


State of Alabama)
 :
County of Shelby)

This Instrument was prepared by:
Robert H. Sprain, Jr.
Sprain & Shires, PC
1707 29th Court South
Birmingham, Alabama 35209

MAINTENANCE AGREEMENT


20071127000539670 1/5 \$23.00
Shelby Cnty Judge of Probate, AL
11/27/2007 04:07:29PM FILED/CERT

This Maintenance Agreement (this "Agreement") is made and entered into between Sharp Pelham, LLC, an Alabama limited liability company ("Sharp") and the City of Pelham ("Pelham") on this 15TH day of November, 2007.

WHEREAS, Sharp is the owner of that certain Property located in the City of Pelham, County of Shelby, State of Alabama, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"), which said Property includes that portion of the Property upon which all improvements are located or are to be constructed; and

WHEREAS, Sharp desires to construct a detention pond (the "Detention Pond") in the common areas of the Property in accordance with the plans and specifications of Gonzalez-Strength & Associates, Inc., dated October 16, 2007 (the "Plans and Specifications"); and

WHEREAS, Pelham is willing to grant all necessary permits and authorizations to Sharp to construct the Detention Pond on the condition that Sharp agrees to certain covenants, restrictions and conditions with respect to the maintenance of the Detention Pond which said covenants, restrictions and conditions shall run with the Property; and

WHEREAS, Sharp agrees that it and the Property shall be bound by certain covenants, restrictions and conditions with respect to the maintenance of the Detention Pond on the Property.

NOW THEREFORE, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Authorization to Construct and Maintain.** Pelham, to the extent that it has the regulatory powers and authority to do so, hereby grants to Sharp the right and privilege to construct and maintain the Detention Pond on the Property subject to the covenants, restrictions and conditions set forth in this Agreement.

2. **Covenants, Conditions and Restrictions.**

a) The Detention Pond shall be constructed on the Property in a good workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable laws and regulations. The Detention Pond shall remain the property and responsibility of Sharp following

the completion of construction thereof. As used herein, "Detention Pond" shall include outlet structures, pipes, embankments and other facilities related or incidental to the purpose of a detention pond.

b) Sharp shall inspect the Detention Pond for material changes after every major storm event but in no event less than once monthly. The inspection contemplated hereunder shall include a reasonable inspection of the Detention Pond for any visible signs of erosion, seepage, sloughing, sliding, or other instability, flow obstructions, cracks and vandalism.

c) Sharp shall perform regular maintenance and repair of the Detention Pond which shall include: (i) maintaining good grass cover, which shall include fertilization and mowing; (ii) removing undesirable vegetation such as trees, bushes, vines and briars; (iii) filling eroded gullies and vehicle ruts and compact soil, backfilling any hollow spots under concrete spillways or outlet structures and compact soil, replacing any riprap that has washed away from spillways and pipe outlets; (iv) removing trash, debris, tree limbs or other flow obstructions from the Detention Pond; (v) repairing slides and sloughs and take corrective action to prevent future recurrence; (vi) filling all animal burrows and compact soil; (vii) repairing damage to the Detention Pond, including damage caused by storms and vandalism; (viii) inspecting the fence and repairing as necessary; and (ix) in general maintaining the Detention Pond in good working order in such a condition as contemplated by the Plans and Specifications.

d) Sharp shall perform annual maintenance and repair of the Detention Pond which shall include: (i) removing vegetation from any cracks in concrete spillways or outlet structures and seal with mastic joint filler; (iii) lubricating and testing moving parts on gates, valves, etc.; (iii) repainting metal parts to prevent rust or replacing severely rusted parts that fail to function as intended; (iv) removing any accumulated sediment to restore pond to design volume; and (v) reseeding or re-sodding grass as necessary to maintain good vegetative cover.

e) Sharp's duties and obligations hereunder shall be performed in accordance with commercially reasonable standards common in the shopping center industry. Whenever Sharp is required to repair deficiencies with the Detention Pond, Sharp shall perform such repair as soon as reasonably practical subject to existing conditions including without limitation weather and availability of materials and labor.

f) The covenants, restrictions and conditions contained herein shall be perpetual and shall run with the land and be binding forever on all future owners of the Property, any part thereof or interest therein.

3. **Certifications.** Within ten (10) days from written request, Sharp agrees to provide City of Pelham, at Sharp's cost and expense, a written certification from its licensed engineering firm that the Detention Pond was constructed in accordance with the Plans and Specifications and complies with all applicable local laws, regulations and ordinances. Within ten (10) days from written request, City of Pelham agrees to provide Sharp a written certification that, as of the date of said certificate, the Detention

Pond has been maintained in accordance with this Agreement, that Sharp is in compliance with the covenants and conditions contained in paragraph 2 herein, and that the Detention Pond complies with all laws, codes, regulations and ordinances of the City of Pelham. City of Pelham may at its option require Sharp to retain an approved third party to inspect the Detention Pond and prepare the certification as required herein, at Sharp's cost and expense, which said certification shall be addressed to the City of Pelham, Sharp, Sharp's lender and such lender's successors and assigns. In the event that a purchaser of the Property, and such purchaser's lender, requires further certifications as to the Detention Pond, City of Pelham and Sharp shall reasonably cooperate with such purchaser and lender to provide further and additional certifications which said certifications shall not be unreasonably withheld, denied or delayed.

4. **Entire Agreement.** This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between them respecting such matters.

5. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. **Headings.** Paragraph headings are for the purpose of convenience and identification only and shall not be used to interpret or construe this Agreement.

7. **Waiver.** The failure of any party hereto to demand performance of any act required hereunder shall not be deemed a waiver of the right to enforce such performance any other performance required later. A waiver can only be made if it is in writing and signed by the party excusing performance. Any attempted oral waiver shall not be valid.


8. **Gender and number.** Whenever the singular or plural number, or the masculine, feminine or neuter gender, is used herein, it shall equally include the other(s).

9. **Notice.** Any notice to be given hereunder shall be in writing, signed by the party giving notice, and delivered by any one of the following methods:

- a) personal delivery;
- b) facsimile machine transmission;
- c) certified or registered mail, return receipt requested; or
- d) overnight courier service, provided that a receipt is maintained in the ordinary course of business.

If to Sharp:

Sharp Pelham, LLC
Attn: Samuel W. Sharp
400 Union Hill Drive
Suite 300
Birmingham, Alabama 35209
Facsimile: 205.879.1908


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If to City of Pelham:

City of Pelham
Attn: Jessie Jowers
3162 Pelham Parkway
Pelham, Alabama 35124
Facsimile: 205-663-3116

Either party may designate a new address by giving notice thereof to the other party.

10. **Governing law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

11. **Binding effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties, their respective heirs, representatives, successors and assigns.

12. **Modifications.** This Agreement may be modified only by a written document signed by representatives by both parties. A purported oral modification shall not be effective.

IN WITNESS WHEREOF, the undersigned sole member and manager of Sharp Pelham, LLC and the authorized representative of the City of Pelham have executed this Agreement on the date first written above.

[Remainder of Page Left Blank; Signatures on Next Page]

**SHARP PELHAM, LLC, an Alabama
limited liability company**

Samuel W. Sharp
By: Samuel W. Sharp
Its: Sole Member and manager

CITY OF PELHAM

Bobby Hayes
By: Bobby Hayes
Its: Mayor

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County and said State, hereby certify that Samuel W. Sharp, whose name as Manager of Sharp Pelham, LLC, an Alabama limited liability company, 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 instrument, he, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 15th day of November, 2007.

Adina R. Freeman
Notary Public
Name: Adina R. Freeman
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF SHELBY)

MY COMMISSION EXPIRES JULY 23, 2011

I, the undersigned Notary Public in and for said County and said State, hereby certify that Bobby Hayes, whose name as Mayor of the City of Pelham 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 instrument, he, as such Mayor, and with full authority, executed the same voluntarily for and as the act of said city.

Given under my hand and official seal this the 26 day of November, 2007.

Donna Treslar
Notary Public
Name: Donna Treslar
My Commission Expires: 9/1/2009