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JB2011R-007772

ANN HUDSON

CRAIGHEAD COUNTY

RECORDED ON:

05/18/2011 02:08PM

BY [Signature] D. C.

**Above Space for Recorder's Use:**

This document prepared by and  
after recording, return to:

Harp's Food Stores, Inc.  
P.O. Box 48  
918 S. Gutensohn  
Springdale, Arkansas 72762  
Attention: J. Max Van Hoose

**PROPERTY USE AND RESTRICTION AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

**THIS PROPERTY USE AND RESTRICTION AGREEMENT** (this "Agreement") is made effective as of 5/4, 2011 (the "**Effective Date**"), between the **CITY OF JONESBORO, ARKANSAS**, an Arkansas municipal corporation ("**City**"), and **NIX DEVELOPMENT CORPORATION**, an Arkansas corporation ("**Developer**").

**BACKGROUND**

A. Developer is developing a retail grocery store on that approximate 6.32 acre tract of land located at 2005 Harrisburg Road in Jonesboro, Craighead County, Arkansas, which is depicted generally on the site plan attached hereto and incorporated herein as Exhibit A (the "**Property**").

B. Developer, as part of its overall development plan for the Property and by stipulation in City Ordinance 10:091, an ordinance to amend the Code of Ordinances of Jonesboro, Arkansas, Chapter 117, has agreed to restrict a certain portion of the Property as greenspace (the "**Greenspace Site**"), as depicted on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto and incorporated herein.

C. Developer and City mutually desire to enter into this Agreement to create a mechanism for the restriction of the Greenspace Site.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City agree as follows:

1. **Restrictions on Use.** Developer, for and on behalf of itself and its successors and assigns, expressly covenants and agrees that, from and after the Effective Date, the Greenspace Site shall not be used or operated for any purposes other than a dedicated, unimproved greenspace to provide for a permanent buffer to abutting properties used as single family residential parcels.

2. **Breach.** In the event of breach or threatened breach of this Agreement, City shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, including, without limitation, the right to exercise any and all remedies afforded under law or at equity, including, but not limited to, the right to obtain injunctive relief.

3. **Rights of Successors.** All provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of City and Developer, and their respective successors and assigns.

4. **Document Execution, Modification and Cancellation.** No modifications or amendments may be made to this Agreement and this Agreement may not be terminated except in writing signed by Developer and City or any successor in interest to Developer and City.

5 **Governing Law.** It is understood and agreed that the construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Arkansas, without considering its law or rules related to choice of law.

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

7. **Invalidity.** Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected.

**[SIGNATURES ON FOLLOWING PAGE.]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

**CITY:**

**CITY OF JONESBORO, ARKANSAS,**  
an Arkansas municipal corporation

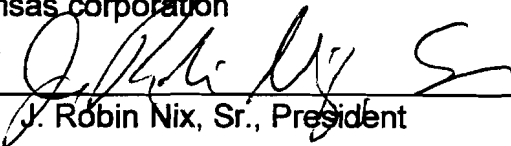
Approved and accepted by the Council of the City of Jonesboro, Arkansas, this 4<sup>TH</sup> day of May, 2011.

SEAL:

**DEVELOPER:**

**NIX DEVELOPMENT CORPORATION,** an  
Arkansas corporation

By: \_\_\_\_\_

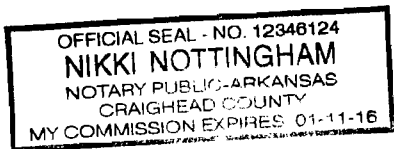
  
J. Robin Nix, Sr., President

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF CRAIGHEAD )

On this 4<sup>TH</sup> day of May, 2011, before me appeared Harold Perrin & Donna Jackson, to me personally known, who being by me duly sworn did say that he/she is the Mayor & City Clerk of City of Jonesboro, Arkansas, an Arkansas municipal corporation, and was duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of said entity, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, use and purposes therein mentioned and set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.



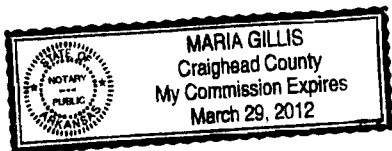
Willie Nottingham  
Notary Public  
My commission expires: 1/11/16

**ACKNOWLEDGEMENT**

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF CRAIGHEAD )

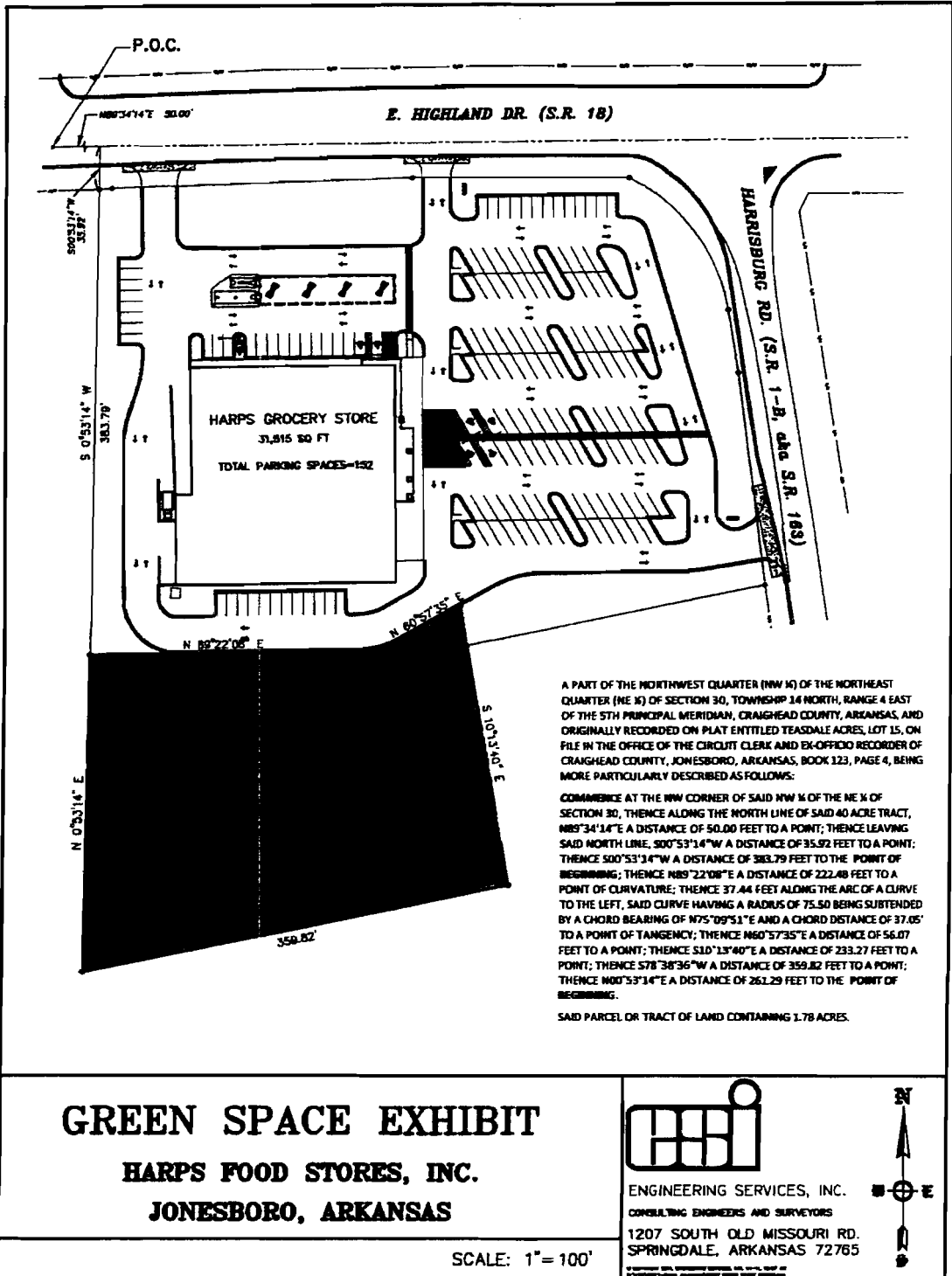
On this \_\_\_\_ day of April, 2011, before me appeared J. Robin Nix, Sr., to me personally known, who being by me duly sworn did say that he is the President of Nix Development Corporation, an Arkansas corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.



Maria Gillis  
Notary Public  
My commission expires: March 29, 2011

**EXHIBIT A**  
**Site Plan showing the Property and the Greenspace Site**



**EXHIBIT B**  
**The Greenspace Site**

A PART OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 30, TOWNSHIP 14 NORTH, RANGE 4 EAST OF THE 5TH PRINCIPAL MERIDIAN, CRAIGHEAD COUNTY, ARKANSAS, AND ORIGINALLY RECORDED ON PLAT ENTITLED TEASDALE ACRES, LOT 15, ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF CRAIGHEAD COUNTY, JONESBORO, ARKANSAS, BOOK 123, PAGE 4, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NW CORNER OF SAID NW ¼ OF THE NE ¼ OF SECTION 30, THENCE ALONG THE NORTH LINE OF SAID 40 ACRE TRACT, N89°34'14"E A DISTANCE OF 50.00 FEET TO A POINT; THENCE LEAVING SAID NORTH LINE, S00°53'14"W A DISTANCE OF 35.92 FEET TO A POINT; THENCE S00°53'14"W A DISTANCE OF 383.79 FEET TO THE POINT OF BEGINNING; THENCE N89°22'08"E A DISTANCE OF 222.48 FEET TO A POINT OF CURVATURE; THENCE 37.44 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 75.50 BEING SUBTENDED BY A CHORD BEARING OF N75°09'51"E AND A CHORD DISTANCE OF 37.05' TO A POINT OF TANGENCY; THENCE N60°57'35"E A DISTANCE OF 56.07 FEET TO A POINT; THENCE S10°13'40"E A DISTANCE OF 233.27 FEET TO A POINT; THENCE S78°38'36"W A DISTANCE OF 359.82 FEET TO A POINT; THENCE N00°53'14"E A DISTANCE OF 261.29 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OR TRACT OF LAND CONTAINING 1.78 ACRES.