

STATE OF ALABAMA)

COUNTY OF SHELBY)

20090113000010850 1/8 \$33.00
Shelby Cnty Judge of Probate, AL
01/13/2009 10:33:16AM FILED/CERT

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement") is made and entered into effective as of the 5th day of January 2008, by and between **City of Pelham**, an Alabama municipal corporation (the "Grantor"), and **Southeastern Food Merchandisers, Inc.**, an Alabama corporation (the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of the property located in Shelby County, Alabama, as more particularly described on Exhibit A, attached hereto and made a part hereof (the "Burdened Property");

WHEREAS, Grantee is the owner of the property located in Shelby County, Alabama, as more particularly described on Exhibit B, attached hereto and made a part hereof (the "Benefited Property"); and

WHEREAS, Grantee wishes to grant and Grantee to receive an easement under, over, through and across the Burdened Property, as more particularly described on Exhibit A, attached hereto and made a part hereof (the "Drainage Easement Area"), for the purpose of the construction, maintenance and use of a system for the drainage of the storm water run-off from the Benefited Party through pipes located underneath the Drainage Easement Area into a culvert located on property of the Grantor.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, it is hereby declared and agreed as follows:

1. **Recitals.**

The recitals set forth above are true and correct, and are incorporated herein by this reference.

2. **Drainage Easement.**

(a) The Grantor does hereby grant and convey unto the Grantee a non-exclusive perpetual easement (the "Drainage Easement") under, over, through and across the Drainage Easement Area for the purposes and on the terms and conditions described in this instrument.

(b) The Drainage Easement is hereby granted to Grantee for the purpose of permitting the drainage and storm water run-off and all matters incident thereto from the Benefited Property through conduits, flumes, pipes, lines and other facilities ("Drainage System") which will be constructed and maintained in a clean and unobstructed condition at all times by the Grantee

underneath the surface of the Drainage Easement Area into a culvert of the Grantor located on the Grantor's property. Grantee and its employees, agents and contractors shall have the right to construct, modify, improve, repair, replace and manage the Drainage System in any manner as may be reasonably necessary to accomplish the purpose of this Drainage Easement, so long as the surface of Grantor's property is restored and Grantee's use does not interfere with use or drainage of Grantor's property. In connection with the rights granted to the Grantee herein, Grantee and its agents, employees and contractor shall have the express right to cut the asphalt and other surface improvements now or hereafter located in the Drainage Easement Area in order to install the Drainage System, so long as the same is immediately restored to its original or better condition. The Drainage Easement granted herein also includes a reasonable right of ingress and egress onto the Drainage Easement Area by Grantee and its contractors, employees and agents to ensure the purposes of this Drainage Easement are satisfied. Notwithstanding anything above to the contrary, before commencing any work authorized by this Agreement, Grantee agrees to provide to the City Engineer for the Grantor plans and specifications and drawings (collectively, "Plans"), which depict the work the Grantee proposes to perform in, on or under the Drainage Easement Area ("Work") and to obtain the written approval of said City Engineer to perform said Work. Grantee agrees to perform all Work in accordance with the Plans and in compliance with the laws and ordinances of the Grantor.

(c) The Grantee shall solely be responsible for the entire cost and expense of installing, improving, maintaining, replacing or repairing the Drainage System and may enter upon the Drainage Easement Area as it deems necessary; provided, in the event of a default by the Grantee in its obligations, Grantor may cure any default by Grantee and receive from Grantee any and all costs or expenses so incurred by Grantor; and provided further, that Grantor shall notify Grantee, in writing, of any such default or work required to be performed and Grantor's intent to perform such maintenance work, and shall allow Grantee a reasonable opportunity (not less than sixty (60) days) to inspect the Drainage Easement Area and to perform the required maintenance work at Grantee's expense prior to the Grantor taking any action to cure the default. Should Grantee violate the terms and conditions of this provision after the expiration of the notice of default and opportunity to cure, Grantor may, in its sole discretion, cancel this Easement Agreement.

3. **Temporary Construction Easement.**

Grantor hereby declares and establishes a temporary construction easement to and for the benefit of Grantee for the performance of all required construction work to construct, install, maintain, repair, replace or manage the Drainage System in the Drainage Easement Area, all areas to be immediately restored by Grantee to original or better condition.

4. **Covenants with the Land.**

All rights, privileges, benefits and burdens created herein for the benefit of Grantee shall run with the land, attach in perpetuity appurtenant to the described parcel, and be binding upon and inure to the benefit of Grantor and Grantee, their respective successors and assigns and any future owners of the real estate.

5. **Violations and Enforcement.**

The easements and respective rights and obligations created or granted under this Easement shall be enforceable by Grantor or Grantee, their respective heirs, successors and assigns, by injunction or by specific performance. In the event it becomes necessary for Grantor to enforce any easement or agreement by institution of suit, the Grantor shall be entitled to recover from the Grantee its reasonable costs and attorneys' fees, including reasonable costs and attorneys' fees in any appellate proceeding.

6. **Indemnity.**

Grantee shall indemnify and hold Grantor harmless from any loss, damage, liability or expense, including reasonable attorney's fees and costs arising out of Grantee's exercise of its rights under this Easement or its failure to comply with its obligations hereunder.

7. **Captions.**

The captions included herein are for reference only and should not be used in construing any of the terms hereof.

8. **Alabama Law.**

This Easement shall be construed and enforced in accordance with the laws of the State of Alabama.

9. **Validity.**

If any provision contained in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement shall be valid and enforceable to the fullest extent permitted by law.

10. **Entire Declaration.**

This instrument contains the entire declaration of Grantor and Grantee relating to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or in similarly executed instruments shall be of any force or effect. No modification, alteration or amendment of this declaration shall be binding unless in writing and executed by Grantor and Grantee, or their respective legal representatives, successors or assigns.

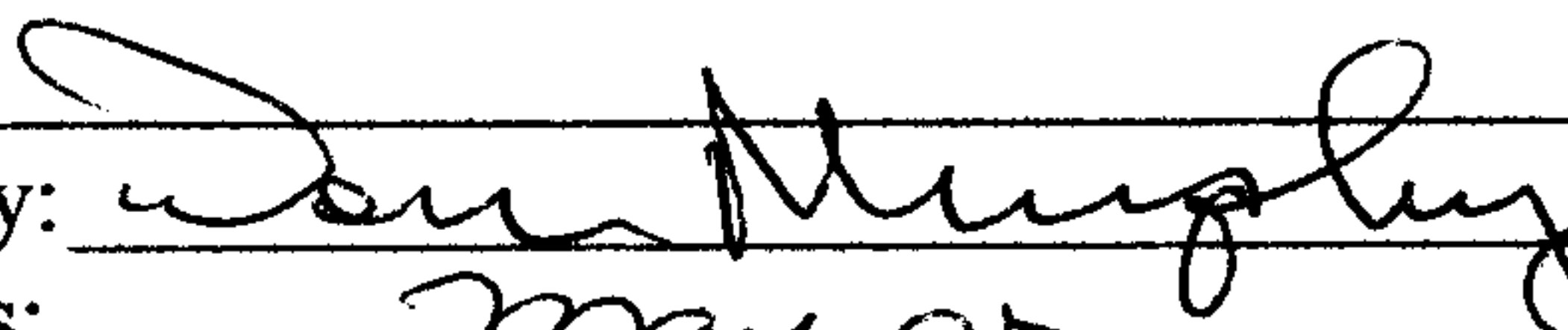
11. Grantor makes no warranty as to its title or the interest conveyed hereby.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed by their respective duly authorized officers effective as of the date first above written.

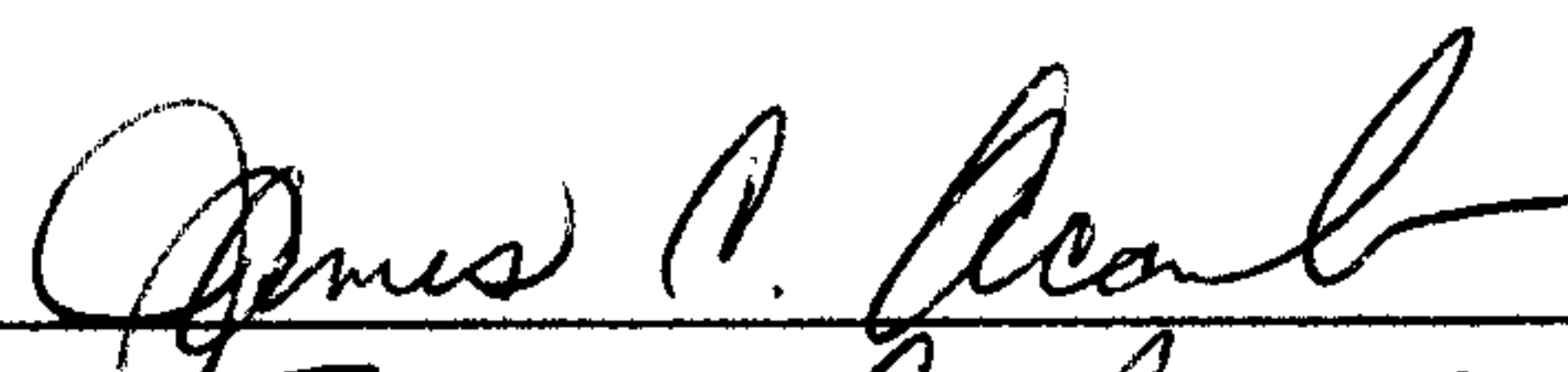
GRANTOR

CITY OF PELHAM

By: 
Its: Mayor

GRANTEE

**SOUTHEASTERN FOOD MERCHANDISERS,
INC.**


By: JAMES P. ACOMB
Its: VICE PRESIDENT

Shelby County, AL 01/13/2009
State of Alabama

Deed Tax: \$1.00

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that DON MURPHY, whose name as MAYOR of the City of Pelham, a municipal 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 instrument, he, as such MAYOR and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and seal this the 6th day of JANUARY, 2008.

Marsha A. Yates (SEAL)
Notary Public
My Commission Expires: 8-29-2010

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that JAMES C. ACCOMB, whose name as VICE PRESIDENT of Southeastern Food Merchandisers, 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 instrument, he, as such President, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this the 26 day of December, 2008.

Billy B. Laddie (SEAL)
Notary Public
My Commission Expires: _____

Exhibit A

Burdened Property

DRAINAGE EASEMENT

An easement being a portion of that certain tract of land as described in instrument 199500030779000 in the Judge of Probate Office, Shelby County, Alabama lying in Section 14, Township 20 South, Range 3 West and being more particularly described as follows:

Commence at a 5/8" rebar found in place at the north easterly corner of that certain tract of land as described in Instrument 20030052422000000 in the Judge of Probate Office, Shelby County, Alabama; thence S 47°53'47" W a distance of 178.41 feet to the Point of Beginning of a 15' wide drainage easement; thence S 41°02'11" E a distance of 20.29 feet to a point; thence S 48°57'58" W a distance of 15.00 feet to a point; thence N 41°02'11" W a distance of 20.01 feet to a point on the easterly right-of-way of Thames Court; thence N 47°53'47" E leaving said right-of-way a distance of 15.00 feet to the Point of Beginning; Said above described easement contains 0.01 acres, or 302.3 square feet, more or less. Less and except any and all parts of above described easement lying within said Thames Court right-of-way.

Exhibit B

Benefited Property

The land referred to in this Commitment is described as follows:

Parcel I:

A parcel of land located in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ Section; thence in a Westerly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 73.83 feet; thence 88 degrees, 23 minutes right in a Northerly direction a distance of 174.72 feet to the Point of Beginning; thence continue along last described course a distance of 458.93 feet to the Southwesterly right of way line of the Atlantic Coast Line Railroad; thence 48 degrees 19 minutes 30 seconds left in a Northwesterly direction along said right of way a distance of 30.80 feet; thence 0 degrees 12 minutes left continuing along said right of way a distance of 15.06 feet; thence 40 degrees 43 minutes left in a Westerly direction a distance of 76.65 feet; thence 40 degrees 43 minutes right in a Northwesterly direction a distance of 585.77 feet; thence 90 degrees left in a Southwesterly direction a distance of 294.17 feet; thence 90 degrees left in a Southeasterly direction a distance of 1144.51 feet to the Point of Beginning. Situated in Shelby County, Alabama.

Being the same property conveyed from American Forest Products Co., a California Limited Partnership, to Welch Enterprises, an Alabama Partnership, by deed dated November 1, 1982, filed for record in the Probate Office of Shelby County, Alabama, on November 5, 1982, at 3:34 o'clock p.m., and recorded in Deed Book 343, page 465.

Parcel II:

A parcel of land located in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ Section, thence in a Westerly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section a distance of 73.83 feet; thence 88 degrees, 23 minutes right in a Northerly direction a distance of 174.72 feet to the most Southerly corner of American Forest Products property; thence 48 degrees 31 minutes 30 seconds left in a Northwesterly direction along the Southwest line of American Forest Products property a distance of 539.51 feet the Point of Beginning; thence continue along last described course a distance of 60.00 feet; thence 90 degrees to the left in a Southwesterly direction a distance of 180.0 feet; thence 90 degrees to the left in an Easterly direction a distance of 60.0 feet to the Southeast corner of property conveyed in Deed Book 294, page 261 in Probate Office; thence North along the East line of said property described in said Deed Book 294, page 261, a distance of 180.0 feet to the Point of Beginning; being situated in Shelby County, Alabama.

Parcel III:

A parcel of land located in the Northwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 14, Township 20, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence in a Westerly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 73.83 feet; thence 88 degrees, 23 minutes right in a Northerly direction a distance of 174.72 feet. Thence 48 degrees 31 minutes 30 seconds left in a Northwesterly direction a distance of 410.62 feet to the point of beginning; thence continue along last described course a distance of 128.89 feet; thence 90 degrees left in a Southwesterly direction a distance of 180.0 feet; thence 90 degrees left in a Southeasterly direction a distance of 128.89 feet; thence 90 degrees left in a Northeasterly direction a distance of 180.0 feet to the point of beginning. Situated in Shelby County, Alabama.

Parcel IV:

A parcel of land located in the SE $\frac{1}{4}$ of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southeast corner of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 14' thence run in a Westerly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section for a distance of 73.83 feet; thence deflecting right at an angle of 88 degrees 23 minutes 00 seconds and run Northerly for a distance of 613.70 feet to the point of beginning of this description; thence continue along the course last traversed for a distance of 18.79 feet to a point on the Southerly right of way line of C.S.X. Railroad (formerly Atlantic Coast Line Railroad); thence run an interior angle to the right of 132 degrees 49 minutes 01 seconds and run Northwesterly along said Southerly right of way line for a distance of 98.47 feet to a point on the Easterly line of an Alabama Power Company right of way; thence departing said Southerly right of way line turn an interior angle to the right of 139 degrees 03 minutes 36 seconds and run Westerly along the Easterly line of said Alabama Power Company right of way for a distance of 75.59 feet to a point on the Southerly right of way line of said Alabama Power Company right of way; thence turn an interior angle of 220 degrees 43 minutes 00 seconds and run Northwesterly along said Southerly right of way line for a distance of 140.67 feet to the Northwest corner of a parcel of land described in Instrument #2002-13547, of the Public Records of said County; thence departing the South line of said Alabama Power Company right of way turn an interior angle of 89 degrees 52 minutes 35 seconds and run Southwesterly along the West line of said parcel for a distance of 293.51 feet; thence turn an interior angle to the right of 90 degrees 05 minutes 42 seconds and run Southeasterly for a distance of 308.96 feet to a point on the West line of the parcel of land described in Instrument #1995 - 30779, of the public records of said County; thence turn an interior angle to the right of 89 degrees 58 minutes 34 seconds and run Northeasterly along the West line of said property for a distance of 328.52 feet to the point of beginning.

Situated in Shelby County, Alabama.

According to survey of Jon P. Strength, RLS #21181, dated June 28, 2002.