

CERTIFICATE OF RECORD
STATE OF ARKANSAS COUNTY OF WHITE
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD
AND IS RECORDED AS STAMPED HEREON.
DATE 12-23-08 TIME 2:55 pm
BOOK 2008 PAGE 24537
TAMM KING, WHITE COUNTY CIRCUIT CLERK

Denise Morrispc

FIRST AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND

THIS FIRST AMENDMENT to Easements with Covenants and Restriction Affecting Land (the "First Amendment"), is made and entered into this 19th day of December, 2008, among Searcy Retail Holdings I, LLC, an Arkansas limited liability company ("Owner"), Harps Food Stores, Inc, being the successor to Concord Food Stores, L.L.C., a Kansas limited liability company ("Concord"), and Searcy Harps Holdings, LLC, an Arkansas limited liability company (the "Developer").

RECITALS:

WHEREAS, Searcy Retail Holdings I, LLC, ("SRH"), and Concord Food Stores, L.L.C., entered into that agreement dated as of April 30, 2008, referred to as Easements and Covenants and Restrictions Affecting Land, recorded in the records of White County, Arkansas in Misc. Book 2008, at Page 7988, (the "ECR") and affecting the Property, as described on Exhibit A-1 hereto; and

WHEREAS, concurrently herewith, Owner has sold to Developer and Developer has acquired from Owner that certain portion of the Property identified in the ECR as Phase II; and

WHEREAS, the Concord Lease is in place; and

WHEREAS, Developer, Owner and Concord recognize and acknowledge the need to make certain revisions, amendments and modifications to the ECR to permit the full development of Phase II in accordance with a harmonious common design, and affecting the Property, as described on Exhibit A-2.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100ths Dollars, other good and valuable consideration, including the mutual covenants and agreements contained herein , the receipt and sufficiency of which is hereby specifically acknowledged, the parties hereto agree to this First Amendment as follows:

MISC 2008- 24538

1. Incorporation of Terms; Reaffirmation. All capitalized terms, except as further defined by this First Amendment, shall have the respective meanings assigned to them in the ECR. Except as modified by this First Amendment, the ECR is hereby incorporated into and made a part of this First Amendment. Nothing herein shall serve to modify, alter, amend or change any provision of the ECR except as specifically provided in this First Amendment. The parties hereto hereby reaffirm each and every provision of the ECR, except as modified by this First Amendment.

2. Further Modification of ECR. From and after the execution of this First Amendment, no modification or amendment may be made to the ECR, and the ECR shall not be terminated except by a signed writing by Owner, Concord and Developer, or any successor in interest to Owner, Concord and Developer, for so long as the Concord Lease remains in force and effect.

3. Exclusive Use for the Benefit of Phase II. Section 1(a) of the ECR is hereby amended by adding the following provision:

Additionally, any new use of Phase I shall not conflict with the specific use exclusive lease provisions of other tenants of the Developer on Phase II in existence as of the date of any new use of Phase I. Developer agrees to provide to Owner or Concord, within ten (10) days of Owner or Concord's request, a list of all specific use exclusives granted to tenants of Phase II.

4. Permitted Uses to be Included in Phase II. The following provision is hereby added as Section 1(f) of the ECR:

Notwithstanding any provision herein to the contrary, a specific permitted use to be undertaken in Phase II shall include a health club or fitness center, or the like, so long as the publicly usable space shall be in amount equal to or less than five thousand (5,000) square feet; provided, however, the location of said health club or fitness center may not be located in Outparcel #1 or directly adjoining the Demised Premises.

5. Development of Phase I and Entry Drive. Section 2 of the ECR is hereby amended by adding the following provision:

Concord shall not, without Developer's prior written approval, construct improvements on or otherwise alter the area of Phase I outlined and described as "BB" on Exhibit "B" attached hereto, which is hereby designated as "Concord's no-build" area.

6. Building Height. Section 3(a) of the ECR is hereby deleted in its entirety and replaced and superseded as follows:

In connection with any development in Phase II, less and except Outparcel #1 and Outparcel #2, Developer may, but shall not be required so to do, construct, erect, build or develop commercial,

retail, general office, or other structures not to exceed two (2) stories (maximum 32 feet) in height and not to exceed the height of any improvements constructed upon the Demised Premises on Phase I. However, a building located on Phase II which is substantially similar as shown on the attached Exhibit C is approved with a maximum height of thirty-two (32) feet on the main building and a maximum height of forty (40) feet on the elevator tower.

In connection with any development on Outparcel #1 and Outparcel #2, any building to be constructed on Outparcel #1 and Outparcel #2 shall be limited to one (1) story and shall not exceed twenty-five (25) feet in height.

7. Right to Access. Section 5 of the ECR is hereby amended by adding the following provision:

Owner hereby grants to Developer and to all future tenants of the Property or any part thereof and to their respective agents, customers, invitees, licensees, tenants and employees non-exclusive easements for access, ingress and egress of passenger vehicles over, through and around those portions of the Property which are from time to time not improved with buildings and related structures. Developer shall have the right to access any entry drive, the Entry Drive, the BB area or any Concord No-Build area or Tenant No-Build area for the purpose of connecting drive, road, approach, way or parking area for the use and benefit of Phase II.

8. Development of Phase II.

Section 3(c) of the ECR is hereby deleted in its entirety and replaced and superseded as follows:

No improvements shall be constructed, erected, expanded or altered on Phase II until the plans for same (including site layout, architectural elevations, exterior building materials and colors and parking) have been approved in writing by Owner and Concord (or Concord's successor in interest, in the event the Concord Lease has been assigned). Owner and Concord shall have fifteen (15) days from the date of their receipt of the Site Plans to give written consent, such consent not to be unreasonably withheld, to the Site Plans or any comments/changes to the Site Plans. In the event Owner or Concord shall fail to give such consent or make comments upon the Site Plans within the time specified herein the consent of Owner and Concord shall be presumed. Developer shall then have not greater than sixty (60) days to make any reasonable revisions to the Site Plans suggested by comments received from Owner or Concord and shall submit such revisions to the party having made the comments (the "Revised Site Plans"). Within fifteen (15) days after delivery of the Revised Site Plans, the commenting party shall review and give written approval of the Revised Site Plans. In the event commenting party shall fail to give such consent to the Revised Site Plans within the time specified herein the consent of the commenting party shall be presumed. In all cases above, if the deadline day to

MISC 2008- 24540

respond falls on a weekend or recognized holiday, the time to respond shall be extended to the first business day following the deadline day. Owner and Developer shall take all steps necessary to keep mud and construction debris off of Phase I and all roads and driveways including, but not limited to, the Entry Drive.

9. Use of Phase I Parking. Section 3(d) of the ECR is hereby deleted in its entirety and replaced and superseded as follows:

In developing and using Phase II, Developer shall continuously provide and maintain a parking ratio of the lesser of (250:1) or as required by local zoning ordinances and as if Phase I was not part of the Property. In addition, Developer shall cause landscaping areas to be added in connection with any building or other improvements constructed on Phase II. At no time shall the parking available on Phase I be used or considered as parking available for Phase II users when making any parking ratio calculation.

10. Restriction of AA Area. The following provision is hereby added as Section 3(k) of the ECR:

Neither Owner nor Developer, nor the successors or assigns of Owner or Developer, shall construct, erect, install or build any improvement, save and except any pylon or monument sign and parking area and any landscaping or other, similar plantings but which shall not material impair or obscure the improvements constructed in Phase I, within the specific area outlined as "AA" on the attached Exhibit D.

11. Development of Phase II - Outparcel #1 Restriction. The following provision is hereby added as Section 3(k) of the ECR:

Owner, or its successor, shall not market or start construction on a speculative retail or office building on Outparcel #1 until after June 1, 2010.

12. Payment of Sums Associated with Damage to Driveways/Sewer Lines/Detention Facilities. The following provision is hereby added as Section 6(b)(iv) to the ECR:

In the event Developer shall be required to pay any sum pursuant to Section 6(b) of the ECR, said sum shall be paid in not greater than ten (10) days from receipt of invoice.

13. Indemnification. Section 9 of the ECR is hereby amended to add the following provisions:

Owner shall indemnify, save harmless and defend Developer, its agents and servants from and against any and all claims, actions, damages, suits, judgments, decrees, orders, liability and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, on or about the Property, or from or out of the use or occupancy of the Property, or occasioned wholly or in part by any action or omission of Owner,

its agents, contractors, employees, servants, subtenants or concessionaires, unless the same shall be caused by the willful, intentional or negligent act or omission of Developer, its agent, contractors, employees, subtenants or concessionaires.

For so long as the Concord Lease is valid and in effect, Concord shall indemnify, save harmless and defend Developer, its agents and servants from and against any and all claims, actions, damages, suits, judgments, decrees, orders, liability and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, on or about the Demised Premises, or from or out of the use or occupancy by Concord of the Demised Premises, or occasioned wholly or in part by any action or omission of Concord, its agents, contractors, employees, servants, subtenants or concessionaires, unless the same shall be caused by the willful, intentional or negligent act or omission of Developer, its agent, contractors, employees, subtenants or concessionaires.

Developer shall indemnify, save harmless and defend Owner and Concord, their agents and servants from and against any and all claims, actions, damages, suits, judgments, decrees, orders, liability and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, on or about Phase II, or occasioned wholly or in part by any action or omission of Developer, its agents, contractors, employees, servants, subtenants or concessionaires, unless the same shall be caused by the willful, intentional or negligent act or omission of Owner or Concord, their agent, contractors, employees, subtenants or concessionaires

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. The ECR and this First Amendment shall bind and inure to the benefit off Owner, Concord and Developer, and their respective successors and assigns. The rights and obligations of Owner shall pass to any successor owner of the Property; provided, however, in the event the Property is divided into more than one ownership, the then-owner or then-owners of Phase I shall continue to serve as "Owner" under the ECR, as amended (with the exception of the obligations under Section 9 of the ECR).

15. Miscellaneous.

15.1 Applicable Law. The ECR and this First Amendment have been executed in and shall be construed and governed by the laws of the State of Arkansas.

15.2 No Third Party Beneficiary. Nothing in this First Amendment or the ECR, whether express or implied, is intended to confer upon any person or entity, other than the parties hereto and their respective successors, legal representatives and permitted assigns, any rights or remedies under this First Amendment or the ECR.

15.3 Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall be one and the same instrument.

15.4 No Partnership. Nothing herein is intended or shall be construed as creating the relationship of co-partner, joint venturer or other similar relationship as between Owner, Concord or Developer.

15.5 Severability. If any one or more of the provisions hereof are determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect upon the remaining provisions hereof, which shall remain valid and enforceable in accordance with their terms.

[End of Page, Signature Pages Follow.]

MISC 2008-

24543

IN WITNESS WHEREOF this First Amendment to the Easements with Covenants and Restrictions Affecting Land is made and entered into this 19th day of December, 2008.

OWNER:

SEARCY RETAIL HOLDINGS I, LLC,
an Arkansas limited liability company

By: BRS, LLLP, its Authorized Member

By: Brian R. Shaw Revocable Trust, its
General Partner

By: Brian R. Shaw, Trustee
Brian R. Shaw, Trustee

Address: 3425 N. FUTRALL, SUITE 1
FAYETTEVILLE, AR 72703

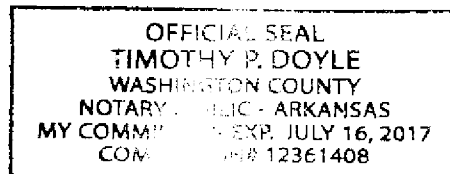
STATE OF ARKANSAS)
)
COUNTY OF Washington) ss.

On this 19th day of December, 2008, before me appeared Brian R. Shaw, to me personally known, who being by me duly sworn, did say that he is the Trustee of the Brian R. Shaw Revocable Trust, the General Partner of BRS, LLLP, the Authorized Member of Searcy Retail Holdings I, LLC, an Arkansas limited liability company, and that said instrument was signed on behalf of said LLC by authority of its Members, and said member acknowledged said instrument to be the free act and deed of said LLC.

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

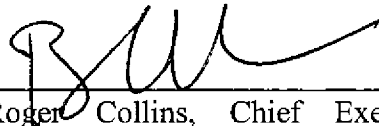
Timothy P. Doyle
Notary Public

My commission expires:



CONCORD:

HARP'S FOOD STORES, INC., an
Arkansas corporation

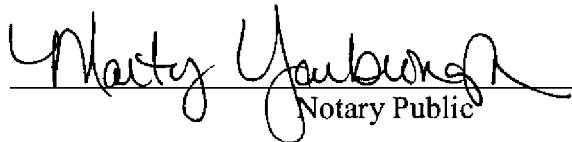
By: 
Roger Collins, Chief Executive
Officer

Address: 918 S. Gutensohn Road
Sprindale, AR 72765

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

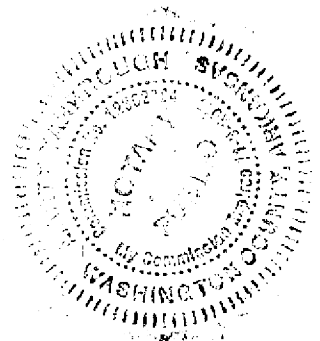
Before me, a Notary Public in and for said county and state, on this 11 day of December, 2008, personally appeared Roger Collins, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as the Chief Executive Officer of Harp's Food Stores, Inc., an Arkansas corporation and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of Harp's Food Stores, Inc., for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.


Notary Public

My appointment expires:

11-3-2017



DEVELOPER:

SEARCY HARPS HOLDINGS, LLC, an
Arkansas limited liability company

OGRE FUND 1, LP, Member

By OGRE Fund 1, LLC, its General
Partner

By: Christine Drusch
Christine Drusch, Member

Address: 1111 Bagby, Suite 5000
Houston, TX 77002

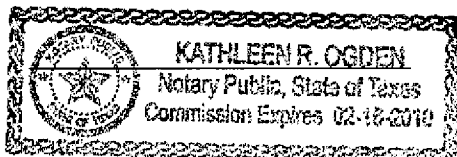
STATE OF Texas)
)
COUNTY OF Harris) ss.

Before me, a Notary Public in and for said county and state, on this 15th day of December, 2008, personally appeared Christine Drusch, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as the Member of OGRE Fund 1, LLC, the General Partner of OGRE Fund 1, LP, a member of Searcy Harps Holdings, LLC, and acknowledged to me that she executed the same as her free and voluntary act and deed, and as the free and voluntary act and deed of Searcy Harps Holdings, LLC, for the uses and purposes therein set forth.

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

K. Ogden
Notary Public

My commission expires:



4818-7102-0035.2

HAVILAH INVESTMENTS, LLC,
Member

By: [Signature]
Luke Anderson, Member

By: [Signature]
Glen Johnson, Member

Address: P.O. Box 1443
Searcy Ar 72145

STATE OF Ark)
COUNTY OF White) ss.

On this 18th day of Dec, 2008, before me appeared Luke Anderson and Glen Johnson, to me personally known, who being by me duly sworn, did say that they are the Authorized Members of Havilah Investments, LLC, an Arkansas limited liability company, a member of Searcy Harps Holdings, LLC, and that said instrument was signed on behalf of Searcy Harps Holdings, LLC, by authority of its Members, and said members acknowledged said instrument to be the free act and deed of said LLC.

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

[Signature]
Notary Public

My commission expires:

4/1/2012

NOTARY PUBLIC
STATE OF ARKANSAS
COMMISSION EXPIRES 4/1/2012