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**DECLARATION OF RESTRICTIONS AND GRANT OF
EASEMENTS**

between

WOODSTOWN ROAD ASSOCIATES, L.L.C.

and

AMERICAN STORES PROPERTIES, INC.

DATE: August 9, 1999

LOCATION: Highway 40 and Route 45
Pilesgrove, New Jersey

STORE NUMBER: 22-1116

40176
RECORD AND RETURN TO:
FIDELITY TITLE ABSTRACT CO.
1415 ROUTE 70 EAST, SUITE 115
CHERRY HILL, NJ 08034-2218

SEE MAP FILED IN MAP ROOM IN FILE FOLDER 1028-199

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Schedule of Exhibits

- "A" Site Plan of Shopping Center
- "B" Legal Description of Shopping Center
- "B-1" Legal Description of Parcel 1
- "B-2" Legal Description of Parcel 2
- "C" Rate Schedule for Cycle-Let® System

**DECLARATION OF RESTRICTIONS AND GRANT OF
EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Agreement") is made as of the ~~10th~~ day of August, 1999, by and between Woodstown Road Associates, L.L.C. ("Developer") and American Stores Properties, Inc. ("ASPI"), collectively referred to herein as the "Parties" and individually as a "Party".

BACKGROUND

This Agreement is made with respect to that certain real property consisting of approximately fourteen (14) acres of real property located at the Southwest corner of Highway 40 and Route 45, Township of Pilesgrove, County of Salem, State of New Jersey, which real property is depicted on the site plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site Plan"), and which real property is more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Shopping Center").

ASPI is, or will be at the time of the recordation of this Agreement, the Owner of that portion of the Shopping Center designated as Parcel 1 on the Site Plan, which Parcel is more particularly described on Exhibit "B-1" attached hereto.

Developer is, or will be at the time of the recordation of this Agreement, the Owner of the balance of the Shopping Center, designated as Parcel 2 on the Site Plan, which Parcel is more particularly described on Exhibit "B-2" attached hereto.

The Parties desire that each of their Parcels and every portion thereof be developed in conjunction with each other for the mutual benefit of the Parties and of each and both of the Parcels and every portion thereof, and accordingly do hereby establish a general plan for the improvement, protection, development, maintenance and use as a commercial shopping center, and for such purposes the Parties do hereby establish easements, covenants, restrictions, liens and charges (collectively, the "Restrictions") as are hereinafter set forth, subject to which all of the Shopping Center, and every portion thereof, shall be improved, held, exchanged, leased, sold and/or conveyed. Each of the Restrictions is imposed upon each Parcel in the Shopping Center as a mutual equitable servitude in favor of the other Parcel and every part thereof. Each of the Restrictions shall create reciprocal rights and obligations among each of the Owners (as defined hereafter); the Restrictions shall further create a privity of contract and of estate between the Owners of the Parcels and their heirs, successors and assigns; and the Restrictions shall be and operate as covenants running with the land for the benefit of the Shopping Center and each and every part and portion thereof.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

1. Preliminary.

a. Incorporation. The above Recitals are hereby incorporated herein and made a part hereof by reference.

b. Definitions.

- (i) **"ASPI Affiliate".** Any entity controlling, controlled by or under common control with American Stores Company, a Delaware corporation, or any successor thereto by merger, consolidation or acquisition of its assets.
- (ii) **"Building Area".** The Building Area is that portion of the Shopping Center upon which buildings may be constructed. No buildings may be erected in the Shopping Center except within the areas shown therefor on the Site Plan, including the future 10,000 square foot expansion of the building for Parcel 1 shown on the Site Plan as the "Area of Proposed Building Expansion."
- (iii) **"Common Area".** All portions of the Shopping Center not designated as Building Area, as well as those portions of the Building Area upon which buildings are not yet constructed or under construction.
- (iv) **"Owner".** The Owner of Parcel 1, the Owner of Parcel 2, and their respective assigns, grantees, and successors in interest having record title to all or any portion of a Parcel in the Shopping Center.
- (v) **"Owner of Parcel 1".** ASPI and its respective assigns, grantees and successors in interest having fee record title to all or any portion of Parcel 1. In the event any ASPI Affiliate does not have record fee title to any portion of Parcel 1 but is leasing all or a portion of Parcel 1 pursuant to a lease, sale-leaseback or other transaction giving the ASPI Affiliate a right of occupancy to all or any portion of Parcel 1 pursuant to a written instrument: (i) the ASPI Affiliate shall be deemed to hold jointly with the Owner of Parcel 1 all of such Owner's rights of consent and approval which are created by this Agreement, and any consent or approval given hereunder by the Owner of Parcel 1 shall not be effective without the consent or approval of the ASPI Affiliate but any such consent or approval by the ASPI Affiliate alone shall be sufficient without the consent or approval of the record Owner of Parcel 1; (ii) any rights of enforcement or to cure defaults under this Agreement which are granted to the Owner of

Parcel 1 shall be deemed to be also for the benefit of the ASPI Affiliate, and the ASPI Affiliate may exercise such rights on its own behalf and without the joinder of the Owner of Parcel 1; and (iii) this Agreement may not be amended or terminated without the prior written consent of the ASPI Affiliate. Any waiver of rights under this Agreement by the Owner of Parcel 1 shall not be effective as against the ASPI Affiliate unless such waiver is also obtained from the ASPI Affiliate. In the event that the ASPI Affiliate and the Owner of Parcel 1 shall exercise inconsistent rights or remedies or issue inconsistent instructions to any Owner or any tenant or other party bound by the terms of this Agreement, then such exercise of rights or remedies or instructions by the Owner of Parcel 1 shall be void and of no effect.

- (vi) "Owner of Parcel 2". Developer and its respective heirs, grantees and assigns having fee record title to all or any portion of Parcel 2. References in this Agreement to the Developer shall also include as applicable, any grantee, assignee or successor of Developer who is then an Owner of all or any portion of Parcel 2; provided, however, that any successor Owner of the portion of Parcel 2 designated as proposed Lot 5.05 on that certain Major Subdivision Plan dated April 13, 1998, as it has been or may hereafter be amended, as approved by the Pilesgrove Township Planning Board (the "Subdivision Plan"), which contains the Building Area for the approximately 16,000 square foot retail building (as shown on the Site Plan) ("Lot 5.05"), shall be responsible for the Developer's maintenance and repair obligations under Paragraph 4 below; provided, further, however, that the foregoing shall not relieve any other Owner of its obligation to pay a portion of the costs of CAM (as defined in section 4 below), to the extent required herein.
- (vii) "Development Agreement". At or near the time of the execution of this Agreement, ASPI and Developer have entered into an agreement governing and providing for the initial planning, development and construction of the Shopping Center (the "Development Agreement"). Until such time as the Shopping Center has been initially developed pursuant to the Development Agreement, ASPI's and Developer's obligations under the Development Agreement, including but not limited to contribution to costs of construction of Off-Site and On-Site Improvements, shall run with the land and any transfer of Parcel 1 or Lot 5.05 whether by sale, foreclosure, operation of law or otherwise, shall be subject to performance of all obligations under the Development Agreement and the transferee agrees, as a condition to the transfer, to fully perform all of the obligations of Developer or ASPI, as the case may be,

under the Development Agreement and within the time frames, if any, therein required. Upon termination of the Development Agreement in accordance with its terms, the requirements of this paragraph shall be deemed to be satisfied.

- (viii) "Parcel." As used herein, "Parcel" shall mean and refer to either of Parcel 1 or Parcel 2, as described on Exhibits B-1 and B-2, respectively, or any portion of a Parcel which is separately owned by an Owner, as the context may require.

2. Building Area.

a. **Building Area.** No building or other structure shall be constructed upon any Parcel in the Shopping Center other than within the Building Area. Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars), normal foundations, required emergency exits (including stairs, landings, footings and foundations associated therewith), trash enclosures, sidewalks, loading and delivery docks (whether open or enclosed), covered areas attached to such docks, and doors for ingress and egress may project from any building or structure up to a distance of twenty-five (25) feet over or outside of the Building Area, provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and provided further, no such extension or projection shall be allowed if it reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access in and through the Shopping Center or to or from adjacent streets as depicted on the Site Plan. The foregoing allowable extensions and projections are hereinafter referred to as the "Permitted Encroachments".

b. **Maximum Building Area.** The total square footage of floor area of all buildings and other structures within the Building Area on Parcel 1 or 2 may not exceed the maximum amount designated for each such Parcel on the Site Plan. Such maximum building area is hereinafter referred to as the "Maximum Building Area"; provided, however, that the Maximum Building Area of the proposed Eckerd drug store identified on the Site Plan shall not exceed 11,500 square feet (rather than 10,908 square feet as indicated on the Site Plan, which is the interior area of such proposed drug store). As used herein, "floor area" shall mean the area within the exterior surfaces of the exterior walls of any building or structure, excluding any "Mezzanines" (i.e., any floor area above the ground floor that does not extend over the entire ground floor area of the building and which is used in connection with the primary commercial use of such building, but is not used for sales area or generally open to the public) and any Permitted Encroachments. The Maximum Building Area for Parcel 1 and Parcel 2 is only a limitation on building size and imposes no obligation whatsoever on the Owner of such Parcel to place, erect or construct a building or structure thereon having the Maximum Building Area.

c. **Design and Construction of Buildings.** All buildings constructed within the Building Area on Parcel 2 shall be designed so that the exterior elevation of each building will be architecturally and aesthetically compatible (including the height, color, materials, design and architectural theme) with the supermarket building to be constructed by ASPI within the Building Area on Parcel 1. Notwithstanding the foregoing, the buildings to be constructed in the three Building Areas on Parcel 2 which are located closest to U.S. Route 40 (i.e., on proposed Lots 5.02, 5.03 and 5.04 as identified on the Subdivision Plan) (the "Route 40 Building Areas") shall be permitted to adopt a corporate prototype architectural design not taller than one story in height (provided that any such building may include a mezzanine) and generally used in the region by a regional drug store, retail merchandise store, bank or fast food restaurant. All building construction and exterior remodeling must be diligently prosecuted to completion. If an Owner or its tenant commences construction or exterior remodeling of a building within the Shopping Center, but such construction or exterior remodeling ceases prior to the completion of the building for a period in excess of one hundred twenty (120) days, and the other Owner in its reasonable discretion determines that such unfinished building or exterior remodeling creates an unsafe condition detrimental to the Shopping Center, upon thirty (30) days prior written notice to the Owner of the Parcel upon which such construction has ceased, unless such Owner has resumed construction prior to the expiration of such thirty (30) day period, the Owner of the other Parcel, (i) in the case of uncompleted construction, may, after twelve (12) months of inactivity regarding such construction, demolish part or all of such building, construct part or all of such building or, construct a barricade around such building and, (ii) in the case of uncompleted remodeling, complete all or part of such remodeling or construct a barricade around such building. Upon completion of any such work by an Owner, the Owner upon whose Parcel the building is located shall reimburse the Owner performing such work upon demand for all amounts expended in connection with such work. In the event such Owner fails to so reimburse the Owner performing such work, the Owner performing such work shall have the lien and other rights set forth in the Section herein entitled "Default". No mechanic's or materialmen's liens shall be filed against any Parcel or any portion thereof in the Shopping Center as a result of work performed on, or materials provided to, the other Parcel in the Shopping Center. In the event any such liens are filed against any such Parcel or portion thereof, the Owner of the Parcel on which such work was performed or for which such materials were provided shall forthwith take the necessary steps to have such lien released. In the event the Owner of the Parcel for which such work was performed or for which such materials were provided fails to remove or release such lien against the other Owner's Parcel, and the Owner of the Parcel against which the lien is filed incurs any expenses, damages or costs, including attorneys' fee, in connection with or relating to releasing such lien, the Owner of the Parcel for which such work was performed or for which such materials were provided shall promptly reimburse all such costs, fees and expenses. Failure to reimburse such costs, fees and expenses shall provide the Owner to be reimbursed with the lien and other rights set forth in the Section herein entitled "Default".

d. **Maintenance of Building Pads.** All portions of the Building Area on which buildings are not constructed or under construction shall be paved or landscaped, free of weeds and debris, and otherwise adequately maintained. Notwithstanding any provision herein to the contrary, the paving or landscaping and maintenance of such Building Area shall be at the sole expense of the respective Owner of such Building Area, and shall not be included in the cost of maintenance of the Common Area.

3. **Common Area.**

a. **Common Area Use.** The Common Area shall be used for vehicular access, circulation and parking, pedestrian traffic and the comfort and convenience of customers, invitees, licensees, agents and employees of the Owners and business occupants of the buildings constructed in the Building Area on the Parcels in the Shopping Center, and for the servicing and supplying of such businesses. In addition, the Common Area may be used: (i) on a temporary basis in connection with the construction and repair of any buildings or Common Area in the Shopping Center, so long as such use does not occupy more area than is reasonably required nor unreasonably restrict access to and from or the conduct of business within the buildings in the Shopping Center or access to and from the adjacent streets; (ii) in connection with the construction and maintenance of utility lines, so long as such activity is undertaken in strict compliance with the requirements of the Section herein entitled "Utility Lines"; (iii) for the construction of Permitted Encroachments; and (iv) for any other use required by any governmental authority having jurisdiction over the Shopping Center. Except as shown on the Site Plan, no building, barricade or structure may be placed, erected or constructed within the Common Area on Parcel 1 or Parcel 2, except Permitted Encroachments, pylon (to the extent not herein prohibited) and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, cart corrals, columns or pillars supporting roof overhangs, and any other improvements as may be required under the Site Plan (and related government approvals) or otherwise under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the Shopping Center.

b. **Parking.** The number of parking spaces maintained on each Parcel and the size and configuration thereof shall initially be as depicted on the Site Plan. Any change to the parking configuration in the Shopping Center shall require the approval of the Owners of both Parcels. No such approval shall be deemed granted unless evidenced by an amendment to this Agreement, which amendment shall be duly recorded in the County in which the Shopping Center is located. Such amendment shall attach and incorporate an amended Site Plan showing the reconfiguration of the parking spaces. The Owner of Parcel 1 may withhold its approval of such reconfiguration of parking for any reason or for no reason in its sole, subjective discretion. There shall be no charge or other validation for parking in the Common Area without the prior written consent of the Owner of Parcel 1. Notwithstanding the foregoing, an Owner may reconfigure the parking on its own Parcel without obtaining the approval of the other Owner(s) if such reconfiguration (a) fully meets all parking requirements for the existing or proposed uses

on such Parcel, (b) does not rely upon parking spaces on any other Parcel(s), and (c) does not otherwise adversely affect any other Parcel(s).

c. **Employee Parking.** The Owner, tenants and other occupants of Parcel 1 shall use only those portions of the Common Area within Parcel 1 for employee motor vehicle parking purposes. Likewise, the Owner, tenants and other occupants of Parcel 2 shall use only those portions of the Common Area within Parcel 2 for employee motor vehicle parking purposes. The Owner of each Parcel shall use its best efforts to enforce such employee parking requirements.

d. **General.** The Owner of each Parcel shall use or cause to be used the Common Area on its Parcel exclusively for the uses specified herein and in such manner as will not unreasonably interfere with the primary purpose of the Common Area, which is to provide for parking and access for the Owners, tenants, customers, invitees, employees, agents and licensees of the businesses located within the buildings in the Shopping Center, and for the servicing and supplying of such businesses. Subject to compliance with all applicable laws, ordinances and government regulations, the Owner or occupant of each Parcel shall have the right to conduct sales or displays of merchandise within the Common Area of its Parcel and on the sidewalks adjacent to its building at the times and in the manner which such Owner or occupant deems advisable, and may place and maintain a recycling facility in the Common Area of its Parcel at a location selected by the Owner or occupant of such Parcel. The Owner or occupant of each Parcel shall have the right to store shopping carts, on their own Parcel, on the sidewalk area adjacent to the buildings located on such Parcels and/or in the Common Area, and shall have the right to place and maintain pay telephones and vending machines upon the sidewalk area and/or in the Common Area of their own Parcels, subject to governmental requirements. The Owners shall have the right to post such temporary directional, identification and/or promotional signs (including banners) and/or place temporary fences or barricades as the Owner or occupant of each Parcel deems necessary or desirable in connection with outdoor sales. In addition, any Owner or occupant of a Parcel may install "Communications Equipment" on or about its own Parcel, including on the roof, wall mounts or poles and supports appurtenant to the building on such Parcel. As used herein, "Communications Equipment" means such items as satellite and microwave dishes, antennas, and laser heads, together with associated equipment and cable. Any rights granted to a tenant or occupant of all or any portion of a Parcel pursuant to this Paragraph shall be subject and subordinate to the terms of any lease or occupancy agreement between such tenant or occupant and the Owner of such Parcel.

e. **Maintenance and Repair.** Each Owner shall, at its own expense, cause the Common Area located on its Parcel (or the portion of such Parcel owned by such Owner) together with the sidewalks immediately adjacent to the buildings located thereon, to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to, the following:

- (i) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- (ii) Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;
- (iii) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers and lines;
- (iv) Operating, keeping in repair, and replacing, where necessary, such artificial lighting facilities as shall be required;
- (v) Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and making replacements of shrubs and other landscaping as is necessary;
- (vi) Maintaining and repairing any and all walls, common storm drains, utility lines, water drainage areas and systems, sewers and other services which are necessary for the operation of the buildings and improvements within the Shopping Center; and
- (vii) Maintaining free and unobstructed access to and from its Parcel and the adjoining portions of the Shopping Center and to and from its Parcel and the streets adjacent thereto.

Notwithstanding anything herein to the contrary, the provisions of this Paragraph 3(e) shall not apply to ASPI if ASPI elects to participate in the shared area maintenance provided in Paragraph 4 below.

f. **Maintenance by Owners.** The Owner or occupant of each business within the Shopping Center shall maintain, at its own expense, its own trash enclosure and loading dock. All Owners and occupants shall regularly collect their shopping carts from the Common Area.

g. **Lighting.** Each Owner covenants and agrees to keep its Parcel fully illuminated each day from dusk to the later of 11:00 p.m. or thirty (30) minutes after the last business operation on its Parcel has closed, and further agrees to keep any exterior building security lights on from dusk until dawn. During the term of this Agreement, each Owner grants an irrevocable license to the other Owner for the purpose of permitting the lighting from its Parcel to incidentally shine on the adjoining Parcel. The Owners shall keep the portion of the access roads on their respective Parcels (i.e., the access roads leading to and from Highway 40 and to and

from Route 45) fully illuminated each day from dusk until dawn, whether or not business operations are being conducted on their respective Parcels.

Each Owner shall have the right, at its respective sole cost, to install a secondary wiring system from its Parcel to any light standards serving an access road on any other Owner's Parcel, which would permit a portion or all of such lighting on such other Owner's Parcel to be operated contemporaneously with the lighting on the Parcel of the Owner installing such system, and the occupant or Owner of the Parcel installing such system shall have the right to operate such lighting on such other Owner's Parcel at such times as such occupant or Owner deems such operation desirable; provided, no Owner shall turn off the lighting on another Owner's Parcel when such other Owner intends such lighting to remain operating. In the event an Owner exercises its right to install such secondary wiring system, all work performed in connection therewith shall be done in a good, workmanlike and lien free manner, and in accordance with all applicable governmental rules, regulations and requirements. All such secondary wiring systems shall be separately metered, and the Owner or occupant of the Parcel operating the same shall pay, prior to delinquency, the cost of all electrical power metered to all such secondary wiring systems.

h. **Water Recycling System.** A Zenon Cycle-Let® wastewater recycling system shall be maintained and operated by Developer (or any successor Owner of Lot 5.05) for the benefit of all Parcels in the Shopping Center in an economical manner and on a non-profit basis, and each Owner shall contribute to the cost of such maintenance and operation according to the initial rate schedule set forth in Exhibit "C", subject to adjustment from time to time with the approval of the Owners, which approval shall not be unreasonably withheld or delayed. Each Owner's proportionate share of such contribution shall be determined according to a fraction, the numerator of which is the total area (in square feet) of the building(s) constructed on its own Parcel and the denominator of which is the total area (in square feet) of the building(s) constructed in the entire Shopping Center (including such Owner's own Parcel).

i. **Reconfiguration of Access Road.** The Owner of Lot 5.05 shall not extend, alter or reconfigure the access road on its Parcel so as to provide a neighboring property with vehicular access to Route 40 unless and until the Owner of Lot 5.05 first constructs a directional traffic barrier or other mechanism reasonably acceptable to the Owner of Parcel 1 designed to effectively prevent use of the access road on Parcel 1 by any non-Shopping-Center traffic.

ASPI acknowledges receipt of a copy of a Deed of Easement and Easement Agreement (the "Rosenstock Easement") between Developer and Walter B. Rosenstock and Suse M. Rosenstock (collectively, the "Rosenstocks"), dated September 2, 1998, and recorded September 8, 1998, in Book 0994, at Page 155, providing for access across Parcel 2 between Route 40 and the remainder of Lot 5, Block 64, consistent with the terms of this Section 3(i). The Developer represents that the copy of the Rosenstock Easement provided to ASPI is a true

and correct copy, including any and all amendments. Hereafter, Developer shall not in any way modify or amend the Rosenstock Easement, except in writing and with the prior written consent of each Owner of Parcel 1. The Developer acknowledges that any Owner of Parcel 1 is an intended third-party beneficiary of the Rosenstock Easement and hereby assigns to the Owner of Parcel 1 the non-exclusive authority to enforce Developer's rights pursuant to the Rosenstock Easement. Developer further agrees, upon request by any Owner of Parcel 1, to execute a written documentation of such assignment in recordable form. Developer acknowledges that Developer is the party in the best position to enforce the provisions of Section 2.3 of the Rosenstock Easement, which require the "Grantee's Access Drive" on Parcel 2 to be located and designed (including directional arrows, curbing, signage, striping and an angular design as depicted on Exhibit "C" to the Rosenstock Easement) in such a way as to discourage and, to the extent feasible, preclude movement of vehicles over Parcel 1 for access to New Jersey Highway Route 45, and Developer hereby agrees to diligently enforce Section 2.3 (and related provisions) of the Rosenstock Easement for the benefit of each Owner of Parcel 1, solely with respect to Developer's right to review and approve the design and location of Grantee's Access Drive. In the event Developer fails to take the actions required by the preceding sentence, any Owner of Parcel 1 shall, in addition to all other remedies available under this Agreement or at law or in equity, have the right to restrict access to Parcel 1 from Grantee's lands, provided that such Owner's exercise of such rights complies with all applicable laws.

j. **Drainage and Utility Easement.** ASPI acknowledges receipt of a copy of a Deed of Easement and Easement Agreement, between Developer and the Rosenstocks, dated September 2, 1998, and recorded September 8, 1998, in Book 0994, at Page 174 (the "Drainage Easement"), whereby the Rosenstocks have granted to the Developer an easement for construction of a drainage basin and certain related improvements, as more particularly described therein (collectively, the "Drainage Improvements") on a portion of the Rosenstocks' property which is adjacent to the Shopping Center. The Drainage Easement provides that the Developer, as the owner of the Shopping Center, is responsible for the maintenance and repair of such improvements. The Developer (or any successor Owner of Lot 5.05) shall operate, maintain, repair and replace the Drainage Improvements in the manner required under the Drainage Easement, for the benefit of all Parcels in the Shopping Center in an economical manner and on a non-profit basis, and each Owner shall contribute its proportionate share of the cost thereof. Each Owner's proportionate share of such contribution shall be determined according to a fraction, the numerator of which is the total area (in square feet) of the building(s) constructed on its own Parcel and the denominator of which is the total area (in square feet) of the building(s) constructed in the entire Shopping Center (including such Owner's own Parcel).

k. **Payment of Contributions/Reimbursements.** The amounts to be contributed by each Owner to the Developer (or successor Owner of Lot 5.05) for reimbursement or contribution for costs related to the waste water recycling system and/or the Drainage Easement, pursuant to paragraphs 3.h. and 3.j. above, shall be paid within twenty (20) days after written demand therefor and, upon request, satisfactory evidence of payment of such costs, but

Developer (or any successor Owner of Lot 5.05) shall not submit such demands more frequently than monthly.

4. Option for Shared Maintenance Expenses.

Initially, commencing upon the date ASPI opens for business in the building on Parcel 1, the Common Area in the entire Shopping Center (except for the Common Area located on the new lots designated on the Subdivision Plan as proposed Lots 5.02, 5.03 and 5.04) shall be maintained on an integrated basis by Developer (or any successor Owner of Lot 5.05) in an economical manner and on a non-profit basis in good, clean, attractive and safe condition, such as is characteristic of first class shopping centers ("CAM"), including, but not limited to: (i) maintaining and, where and when necessary, replacing paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as is in all respects equal or superior in quality, use and durability; (ii) promptly removing all snow, ice, water, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a safe, clean and orderly condition; (iii) promptly placing, keeping in repair and replacing, where and when necessary, appropriate signage, directional signs, markers and lines; (iv) keeping in repair and replacing such landscaping and artificial lighting facilities as shall be necessary; (v) maintaining, repairing and replacing any and all retaining walls, curbs, common storm drains, common utility lines, common sewers and other common services which are located thereon and are necessary for the operation of the Shopping Center; and (vi) illuminating any lighting fixtures located on the parking area or access drive located on Parcel 2. The Owner of Parcel 1 may exercise its option to cease contributing to such shared costs of CAM by written notice to Developer, such notice to be effective thirty (30) days after receipt; provided, however, such notice shall not be effective with respect to any portion of CAM which is being performed pursuant to a service contract or similar agreement, previously approved in writing by ASPI, which is not terminable on less than thirty (30) days notice. The Owner of Parcel 1 shall continue to share the cost of CAM performed pursuant to any such contract until it expires or is canceled in accordance with its terms. Notwithstanding the foregoing, the Owner of each Parcel shall be required to maintain the sidewalks in front of all buildings on its own Parcel and to remove therefrom snow, ice, dirt and debris. CAM shall not include any cost or expense relating to such work.

Commencing upon the date ASPI initially opens for business in the building on its Parcel, ASPI shall pay to Developer (or any successor Owner of Lot 5.05) a monthly payment equal to ASPI's Proportionate Share of Developer's actual cost to perform CAM for each month. ASPI's "Proportionate Share" means a fraction, the numerator of which is the total area (in square feet) of the building(s) constructed on Parcel 1 and the denominator of which is the total area (in square feet) of the building(s) constructed in the entire Shopping Center (including Parcel 1), but specifically excluding the area of the buildings constructed within the Route 40 Building Areas. Payment for each month shall be due within twenty (20) days after the first day of each month.

Initially, ASPI shall pay on account of ASPI's Proportionate Share of CAM, an amount equal to one-twelfth (1/12th) of seventy-five cents (\$.75) multiplied by the square footage of all buildings constructed on Parcel 1 provided that Developer shall, within one hundred twenty (120) days after the end of each calendar year, deliver to ASPI a breakdown showing ASPI's actual Proportionate Share of such CAM sums due for the year in question and, upon request, copies of each invoice for expenses included within CAM. If ASPI has overpaid for the year in question, Developer shall refund the amount of such overpayment; if ASPI has underpaid, within thirty (30) days after receipt of such invoice, ASPI shall pay the amount due to Developer. Developer shall have the right to adjust at any time the amount of ASPI's monthly payment on account of its Proportionate Share to an amount equal to ASPI's actual payment obligation for the immediately preceding year and upon receipt of such notice ASPI shall adjust its monthly payments accordingly. If ASPI's obligations under this paragraph shall commence or terminate on a day other than the first day of a month, ASPI's obligations for CAM for such month of commencement or termination shall be adjusted proportionately based on the full CAM charge for the month and the number of days of such month during which this paragraph is in effect.

ASPI may examine or audit the accounts and original bills for CAM at any reasonable time, but not more frequently than annually. ASPI shall bear the cost of any such audit, unless the same discloses a discrepancy in excess of three percent (3%) of ASPI's Proportionate Share of CAM expenses, in which event Developer shall bear such costs.

Except in an emergency situation creating actual danger of property damage and/or personal injury or death, Developer shall not (i) contract for or perform any Single Item (as hereinafter defined) of CAM in excess of Ten Thousand Dollars (\$10,000.00) (excluding contracts for snow removal) or (ii) enter into any contract for all or any portion of CAM which contract cannot be terminated on no more than thirty (30) days notice, without the prior written consent of ASPI. A "Single Item" shall be any agreements or contracts entered into by Developer for the purchase of labor, equipment or materials or any combination thereof to be used for what, as a general practice, is considered to be one project, one job or one category of expenditure. Failure of ASPI to respond to Developer's written request for consent within thirty (30) days of receipt shall constitute approval for the Contract described in such request.

Developer and ASPI shall keep the Common Areas on their respective Parcels illuminated as set forth in Section 3 (g) of this Agreement. Parcel 1 shall be separately metered for electricity with respect to the parking area on such Parcel, and the Owner of Lot 5.05 shall reimburse ASPI for its proportionate share of such electricity costs. For purposes of the preceding sentence, the proportionate share payable by the Owner of Lot 5.05 shall be a fraction, the numerator of which is the total area (in square feet) of the building(s) constructed on Parcel 2 (but specifically excluding the area of the buildings constructed within Route 40 Building Areas) and the denominator of which is the total area (in square feet) of the building(s) constructed in the entire Shopping Center (including Parcel 2), but specifically excluding the area of the buildings constructed within the Route 40 Building Areas. Within twenty (20) days after written demand (and, upon request, satisfactory evidence of payment of such electricity costs),

the Owner of Lot 5.05 shall reimburse the Owner of Parcel 1 for the proportionate share of such electricity costs owed by the Owner of Lot 5.05; provided, however, that the Owner of Parcel 1, at its option, may instead elect to offset such electricity reimbursement against any outstanding CAM payments due hereunder to the Owner of Lot 5.05.

Notwithstanding anything to the contrary in this Section, in no event shall ASPI, unless expressly provided to the contrary herein, be required to pay any portion of any of the following costs or expenses as reimbursement of ASPI's Proportionate Share of CAM: (i) security services being placed in or around the Shopping Center, or on-site personnel; (ii) any Single Item of CAM in excess of Ten Thousand Dollars (\$10,000.00), or amounts due under any contract which cannot be terminated on no more than thirty (30) days notice, unless such Single Item or contract has been approved (or deemed approved) in advance by ASPI as provided in this Section; (iii) taxes or assessments on or depreciation of the common areas and improvements thereon; (such taxes, assessments or depreciation being the obligation of the Owner of the Parcel on which such common areas and improvements are located); (iv) the cost of any repair or replacement item which, pursuant to generally accepted accounting principles, should be capitalized (such costs to be the obligation of the Owner of the Parcel on which such repairs or replacement items are located); (v) insurance on the common areas; (vi) services or items for the benefit of any particular tenant or group of tenants in the Shopping Center which does not include ASPI; (vii) expenses incurred as a result of Developer's or its tenant's negligence or willful misconduct; (viii) any management fees; (ix) any items or expenses for which Developer receives reimbursement from third parties; (x) any costs or expenses associated with remediation of Hazardous Material (as hereinafter defined); (xi) any costs or expenses associated with repair or correction of defective workmanship or materials in construction of the Shopping Center or any part thereof; (xii) costs or expenses which are covered by the proceeds of insurance (or which are not covered due to an Owner's failure to obtain the insurance required pursuant to Paragraph 16 but would be covered under customary policies of such required insurance), condemnation or legal claims against the responsible parties; (xiii) clerical services of Developer or its agents, office overhead or salaries; (xiv) trash removal (such service being at the expense of each separate Owner); (xv) lighting (such service being at the expense of each separate Owner as provided hereinabove); or (xvi) costs associated with vacant buildings or other improvements not a part of the Common Area.

In the event ASPI is dissatisfied with the performance of CAM by Developer (or any successor Owner of Lot 5.05), ASPI may at any time terminate its election to contribute to shared costs of maintenance, upon thirty (30) days prior written notice (except for costs incurred under approved contracts not terminable within thirty (30) days, as provided above), in which event the provisions of subparagraph 3(e) of this Agreement shall apply.

In connection with contributions to shared maintenance expenses, Developer hereby certifies that its employer identification number is 22-3513171.

5. Easements.

a. **Ingress, Egress and Parking.** Subject to the terms of the Section herein entitled "General", each Owner, as grantor with respect to its Parcel, hereby grants to the other Owner as grantee, for the benefit of such grantee Owner and its respective employees, agents, customers, invitees and tenants, and the employees, agents, customers and invitees of Owner's tenants, and for the benefit of the Parcel owned by such grantee Owner, and as a burden on such grantor Owner's Parcel, a non-exclusive easement appurtenant to such grantee Owner's Parcel for the purpose of ingress and egress by vehicular and pedestrian traffic and for vehicular parking upon, over, across and through the Common Area within such grantor Owner's Parcel.

b. **Utility Lines.** Each Owner, as grantor with respect to its Parcel, hereby grants to the other Owner as grantee, for the benefit of such grantee Owner and its Parcel, non-exclusive easements appurtenant to the Parcel owned by the grantee Owner, under, through and across the Common Area of the Parcel owned by the grantor Owner for the installation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, gas mains and other public utility facilities necessary for the orderly development and operation of the Common Area and each building in the Shopping Center; provided, the rights granted pursuant to such easements shall at all times be exercised in such manner as to cause the least interference with the normal operation of the Shopping Center; and provided further, except in an emergency, the right of any grantee Owner to enter upon the Parcel of any grantor Owner for the exercise of any right pursuant to such easements shall be conditioned upon obtaining the prior written consent of such grantor Owner, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, if an Owner does not deny a request for such consent within thirty (30) calendar days after receipt thereof, then the Owner, if it does not reply within fifteen (15) calendar days after receipt of a second request, shall be deemed to have consented thereto, provided that such first and second request for consent included a specific reference to this section and a notice that failure to respond within such time periods would constitute a deemed consent. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the surface or ground level of such easements. In the event an Owner deems it necessary to cause the installation of a storm drain, utility line or sewer across the Common Area of any other Parcel subsequent to the initial paving and improving thereof, the Owner thereof agrees not to unreasonably withhold the granting of any necessary additional easements; provided, such Owner may withhold its consent if such installation would unreasonably interfere with the normal operation of any business in the Shopping Center, or with such Owner's plans for the development of its Parcel in conformance with this Agreement and the Development Agreement; and provided further, the Owner making or causing such installation shall, at its sole cost and expense, completely restore all Common Area improvements and surfaces disrupted as a result of such installation.

In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition of their providing or continuing service, such

rights shall be granted, provided that the Owners required to execute such instruments deem any terms and conditions of such a grant which differ from those provided herein to be acceptable.

c. **Building Encroachments.** Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner as grantee and for the benefit of its Parcel, an easement for any portion of any building or structures on any Parcel (including, but not limited to, subsurface support elements required for the construction or reconstruction of such building or structures) which may encroach onto or over an adjoining Parcel; provided, the easement for footings, piers, piles, grade beams, canopies, eaves, utility meters, roof overhangs and building encroachments granted herein shall not exceed two (2) feet; and provided further, the encroachment easement shall not extend to encroachments which are intentional or which materially and adversely affect the location, orientation, design or construction of buildings to be constructed on the Building Area of the Parcel upon which the encroachment has taken place, unless first approved in writing by the Owner of the affected Parcel. The easement granted herein shall last so long as the building of which such encroachment is a part is standing, and in the event this Agreement expires first, such easement shall survive such expiration.

d. **Emergency Exits.** Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner, as grantee and for the benefit of each other Owner and its respective Parcel: (i) an easement for any portion of any stairs and landings (including any footings and foundations related thereto) constructed in connection with building emergency exits required by any governmental entity, which may encroach onto or over an adjoining Parcel; and (ii) an easement for emergency egress from such emergency building exits; provided, the easement for stairs and landings (and foundations and footings related thereto) granted herein shall not exceed six (6) feet.

6. **Restrictions.**

a. **Business.** The types of uses permitted in the Shopping Center shall be of a retail, service and/or commercial nature found in Shopping Centers of a similar size and quality in the metropolitan marketing area in which the Shopping Center is located. Nothing contained herein shall be construed to require the Owner of Parcel 1 or any ASPI Affiliate or tenant or subtenant thereof or their successors or assigns to open or operate any form of business in the Shopping Center for any period of time or at all. None of the uses listed below shall be conducted in the Shopping Center without the prior written consent of the other Owner(s), which consent may be granted or withheld for any reason or for no reason in the sole, subjective discretion of each Owner. The restrictions in this Subparagraph (a) shall be a servitude upon the entire Shopping Center and shall be binding upon any person acquiring any interest in any part of the Shopping Center.

- (i) No portion of the Shopping Center shall be used for any of the following purposes:

- (1) Funeral Homes;
- (2) Any production, manufacturing, industrial or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof from the Shopping Center and except that any vacant retail store may be utilized by an adjacent operating retail store in the Shopping Center for accessory storage use provided that the front window treatment is appropriately screened so that such use is not disclosed to the general public;
- (3) Massage parlor, pornographic or "Adult" store or head shop, except for incidental sales of magazines and videos;
- (4) Car washes, gasoline or service stations or the displaying, repairing, or renting of trailers;
- (5) Any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke or gases or materially increases fire, explosion, or radioactive hazards on any Parcel;
- (6) A dry cleaning facility with on-premises dry cleaning operations;
- (7) A bowling alley, skating rink or discotheque;
- (8) Any business or facility which has as its primary purpose the use, storage or marketing of Hazardous Materials or which would cause the premises in which such business or activity is conducted to be an "industrial establishment" within the meaning of the New Jersey Industrial Site Recovery Act (13:1K-6, *et seq.*). As used herein, "Hazardous Materials" means any substance which, if used in any activity in the Shopping Center, would cause: (i) any part of the Shopping Center to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring any part of the Shopping Center or any Parcel within the ambit of, the Resource Conservation and Recovery Act of 1976, or any similar federal or state law or local ordinance or any other environmental law; (ii) a release or threatened release of hazardous waste from any part of the Shopping Center within the meaning of, or otherwise bring any part of the Shopping Center or any Parcel within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar federal or state law or local ordinance or any other

environmental law; or (iii) the discharge of pollutants or effluents which would require a permit under the Federal Water Pollution Control Act, or the Clean Air Act, or any similar federal or state law or local ordinance or other environmental law including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material. Nothing in this subsection (a)(i), however, shall prohibit the occupant of any grocery or drug store or combination thereof from storing, using and/or selling any item on or from the Shopping Center which grocery stores, drug stores or combinations thereof customarily store, use or sell, or from engaging in any activity in the Shopping Center which grocery stores, drug stores or combinations thereof customarily engage in, subject to the Shopping Center exclusives set forth in subsection (c) hereinbelow;

- (9) Offices (except for offices related to retail services, such as travel planning or tax preparation);
 - (10) A dance hall, nightclub or flea market; or
 - (11) Training or educational facilities such as a beauty school, child care facility, barber college, library, reading room, church, school, place of instruction, or any other operation catering primarily to students or trainees rather than to customers.
- (ii) Except as depicted on the Site Plan, no drive-up or drive-through lanes shall be permitted on Parcel 2 without the prior written approval of the Owner of Parcel 1, which approval may be withheld for any reason or for no reason in the sole, subjective discretion of the Owner of Parcel 1. No such approval shall be deemed to be granted unless evidenced by an amendment to this Agreement, which amendment shall be duly recorded in the County in which the Shopping Center is located. Such Amendment shall designate and shall attach and incorporate an amended Site Plan designating the location of permitted drive-up or drive-through lanes. Notwithstanding the foregoing, drive-up or drive-through lanes may be constructed to serve (a) any buildings constructed in the Route 40 Building

Areas so long as such lanes shall not adversely affect the traffic pattern on any portion of Parcel 1 or (b) at either end of the building to be constructed within the Building Area on Lot 5.05, as depicted on the Site Plan.

b. **Common Area Uses.** No Owner of any Parcel shall knowingly permit persons other than customers, employees, agents and contractors of the occupants of the Shopping Center to park in the Common Area without the prior written approval of all Owners of the Shopping Center. No such approval shall be deemed granted unless evidenced by an amendment to this Agreement, which amendment shall be duly recorded in the County in which the Shopping Center is located.

c. **Exclusives Restricting Uses on Parcel 2.** No portion of Parcel 2 shall be used for any of the following purposes:

- (i) A drug store or store compounding prescriptions and/or selling merchandise which must be sold by, in the presence of, or under the authority of a registered pharmacist; provided the exclusive set forth in this subsection (i) shall not apply in any way to drug store operations conducted by Eckerd Corporation (or any of its successors or assigns) in the proposed 10,908 square foot facility on Parcel 2. Notwithstanding the foregoing, the pharmacy to be operated by Eckerd Corporation (or any of its successors or assigns) on Parcel 2 shall not sell food and beverage items as a primary use; and shall not in any event sell meat (except pre-packaged delicatessen or breakfast meats), fish, poultry, fruits, or vegetables.
- (ii) A grocery store, supermarket or any other store in each case selling for off-premises human consumption: (1) fresh or frozen foods (except at the Eckerd drugstore to the extent permitted in section (i) above); (2) poultry, fish, meats or meat products (except at the Eckerd drugstore to the extent permitted in section (i) above); (3) fruits or vegetables; (4) dairy products (except at the Eckerd drugstore); (5) delicatessen products; (6) bakery products; (7) liquor or other alcoholic beverages in package form, including, but not limited to, beer, wine and ale (except at the Eckerd drugstore); (8) floral items; (9) any combination of food items sufficient to be commonly known as a convenience food store; (10) photo processing (except at the Eckerd drugstore); (11) health and beauty aids (except at the Eckerd drugstore or as incidental to a beauty salon); and (12) take-out meal replacement items (i.e., as sold by Boston Market type operations as opposed to traditional restaurants or fast food outlets.
- (iii) The exclusives set forth in this subparagraph 6(c) are intended for the benefit of the Owner of Parcel 1 and any ASPI Affiliate or tenant or

subtenant thereof and their successors or assigns. Notwithstanding the preceding sentence, the drug store exclusive set forth in subparagraph 6(c)(i) is also intended for the benefit of the Eckerd Corporation and its successors and assigns (the "Eckerd Beneficiaries").

d. **Exclusives Restricting Uses on Parcel 1.** No portion of Parcel 1 shall be used for any of the following purposes:

- (i) A drug store or store compounding prescriptions and/or selling merchandise which must be sold by, in the presence of, or under the authority of a registered pharmacist; provided the exclusive set forth in this subsection (i) shall not preclude drug store operations conducted with the written consent of Eckerd Corporation (or any of its successors or assigns operating a drug store on Parcel 2), and shall not preclude the operation of a pharmacy department incidental to the business of a supermarket having an area of not less than 45,000 square feet. The exclusive set forth in this subsection (i) is intended solely for the benefit of the Eckerd Beneficiaries, and shall be enforceable only by an Eckerd Beneficiary then possessing a current leasehold or fee interest in a portion of Parcel 2 and either (a) then operating a drug store or pharmacy on a portion of Parcel 2; or (b) not having ceased operation of a drug store or pharmacy on a portion of Parcel 2 for more than 12 consecutive months, unless such cessation of operations shall be due to a casualty or condemnation and the Eckerd Beneficiary is diligently engaged in efforts to re-open the drug store or pharmacy.
- (ii) A fast food restaurant; provided the exclusive set forth in this subsection (ii) shall not preclude fast food operations incidental to a retail business having an area of not less than 45,000 square feet.

Developer hereby represents and warrants that there are no third party agreements (as opposed to zoning, land use or other governmental restrictions) restricting the use of Parcel 1, except as expressly provided herein.

7. **Signs.**

Each Owner shall have the right to maintain such signs on the interior of buildings located on its Parcel as it desires, whether or not such signs are visible from the exterior. As permitted by applicable governmental regulations, each Owner shall have the right to erect, maintain and replace signs on the exterior of the buildings located on its Parcel; provided, such signs shall be constructed so as to lie flat against the exterior fascia facing outward, and shall not protrude more than two (2) feet from the surface thereof; and provided further, in no event shall any sign be

located on the roof (excluding canopies, so long as no sign is erected on a canopy which extends above the height of the building canopy or mansard roof) of any building in the Shopping Center without the prior written consent of all Owners of the Shopping Center.

Each Owner, with respect to its Parcel, as grantor, hereby grants to the other Owner, as grantee, easements under, through and across the Shopping Center for the purpose of installing and/or maintaining permitted free standing pylon signs (and other permitted signs), as shown on the Site Plan or on the Signage Plan and/or the Site Details sheets of the Approved Site Plan (as such terms are defined below).

Developer shall construct at its sole cost and expense (but subject to payment of ASPI's share, as defined in the Development Agreement), free standing pylon or monument signs at the locations in the Shopping Center designated on the Site Plan or on the Approved Site Plan as "Shopping Center Pylon Sign". ASPI, at its election, may place a sign panel on each Shopping Center Pylon Sign above all tenants with less retail space than the tenant of the Building on Parcel 1.

Except as expressly permitted herein, there shall be no signs in the Shopping Center without the prior written approval of all Owners.

As used herein, the "Approved Site Plan" means that certain set of site plan drawings, consisting of 16 sheets, prepared by Engineering Design Associates, P.A., dated April 23, 1998, as revised, and as filed with, and approved by, the Pilesgrove Township Planning Board on November 18, 1998. The "Signage Plan" and the "Site Details" are designated as Sheet 6 of 16 and Sheet 10 of 16, respectively, of the Approved Site Plan.

8. Repurchase. [Intentionally Omitted].

9. Indemnification and Insurance.

a. Indemnification of Owners. Except to be the extent reimbursed by insurance, each Owner hereby indemnifies, holds harmless and agrees to defend the other Owner and any ASPI Affiliate from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in the Shopping Center or on the ways immediately adjoining the Shopping Center, caused by the active or passive negligence of the indemnifying Owner, or its agents, servants or employees; provided, the indemnifying Owner does not indemnify the other Owner or any ASPI Affiliate against any injury, loss of life, or damage which is caused by the active or passive negligence of the other Owner, or its agents, servants or employees.

The Owner obligations with respect to indemnification hereunder shall remain effective notwithstanding the expiration or termination of this Agreement as to claims accruing prior to the expiration or termination of this Agreement.

The foregoing indemnification obligations shall be subject to compliance with the following requirements:

- (i) Notwithstanding any provision hereof to the contrary, in the event that an Owner (a "Claimant") shall assert a claim for indemnification against another Owner (the "Indemnifying Party") under this Agreement (a "Claim"), it is agreed that the Claim shall be asserted in the following manner, and that the Indemnifying Party will not be liable for any Claim, unless: (i) written notice of the Claim is given by the claimant to the Indemnifying Party in accordance with paragraph (b) below; (ii) the Claimant does not waive any defense, set-off or counterclaim which the Indemnifying Party might assert against any third party connected with the Claim; (iii) the Indemnifying Party will have the right to contest and defend against any such third party or to settle any Claim; and (iv) the Claimant cooperates with and provides reasonable assistance to the Indemnifying Party in connection with any such contest or defense against a third party.
- (ii) A Claimant may not assert any claim against the Indemnifying party unless the Claimant shall have provided the Indemnifying party with written notice of such Claim in the manner provided in Paragraph 15 below by the earlier of (i) sixty (60) days after discovery of the Claim or (ii) ten (10) days prior to the expiration of the applicable statute of limitations, describing the same with reasonable specificity, including, as applicable, the names of the parties involved, date, place and all other material facts pertaining to such Claim then known to the Claimant. Nothing contained herein shall, or shall be deemed to, extend or effect a waiver or modification of any statutory period of limitations applicable to or which may otherwise operate to bar any Claim.

b. **Waiver of Certain Rights.** With respect to any loss or damage that may occur to the Shopping Center (or any improvements thereon) or any Parcel (or any improvements thereon), arising from any peril customarily insurable under a fire and extended coverage insurance policy (whether or not either party elects to self-insure), regardless of the cause of origin, excluding willful acts but including negligence of the Owners (and any ASPI Affiliate), their tenants and their respective agents, servants or employees, the entity carrying such

insurance and suffering such loss hereby releases the other Owners (and any ASPI Affiliate) from all claims with respect to such loss, and each Owner (and any ASPI Affiliate) agrees that their respective insurance companies shall have no right of subrogation against the other Owners (or any ASPI Affiliate) on account of any such loss, and each Owner shall procure from its respective insurer under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners (and any ASPI Affiliate) which the insurers might otherwise have under such policies.

c. **Liability Insurance Coverage and Limits.** Each Owner agrees to maintain and/or cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Shopping Center (including within the buildings therein) and the ways immediately adjoining the Shopping Center, with a "Combined Single Limit" (covering bodily injury liability and property damage liability) of Five Million Dollars (\$5,000,000) for total claims for any one (1) occurrence. Any insurance required to be provided under this Section may be in the form of blanket liability coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein. Each Owner (and any ASPI Affiliate or tenant of any portion of the Shopping Center providing such insurance) shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, but only so long as: (i) the self-insuring Owner (or any ASPI Affiliate or tenant providing such insurance) shall have a net worth of at least Fifty Million Dollars (\$50,000,000); (ii) the self-insuring Owner (or any ASPI Affiliate or tenant shall, upon request, provide an audited financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth; and (iii) such self-insurance provides for loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any deductible in excess of Ten Thousand Dollars (\$10,000) shall be deemed to be self-insurance.

The insurance limits in this Section shall be subject to increase from time to time by such amounts as all Owners of the Shopping Center may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated shopping centers. Any such increase must be approved in writing by the Owners.

d. **Performance of Indemnity Agreements.** All policies of insurance required under this Section shall insure the performance of the Owner or Owners insured thereunder of the indemnity agreements contained herein, and shall contain a provision that the insurance company will give all Owners thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Upon request, each Owner shall deliver to the requesting Owner a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder, and shall deliver to such Owner copies of process and pleadings.

e. **Contractor's Insurance.** Prior to commencing any construction activities within the Shopping Center, each Owner shall obtain or require its contractor to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverages:

- (i) Workers' compensation - statutory limits;
- (ii) Employers liability - One Hundred Thousand Dollars (\$100,000.00);
- (iii) Comprehensive General and Comprehensive Auto Liability as follows:
(A) "Combined Single Limit" (covering bodily injury liability, death and property damage) in any one (1) occurrence of not less than Five Million Dollars (\$5,000,000.00); (B) Independent Contractors Liability or Owner's Protective Liability with the same coverage as set forth in (A) above; (C) Products/Completed Operations Coverage, which shall be kept in effect for two (2) years after completion of work; (D) "XCU" Hazard Endorsement, if applicable; (E) "Broad Form" Parcel Damage Endorsements; (F) "Personal Injury" Endorsements; (G) "Blanket Contractual Liability Endorsement.

If any construction activity involves the use of the other Owner's Parcel, then the Owner of such Parcel shall be named as an insured under all such insurance, and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds.

10. Damage or Destruction.

In the event any building in the Shopping Center is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Parcel upon which such building is located may, in its sole, subjective discretion, demolish or rebuild the damaged building. However, if an Owner determines to demolish a damaged building, that Owner shall either promptly construct a new building on the same location, or leave and maintain the Parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds, and sealed against dust by paving, landscaping or other suitable ground cover, and otherwise maintained in a condition similar to other first class shopping centers in the metropolitan area in which the Shopping Center is located. In the event the Common Area of the Shopping Center or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to its condition immediately prior to such damage or destruction.

11. Eminent Domain.

a. **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, or transfer in lieu thereof, affecting such other Owner's Parcel, or to give the public or any government any rights in either Parcel. In the event of any exercise of eminent domain, or transfer in lieu thereof, of any part of the Common Area located within the Shopping Center, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee thereof, and no claim thereto shall be made by the Owner of the other portion of the Common Area.

b. **Collateral Claims.** The other Owner or persons having an interest in any Common Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

c. **Tenants' Claims.** Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

d. **Restoration of Common Area.** The Owner of the fee of each portion of any Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned as near as practicable to the condition of the Common Area immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other party.

e. **Restoration of Building Area.** In the event any building or any portion thereof located in the Shopping Center is condemned, the remaining portion of such building shall be demolished or restored by the Owner of the Parcel on which it is located, and such Owner shall remove all debris resulting therefrom. Such election shall be made within sixty (60) days from the date of taking. In the event the remaining building improvements are removed, the Owner shall thereafter maintain such Building Area in the manner provided for in the Section herein entitled "Damage or Destruction".

12. Taxes.

Each Owner shall pay, or cause to be paid, directly to the appropriate taxing authority before such taxes become past due, the real property taxes and other special taxes and assessments assessed against the Parcel owned by such Owner, including the portion of the Common Area owned by such Owner.

In the event any Owner fails at any time to pay, or cause to be paid, before delinquency its taxes or assessments on any portion of the Parcel described herein of which such Owner has a fee interest, and which may become a lien on any of the Common Area, then any other Owner

may, after first giving written notice to the holder of the mortgage on the Parcel owned by the defaulting Owner, if known to such other Owner, and affording such mortgagee the right to cure the default by such defaulting Owner within thirty (30) days after receipt of such notice, pay such taxes and/or assessments, together with interest, penalties, and costs, and in any such event the Owner obligated to pay such taxes and/or assessments shall promptly reimburse such other Owner for all such taxes and/or assessments, interest, penalties, and other charges, and until such reimbursement has been made, the amount thereof shall constitute a lien and charge on the Parcel hereinabove described of the defaulting Owner. Nothing contained herein shall prevent an Owner from paying its taxes under protest or challenging the validity or amount of any assessment, so long as such Owner takes steps to prevent the delinquent taxes from becoming a lien on its Parcel or the occurrence of a tax sale of such Parcel.

13. Environmental Liabilities.

Each Owner assumes all responsibility and liability for any and all damages, costs and claims including, but not limited to, leaks, spills or losses of motor fuels related to underground storage tanks, piping, dispensing systems or other facilities or activities on or about its Parcel. Each Owner shall promptly comply with any and all clean up requirements of any governmental authority having jurisdiction pertaining thereto, and shall indemnify the other Owner for all costs, expenses and fees incurred by the other Owner (including attorneys' fees in defending the same) resulting from any contamination or discharge of Hazardous Materials except if caused by another Owner or any abutting land owner. Any and all environmental assessment and remediation work shall be performed in accordance with all applicable local, state and federal laws, ordinances and regulations. Nothing contained herein shall preclude an Owner from enforcing any rights or claims it may have against any other party who is liable for compliance with environmental laws (including, without limitation, any required clean-up or other remediation activities) or who is otherwise responsible for the proper disposition or storage of Hazardous Materials with respect to such Owner's Parcel (or any portion thereof).

14. Default by Owner.

a. **Right to Cure.** Should any Owner fail to timely perform any of its obligations under this Agreement and thereafter fail to diligently commence performing such obligation within thirty (30) days following its receipt of another Owner's written demand therefor or shorter period of time in the event of an emergency and diligently and continuously pursue such performance to completion, the Owner giving such notice shall, after first giving written notice to the holder of the mortgage on the Parcel owned by the defaulting Owner, if known to such other Owner, and affording such mortgagee the right to cure the default by such defaulting Owner within thirty (30) days after receipt of such notice, or shorter period of time in the event of an emergency, in addition to any other remedy provided at law, in equity or in this Agreement, have the right (but not the obligation) to perform such obligation on behalf of the

defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not so reimburse the curing Owner within such ten (10) days, the curing Owner shall have: (i) the right to exercise any and all rights which such curing Owner might have at law or in equity to collect the same; and (ii) have a lien on the property owned by the defaulting Owner, to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the then published "Prime Rate" of Citibank, N.A., plus one percent (1%) per annum (the Owners acknowledging that such rate may not be the lowest or "best" rate), or the highest legal rate of interest, whichever is less, from the date of billing until paid. Such lien may be filed of record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages and liens are recorded, which lien shall contain at least the following information:

- (i) The name of the lien claimant;
- (ii) The name of the defaulting Owner;
- (iii) A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- (iv) A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default, and it may be enforced and foreclosed in any manner allowed by law including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so established against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien. The lien claimant shall promptly discharge such lien of record upon payment of the full amount due pursuant to this paragraph.

b. **Injunctive Relief.** In the event of any violation or threatened violation of any provision of this Agreement, any Owner (and an ASPI Affiliate, if any) shall have the right, in addition to any other remedies herein or by law or equity provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Shopping Center, other than any ASPI Affiliate, shall not have the right of injunction (unless consented to by ASPI in writing), but shall rather be limited to their rights granted by law and by their respective leases.

c. **Breach Shall Not Permit Termination.** No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

d. **No Limitation of Remedies.** The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy, or be construed as a waiver of any default or nonperformance or as acquiescence therein.

15. **Notices.**

All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by Federal Express (or other established express delivery service which maintains delivery records), (ii) by hand delivery (with receipt), or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties (or any party that hereafter becomes an Owner hereunder) may designate by written notice in the above manner:

Developer:

Woodstown Road Associates, L.L.C.
c/o Net Asset Properties, L.L.C.
HUB Building, Suite 104
1909 Route 70 East
Cherry Hill, NJ 08003

with a copy to:

Allen P. Fineberg, Esquire
Flaster/Greenberg
Commerce Center
1810 Chapel Avenue West, Third Floor
Cherry Hill, NJ 08002

ASPI:

American Stores Properties, Inc.
75 Valley Stream Parkway
Malvern, Pennsylvania 19355
Attention: Real Estate Department
(#22-1116)

with a copy to:

Albertson's, Inc.
P.O. Box 20
250 Parkecenter Boulevard
Boise, ID 83726 (Street Zip: 83706)
Attention: Legal Department

Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

16. Attorney's Fees.

In the event either Party brings or commences legal proceedings to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in the same action. The term "legal proceeding" shall include appeals from a lower court judgment, as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The "prevailing Party" as used in the context of Federal Bankruptcy Court shall mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the nonbankrupt Party which are reasonably necessary to protect its rights under the terms of this Agreement. The "prevailing Party" as used in the context of any court other than the Federal Bankruptcy Court shall mean the Party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which the Party sought.

17. Duration.

Except for the rights of access, parking, and easements for utilities which rights and easements shall remain in full force and effect for as long as the Shopping Center is operated as an integrated facility, this Agreement shall remain in full force and effect for a term of sixty-five (65) years from the date hereof.

18. Modification.

All negotiations and oral agreements acceptable to the Owners have been incorporated herein. Except as otherwise provided herein, this Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by all Owners of the Shopping Center and duly recorded.

19. General Provisions.

a. **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Agreement shall be strictly limited to and for the purposes herein expressed; provided, however, that the foregoing is not intended to limit the easements and other rights expressly granted in paragraph 5(a) above to each Owner and its respective employees, agents, customers, invitees and tenants, and to the employees, agents, customers and invitees of such Owner's tenants.

b. **Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

c. **Pronouns.** When required by context, the singular shall include the plural, and the neuter gender shall include both male and female, as well as a corporation, firm, association, or other business arrangement.

d. **Captions.** The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

e. **Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship among the Owners.

f. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New Jersey, without giving effect to principles of conflicts of law.

g. **No Presumption.** This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

h. **Inurement.** This Agreement, and the easements, covenants, benefits and obligations created hereby, shall inure to the benefit of and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys any portion or all of its interest in any Parcel owned by it, such buyer, by acceptance of a deed for its Parcel shall be automatically deemed to assume obligations hereunder subsequently accruing and the Owner shall thereupon be

released and discharged from any and all further obligations under this Agreement as it had in connection with the Parcel conveyed by it. And provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

i. **Estoppel Certificate.** Each Owner agrees that, upon request by another Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest in a Parcel or part thereof, an estoppel certificate stating:

- (i) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement, and if there are known defaults, specifying the nature thereof;
- (ii) whether this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and
- (iii) that to the Owner's actual knowledge this Agreement as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

j. **Authority.** The individuals signing this Agreement on behalf of the Parties warrant and represent that they have the authority to execute this Agreement on behalf of and bind the respective Parties.

k. **Force Majeure.** The Owners will each comply with the time periods set forth in this Agreement to the extent such provisions are applicable to them; provided, such time periods shall be extended for a period or periods of time equal to any period or periods of delay preventing the performance of any Owner's obligations, which delays are caused by fire or other casualty, Acts of God, weather, refusal or failure of governmental authorities to grant necessary approvals or permits (the Owner responsible therefor agreeing to use reasonable diligence to procure the same), war, riot, or insurrections, or any other cause (except financial) beyond the control of such Owner; provided, in the event of any delay, the Owner suffering such delay shall seek and use to the extent available economically reasonable and comparable substitutes or alternatives and shall promptly give written notice to the other Owner of the occurrence of such delay and, upon termination thereof, notice of the termination of such delay. In the event an Owner suffers a delay and fails to give notice of the occurrence of and termination of such delay, as provided herein, but in all events within ten (10) business days after receipt of a written inquiry from another Owner requesting an explanation for any delay, such Owner shall be deemed to have waived its right to an extension hereunder on account of such delay.

20. Exculpation.

The Owner of any Parcel shall be in default under this Agreement if such Owner fails to perform any of its obligations under this Agreement and such failure continues for a period of thirty (30) days after written notice thereof from another Owner unless such failure cannot reasonably be cured within such thirty (30) days and such Owner shall have commenced to cure such failure within such thirty (30) days and continues diligently to pursue the curing of the same. If an Owner shall be in default under this Agreement following the Substantial Completion of construction of the Shopping Center (as set forth in the Development Agreement), and if, as a consequence of such default, the other Owner shall recover a money judgment against such defaulting Owner, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the Parcel owned by the defaulting Owner as the same may then be encumbered and such defaulting Owner shall not be liable for any deficiency.

THE SUBMISSION OF THIS AGREEMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN, AND THE EXECUTION OF THIS AGREEMENT BY DEVELOPER DOES NOT CONSTITUTE A BINDING CONTRACT UNTIL SUCH TIME AS THIS AGREEMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF ASPI, EXECUTED BY AUTHORIZED OFFICERS OF ASPI AND DELIVERED TO DEVELOPER.

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IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

"ASPI":

AMERICAN STORES PROPERTIES, INC.

Attest:

By: [Signature]
Secretary

By: [Signature]
Lincoln V. Sharp, Jr., Vice President

SE/SK

"Developer":

WOODSTOWN ROAD ASSOCIATES, L.L.C.

Witness:

By: [Signature]
ROBERT LANG, I, MANAGER
Member

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