

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

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; (ii) 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

20071217000568150 4/8 \$32.00
Shelby Cnty Judge of Probate, AL
12/17/2007 04:05:39PM FILED/CERT

20071127000539670 4/5 \$23.00
Shelby Cnty Judge of Probate, AL
11/27/2007 04:07:29PM FILED/CERT

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: _____

MY COMMISSION EXPIRES JULY 23, 2011

STATE OF ALABAMA)
COUNTY OF SHELBY)

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

EXHIBIT A



20071217000568150 6/8 \$32.00
Shelby Cnty Judge of Probate, AL
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The following property is situated in Shelby County, Alabama:

PARCEL 1

A parcel of land situated in the southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one-quarter of the Southwest one-quarter of said Section; thence run South 89 degrees 58 minutes 11 seconds East for a distance of 645.80 feet to the point of commencement of a curve to the right, said curve having a radius of 720.00 feet, a central angle of 06 degrees 05 minutes 18 seconds, a chord bearing of North 11 degrees 10 minutes 26 seconds East for a chord distance of 76.47 feet; thence run along arc of said curve for a distance of 76.51 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 780.00 feet, a central angle of 14 degrees 27 minutes 15 seconds, a chord bearing of North 06 degrees 59 minutes 28 seconds East for a chord distance of 196.25 feet; thence run along arc of said curve for a distance of 196.77 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 317.88 feet to the POINT OF BEGINNING; thence run along last described course for a distance of 630.40 feet to the point of commencement of a curve to the left, said curve having a radius of 430.00 feet, a central angle of 04 degrees 01 minutes 27 seconds for a chord bearing of North 02 degrees 14 minutes 53 seconds West for a chord distance of 30.19 feet; thence run along arc of said curve for a distance of 30.20 feet to the point of commencement of a curve to the right, said curve having a radius of 270.00 feet, a central angle of 37 degrees 20 minutes 58 seconds, a chord bearing of South 19 degrees 07 minutes 17 seconds East for a chord distance of 172.91 feet; thence run along arc of said curve for a distance of 176.01 feet; thence run South 00 degrees 26 minutes 49 seconds East for a distance of 496.98 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 56.74 feet to the POINT OF BEGINNING.

PARCEL 2

A parcel of land situated in the Southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one-quarter of the Southwest one-quarter of said Section; thence run South 89 degrees 58 minutes 11 seconds East for a distance of 645.80 feet to the point of commencement of a curve to the right, said curve having a radius of 720.00 feet, a central angle of 06 degrees 05 minutes 18 seconds, a chord bearing of North 11 degrees 10 minutes 26 seconds East for a chord distance of 76.47 feet; thence run along arc of said curve for a distance of 76.51 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 780.00 feet, a central angle of 14 degrees 27 minutes 15 seconds, a chord bearing of North 06 degrees 59 minutes 28 seconds East for a chord distance of 196.25 feet; thence run along arc of said curve for a distance of 196.77 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 317.88 feet; thence run North 89 degrees 45 minutes 50 seconds East for a distance of 56.74 feet to the POINT OF BEGINNING; thence run North 00 degrees 26 minutes 49 seconds West for a distance of 496.98 feet to the point of commencement of a curve to the left, said curve having a radius of 270.00 feet, a central angle of 37 degrees 20 minutes 58 seconds, a chord bearing of North 19 degrees 07 minutes 17 seconds West for a chord distance of 172.91 feet; thence run along arc of said curve for a distance of 176.01 feet to the point of commencement of a curve to the left, said curve having a radius of 430.00 feet, a central angle of 14 degrees 57 minutes 11 seconds, a chord bearing of North 11 degrees 44 minutes 12 seconds West for a chord distance of 111.90 feet; thence run along arc of said curve for a distance of 112.22 feet; thence run North 68 degrees 12 minutes 23 seconds East for a distance of 195.70 feet; thence run South 00 degrees 26 minutes 49 seconds East for a distance of 202.89 feet; thence run South 85 degrees 59 minutes 18 seconds East for a distance of 285.00 feet; thence run North 04 degrees 01 minutes 50 seconds East for a distance of 214.83 feet to a point on the Southernmost right of way line of Shelby County Highway 52 (right of way varies); thence run South 76 degrees 52 minutes 19 seconds East along said right of way for a distance of 226.61 feet; thence run South 79 degrees 39 minutes 20 seconds East along said right of way for a distance of 122.05 feet; thence leaving said right of way, run South 00 degrees 36 minutes 23 seconds West for a distance of 426.01 feet; thence

run North 71 degrees 07 minutes 47 seconds West for a distance of 39.54 feet; thence run South 00 degrees 03 minutes 55 seconds East for a distance of 435.03 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 515.68 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 90.46 feet; thence run South 89 degrees 45 minutes 50 seconds West for a distance of 182.70 feet to the POINT OF BEGINNING.

PARCEL 4

A parcel of land situated in the Southwest one-quarter of Section 19, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Southwest one-quarter of said Section; thence run South 89 degrees 58 minutes 11 seconds East for a distance of 645.80 feet to the point of commencement of a curve to the right, said curve having a radius of 720.00 feet, a central angle of 06 degrees 05 minutes 18 seconds, a chord bearing of North 11 degrees 10 minutes 26 seconds East for a chord distance of 76.47 feet; thence run along arc of said curve for a distance of 76.51 feet to the point of commencement of a reverse curve to the left, said curve having a radius of 780.00 feet, a central angle of 14 degrees 27 minutes 15 seconds, a chord bearing of North 06 degrees 59 minutes 28 seconds East for a chord distance of 196.25 feet; thence run along arc of said curve for a distance of 196.77 feet; thence run North 00 degrees 14 minutes 10 seconds West for a distance of 948.28 feet to a point on a curve to the left, said curve having a radius of 430.00 feet, a central angle of 18 degrees 58 minutes 38 seconds, a chord bearing of North 09 degrees 43 minutes 29 seconds West for a chord distance of 141.77 feet; thence run along arc of said curve for a distance of 142.42 feet to the POINT OF BEGINNING and a point on a curve to the left, said curve having a radius of 430.00, a central angle of 05 degrees 01 minutes 08 seconds, a chord bearing of North 21 degrees 43 minutes 22 seconds West for a chord distance of 37.65 feet; thence run along arc of said curve for a distance of 37.67 feet to the point of commencement of a reverse curve to the right, said curve having a radius of 270.00 feet, a central angle of 60 degrees 09 minutes 25 seconds, a chord bearing of North 06 degrees 50 minutes 47 seconds East for a chord distance of 270.64 feet; thence run along arc of said curve for a distance of 283.48 feet to a point on the Southernmost right of way line of Shelby County Highway 52 (right of way varies); thence run South 50 degrees 12 minutes 05 seconds East along said right of way for a distance of 61.12 feet; thence run South 75 degrees 44 minutes 24 seconds East along said right of way for a distance of 123.67 feet; thence leaving said right of way, run South 00 degrees 26 minutes 49 seconds East for a distance of 161.98 feet; thence run South 68 degrees 12 minutes 23 seconds West for a distance of 195.70 feet to the POINT OF BEGINNING.

TOGETHER WITH A non-exclusive easement for ingress, egress and utilities, at set forth in Easement, Joint Use and Maintenance Agreement recorded in Instrument 20040610000314520, more particularly described as follows:

A non-exclusive Proposed Easement for the purpose of Ingress, Egress and Utilities. Commence at the NW corner of Section 30 Township 20 South, Range 2 West and thence S00°26'48"W a distance of 350.56 feet; thence S89°33'12"E a distance of 653.28 feet to the Point to Beginning of a 60 foot Ingress, Egress and Utility Easement lying 30 feet either side of the following described center line; thence with a curve turning to the right with an arc length of 676.99 feet, with a radius of 750.00 feet, with a chord bearing of N06°47'45"E, with a chord length of 654.24 feet, thence with a curve turning to the left with an arc length of 170.51 feet, with a radius of 300.00 feet, with a chord bearing of N16°22'20"E, with a chord length of 168.22 feet, thence N00°05'23"E a distance of 622.22 feet, thence with a curve turning to the left with an arc length of 233.14 feet, with a radius of 300.00 feet, with a chord bearing of N22°10'25"W, with a chord length of 227.32 feet, thence with a curve turning to the right with an arc length of 430.04 feet, with a radius of 300.00 feet, with a chord bearing of N03°22'18"W, with a chord length of 394.15 feet, thence N37°41'38"E a distance of 31.96 feet to the Point of Termination of said easement.

Less and except any property lying in the Shelby County Highway right-of-way as recorded in Instrument #200404080001834000 corrected in Instrument 20040524000273220 and in Instrument 20040408000183390 corrected in Instrument 20040524000273230..

ALSO, a permanent, perpetual and non-exclusive easement for utilities as set forth in Declaration of Utility



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Easement as recorded in Instrument 20040610000314500, more particularly described as follows:

Commence at the NW corner of Section 30 Township 20 South, Range 2 West and thence S89°26'05"E a distance of 566.35 feet to the Point of Beginning; thence with a curve turning to the right with an arc length of 350.54 feet, with a radius of 800.00 feet, with a chord bearing of N20°06'07"E, with a chord length of 347.75 feet, thence with a curve turning to the left with an arc length of 142.09 feet, with a radius of 250.00 feet, with a chord bearing of N16°22'20"E, with a chord length of 140.19 feet, thence N00°05'23"E a distance of 622.22 feet, thence with a curve turning to the left with an arc length of 194.28 feet, with a radius of 250.00 feet, with a chord bearing of N22°10'25"W, with a chord length of 189.43 feet, thence with a curve turning to the right with an arc length of 486.54 feet, with a radius of 350.00 feet, with a chord bearing of N04°36'47"W, with a chord length of 448.30 feet, thence N60°03'21"W a distance of 243.63 feet, thence N13°16'13"E a distance of 41.76 feet; thence S60°03'21"E a distance of 258.00 feet; thence with a curve turning to the right with an arc length of 34.12 feet, with a radius of 20.00 feet, with a chord bearing of S11°10'51"E, with a chord length of 30.13 feet, thence S37°41'38"W a distance of 4.97 feet; thence with a curve turning to the left with an arc length of 473.04 feet, with a radius of 330.00 feet, with a chord bearing of S03°22'18"E, with a chord length of 433.57 feet, thence with a curve turning to the right with an arc length of 209.83 feet, with a radius of 270.00 feet, with a chord bearing of S22°10'25"E, with a chord length of 204.59 feet, thence S00°05'23"W a distance of 622.22 feet; thence with a curve turning to the right with an arc length of 153.46 feet, with a radius of 270.00 feet, with a chord bearing of S16°22'20"W, with a chord length of 151.40 feet, thence with a curve turning to the left with an arc length of 339.33 feet, with a radius of 780.00, with a chord bearing of S20°11'30"W, with a chord length of 336.66 feet, thence N89°26'05"W a distance of 20.15 feet which is the point of beginning.

Less and except any property lying in the Shelby County Highway right-of-way as recorded in Instrument #200404080001834000 corrected in Instrument 20040524000273220 and in Instrument 20040408000183390 corrected in Instrument 20040524000273230.