

STATE OF ALABAMA)

SHELBY COUNTY)

EASEMENT AGREEMENT

This is an Easement Agreement by and between **PEAK, INC. D/B/A OIL EXPRESS**, a(n) Alabama corporation, (the "Grantor"), and **ELI'S, INC.**, an Alabama corporation, (the "Grantee").

RECITALS:

A. James F. Donovan and Dorothy H. Donovan (collectively the "Owner") own certain property situated in Shelby County, Alabama more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property").

B. Pursuant to that certain Lease Agreement between Grantor and Owner dated March 22, 1995 (the "Lease"), Grantor leases from Owner the eastern approximate one-half of the Property, which leased property is more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Grantor's Property").

C. Grantee leases from Owner the western approximate one-half and remainder of the Property, which property is more particularly described on **Exhibit C** attached hereto and made a part hereof (the "Grantee's Property").

D. Grantee is the owner of the properties situated immediately to the east and west of and adjacent to the Property, which adjacent properties are more particularly described on **Exhibit D** attached hereto. Grantee's Property and the property situated immediately to the west of Grantee's Property and described as Parcel 1 on **Exhibit D** (popularly known as Lloyd's Restaurant) are hereinafter collectively referred to as the "Benefitted Properties."

E. Grantor has created for its own use and benefit a service road approximately 30 feet in width and 120 feet in length located on Grantor's Property, which service road provides access to Grantor's Property from U.S. Highway 280 (the "Service Road") and is more particularly described on **Exhibit E** attached hereto.

F. Grantee desires to extend the Service Road to Grantee's Property.

G. Grantor desires to grant to Grantee a non-exclusive easement along the Service Road for purposes of vehicular and pedestrian ingress and egress to and from U.S. Highway 280.

Inst # 1996-32294

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NOW, THEREFORE, in consideration of the sum of Three Thousand Dollars (\$3,000) and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor and Grantee hereby agree as follows:

1. **Access Easement:**

(a) The Grantor, to the full extent of its interest in Grantor's Property, does hereby grant, bargain, sell and convey unto Grantee, its sublessees, tenants, successors and assigns, for and during the term of the Lease, a nonexclusive easement (the "Easement") for purposes of vehicular and pedestrian ingress and egress to and from the Benefitted Properties across, through and along the Service Road.

(b) The Easement described above (i) shall be for and during the term of the Lease and any extension or renewal thereof, (ii) shall be appurtenant to and shall serve and run with title to the Benefitted Properties, (iii) shall be binding on Grantor, its sublessees, tenants, successors and assigns, (iv) shall constitute a burden on the Property and (v) shall be for the benefit and use of Grantee, its sublessees, tenants, successors, assigns, assignees, licensees, employees and invitees.

2. **Repair, Maintenance and Replacement:**

(a) Grantor shall maintain, or cause to be maintained, the Service Road in good order and repair and Grantee shall reimburse Grantor, or shall cause the Grantor to be reimbursed for, one-half of the reasonable costs and expenses associated with the repair and maintenance of the Service Road, which shall from time to time be required in order to keep the same in good order and repair. Such reimbursement shall be due and payable within ten (10) days following written demand by Grantor together with copies of all invoices for such repair or improvement.

(b) Notwithstanding the foregoing, if the repair or replacement is necessitated by or as a consequence of the act of a third party or an Act of God, then in such event insurance proceeds allocable to the improvements within such Easement shall be utilized to repair or replace such improvements to the extent such insurance proceeds are available, and the balance of the cost of such repair or replacement shall be borne equally by Grantor and Grantee.

3. **Indemnity:** Grantee agrees to indemnify, protect and hold harmless Grantor from and against any and all damages, losses, claims, suits, judgments, decrees, costs and expenses, including attorneys' fees and other legal costs, incurred by or imposed on Grantor resulting directly or indirectly from Grantee's use and enjoyment of the Easement.

4. **Unobstructed Access:** To the extent not otherwise prohibited by any other agreement, the parties hereto shall (i) use and operate the Service Road in such a way as to ensure that it remains open to travel and is at no time blocked or otherwise obstructed, (ii) not permit their agents, employees or anyone acting on their behalf to park or store vehicles or other equipment on the Service Road or otherwise obstruct it

at any time and (iii) not hinder, restrict or prevent the use and enjoyment of the Grantor's Property by either of the parties, their sublessees, tenants, successors and assigns; provided, however, that until such time as Grantee exercises the option in Paragraph 5 below, Grantor may use the eastern 60 feet of the Service Road for parking.

5. Option to Extend Benefit to Additional Property:

(a) Grantee shall have the right, upon payment of the sum of Seven Thousand Dollars (\$7,000), to use the Service Road to provide access to the property owned by the Grantee situated immediately to the east of Grantor's Property, such property being more particularly described as Parcel 2 on **Exhibit D** (the "East Property"). Upon such payment, the East Property shall be thereafter included within the definition of the term "Benefitted Properties" for all purposes set forth herein including the grant of the Easement as set forth in Paragraph 1(c) above.

(b) Nothing contained herein shall be construed to grant access to the property popularly known as the Ingram Property and which is located behind the Property. Grantor and Grantee agree to use their best efforts not to allow heavy trucks to use the Service Road for purposes other than making deliveries to and performing work on either Grantor's Property or the Benefitted Properties.

6. Widening of Service Road: Grantee, at Grantee's expense, shall have the option of widening the Service Road by up to twelve feet (12') to a point located within the state right of way along U.S. Highway 280. Grantee shall secure all necessary approvals and permits from the state and county authorities prior to beginning such work, and will minimize interference with Grantor's Property and Grantor's use of the Service Road.

7. Grantor Access over Benefitted Properties: Grantee hereby grants to Grantor, its successors, assigns, employees, licensees and invitees, a license on, over and across the extension of the Service Road to be located on the Benefitted Properties for purposes of access from Grantor's Property to Meadowbrook Drive. Grantor shall use the license at all times so as to ensure that it remains open to travel and is at no time blocked or otherwise obstructed. Grantor agrees to and does hereby indemnify, protect and hold harmless Grantee from and against any and all damages, losses, claims, suits, judgments, decrees, costs and expenses, including attorneys' fees and other legal costs, incurred by or imposed on Grantee resulting directly or indirectly from Grantor's, its tenants', successors', employees', licensees' and invitees', use of the license.

8. Termination: Grantee, its sublessees, tenants, successors and assigns, may terminate its obligations hereunder by delivering written notice to Grantor, its sublessees, tenants, successors and assigns, stating that Grantee has abandoned use of the Easement, provided that Grantee shall not be entitled to a refund of any amounts paid. Such termination shall be effective when delivered by Grantee to Grantor via hand delivery or when deposited in the U.S. Mail, postage prepaid, and properly addressed to Grantor at its last known address.

9. **Cooperation with Respect to Dedication:** In the event that any governmental instrumentality is willing to accept a dedication of the Service Road into its roadway or highway system, Grantor and Grantee shall take all actions necessary to dedicate the Service Road for public purposes, and upon such acceptance, neither party will have any continuing rights or obligations hereunder.

10. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. **Governing Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

12. **Entire Agreement:** This Agreement and the Exhibits attached hereto constitute the entire Agreement and understanding between the parties with respect to the subject matter and supersedes all prior agreements and understandings. The terms and conditions of this Agreement shall not be modified or amended except in writing executed by the parties hereto.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Easement to be executed this 3rd day of April, 1996.

GRANTOR:

PEAK, INC. D/B/A/ ~~Oil Express~~ *Express Oil Change*

By: *Mark H. Bond*
Its: President

GRANTEE:

ELI'S INC.

Eli T. Stevens Pres.
Eli T. Stevens, President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Mark W. Bond, whose name as President of **Peak, Inc. d/b/a Oil Express**, a(n) Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Easement Agreement, he, in his capacity as such President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 3rd day of April, 1996.

Jewell Allred
Notary Public
My Commission Expires: 6/5/97

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **ELI T. STEVENS**, whose name as President of **ELI'S, INC.**, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Easement Agreement, he, in his capacity as such President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 24th day of April, 1996.

Mary A. Ehlert
Notary Public
My Commission Expires: ~~MY COMMISSION EXPIRES~~
OCTOBER 26, 1998

This Instrument Prepared by:
Lori L. Duwve
Berkowitz, Lefkovits, Isom & Kushner
1600 SouthTrust Tower
Birmingham, Alabama 35203

EXHIBIT A TO EASEMENT AGREEMENT

**LEGAL DESCRIPTION OF PROPERTY OWNED BY
JAMES F. DONOVAN AND DOROTHY H. DONOVAN**

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West, thence run North along the East line of said Section a distance of 1663.70 feet; thence turn an angle of 90 deg. 18 min. 08 sec. to the left and run a distance of 533.53 feet to the point of beginning; thence continue in the same direction a distance of 265.53 feet; thence turn an angle of 90 deg. 00 min. to the left and run a distance of 271.52 feet to the North right of way line of U.S. Highway 280; thence turn an angle of 96 deg. 52 min. to the left and run along said Highway right of way a distance of 267.45 feet; thence turn an angle of 83 deg. 08 min. to the left and run a distance of 239.54 feet to the point of beginning. Situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama; being situated in Shelby County, Alabama.

EXHIBIT B TO EASEMENT AGREEMENT

**LEGAL DESCRIPTION OF PROPERTY LEASED TO
PEAK, INC. D/B/A OIL EXPRESS**

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West; thence run North along the East line of said Section a Distance of 1663.70 feet; thence turn left 90 deg. 18. min. 08 sec. and run West 533.53 feet; thence turn left 90 deg. 00 min. 00 sec. and run South 239.54 feet; thence turn 83 deg. 08 min. 00 sec. right and run Westerly along the North Right of Way line of U.S. Highway 280 24.75 feet to the Point of Beginning; thence continue Westerly 120.00 feet; thence turn 96 deg. 52 min. 00 sec. right and run North 256.70 feet; thence turn 90 deg. 00 min. 00 sec. right and run Easterly 119.14 feet; thence turn 90 deg. 00 min. 00 sec. right and run South 242.35 feet to the Point of Beginning.

EXHIBIT C TO EASEMENT AGREEMENT

LEGAL DESCRIPTION OF PROPERTY LEASED TO ELI'S, INC.

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West, thence run North along the East line of said Section a distance of 1663.70 feet; thence turn an angle of 90 deg. 18 min. 08 sec. to the left and run a distance of 533.53 feet to the point of beginning; thence continue in the same direction a distance of 265.53 feet; thence turn an angle of 90 deg. 00 min. to the left and run a distance of 271.52 feet to the North right of way line of U.S. Highway 280; thence turn an angle of 96 deg. 52 min. to the left and run along said Highway right of way a distance of 267.45 feet; thence turn an angle of 83 deg. 08 min. to the left and run a distance of 239.54 feet to the point of beginning. Situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama; being situated in Shelby County, Alabama.

LESS AND EXCEPT that portion of the property leased to Peak, Inc. d/b/a/ Oil Express more particularly described as follows:

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West; thence run North along the East line of said Section a Distance of 1663.70 feet; thence turn left 90 deg. 18. min. 08 sec. and run West 533.53 feet; thence turn left 90 deg. 00 min. 00 sec. and run South 239.54 feet; thence turn 83 deg. 08 min. 00 sec. right and run Westerly along the North Right of Way line of U.S. Highway 280 24.75 feet to the Point of Beginning; thence continue Westerly 120.00 feet; thence turn 96 deg. 52 min. 00 sec. right and run North 256.70 feet; thence turn 90 deg. 00 min. 00 sec. right and run Easterly 119.14 feet; thence turn 90 deg. 00 min. 00 sec. right and run South 242.35 feet to the Point of Beginning.

EXHIBIT D TO EASEMENT AGREEMENT

LEGAL DESCRIPTION OF BENEFITTED PROPERTIES

PARCEL 1 (Lloyd's Restuarant)

A part of the NE 1/4 of SE 1/4 of Section 31, Township 18 South, Range 1 West, more particularly described as follows: Begin at the NE corner of said 1/4 1/4 Section and run South 88 deg. 20 min. West 272 feet for point of beginning; thence run South 88 deg. 20 min. West 266 feet; thence South 2 deg. 45 min. East to the South boundary of said 1/4 1/4 Section; thence North 87 deg. 15 min. East along said South boundary 266 feet, to the SW corner of the Katherine Lee Property; thence North 2 deg. 45 min. West along said Katherine Lee Property to the point of beginning.

ALSO, the following described property: Commence at the NE corner of the SE 1/4 of the SE 1/4 of Section 31, Township 18, Range 1 West; thence run 532 feet West along the North line of said SE 1/4 of SE 1/4 of Section 31, Township 18, Range 1 West; thence run South to the North right of way line of the present U.S. Highway #91; thence run East 266 feet along the North right of way line of said U.S. Highway #91; thence run North to the North line of the SE 1/4 of the SE 1/4 of Section 31, Township 18, Range 1 West; thence run West 266 feet along the North line of said SE 1/4 of SE 1/4, Section 31, Township 18, Range 1 West to the point of beginning.

All being situated in Shelby County, Alabama.

PARCEL 2 (East Property)

Commence at the Southeast corner of Section 31, Township 18 South, Range 1 West, thence run North along the East line of said Section a distance of 1663.70 feet; thence turn an angle of 90 degrees 18 minutes 08 seconds to the left and run a distance of 799.06 feet to the point of beginning; thence turn an angle of 90 degrees 00 minutes to the left and run a distance of 271.52 feet to the North right-of-way of U.S. Highway No. 280; thence turn an angle of 83 degrees 08 minutes to the right and run along said right-of-way a distance of 267.18 feet; thence turn an angle of 96 degrees 47 minutes to the right and run a distance of 1274.60 feet; thence turn an angle of 90 degrees 42 minutes to the right and run a distance of 266.00 feet; thence turn an angle of 89 degrees 16 minutes 31 seconds to the right and run a distance of 968.27 feet to the point of beginning. Situated in the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, Huntsville Meridian, Shelby County, Alabama.

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EXHIBIT E TO EASEMENT AGREEMENT

LEGAL DESCRIPTION OF THE SERVICE ROAD

Being that portion of the property leased to Peak, Inc. d/b/a Oil Express and being approximately 120 feet in length by 30 feet in width lying adjacent to and running parallel with the right of way line of U.S. Highway 280.

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