



## MAINTENANCE ESCROW AGREEMENT

For Stormwater Best Management Practices Structures

Permit # \_\_\_\_\_

**THIS AGREEMENT** made pursuant to the City of Prattville Post Construction Stormwater Management Ordinance, and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and among The CITY OF PRATTVILLE, a Alabama municipal corporation, party of the first part (hereinafter referred to as "CITY") and \_\_\_\_\_ (hereinafter referred to as "Developer") and \_\_\_\_\_ (hereinafter referred to as the "Association" )or any other legal entity responsible under this agreement, parties of the second part, hereby designate \_\_\_\_\_, as Escrow Agent party of the third part (hereinafter called "Escrow Agent"), with its principal place of business at \_\_\_\_\_, and in connection with the Stormwater Management System(s) of the \_\_\_\_\_ project at \_\_\_\_\_.

### WITNESSETH:

**WHEREAS**, the Post Construction Stormwater Management Ordinance of the CITY, requires the establishment of an escrow account to ensure that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction of Stormwater Best Management Practices Structures, as defined in section 19 of the City Code (hereinafter "BMPs") (such as, but not limited to, sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction).

**WHEREAS**, the Post Construction Stormwater Management Ordinance of the CITY, requires both an initial Developer contribution (the "Initial payment) and either Association payment of annual funds to fund the escrow account (if it has taken ownership) or annual payment by the developer if it still retains ownership of the BMPs.

**WHEREAS**, the Post Construction Stormwater Management Ordinance of the CITY requires the Developer to pay into the escrow account an initial payment equal to ten (10) percent of half the initial construction cost of the BMPs prior to plat recordation or issuance of construction permits.

**WHEREAS**, the Post Construction Stormwater Management Ordinance of the CITY requires the Association, if it has taken ownership or legal or managerial authority/control, or Developer, if it still retains ownership and legal and managerial authority/control of the structure, if construction has not been finally completed in accordance with the Post Construction Stormwater Management Permit (the "Permit"), if the Administrator has not approved the completed construction, if the Developer has not complied with all annual inspections required by the City, if the Permit has not been reissued to the Association, or if all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have not been constructed or transferred to the Association, to pay into the

escrow account an amount satisfactory to support the operation, maintenance and annual inspection of the BMPs), as defined in section 19 of the City Code and as indicated by the approved estimate, according to the following schedule: ten (10) percent of half the initial construction cost shall be deposited to establish the escrow account, after that ten (10) percent shall be deposited into the escrow account annually, and the full amount shall be deposited within ten years following initial construction.

**WHEREAS**, the Developer is developing a property to be maintained by a homeowners association, property owners association, or similar entity, known as the \_\_\_\_\_, and desires to provide the CITY a financial guarantee to assure that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair and replacement/reconstruction of BMPs at \_\_\_\_\_ and has established an Escrow Account for such purpose.

**WHEREAS**, the parties have agreed that the Escrow Agent is acceptable to all parties to act in such capacity;

**NOW, THEREFORE**, in consideration of the foregoing premises, it is hereby agreed:

1. The Developer acknowledges the total sum required to be paid, pursuant to this Escrow Agreement, is \_\_\_\_\_, to guarantee that the Developer acknowledges the total sum required to be paid, to guarantee that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction (sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) of BMPs, as required by the Post Construction Stormwater Management Ordinance of the CITY of Prattville and in accordance with approved construction plans and specifications, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Alabama Handbook for Erosion Control Sediment Control and Stormwater Management, and the Permit (as those terms are defined in the Operation and Maintenance Agreement).

2. The Developer has deposited in escrow the sum of \$ \_\_\_\_\_ with the Escrow Agent, to guarantee that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction (sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) of BMPs, as required by the Post Construction Stormwater Management Ordinance of the CITY of Prattville and in accordance with approved construction plans and specifications, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Alabama Handbook for Erosion Control Sediment Control and Stormwater Management, and the Permit (as those terms are defined in the Operation and Maintenance Agreement).

3. The Escrow Agent agrees to hold said funds and to pay out said funds only upon receipt of "Proper Authorization", as hereinafter defined. "Proper Authorization" shall mean authority in written form from the City of Prattville, stating to which party funds shall be disbursed and in what amount. The document will be executed by a city official, stating his/her office and that he/she is duly authorized to issue the "Proper Authorization", and the official's signature shall be notarized. Escrow Agent is limited to an obligation to pay the funds as directed in the "Proper Authorization" and is not to render any judgment or exercise any discretion concerning the reason for the disbursement, the amount, or to whom

it is to be made.

The CITY and the Developer and/or the Association acknowledge that disbursements are to be either:

(a) To the Association, or to any party designated in writing by the Association, upon delivery of "Proper Authorization" from the City of Prattville authorizing such payment. The City of Prattville, through the Stormwater Department, shall issue such "Proper Authorization" if the City approves the expenditure.

(b) To the City of Prattville upon delivery of a "Proper Authorization" from the Stormwater Department of the CITY, upon its determination that the BMPs are not performing adequately or as intended, or are not properly maintained in accordance with the Post Construction Stormwater Management Ordinance, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Alabama Handbook for Erosion Control Sediment Control and Stormwater Management, or the Permit (as those terms are defined in the Operation and Maintenance Agreement), and the City of Prattville has determined that, pursuant to the Ordinance, it must take over and perform any such uncompleted operation, maintenance, inspections, repairs, and replacement/reconstruction, and use the escrow funds on deposit with the Escrow Agent for such purposes.

4. The Developer or the Association, whichever is responsible, agrees to comply with the requirement of the Ordinance that any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to originally fund the escrow account by the Association.

5. The Escrow Agent, hereby, acknowledges that it will hold the funds referred to in Items 1 and 2 above and represents that it has no obligation, as it relates to the terms of this agreement, to any of the parties hereto, except to release said funds within 10 (ten) calendar days upon delivery of "Proper Authorization" from the City of Prattville, in the amount and to the party so indicated in the "Proper Authorization", and the Developer or Association does, hereby, release and hold the Escrow Agent harmless from any and all claims whatsoever by it against the Escrow Agent for releasing such funds to the City of Prattville, in accordance with the terms of this Agreement. Escrow Agent agrees to use commercially reasonable best efforts to comply with the terms of this Agreement. The City of Prattville, Developer, and Association all agree to release Escrow Agent of any liability and the Developer and the Association agree to hold Escrow Agent harmless from any and all claims for any actions taken pursuant to the funds in this Escrow Account; provided that the City, the Developer, and the Association agree to the foregoing if and only if, and only to the extent that, the disbursement of funds has been made in accordance with a Proper Authorization by the City of Prattville. The Escrow Agent retains the ability to terminate this agreement providing a 15 (fifteen) business-day advance notice to the CITY and to the Developer or Association. In the event of such termination by the Escrow Agent, the funds in the Escrow Account will be disbursed according to the City's instruction, contained in a "Proper Authorization", if such is provided, or otherwise, as instructed by the City. If the Escrow Agent solicits instruction from the City and none is provided, within 15 (fifteen) business days of the Escrow Agent's written request, then, the Escrow Agent, will disburse the funds in the Escrow Account by check delivered to the CITY, payable

jointly to the CITY and the Association.

6. In the event that this escrow agreement should fail for any reason to cover the costs of operation, maintenance, inspection, repair, and replacement/reconstruction, including any deficiency as to form or execution, then, the Developer, the Association, and their successors, transferees, or assigns, acknowledge that whichever party is deemed responsible by the CITY is subject to being charged for the costs of such maintenance and repair, and such costs shall be enforced in the nature of a debt as provided by the applicable Ordinances and State laws, provided that, once construction has been finally completed in accordance with the Permit, the Stormwater Director has approved the completed construction, the Developer has complied with all annual inspections required by the City, the Permit has not been reissued to the Association, or all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have been constructed or transferred to the Association, the Developer shall no longer be responsible for any obligations arising from events or circumstances occurring after the date the BMP is transferred and the Permit is reissued.

**IN WITNESS WHEREOF**, the parties have hereto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

{SIGNATURES APPEAR ON THE FOLLOWING PAGES.}

# Corporation

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

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF ALABAMA  
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 \_\_\_\_\_ respective hand on the first date written above.

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

\_\_\_\_\_

MEMBER:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

MANAGER:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF ALABAMA  
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 \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

(SEAL)

City of Prattville  
BY: \_\_\_\_\_  
Dale Gandy  
Director of Public Works

# Individual

STATE OF ALABAMA  
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

