and filed or recorded as the case may be and as may be duly amended from time to time.

**Section 10.** "*Hazardous Substance*" shall mean and refer to the same term as used in 42 U.S.C. § 9601 as well as the term "hazardous waste" as used in said statute or any amendment thereto or replacement thereof.

**Section 11.** "*Lot*" shall mean and refer to each of the lots shown on the Section One Plat and any other plot of land shown upon any recorded subdivision plat of the Subdivision (with the exception of the Common Areas), subject to such Storm Water Management Facilities as may be situated within the boundaries of same.

**Section 12.** "*Members*" shall mean and refer to members of the Association, each of whom shall be the Owner of a Lot.

**Section 13.** "*Notice*" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient.

**Section 14.** "*Occupant*" shall mean and refer to the occupant of a Lot who

is the Owner, contract purchaser, or lessee or sublessee who holds a written lease having an initial term of at least twelve (12) months.

**Section 15.** "*Owner*" shall mean and refer to the record holder of the fee simple title to any Lot, whether referring to one person or entity or collectively to more than one person or entity who have joint ownership of a Lot, including contract Sellers; the term "*Owner*" shall exclude those having an interest merely as security for the performance of an obligation.

**Section 16.** "*Quorum of Members*" shall mean and refer to the representation at a duly called meeting of the Members by presence or proxy of Members who hold at least one-third of the outstanding Class A votes, and the representation by presence or proxy of the Class B Member, so long as it shall exist. In the event a Quorum of Members is not present at a duly called meeting of the Members, no action may be taken which requires the vote of a Quorum of Members. At the next duly called meeting of the Members after failure of the attending Members at the previous meeting to constitute a quorum; the quorum requirement shall be at least one-sixth of the outstanding Class A votes and the representation by presence or proxy of the Class B Member, so long as it shall exist, provided that in order for the reduced quorum requirement to apply, the purpose of the meeting as recited in the notice given to all Members is the same as the purpose recited in the notice of the preceding meeting at which no quorum was present.

**Section 17.** "*Registered Notice*" shall mean and refer to any Notice which has been sent by Registered U.S. Mail, return receipt requested, to the last known address of the intended recipient and which has been signed for or has been certified by the U.S. Postal Service that delivery was attempted at the aforementioned address. Failure by refusal of an intended recipient to acknowledge or accept such Notice shall nevertheless constitute receipt.

**Section 18.** "*Section One Plat*" shall mean and refer to the plat entitled "Final Plat of Ivy Ridge Estates, Section One", made by Lotts & Associates, P.C. (Barry E. Lotts, L.S.), dated December 16, 2010, and revised January 19, 2011, which is incorporated herein by this reference and a copy of which shall be recorded with the Declaration in the Clerk's Office.

**Section 19.** "*Storm Water Management Facilities*" shall mean and refer to all easements within the area of the Ivy Ridge Master Plan that the Developer will hereafter convey to the Association in accordance with the provisions of the Ivy Ridge Estates Storm Water Agreement of even date herewith for the purposes of draining, detaining, retaining, treating, managing and controlling the flow of storm water from the Subdivision, including all drainage swales, ditches, pipes and conduits, all detention basins and ponds and related structures and devices constructed, installed and maintained within the bounds of such easements, which shall be designated upon plats to be

approved by the County and recorded in the Clerk's Office. Such conveyance shall be made when at least a majority of the Lots has been built upon and made ready for occupancy. Without intending to limit the generality of the foregoing, Storm Water Management Facilities shall include all of the drainage easements, including all drainage swales, ditches, pipes and conduits, all detention basins and ponds and related structures and devices constructed, installed and maintained within the bounds thereof, as shown on the Section One Plat.

**Section 20.** "Supplementary Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions that may be recorded by the Developer, which expands the Development Limits beyond the land area that is subjected initially to the Declaration.

## ARTICLE II.

### PROPERTY SUBJECT TO THE DECLARATION AND ADDITIONS

**Section 1.** *The Subdivision.* The Subdivision or any subdivided portions thereof shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

**Section 2.** *Additions to the Subdivision.* Additional properties may become subject to this Declaration in the following manner:

A. *Additions by the Developer.* The Developer shall have the unilateral right to subject to the Declaration all or any portion of the land zoned Single Family Residential (SF) lying on the southwest side of Ladd Road (State Route 631), including (i) the area identified on the Section One Plat as "25.872 Acres, Future Development", (ii) the undeveloped land situated across the northern boundary of such area and adjoining Ivy Ridge Townhomes, Section Three, and (iii) the undeveloped land adjoining the western lines of Lots 3, 33, 34, 35, 36 and 37 and Rolling Rocks Drive as shown on the Section One Plat;

B. *Supplementary Declarations.* The Supplementary Declaration which subjects additional property to the Declaration shall describe the real property to be annexed to the scheme of this Declaration and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplementary Declaration to the scheme of this Declaration and extending the jurisdiction of the Association to cover the real estate so described in such Supplementary Declaration.

C. *Compliance with County Ordinances.* The additions authorized under subsection A above shall be made by complying with the requirements of the applicable County Ordinances and by recording in the Clerk's Office one or more Supplementary Declarations of Covenants and Conditions with respect to the additional property.

**ARTICLE III.  
THE ASSOCIATION**

**Section 1. Organization.** The Association is a nonprofit, non-stock corporation organized and existing under the laws of Virginia and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents shall be amended for any reason or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**Section 2. Membership.**

A. *Basis.* Membership shall be appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except as provided in the Governing Documents.

B. *Member's Rights and Duties.* Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

C. *Voting Rights.* The Association shall have two classes of voting membership:

1. *Class A Members.* Class A shall be constituted of all Owners except the Class B Member, which shall become a Class A Member upon the cessation of its Class B membership as provided in subsection 3 below. Class A Members shall be entitled to one vote for each Lot owned.

2. *Class B Member.* The Class B Member shall be the Developer, or any successor or assignee to which the Developer assigns any or all of its rights as Developer pursuant to this Declaration by assignment recorded in the Clerk's Office. Such assignment shall only operate as to the land which is owned by such successor or assignee and which is referenced specifically in the instrument of assignment. The Class B Member shall be entitled to two votes for each Lot owned, less the number of Class A votes outstanding at the time the vote is taken.

3. *Cessation of Class B Membership.* The Class B membership and Class B voting rights shall cease when the total number of Class A votes equals one-half the total number of Class B votes. Thereafter, the Developer shall have Class A membership rights for each Lot that it owns.

D. *Exercise of Vote.* The vote for any membership that is held by more than one person may be exercised by any one of such persons, if no objection or protest by any other holder of such membership is made before the completion of a vote. If such protest is lodged before the completion of the vote, the vote for such membership shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting.

**Section 3. Board of Directors.**

A. *Composition.* The number of Directors and method of selection of Directors shall be as provided in the Bylaws; provided, however, that the Developer, until its rights as Developer cease, shall be entitled to appoint a majority of the Directors.

B. *Extent of Power.*

1. The Board of Directors shall have all powers to conduct the affairs of the Association which are enabled by law or the Governing Documents and which are not specifically reserved to the Members or the Developer by said Documents.

2. The Board of Directors shall exercise its powers in accordance with the Governing Documents.

C. *Powers and Duties.* By way of example and without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:

1. *Common Areas.* To own, hold, improve, maintain and manage the Common Areas subject to the provisions of Article I, Section 4, and Article IV of this Declaration;

2. *Storm Water Management Facilities.* To own, hold, improve, maintain and manage the Storm Water Management Facilities subject to the provisions of Article I, Section 19, and Article V of this Declaration and the minimum maintenance standards prescribed by the County; and

3. *Assessments.* To fix, levy, and collect assessments as provided in Article VI; and

4. *Easements.* To grant and convey easements over and across the Common Area as may become necessary; and

5. *Employment of Agents.* To employ, enter into contracts with, delegate authority to, and supervise such persons or entities as may be appropriate to manage, conduct, and perform the business obligations and duties of the Association; and

6. *Enforcement of Governing Documents.* To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be filed or enforced, suspending membership rights, or enforcing or effectuating any of the provisions of the Governing Documents.

**Section 4. Architectural Review Committee.**

A. *General.* The Architectural Review Committee shall regulate any alteration of or addition to the external design and appearance of the architectural and landscaping features located in the Subdivision in order to preserve and enhance property values and maintain a harmonious relationship

among the residences and the surrounding horticulture and topography.

B. *Required Submittals.* The plans and specifications for (i) the construction of any residence or ancillary structure or improvement on any Lot, (ii) the alteration of the exterior appearance of any structure or improvement erected on any Lot, (iii) the addition of any structure or improvement to any Lot or (iv) the alteration or addition of any landscaping feature of or to any Lot, including by way of example and without limitation, trees, shrubs, flower beds, walls, fences, mailboxes and statuary, shall be prepared and submitted to the Architectural Review Committee (herein called "the Committee") for approval. The plans and specifications shall be subject to and, before any work is commenced, shall require the approval in writing of the Committee. No new construction or expansion or exterior alteration of buildings, utilities, screens, fences, pavements, landscaping, or other facilities shall be initiated without approval by the Committee of the plans and specification for the same.

C. *Committee Membership.* The Committee shall be composed of not less than three (3) members and not more than five (5) members who shall be appointed by the Developer until the Developer's rights and obligations under this Declaration cease as provided in Article I, Section 7. After the Developer's rights cease, the Board of Directors shall appoint the members of the Committee from among the designated representatives of the Owners. The members of the Committee need not be Members of the Association nor own any interest in any Owner.

D. *Committee Review.*

1. The Committee's review shall ensure compliance and compatibility of uses, structures and improvements within the Subdivision.
2. Items of review shall include, but not be limited to:
  - (a) locations and elevations;
  - (b) color schemes;
  - (c) construction materials;
  - (d) compatibility and conformity of style and design with surrounding structures;
  - (e) sensory impact upon the environment and the quiet enjoyment of the Subdivision by all Owners; and
  - (f) height, width and depth of all natural and manmade landscape features upon installation and at maturity.
3. The Committee shall approve or disapprove proposed plans, specifications and details within thirty (30) days from the receipt of all submittals required in subsection B above (the "Review Period"). The



Committee's report shall be in writing, and, in the case of disapproval, the reasons for the disapproval shall be stated. If the Committee does not disapprove such submittals within the Review Period, they shall be conclusively presumed to have been approved.

4. The Committee shall act by majority vote. As long as the Developer's appointees are members of the Committee, however, the Developer shall have the exclusive authority to approve or disapprove all submittals; and the remaining Committee members shall then serve in an advisory capacity.

5. The Committee shall have the right to disapprove any plans, specifications, or details submitted to it if (i) the same are not in accordance with all of the provisions of this Declaration; (ii) the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of the Lot or adjacent buildings or structures; (iv) the plans and specifications submitted are incomplete; or (iv) the Committee, in its sole and absolute discretion, determines that the proposed plans, specifications, or any detail or part thereof is contrary to the interests, welfare, or rights of one or more of the Owners. The decisions of the Committee shall be final.

*E. Committee Not Liable.* Neither the Committee nor any architect or agent thereof nor the Developer shall be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

**Section 5. Fidelity Bonds.** The Association may obtain fidelity coverage against dishonest acts on the part of Directors, officers, managers, employees, or agents responsible for handling funds collected and held for the benefit of the Association.

**Section 6. Insurance.** The Association shall maintain a hazard insurance policy for 100% of the replacement cost of any improvements on the Common Areas and a comprehensive policy of public liability insurance covering the Common Areas and Storm Water Management Facilities.

#### **ARTICLE IV. COMMON AREAS**

**Section 1. Obligations of the Association.** The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members of the Common Areas conveyed to it and shall keep the same in good, clean, attractive, and sanitary condition, order and repair, including without limitation the removal of snow from and maintenance of all streets within the Subdivision until such time as they are taken into the Augusta County system of secondary roads and accepted for maintenance by the Virginia Department of Highways.

**Section 2. Easement of Enjoyment.** Subject to the provisions hereof, every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment in the Common Areas.

**Section 3. Extent of Members' Easement.** The Members' easement of enjoyment created hereby shall be subject to the following:

A. The right of the Association to convey or transfer all or any part of the Common Areas, subject to the prior approval of the County and the assent of seventy-five percent (75%) of the Class A Members and the approval of the Class B Member; and

B. The right of the Association to regulate the use of the Common Areas for the benefit of Members; and

C. The right of the Association, at any time or times, consistent with the then existing zoning ordinances of the County and pursuant to a recorded subdivision or re-subdivision plat, to transfer part of the Common Areas to or at the direction of the Developer for the purpose of adjusting Lot lines or otherwise in connection with the orderly subdivision and development of the Subdivision.

**Section 4. Title to Common Area.** The Developer hereby covenants that areas which the Developer conveys to the Association as Common Areas shall be free and clear of liens and financial encumbrances at the time of conveyance, except as otherwise provided herein.

#### ARTICLE V.

##### STORM WATER MANAGEMENT FACILITIES

**Section 1. Obligations of the Association.** The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the management and control for the benefit of the Members and the County of the Storm Water Management Facilities conveyed to it, including without limitation the obligations to remove debris and cut any trees, bushes, shrubbery or grass within the Storm Water Management Facilities as may be required by the County's minimum maintenance standards, to repair any Facilities eroded by storm water and to take any other similar action reasonably necessary to keep the Facilities in good, clean, attractive, and sanitary condition, order and repair.

**Section 2. Drainage Easement.**

A. **Storm Water Management Facilities.** Subject to the provisions herein, every Owner shall have a right and nonexclusive easement to drain storm water that is uncontaminated by any Hazardous Substance from Owner's Lot into the Storm Water Management Facilities, which shall be

appurtenant to and shall pass with the title to every Lot.

**Section 3. Extent of Members' Easement.** The Members' easement created hereby shall be subject to the following:

A. The right of the Association to regulate the use of the Storm Water Management Facilities for the benefit of Members;

B. The right of the Association to establish rules and regulations and assessments for the maintenance and operation of the Storm Water Management Facilities; and

C. The right of the Association to convey or transfer all or any part of the Storm Water Management Facilities, subject to the prior approval of the County and the assent of seventy-five percent (75%) of the Class A Members and the approval of the Class B Member.

**Section 4. Title to Storm Water Management Facilities.** The Developer hereby covenants that the easements the Developer conveys to the Association as Storm Water Management Facilities shall be free and clear of liens and financial encumbrances at the time of conveyance, except as otherwise provided herein.

#### ARTICLE VI.

##### COVENANT FOR ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual and Special Assessments as are established herein and paid in the manner hereinafter provided.

Each assessment, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the entity or person who was the Owner of such Lot at the time when the assessment became due but shall not pass as a personal obligation to his successors in title unless expressly assumed by them. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or Storm Water Management Facilities or abandonment of his Lot.

**Section 2. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. The sale or transfer of any Lot shall not impair the lien of the assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which

became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 3. Method of Assessment.** All assessments shall be levied by the Association against Lots, and collected and disbursed by the Association. The Board of Directors shall fix the amount of the assessments as provided hereinafter and set the dates such assessments shall become due.

**Section 4. Annual Assessments.** Annual Assessments shall be payable quarterly, exclusively to administer the Association, purchase liability and casualty insurance for the benefit of the Association and its officers and directors, improve, maintain, and operate the Common Areas and Storm Water Management Facilities and fund appropriate reserves for future maintenance, repair, and replacement of such Facilities and any improvements within the Common Areas.

**Section 5. Basis for Assessment.** For Annual Assessment purposes, each Lot shall be assessed at an equal rate with all other Lots. Each Annual Assessment shall be made on the basis of a fiscal year beginning January 1 and ending December 31.

A. *Amount of Assessment.* Until December 31, 2011, the Annual Assessment on each Lot shall be One Hundred Dollars (\$100) per year. Each fiscal year after December 31, 2011, the amount of each Annual Assessment shall be determined by the Board of Directors, which shall adopt and publish annually to the Members an operating budget sufficient to pay the costs of the Association's performance of its obligations under the terms of this Declaration. The amount of each Annual Assessment shall not be less than the actual pro rata cost attributable to each Lot for (i) the maintenance and operation of the Common Areas and Storm Water Management Facilities, (ii) the administration of the Association, (iii) the purchase of liability and casualty insurance for the benefit of the Association and its officers and directors, (iv) the improvement, maintenance, and operation of the Common Areas and Storm Water Management Facilities and (v) the funding of appropriate reserves for future maintenance, repair, and replacement of such Facilities and any improvements within the Common Areas.

B. *Method of Assessment.* By a vote of a majority of the Directors at a meeting of the Board prior to the beginning of each fiscal year, the Board shall fix the amount of each Annual Assessment; provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by the Declaration and the Supplementary Declarations. Until the Developer's rights cease, the Association shall not adopt an Annual Assessment less than the Annual Assessment applicable in the fiscal year for which the Annual Assessment is adopted without the consent of the Developer. In the event the Board fails to adopt an Annual Assessment for any fiscal year, then the Annual

Assessment established for the prior year shall be continued automatically until the Board acts.

C. *Date of Commencement of Annual Assessments.* The first Annual Assessments provided for herein shall commence as to each Lot on the first day following the earlier of the date the Developer conveys the Lot to the Owner or the date the Owner or Occupant occupies the Lot.

**Section 6. Special Assessments.**

A. *Capital Improvement Assessment.* The Association may levy in any assessment year a Special Assessment against Lots applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement in the Common Areas or Storm Water Management Facilities, including fixtures related thereto, provided that any such assessment shall require the affirmative vote of two-thirds of the Class A Members who are present and voting, in person or by proxy, at a meeting at which a Quorum of Members is present, and the consent of the Class B Member, if Class B membership has not expired.

B. *Clean-Up Assessment.* The Association shall levy a Clean-Up Assessment upon any Lot whose Occupant causes, by act or omission, Hazardous Substances to enter the Storm Water Management Facilities from such Lot or from any public street within the Park. A Clean-Up Assessment shall be equal to three times the aggregate costs actually incurred by the Association to clean-up and remove the Hazardous Substances from the Storm Water Management Facilities, a reasonable administrative fee for oversight of the clean-up and removal operation and collection of such assessment and the actual costs incurred by the Association in collecting such assessment, including court costs and reasonable attorneys' fees.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment installment not paid within thirty (30) days after the due date shall be delinquent. Thereupon, the Association shall provide Notice of such delinquency as provided by law and may (a) assess a late payment charge equivalent to the amount of the assessment installment (b) declare the entire balance of such Annual or Special Assessment due and payable in full; (c) charge interest from the due date at 18% per annum; (d) give Notice to the Owner that in the event the assessment installment, late payment charge and accrued interest are not paid within thirty (30) days from the date of such Notice, then the expressed contractual lien provided for herein shall be filed and/or enforced; and (e) upon Registered Notice to the Owner, suspend the right of such Owner to vote until the assessment installment, late payment charge, accrued interest, and costs of collection are paid in full.

**Section 8. Certificate of Payment.** Upon payment of a reasonable administrative fee to be determined by the Board of Directors, the Association shall certify to any Owner or the mortgagee of any Owner the status of payment

of any assessment levied by the Association against such Owner's Lot as provided in this Article.

**Section 9. Exempt Property.** All properties to the extent dedicated and accepted by a public authority and devoted to public use and all Common Areas shall be exempted from the assessments, charges, and liens created herein.

**ARTICLE VII.  
USE OF PROPERTY**

**Section 1. Restrictions.** The Developer hereby declares that all of the Lots shall be held, conveyed, hypothecated and encumbered, leased, rented, used, occupied, and improved subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the subdivision, improvement and sale of Lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision. All of the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to such Restrictions.

A. *Residential Use.* Except as provided in Paragraph E below, each Lot shall be used for residential purposes only, and only one single-family residence may be built on any Lot. No tents, campers, motor homes, or vehicles designed for mobile living may be used as either temporary or permanent living spaces upon any Lot.

B. *Minimum Construction Standards.* Without limiting the authority of the Architectural Review Committee as provided in Article III, Section 4, the construction of improvements to any Lot shall be subject to the following minimum standards:

1. No residence or ancillary structure, exclusive of unenclosed entry stoops or porches, shall be constructed nearer than thirty-five feet (35') from the right-of-way line of any street or fifteen feet (15') from the side line of any Lot; provided, however, that the Architectural Review Committee may grant variances from these standards for any corner or irregularly shaped Lot.

2. No fence, wall or other barrier shall be constructed or erected outside the setback lines provided in Paragraph 1 above and no chain-link fence shall be permitted on any Lot.

3. The minimum, heated, interior space of every residence constructed in the Subdivision, exclusive of garages and other ancillary structures, shall be eighteen hundred (1,800) square feet in a residence with an elevation of not more than one-story above ground level and twenty-two hundred (2,200) square feet (with at least fourteen hundred (1,400) square feet

in the first level above the basement, if any) in a residence with an elevation of more than one-story above ground level.

4. The siding of all residence and ancillary structures shall be constructed of brick, stone, or stucco (including, without limitation, cement board or EIFS) and brick or stone molding shall be applied to all exposed foundations. Aluminum fascia and vinyl soffits and porch ceilings shall be permitted.

5. The roofs of all residences and ancillary structure shall be maintained at 7:12 minimum pitch and the surfaces of all roofs shall be covered with fire-resistant, architectural shingles warranted for not less than forty (40) years.

6. All driveways and walkways shall be constructed of asphalt, concrete, brick, stone or other impervious materials.

C. *Completion of Construction.* Any structure located on any Lot and any improvements to be made to the structure or the Lot must be substantially completed within twelve (12) months after construction of the same shall have commenced and all landscaping, driveways and walkways shall be completed concurrently with the residence or other structure served thereby, except that the Architectural Review Committee may grant extensions where such completion is impossible or where substantial incompleteness is the result of matters beyond the control of the Lot owner, such as strikes, casualty losses, national emergencies, or acts of God.

D. *Modular, Motor and Manufactured Homes.* No modular home, motor home or manufactured home shall be erected or maintained on any Lot. "Modular home" means a structure comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the Lot and shipped with most permanent components in place to the Lot for final assembly. "Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings. "Manufactured home" means a structure which (i) is transportable in one or more sections; (ii) is built on a permanent chassis; (iii) is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and (iv) includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

E. *Home occupations.* A home occupation that is permitted under the terms of the zoning ordinances of the County Code shall be permitted on any Lot in the Subdivision provided:

1. Such occupation shall be engaged in only by residents on the premises;

2. No more than twenty-five percent (25%) of the floor space of the dwelling may be used exclusively for such occupation;

3. No display of products made shall be visible from the street;

4. No products shall be sold on the premises except such as are made on the premises or such as are clearly incidental to services provided on the premises;

5. No outside storage of any kind shall be permitted;

6. The occupation shall not generate more than ten (10) vehicular trips (a trip consisting of one arrival and one departure) each day; and

7. Not more than one commercial vehicle may be used in conjunction with the home occupation.

F. *Further Subdivision.* No Lot shall be further subdivided or separated into smaller lots and no portion less than all of a Lot, nor any easement or other interest therein, shall be conveyed or transferred, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, easements to public agencies or authorities, or for utilities.

G. *Communication Facilities.* No communication towers, satellite earth stations, dish antennae, or exterior radio, television or telecommunication antennae shall be permitted without the prior written consent of the Architectural Review Committee.

H. *Signage.* No signage shall be permitted on any Lot except signs approved by the Architectural Review Committee for house numbering and advertising the Lots for sale or rent.

I. *Nuisances.* No activity will be permitted on any Lot that creates objectionable noise, smoke, odors or in any other way, in the opinion of the Architectural Review Committee, constitute a nuisance or degrade the value of the real property within the Subdivision.

J. *Yard Maintenance.* All vacant Lots and the yards of all improved Lots shall be mowed to a maximum height of three inches (3") at least once each month from March 1 through October 31 of each year.

K. *Rubbish and Debris.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot except in waste containers approved by the Architectural Review Committee and located in areas approved by the Architectural Review Committee.

L. *Off-Site Parking Prohibited.* Parking on any street within the Subdivision is prohibited. Until the streets are dedicated to public use and accepted for maintenance by the Virginia Department of Transportation as part of the Augusta County secondary road system, the Developer or the Association, as permitted by law, may cause vehicles Parked on any such street



to be removed to a licensed facility for storage and the owner of the removed vehicle shall be charged with the costs of such removal and storage in accordance with applicable provisions of the County Code or the Code of Virginia.

M. *Outdoor Storage.* No personal property, other than operative light passenger vehicles and pickup trucks parked on-site and outdoor furniture or appliances placed on a porch or deck, shall be maintained on any Lot except in a completely enclosed residence or garage for more than seventy-two hours.

N. *Structures Prohibited or Limited.* No clothes lines or carousels or satellite dishes, receivers or antennae shall be permitted on any Lot, except that small, roof- or wall-mounted satellite receivers shall be permitted if they are not visible from the curb of any street. Propane fuel tanks and other utility installations must be buried or obscured by landscaped or horticultural screening from the view from any residence.

O. *Animals.* No animals other than generally recognized house or yard pets, in reasonable numbers, may be kept and maintained on any Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their owners when they are outside any residence constructed on any Lot, must not become a nuisance to the occupant of any Lot and must be kept and maintained in compliance with all applicable County ordinances. No dog house, dog run or other outdoor animal enclosure shall be maintained on any Lot.

#### **Section 2. Remedies.**

A. The Developer, the Association or any party to whose benefit these Restrictions inure may proceed at law or in equity to prevent the occurrence, continuation, or violation of any of these Restrictions, and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

B. The remedies hereby specified are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of these Restrictions shall be held to be a waiver by the party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

### **ARTICLE VIII. EASEMENTS**

**Section 1. Developer's Easement to Construct and Maintain Storm Water Management Facilities.** Until the rights and obligations of the Developer shall cease as provided in the Ivy Ridge Residential Storm Water Agreement between

the Developer and the County of even date herewith and recorded immediately ahead of this Declaration, the Developer reserves an easement and right on, over, and under the ground within each Lot to construct, maintain, repair and correct the operation of the Storm Water Management Facilities and maintain reasonable standards of efficiency, health, safety, and appearance within such Facilities. Such right expressly includes the rights to cut any trees, bushes, shrubbery or grass to such height as may be required by County regulations, to perform any grading of the land, provided such grading does not reduce the capacity and rate of flow of storm water within the Storm Water Management Facilities as approved by the County, to repair any facilities eroded by storm water and to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as nearly as is practicable. The Developer shall give reasonable notice of its intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

**Section 2. Construction Easements and Rights.** Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer or Builders are engaged in developing or improving any portion of the Subdivision, the Developer and Builders and their employees, agents, and assigns shall have an easement of ingress, egress, and use over any portion of the Subdivision not conveyed as a Lot to an Owner for occupancy for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness, and general appearance of the Subdivision.

**Section 3. Easement to Inspect.** There is hereby created an easement in favor of the Association for ingress and egress on any Lot to (a) inspect such property for alleged violations of the Governing Documents based on formal, written complaints and (b) perform such maintenance as is required by this Declaration or the Supplementary Declaration for such Lot, provided the Owner of such Lot is given written notice of the purpose and time of inspection at least three (3) days in advance thereof and such inspection is performed during reasonable hours.

**Section 4. Easement for the County.** A right of entry on any Lot or Common Area is hereby granted to the County to inspect and, if necessary, to repair or correct any deficiencies in the Storm Water Management Facilities caused by the failure of the Association to maintain them as provided in this Declaration. In the event of such failure, the County shall be entitled to recover its administrative fees and the costs of such repairs and corrections from the Association and *pro rata* from each of the Owners, to enforce the rights of the Association as provided in Section 7 of Article VI and to collect such prorated

fees and costs from the Owners as taxes and levies are collected.

**Section 5. Easement for Landscaping, Signs, and Related Purposes.** There shall be and is hereby reserved to the Developer, for so long as it retains its rights as Developer, a nonexclusive easement over all Common Areas for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, plantings, street lights, entrance features, lighting, stone, wood, or masonry wall features and landscaping.

**ARTICLE IX.  
GENERAL PROVISIONS**

**Section 1. Duration.** The Covenants and Conditions of this Declaration shall run with and bind the land until they are terminated with the written consent of seventy-five percent (75%) of the Class A Members, the consent of the Class B Member and the approval of the County pursuant to an instrument recorded in the Clerk's Office. Upon any such termination, the Association shall convey the Storm Water Management Facilities to a nonprofit corporation, association, trust, or other organization or governmental entity devoted to similar purposes and approved by the County.

**Section 2. Amendment.** Until the rights and obligations of the Developer shall cease as provided in Article I, Section 7, the Developer may amend this Declaration unilaterally if required by the County following Registered Notice to all Owners. After such period or if any amendment is not required by the County, the proposed amendment shall be accompanied by a document signed by not less than two-thirds of the Class A Members and the Class B Member and evidence of approval by the County and recorded in the Clerk's Office in order to become effective.

**Section 3. Certain Rights of the Developer.** For such time as the Developer shall own Lots and unless it shall, in writing, join in such amendment, its rights and interests shall not be prejudiced by any amendments to the Governing Documents which (a) discriminate or tend to discriminate against its rights as an Owner; (b) change the definitions provided in Article I in a manner that alters its rights or status; (c) alter its right to add additional properties to the Subdivision in the manner provided in Article II; (d) alter the character and rights of membership or the rights of the Developer as set forth in Article III; (e) alter previously recorded or written agreements with public or quasi-public agencies affecting easements and rights-of-way; (f) deny the right to convey Common Areas to the Association so long as such Common Areas lie within the Development Limits; (g) alter the Developers rights as set forth in Article III, Section 4 relating to architectural controls; (h) alter the basis for assessments; (i) alter the protective covenants as set forth in Article VII; (j) alter the number or selection of Directors as established in the Bylaws; or (k) alter the Developer's rights as they appear in this Article.

**Section 4. Enforcement.** The Association, the Developer, any Owner, or the County as their interests may appear, shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration and of Supplementary Declarations. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5. Severability.** Invalidation of any one of those covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 6. Conflict.** In the event of conflict among the Governing Documents, this Declaration shall control, then Supplementary Declarations, then the Articles of Incorporation of the Association, then the Bylaws; except that in all cases where the Governing Documents are found to be in conflict with statute, the statute shall control.

**Section 7. Interpretation.** Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including, without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to pursue the purpose of controlling the flow of storm water in and away from the Subdivision. The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

**Section 8. Notices.** All notices to be given with respect to this Declaration shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at such address as either party may from time to time designate in writing.

Unless otherwise designated by the parties, their addresses are designated as follows:

The Developer:

Thomas I. Shields, Jr., Manager  
2014 Goose Creek Road, Suite 104  
Waynesboro, Virginia 22980

The Association:

G. William Watkins, Registered Agent  
Allen & Carwile, P.C.  
P. O. Drawer 1558  
Waynesboro, Virginia 22980

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

**ARTICLE X.  
DISSOLUTION OF THE ASSOCIATION**

The Association may be dissolved with the written consent of seventy-five percent (75%) of the Class A Members and the consent of the Class B Member, upon the conveyance of the Storm Water Management Facilities to any nonprofit corporation, association, trust, or other organization or governmental entity devoted to similar purposes and approved by the County.

IN WITNESS WHEREOF, the Developer, Ivy Ridge Developers, LLC, has caused this Declaration to be executed by its Manager, Thomas I. Shields, Jr., pursuant to a resolution adopted in accordance with the Operating Agreement of the limited liability company and the laws of the Commonwealth of Virginia.

Ivy Ridge Developers, LLC, a Virginia limited liability company

By: Thomas I. Shields, Jr.  
Thomas I. Shields, Jr., Manager

STATE OF VIRGINIA, AT LARGE  
CITY/COUNTY OF Westmoreland, TO-WIT:

Thomas I. Shields, Jr., Manager of Ivy Ridge Developers, LLC, a Virginia limited liability company, acknowledged the foregoing instrument before me this 24 day of February, 2011.

Julia Martin  
Notary Public

My Commission Expires: \_\_\_\_\_

JULIA MARTIN  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. # 7123080  
My Commission Expires 11-30-11

INSTRUMENT #110001784  
RECORDED IN THE CLERK'S OFFICE OF  
AUGUSTA COUNTY ON  
MARCH 3, 2011 AT 11:16AM

JOHN B. DAVIS, CLERK  
RECORDED BY: JWD

**IVY RIDGE ESTATES  
STORM WATER AGREEMENT**

**THIS AGREEMENT**, made as of this 14<sup>th</sup> day of February, 2011, by and between **IVY RIDGE DEVELOPERS, LLC**, a Virginia limited liability company, party of the first part, Grantor, hereinafter called the "Developer"; and the **COUNTY OF AUGUSTA**, a political subdivision of the Commonwealth of Virginia, party of the second part, Grantee, hereinafter called the "County";

OF OF WITNESSETH TO TO TO

**WHEREAS**, the Developer is the owner of certain real estate situated in South River District, Augusta County, Virginia, containing 53.284 acres as described on a plat entitled "Plat of 53.284 Acres of Land Presently in the Name of Thomas I. Shields, Jr. & Jennifer S. Shields South River District, Augusta County, Virginia", dated March 1, 2004, made by Lotts, Austin & Associates, Surveying, Engineering and Planning, P.C. (Barry E. Lotts, L.S.), attached to a Confirmation of Plat dated March 1, 2004, and recorded in the Augusta County Circuit Court Clerk's Office as Instrument No. 040003981 and incorporated herein by this reference (the "Property"); and

**WHEREAS**, in accordance with the Preliminary Plat dated July 30, 2010, revised October 21, 2010, and approved by the County (the "Preliminary Plat"), the Developer has submitted to the County a final plat for the first section of the development of a portion of the Property to be known as **Ivy Ridge Estates, Section One** (the "Subdivision"), which first section contains 8.889 acres of land; and

**WHEREAS**, the Subdivision shall contain residential and related uses permitted under the terms of the Zoning District Regulations of Augusta County, Virginia, with access to Roxbury Drive directly and over internal streets to be dedicated to public use and accepted for maintenance by the Virginia Department of Transportation as part of the Augusta County secondary road system; and

**WHEREAS**, the Developer intends to submit the Property to the terms of the Ivy Ridge Estates Declaration of Covenants, Conditions and Restrictions of even date herewith approved by the County and to be recorded in the Augusta County Circuit Court Clerk's Office immediately following this Agreement (the "Declaration"); and

**WHEREAS**, the terms used in this Agreement and not defined herein shall

THIS INSTRUMENT WAS PREPARED BY  
**ALLEN & CARWILE, P.C.**  
WAYNESBORO, VIRGINIA

mean and refer to the same terms as used in the Declaration; and

**WHEREAS**, the Developer desires to execute a Storm Water Agreement to cover all proposed future subdivisions of the Subdivision which will be created by final plats and approved by the County for recordation; and

**WHEREAS**, the Developer desires that the roads in the Subdivision be taken into and be made a part of the Secondary Highway System of the Commonwealth of Virginia and be maintained by the Department of Transportation; and

**WHEREAS**, the Department of Transportation will not accept new roads in new subdivisions into the Secondary Highway System until there shall be a continuous drainage easement from such roads to natural watercourses or an executed agreement with the appropriate governing body, whereby an association of owners of lots or parcels within the Subdivision shall assume the responsibility for the future maintenance and operation of the method determined by the Commonwealth as satisfactory for handling the storm drainage; and

**WHEREAS**, both the Developer and the County acknowledge that this standard is desirable to assure safe thoroughfares for the traveling public, with maximum security to neighboring landowners; and

**WHEREAS**, the County has adopted a general policy regarding the handling of storm waters resulting from development occurring in Augusta County which permits the use of storm water management facilities, provided such facilities are designed to the prescribed criteria and the Developer is obligated to construct, maintain and operate such facilities within the Subdivision until not less than ninety percent (90%) of the lots in the Subdivision have been built upon and made ready for occupancy; and

**WHEREAS**, in consideration of the approval by the County of the subdivision of each section of the Subdivision, the Developer has agreed to assume the obligation of constructing, maintaining and operating such storm water management facilities as are set forth in the Preliminary Plat (the "Storm Water Management Facilities") within the Subdivision until not less than ninety percent (90%) of the lots in the Subdivision have been built upon and made ready for occupancy, to establish a property owners association in accordance with the terms of the Declaration to be composed of all of the owners of the lots or parcels within the Subdivision to assume the responsibility for the future maintenance and operating of said facilities, and to transfer said facilities to

the property owners association when not less than ninety percent (90%) of the lots in the Subdivision have been built upon and made ready for occupancy.

**Now, THEREFORE**, in consideration of the premises and the mutual covenants hereof, the parties agree as follows:

1. *Organization of Association and Transfer of Storm Water Management Facilities.* The Developer shall organize and incorporate the Ivy Ridge Estates Homeowners Association for the purposes of future maintenance and operation of the Storm Water Management Facilities and such other purposes as may be determined by the Developer within the Subdivision and shall grant and convey such Facilities to the Association not later than the date upon which at least ninety percent (90%) of the lots have been built upon and made ready for occupancy and the County has approved the construction and maintenance of such Facilities for transfer to the Association.

2. *Construction of Storm Water Management Facilities.* The Developer shall construct or cause to be constructed, at no cost to the County or the Association, Storm Water Management Facilities adequate to intercept the peak storm water run-off within the Subdivision expected to recur on an average of once in twenty-five (25) years and discharge it at a 10 year pre-developed storm rate. In addition, there will be no increase in runoff between the 2-year post- and pre-developed storms. Emergency spillways shall be designed based on a 100-year frequency storm and channels or pipes associated with drainage easements shall be designed based on a 10 year post-developed storm and in accordance with Chapter 18 of the Code of Augusta County relating to the Regulation of Storm Water, except that where water is intended to reach a storm water management basin, the channels, pipes, or combination thereof shall be designed based on a 25 year post-developed storm.

3. *Maintenance of Storm Water Management Facilities.* The Developer shall maintain or cause to be maintained, at no cost to the County, all Storm Water Management Facilities so as to permit them to function as designed and in such a manner as not to result in nuisances, health or safety hazards, or damage by reason of increased drainage, to property in the area to be affected. Without limiting the generality of the foregoing, the Developer shall remove or cause to be removed debris and cut or cause to be cut any trees, bushes, shrubbery or grass within the Storm Water Management Facilities as may be required by the County's minimum maintenance standards, repair or cause to be repaired any Facilities eroded by storm water and take or cause to be taken any other similar action reasonably necessary to keep the Facilities in good,



clean, attractive, and sanitary condition, order and repair. In the event of the Developer's failure to perform these obligations, the County may enter the Lots, remove the debris, mow the plant growth, repair and maintain the Facilities, charge the cost or expense thereof, plus an administrative fee of \$100.00, to the Developer and collect the same as taxes and levies are collected.

4. *Third Party Easements.* The Developer shall secure all easements from third parties necessary for the construction and maintenance of the Storm Water Management Facilities and complete the construction of such Facilities before requesting the addition of streets in the Subdivision to the Secondary Highway System.

5. *Eminent Domain.* The Developer shall indemnify the County and hold it harmless from (i) any and all claims that may arise under Article 1, Section II, of the Revised Constitution of Virginia or any other law for taking and/or damaging property of any and all landowners who might be adversely affected by storm water drainage from the Subdivision and (ii) any and all costs or expenses incurred as a result of the denial, settlement and/or litigation of such claims.

6. *Storm Water Damage to Public Roadways.* The Developer shall reimburse the County for repairs to public roadways damaged because of the lack of an adequate design and/or proper maintenance of the Storm Water Management Facilities.

7. *Future Development in the Watershed.* The Developer shall not undertake any future development in the watershed upstream of the Storm Water Management Facilities before making adequate provisions, as are mutually agreed upon by the County and the Developer, for the anticipated increased run-off caused by such future development.

8. *No Assumption of Liabilities by County.* Notwithstanding any provisions in this Agreement to the contrary, the County shall not assume any liabilities, expenses or costs of any landowner or the Developer with respect to any liabilities to or claims by third parties that may result from any lack of an adequate design or proper maintenance of the Storm Water Management Facilities.

9. *County Inspections.* Before transferring the Storm Water Management Facilities to the Association, the Developer shall notify the County in writing so that the County may inspect and approve such Facilities before the Association assumes all maintenance responsibilities. Following such inspection, the County shall notify the Developer and the Association of any

deficiencies found. The Developer shall correct or cause to be corrected any reported deficiencies before transferring the Storm Water Management Facilities to the Association. At any time before or after such transfer and during the term of the Declaration, the County may conduct periodic inspections of the Storm Water Management Facilities and shall notify the Developer or the Association, as appropriate, of each inspection and any deficiencies found. The Developer and/or the Association shall correct any reported deficiencies.

10. *Termination of Developer's Obligations.* The Developer's obligations under this Agreement shall terminate upon transfer of the Storm Water Facilities to the Association, which transfer shall occur when (i) ninety percent (90%) of the lots in the Subdivision have been built upon and made ready for occupancy or (ii) all of the Storm Water Management Facilities have been constructed to serve the Subdivision, whichever last occurs, and the County has approved the construction and maintenance of such Facilities for transfer to the Association. Upon such transfer, and as a condition thereof, the Association shall be deemed to have assumed the obligations under this Agreement. Until such time, the Developer's performance of any of its obligations to the County and the County's enforcement of its rights against the Developer arising under this Agreement shall not compromise any claim or right of indemnity available to the Developer against the Association arising from the failure of the Association to perform its obligations under the Declaration.

11. *Successors and Assigns.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

Ivy Ridge Developers, LLC

By: Thomas I. Shields, Jr.  
Thomas I. Shields, Jr., Manager

County of Augusta, Virginia

By: Timothy Fitzgerald  
Timothy Fitzgerald, Director of  
Community Development

STATE OF VIRGINIA, AT LARGE  
CITY/COUNTY OF Warren, TO-WIT:

The foregoing instrument was acknowledged before me this 24 day of February, 2011, by Thomas I. Shields, Jr.

Julia Martin  
Notary Public

My Commission Expires: \_\_\_\_\_

JULIA MARTIN  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7123060  
My Commission Expires 11-30-11

STATE OF VIRGINIA, AT LARGE  
CITY/COUNTY OF Augusta, TO-WIT:

The foregoing instrument was acknowledged before me this 2nd day of March, 2011, by Timothy Fitzgerald, Director of Community Development.

Jessica T. Staples  
Notary Public

My Commission Expires: 11/30/2014



INSTRUMENT #110001783  
RECORDED IN THE CLERK'S OFFICE OF  
AUGUSTA COUNTY ON  
MARCH 3, 2011 AT 11:14AM

JOHN B. DAVIS, CLERK  
RECORDED BY: JWD