

After recording return to:
102 W. Main Street
Prattville, AL 36067

BOOK: _____
PAGE: _____

**STATE OF ALABAMA
COUNTY OF AUTAUGA/ELMORE**

**REGIONAL DETENTION USE
STORMWATER OPERATION AND
MAINTENANCE AGREEMENT AND
GRANT OF EASEMENT**

THIS REGIONAL DETENTION USE STORMWATER OPERATION AND MAINTENANCE AGREEMENT AND GRANT OF EASEMENT is made and entered into on this the ___ day of _____, 20___, pursuant to the Post-Construction Stormwater Ordinance, Number 2018-008 of the City Code of the City of Prattville, by _____, a _____) (hereinafter known as the “Developer”), for the benefit of the City of Prattville (the “City”).

RECITALS:

A. WHEREAS, the Developer wholly owns certain land lying within the city limits of Prattville described in Exhibit A attached hereto (the “Property”), and upon which Developer intends to construct improvements; and

B. WHEREAS, the development of the Property will require the use and/or construction of a Stormwater Best Management Practices Structure (BMPs), including stormwater detention ponds or other stormwater control structures, as necessary, and in accordance with approved plans, specifications, and applicable manuals, to serve the Property; and

C. WHEREAS, the Developer has applied to the City for the issuance of a Post-Construction Stormwater Permit (“Permit”), which will allow Developer to construct, maintain, inspect and operate the BMPs or any BMPs utilized by this Developer; and

D. WHEREAS, the City desires to ensure that the BMPs is properly constructed, utilized regionally by more than one developer, maintained and operated in accordance with the Permit and all other applicable ordinance provisions, and, therefore, requires the execution of this Agreement by Developer prior to issuance of a Certificate of occupancy or final plat approval.

NOW, THEREFORE, in consideration of the benefits to be derived by the Developer in obtaining the Permit and developing the Property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby agree as follows:

1. Purpose. The Developer who is signing on to this Agreement expressly acknowledges that it bears sole responsibility for the structural BMP regardless if there are other entities or individuals utilizing such. Therefore, any issues which may arise regarding the structural BMP are the sole responsibility of the Developer who is signed to this Agreement. Any disputes between the Developer and any other individual or entity who uses the structural BMP are to be addressed between those parties only. The Developer who agrees to the terms herein bears ultimate responsibility to the City.

2 Generally. Regional Detention Use refers to scenarios in which the Developer will be sharing or “regionally using” BMPs which are subject to the provisions of the Post-Construction Stormwater Ordinance, Number 2018-008. In these situations, there will be a “Primary” Developer who will initially construct the regional use BMPs and may be at least one secondary developer, who will be sharing the BMPs constructed by the Primary Developer. The Primary Developer may allow one or more secondary developers to use their structural BMP so long as such use complies with all applicable codes, regulations, and ordinances. The Primary Developer shall construct the BMPs in accordance with the Permit and the plans and specifications for the Stormwater Control System, as approved by the City, and the Primary Developer shall, thereafter, operate and maintain the BMPs in accordance with applicable Permit provisions, the plans and specifications, the Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Site and Urban Areas Volume I and II, and all other applicable law.

3 Transfers. Primary Developer agrees that it shall not transfer ownership and/or control of the BMPs until construction has been completed in accordance with the Permit, and the Administrator has approved the completed construction. If Developer, thereafter, desires to transfer ownership and/or control of the Stormwater Control System, Developer and the proposed transferee shall first request that the Permit be re-issued to the proposed transferee. Any secondary developer or user must have a written agreement with the Primary Developer to ensure to the satisfaction of the City that said secondary developer is making lawful use of the structural BMP. The City may require copies of such agreement(s) as part of the permitting process of any future secondary developer or user of the structural BMP.

Primary Developer shall remain solely responsible for the operation and maintenance of the BMPs until the Permit has been reissued to the proposed transferee, at which time the Primary Developer shall be released from any obligations, hereunder arising, from events or circumstances occurring, thereafter. The Primary Developer’s responsibility remains even if there are multiple secondary developers or users of the structural BMP.

4 Right to Construct and Maintain. If the Primary Developer for any reason, or at any time, fails, within thirty (30) days after receiving written notice, to complete construction or maintain the BMPs as required by this Agreement, or the Permit, the City may complete such construction or perform such maintenance, and the Primary hereby agrees to pay the City or other governmental authority all reasonable costs incurred, and grants and conveys to the City a lien on the Property subordinate only to the lien of any mortgages/deeds of trust now or, hereafter, encumbering the Property. Primary Developer warrants that the lien created by this paragraph has no less than a second priority status, excluding ad valorem property tax and other statutory liens. The City may bring an action at law against the Primary Developer to pay any such sums coming due hereunder or foreclose the lien created herein against the Property in the same manner as prescribed by the laws of the State of Alabama for the foreclosures of mortgages/deeds of trust. Interest at the legal rate, costs, and reasonable attorneys’ fees for representation of the City in such action or foreclosure shall be added to the indebtedness secured by such lien. Upon removal of the BMPs in accordance with applicable law, any applicable provisions of the Permit, and upon inspection and approval of the same by the Administrator, the lien herein granted and conveyed to the City shall be of no further force and effect.

5 Easement for Inspection, Construction and Maintenance. The Primary Developer and any subsequent user of the structural BMP hereby grants and conveys to the City, a non-exclusive easement or easements (“Easement”) across those portions of the Property necessary for inspection, completion of construction, monitoring, maintenance, repair, and reconstruction of the Stormwater Control System, as shown on Exhibit B. This Easement shall terminate upon the

removal of the BMPs in accordance with applicable law and any applicable provisions of the Permit, regulations and procedures, the permit and approval plans, and the inspection and approval of the removal by the Administrator.

Nothing herein contained shall be deemed a gift or dedication of any portion of the Property described herein to the general public or for any public use or purpose, whatsoever, it being the intent of the parties that this Easement shall be strictly limited to, and for the purposes, herein, expressed, and shall be solely for the benefit of the parties, hereto, and their respective heirs, successors, and assigns, and successors in title to their respective properties.

The Primary and Secondary Developer, hereby, agree to release, indemnify, defend, and hold the City, its officials, officers, agents, and employees, harmless from any and claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys' fees, and costs of litigation, of any nature, whatsoever, including claims for special and consequential damages, arising out of, or in any way related to, the BMPs and/or the City's entry onto the Property and use of the Easement, thereupon.

6 Restrictive Covenant. All future transferees of the Property shall be subject to the restrictive covenant that they will construct, maintain, repair, and reconstruct the BMPs in conformance with the applicable laws, the Permit, and this Agreement. Such restrictive covenants shall run with the land, provided, however, that with the approval of the Administrator, the Primary and Secondary Developer may transfer all responsibilities and obligations, hereunder, to another entity having the legal and financial ability and authority to assure fulfillment of Developer's responsibilities under the Permit and this Agreement.

7 Notice. Any notice which any party, hereto, may send to the other pertaining to this Agreement shall be in writing and shall be considered delivered when deposited in the United States mail, certified with postage pre-paid. The addresses are as stated below:

City of Prattville
Stormwater Department
102 West Main Street
Prattville, AL 36067

8 Modification and Amendment. This Agreement may only be amended by a written agreement signed by City and both the Primary Developer or their respective successors and assigns. This Agreement contains the entire agreement between the parties. There are merged, herein, all prior and collateral representations, promises, and conditions, in connection with the subject matter, hereof. Any representation, promise, or condition not incorporated, herein, shall not be binding upon either party.

9 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will, in no way, affect any other provisions, which shall remain in full force and effect.

10 Beneficiaries of this Agreement. The City is the governmental authority which has jurisdiction over Stormwater Management Permit issuance, and shall be deemed to be a beneficiary of this Agreement, both in its own right, and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor, or for whose benefit, this Agreement has been provided. This Agreement shall run in favor of the City for the entire period during which this Agreement shall be in force and in effect, without regard to whether the City has, at any time, been, remains, or is an owner of the Property or any portion, thereof. The City shall have the right, in the event of any breach of this Agreement, following notice and a reasonable period to cure, to exercise all the rights and remedies, and to maintain any action or suits at law or in equity, or other proper proceedings, to enforce the curing of such breach of this Agreement to which it may be entitled.

11 Caption Headings. The headings and captions used in this Agreement are used for convenience, only, and shall not be deemed to limit, amplify, or modify the terms of this Agreement.

12 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Alabama. Venue for any litigation pertaining to this Agreement shall be laid in the state of Alabama Circuit court having jurisdiction.

13 Binding Effect. The parties agree that the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties, their heirs, executors, administrators, successors in interest, and assigns.

14 Recording. A copy of this Agreement and any modification, thereof, shall be filed in the office of the Autauga county or Elmore county Judge of Probate and in the office of the Stormwater Administrator.

TO HAVE AND TO HOLD the aforesaid Easement and all privileges and appurtenances thereunto belonging to City, and its successors and assigns. Primary Developer covenants that it is seized of the aforesaid premises in fee, has the right to convey the Easement hereby granted, that the same are free from encumbrances, and that it will warrant and defend said title to said Easement against the claims of all persons, whomsoever and whatsoever, except as to any easements, restrictions, or conditions of record.

IN WITNESS, WHEREOF, Developer has caused this Agreement to be executed under seal, the day and year first above written.

Corporation

IN WITNESS WHEREOF, _____ has hereunto set
its hand and corporate seal, this _____ day of _____, _____.

CORPORATION NAME: _____

BY: _____

ITS: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that
_____, Whose name is signed to the foregoing conveyance, and who
is known to me, acknowledged before me of this day that, be informed of the contents of said
conveyance, _____ in such capacity as _____
executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of
_____, _____.

NOTARY PUBLIC
My Commission Expires: _____

(SEAL)

City of Prattville
BY: _____
Dale Gandy
Director of Public Works

Limited Liability Corporation

IN WITNESS WHEREOF, the party hereto has set their respective hand on the first date written above.

LLC NAME: _____

Attested, Signed, Sealed and Delivered
in the presence of:

MEMBER: _____

BY: _____

ITS: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that _____, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me of this day that, be informed of the contents of said instrument, _____ in such capacity as _____ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____

MANAGER: _____

BY: _____

ITS: _____

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that _____, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me of this day that, be informed of the contents of said instrument, _____ in such capacity as _____ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____

City of Prattville
BY: _____
Dale Gandy
Director of Public Works

Individual

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that _____, Whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me of this day that, be informed of the contents of said conveyance, _____ in such capacity as _____ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

NOTARY PUBLIC
My Commission Expires: _____

(SEAL)

City of Prattville
BY: _____
Dale Gandy
Director of Public Works

EXHIBIT A

EXHIBIT B