

**LEE COUNTY
STATE OF ALABAMA**

**POST CONSTRUCTION STORMWATER
MANAGEMENT MAINTENANCE AGREEMENT**

This Post-Construction Stormwater Management Maintenance Agreement (the “Agreement”) to be entered into this the ____ day of _____, 20__, by and between (insert full name of owner(s)) (hereinafter referred to as the “Owner(s)”) and the City of Opelika, Alabama, (hereinafter referred to as the “City”).

WHEREAS, the Owner (whether one or more) is the owner of real property described on Exhibit “A” (hereinafter referred to as the “Property”); and

WHEREAS, the Owner is providing a stormwater management system consisting of the stormwater best management practices and strategies as shown and described in the Post-Construction Best Management Practices Plan (“Post-BMP Plan”) on file with the Engineering Department of the City of Opelika, which is hereby incorporated by reference into this Agreement;

WHEREAS, the City and the Owner, its successors, and assigns, including any homeowners’ association, agree that the health, safety, and welfare of the residents of the City require that on-site stormwater management facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management facilities as shown in the Post-BMP Plan be constructed and adequately maintained by the Owner, its successors, and assigns, including any homeowners’ association; and

WHEREAS, to comply with the City’s Post-Construction Stormwater Management Ordinance, codified as Article IV of Chapter 7 of the *Code of Ordinances*, the Owner has agreed to maintain the stormwater best management practices and strategies in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties, the parties hereby agree as follows:

**MAINTENANCE PLANS FOR STORMWATER BEST MANAGEMENT PRACTICES
AND STRATEGIES**

1. The Owner, its successors and assigns, including any homeowners’ association, agrees to maintain in perpetuity the stormwater best management practices and strategies in accordance with the approved Post-BMP Plan on file with the Engineering Department, in a manner that will permit the stormwater best management practices and strategies to perform the purposes for which they were designed and constructed, and in accordance with the standards by which they

were designed and constructed, all as shown and described in the approved Post-BMP Plan and the drawings, maps and other exhibits attached thereto. This includes all pipes and channels built to convey stormwater to the stormwater best management practices and strategies as well as detention/retention ponds, structures, improvements, and vegetation provided to control the quantity and quality of stormwater. For purposes of this Agreement, the terms “best management practices” or “BMP” and “Post-Construction Strategies” shall have the meanings assigned to them in Section 7-102 of the *Code of Ordinances* of the City of Opelika.

The Post-BMP Plan shall not be modified without written approval from the City.

2. The Owner shall perform all maintenance in accordance with the Post-BMP Plan and shall complete all repairs identified through regular inspections, and additional repairs as requested in writing by the City.

INSPECTION AND REPAIRS OF STORMWATER BEST MANAGEMENT PRACTICES AND STRATEGIES

3. The Owner shall inspect all stormwater best management practices and strategies identified in the Post-BMP Plan at least once per year or more frequently if specified in the Post-BMP Plan.
4. Inspection reports shall be prepared and filed with the Opelika Engineering Department, stormwater division for stormwater best management practices and strategies located at the Property and shall include those items specified in the approved Post-BMP Plan. The owner/responsible party shall include a date stamped photo of all structures if present. Owner/Responsible party shall keep past reports for a minimum of three (3) years.
5. All stormwater best management practices and strategies, including those built underground and/or physically located in, on or under building structures, will by easement, provide that the City, its employees, and authorized agents, may enter the Property to inspect all aspects of the stormwater best management practices and strategies whenever the City deems necessary. The City shall provide the Owner copies of the inspection findings and a directive to commence with repairs if necessary.
6. The Owner shall make all repairs within ninety (90) days of their discovery through Owner inspections or through a request from the City. If repairs will not occur during this ninety-day period, the Owner must receive written approval from the City for an alternate repair schedule.

7. In the event of any default or failure by the Owner to maintain the stormwater best management practices and strategies in accordance with the approved design standards and the Post-BMP Plan as determined by the City, or in the event of an emergency as determined by the City, it is within the sole discretion of the City, after providing reasonable notice to the Owner, to enter the Property and take whatever steps necessary to correct deficiencies and to charge the cost of such repairs to the Owner. The Owner shall reimburse the City within thirty (30) days upon demand for costs expended by the City in performing such necessary maintenance or repairs and shall constitute a lien against the properties of the Owner, its successors, and assigns. Nothing herein shall obligate the City to maintain the stormwater best management practices and strategies.

INDEMNIFICATION

8. The Owner hereby agrees that it shall save, hold harmless and indemnify the City and its employees and officers from and against all liability, losses, claims, demands, costs and expenses arising from, or out of, the fault or failure by the Owner to maintain the stormwater best management practices and strategies, in accordance with the terms and conditions set forth herein, or from acts of the Owner arising from, or out of, the construction, operation, repair or maintenance of the stormwater best management practices and strategies.
9. The parties hereby expressly do not intend by execution of this Agreement to create in the public, or any member thereof, any rights as a third-party beneficiary or to authorize anyone not a party hereof to maintain a suit for damages pursuant to the terms of this Agreement.

COVENANT

10. This Agreement shall be a covenant that runs with the Property and/or equitable servitude and shall inure to the benefit and shall be binding upon the parties hereto, their respective heirs, successors and assigns and all subsequent owners of the Property, in perpetuity.
11. Upon execution of this Agreement, it shall be recorded in the Probate Office of Lee County, Alabama.

AMENDMENT AND TERMINATION

12. This Agreement shall be amended or terminated only by written consent of the Owner or Transferee and the City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF OPELIKA, ALABAMA,
a municipal corporation

By: _____
Its: Mayor

ATTEST:

City Clerk

OWNER

By: _____
Its: _____

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that GARY FULLER and RUSSELL A. JONES, whose names as Mayor and City Clerk respectively, of the City of Opelika, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me this day, that, being informed of the contents of said instrument they, as such officers and with full authority, executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal of office this the ____ day of _____, 20__.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

STATE OF ALABAMA }
COUNTY OF LEE }

I, the undersigned notary public in and for said county in said state, hereby certify that _____ whose name as _____ of _____, a corporation, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this _____ day of _____, 20__.

NOTARY PUBLIC
My commission Expires: _____