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REGISTER OF DEEDS
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Prepared by and return to:
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**DECLARATION OF RIGHTS,
RESTRICTIONS AND EASEMENTS
FOR
BROOKDALE RETAIL AND OFFICE PARK**

THIS DECLARATION OF RIGHTS, RESTRICTIONS AND EASEMENTS FOR BROOKDALE RETAIL AND OFFICE PARK (the "**Declaration**") is made and entered into as of the 3rd day of October, 2005, by AAC/APS DEVELOPMENT LIMITED PARTNERSHIP (the "**Declarant**") and Junius G. Cochran and wife, Mary K. Cochran (by Samuel G. Cochran, her attorney-in-fact) ("**Cochran**").

WITNESSETH:

WHEREAS, Declarant and Cochran are the fee simple owners of title to the real property located in the Town of Harrisburg, Cabarrus County North Carolina and in Mecklenburg County, North Carolina, and more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the "**Property**"); and

WHEREAS, Declarant has subdivided the Property into Outparcels 1, 2, 3, 4, 9 and 11 as shown on the Initial Plats as defined in Section 12(k) herein (these Parcels and any subsequently created Parcels derived from the Additional Property (as hereinafter defined) being hereinafter collectively referred to as a "**Parcel**" or "**Parcels**") and the Additional Property (as herein defined);

WHEREAS, Declarant and Cochran intend ultimately to develop, or sell or ground lease Parcels, including Parcels to be created within the Parcels ("**Additional Property**") to purchasers or lessees who will, pursuant to the terms of this Declaration

and their respective leases, construct, install and develop their own improvements ("Improvements") on their respective Parcels, for uses compatible to each other and the adjacent Shopping Center developed by Declarant (which is more particularly described as Area A on the Plat recorded in Map Book 44 Pages 94-95, Cabarrus County Public Registry- such property being described as the "Shopping Center") so that the Property will constitute an integrated complex;

WHEREAS, it is desirable for the operation of the complex to be developed on the Property, since the Property will be served by a limited number of access points as shown on the attached Exhibit B (accessing the Area labeled "Area B" thereon - "Access Points"), to provide for certain reciprocal rights, easements and restrictions affecting the Property as set forth in this Declaration.

NOW, THEREFORE, for and in consideration of the mutual covenants existing or hereafter to exist between Declarant, Cochran and the grantees or ground lessees (collectively the "Owners") of any Parcel or portion of the Property, Declarant and Cochran hereby impose and place the following restrictions and easements upon the Property, reserving unto itself and such future Owners certain rights and privileges, all as more particularly set forth in this Declaration:

1. Easement over Common Access Facilities on Property. Each Owner of a Parcel and their tenants, sub-tenants, concessionaires and licensees, and its and their respective officers, employees, agents, customers and invitees, is granted and hereby grants a mutual non-exclusive right, privilege and permanent easement, appurtenant to each Owner's Parcel, to use (i) any Common Driveway Easement designated as such on any recorded plat of all or a portion of the Property ("Plat"), and (ii) all of the vehicular roadways, entrances and exits, and sidewalks within each Parcel as the same may presently exist or be constructed in the future (collectively, the "Common Access Facilities"), for the purpose for which such Common Access Facilities are designed, without payment of any fee or other charge being made therefore (except as expressly provided in Section 12 below), subject to the right of the Owner of each Parcel to relocate any such Common Access Facilities on their own Parcel from time to time, all subject to Section 3 below; provided, however, that no changes shall be made in the Common Access Facilities that deprive any Parcel of two-way vehicular access to and from the Access Driveways into the Property over a paved roadway without the prior written consent of the Owner of the affected Parcel. Nothing in this Section 1 shall be deemed to create any cross-parking easement between Parcels for the parking of automobiles or other vehicles, and the Owners of each Parcel agree to cooperate with each other and will take such reasonable actions as may be required to prevent or control any such cross-parking.

2. Parking Standard. A ratio of parking spaces of not less than that required by applicable ordinances or statutes and the Approved Guidelines (as defined herein) shall be maintained on each separate Parcel contained in the Property. Cross-parking easements between Parcels for the parking of automobiles or other vehicles are not permitted, except as an amendment to this Declaration in accordance with Section 15 hereof.

3. No Barriers. Except as hereinafter provided in this Section 3, no barriers, fences, or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of Parcels from time to time devoted to pedestrian and/or vehicular access, and the balance of the Property, or in any manner restrict or interfere with the full and complete use and enjoyment of the rights and easements granted in Section 1. Notwithstanding the foregoing, each Owner may close or block traffic on its Parcel for the time necessary to prevent loss of ownership rights as the result of adverse possession, and may temporarily fence off portions of its Parcel as reasonably required for repair, construction and reconstruction of improvements on its Parcel; provided, however, reasonable vehicular and pedestrian access to any Parcel affected by any such closure, blockage or fencing shall be maintained.

4. Utility Easements. Each Owner of a Parcel is hereby granted and hereby grants a mutual non-exclusive right, privilege and permanent easement appurtenant to each Parcel over and across the remainder of the Property for the purpose of installation, maintenance, repair and use of underground utilities (including, but not limited to, permanent drainage, water, sewer and irrigation systems) serving such Parcel; provided, however, that such utilities shall not be located under the existing or proposed location of any Improvements shown on the Site Plan, under any existing building on the Property or, except with the prior written permission of the Owner of the affected Parcel, outside the (10) foot wide strips of land which are contiguous to the boundary lines of such Parcel or outside the permanent drainage or other easements for utilities as may be shown on any Plat. The Owner installing underground utilities pursuant to this Section 4 shall be responsible for the entire cost and expense of such installation, including without limitation, tap fees to the appropriate municipality or municipal agency. If, pursuant to the terms hereof, any Owner installs underground utilities across the Parcel of a second Owner, the installing Owner shall, at such Owner's sole expense: (i) relocate that utility at its expense if such relocation is required as a result of construction by the Owner of the Parcel across which the utility is installed; (ii) maintain or cause to be maintained any such utilities; (iii) repair at its expense any damage to improvements or landscaping caused by such installation and maintenance to a condition equal to or better than the conditions which existed prior to such use of the easement; (iv) perform such installation and maintenance in a manner so as to minimize any disruption of business on the Parcel on which the utility is located and not prevent or disrupt reasonable access to such Parcel; (v) obtain adequate public liability insurance coverage as is customary covering all such activities prior to commencement thereof and maintain such coverage until same are fully completed; (vi) give thirty (30) days prior written notice of the intended use of the easement to the Owner of the affected Parcel; and (vii) indemnify and hold harmless the Owner of the affected Parcel and any occupants thereof from and against any claims, actions, demands, damages, losses, injuries or expenses which arise out of the existence, installation or maintenance of the easement. If the Owner exercising its right to such easement defaults in its obligations under this Section 4, the Owner of the affected Parcel shall have the same rights to perform, or cause to be performed, the obligations of such Owner and claim a mechanics lien for the cost of such performance in the manner provided in Section 7 hereof. Provided, however, that upon conveyance by

Declarant of any sewer easement rights to a public utility or to Carolina Water Service of North Carolina, Inc. ("CWS") Owners' rights under this paragraph shall be subject to the ownership of such public utility or CWS in such easement rights.

5. Building Plan Approval Requirement. It is the intent of Declarant that the improvements located on each Parcel blend harmoniously and attractively with the other Improvements on the Property and the Shopping Center. Accordingly, no building improvements shall be constructed on any Parcel until (a) a site plan showing the location and dimensions of the building(s) and the landscaping, paving (roadway, sidewalks and parking), signage and other improvements to be constructed or installed on the Parcel; (b) plans showing the exterior elevations of all sides of the building improvements, landscaping, paving (roadway, sidewalks and parking), and signage, and (c) specifications describing the principal building materials and color(s) to be used on the exterior of the proposed buildings (which exterior finishes shall be architecturally harmonious with those used in other Improvements and the Shopping Center), exterior lighting, paving and landscaping placement and materials have all been approved in writing by Declarant, which approval shall not be unreasonably withheld, conditioned or delayed (items (a) - (c) above as submitted to Declarant being collectively referred to herein as "Plans"); provided, however, that in any event that all improvements on any Parcel shall be subject to the architectural design guidelines and rezoning conditions for the Property approved by (i) the Town of Harrisburg as the same may be amended from time to time (as to the portions of the Property located in Cabarrus County) and (ii) the conditional rezoning approved by the City of Charlotte as the same may be amended from time to time (as to the portions of the Property located in Mecklenburg County ("Approved Guidelines")). Declarant shall respond to Plans which are submitted for approval as required above within thirty (30) days after complete submission. Failure of Declarant to respond within such 30-day period shall be deemed an approval of the Plans as submitted, subject to the Approved Guidelines. Any additional improvements thereafter constructed on any Parcel shall, to a reasonable degree, use the principal exterior building materials specified in the Plans as the principal building materials, and shall be designed and landscaped so as to be architecturally harmonious with the initial building improvements constructed on the Parcel and shall be constructed only in accordance with the Approved Guidelines.

Until the Property is connected to and served by public (municipal or county) waste water treatment service, the foregoing plan submittals for each Parcel shall also include information regarding the maximum contemplated waste water output (in gallons per day) that will be generated by the improvements to be constructed thereon, as operated by the applicable Owner for the use contemplated by such Owner on the Parcel. As part of the plan approval for such Parcel, Declarant shall approve a maximum amount of waste water output for the applicable Parcel. Thereafter, until such time as the Property is connected to and served by public (municipal or county) waste water treatment service, no Owner of any Parcel shall change the use of such Parcel in such a way that the waste water output from that Parcel is increased above the amount approved by Declarant during the plan approval, without the prior written consent of the Declarant.

6. Building Restrictions.

(a) No building shall be constructed on Outparcel 1, Outparcel 2 or Outparcel 3 that contains more than one (1) story or exceeds twenty-five feet (25') in height; provided that the permissible height of any cupolas, screening parapets or other decorative architectural features located on the roof of such building shall not exceed thirty feet (30') in height, as measured from the graded elevation of the surrounding graded areas, without the prior written consent of the Declarant.

(b) All structures, facilities and building improvements on any Parcel shall be constructed in accordance with and subject to the Approved Guidelines.

7. Maintenance Standard. Each Parcel shall be maintained by the Owner of the Parcel until developed as either paved parking or landscaped area, and shall be kept free of weeds, debris, trash and underbrush. After development of each Parcel, the Owner of that Parcel shall maintain or cause to be maintained its Parcel and any improvements located thereon in good order and condition, which obligation shall include, but shall not be limited to, the following specific items of maintenance and upkeep:

(a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and paved parking surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or of similar quality, use and durability, and also in good, safe, clean and sightly condition;

(b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris;

(c) Keeping all directional signs, pavement signs and striping in the Common Access Facilities clear and legible;

(d) Repairing, replacing and renewing common area lighting, fixtures, and bulbs, tubes and ballasts therefore as may be necessary;

(e) Caring for and replanting all landscaped and planted areas so as to not allow dead or unsightly plants to remain within its Parcel;

(f) Repairing any damage or breakage to improvements located beneath the pavement on its Parcel and serving solely that Parcel; and

(g) Keeping its Parcel clean, orderly, sanitary and free from offensive odors (provided, however, that odors created by the preparation of foods in the operation of a restaurant shall be permitted) and from termites, insects, vermin and other pests.

If the Owner of any Parcel fails to maintain or cause to be maintained its Parcel in good order and condition as set forth above, or if any Owner fails to maintain or cause to be maintained in good order and condition any Common Access Facilities located on the Property which provide direct access between any Parcel and Plaza Road Extension (SR 1176) and/or Rocky River Road (SR 2802); and such failure continues for a period of thirty (30) days after that Owner (the "Responsible Owner") has been given written notice specifying the nature of the default (provided, however, that no notice shall be required in an emergency), then any Owner who has given such written notice ("Noticing Owner") shall have the right to go on that Parcel to perform any necessary maintenance or repairs at the expense of the Responsible Owner and the Responsible Owner shall reimburse the Noticing Owner for all such expenses within thirty (30) days after receipt of invoices evidencing such expenses. If the Noticing Owner performs maintenance or repairs on any Parcel under this Section 7, the Responsible Owner shall be deemed to have contracted, with the Noticing Owner for that work, and the Noticing Owner shall be entitled to file and enforce a mechanics lien against the interest of the Responsible Owner in its Parcel for the cost of that work if not paid by Responsible Owner, and to recover the cost of that work in an action at law against the Responsible Owner, all in accordance with the applicable mechanics lien laws of the State of North Carolina.

8. General Standards. Each Owner shall comply with, and require its tenants and subtenants to comply with, reasonable requirements with reference to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, safety and security against fire, theft, vandalism, personal injury and other hazards as well as the Approved Guidelines. In particular, each Owner shall have the following obligations:

(a) To store all trash and garbage in adequate containers within its Parcel, maintained in a clean and neat condition, and located and screened as approved in writing by Declarant so as not to be visible to the public and so as not to create any health or fire hazard, and to arrange for regular removal of all trash and garbage at Owner's expense.

(b) Not to burn any papers, trash or garbage of any kind in or about its Parcel.

(c) Not to distribute any handbills or other advertising matter on or about any part of the Property outside its Parcel.

(d) Not to install in or about the Property any exterior amplification or similar devices and/or not to use in, on or about the Property any advertising medium which may be heard or experienced outside the Property, such as flashing lights, searchlights, loudspeakers, phonographs, television or radio broadcasts (provided, however, that drive-thru speakers and any usual paging system shall be allowed).

(e) To the extent reasonably feasible, locate all television antennas, satellite dishes and any other mechanical equipment in such a fashion so as not to be visible to the public at street level from any direction.

9. Casualty Damage. If any building or other improvement located on the Property is damaged or destroyed by fire or other casualty, then the Owner of the Parcel on which the building is (or was) located shall have one hundred eighty (180) days of that damage or destruction to make the decision to rebuild or not to rebuild. If that Owner elects not to repair or restore the damage, the Owner shall promptly after such election demolish the destroyed or damaged building or improvement, clean up any and all rubbish and debris, level the area, landscape and grade or pave the area, and thereafter maintain its Parcel in a good, clean, safe and presentable condition. Within twenty (20) days after any such fire or other casualty and until the foregoing restoration, landscaping, or paving, as the case may be, is completed, the Owner of the damaged or destroyed building or improvement shall (a) screen the damaged or destroyed areas from view with a solid plyboard wall not less than eight feet (8') in height and painted a solid color, and (b) not allow debris, dirt or construction materials to accumulate or remain outside the plyboard wall.

If the Owner of the damaged or destroyed building defaults under this Section 9, a Noticing Owner of a Parcel shall have the same rights to perform, or cause to be performed, the obligations of such Owner and claim a mechanic's lien for the cost of such performance in the manner provided in Section 7 hereof.

10. Use Restrictions.

(a) General. No portion of the Property shall be used for any of the uses set forth on Exhibit C attached hereto and incorporated herein by reference.

(b) CVS Restrictions. During the term of the Lease Agreement between Declarant and Harrisburg NC CVS, Inc. ("CVS") dated January 8, 2003 as it may be amended or extended ("CVS Lease"): (i) no portion of the Property or the Additional Property shall be used in violation of the restrictive covenants set forth on Exhibit D attached to and made a part of this Declaration (the "CVS Restrictions") without the prior written consent of Declarant and CVS, or its successors or assigns as tenant under such Lease Agreement and (ii) CVS or its successors or assigns as tenant under the CVS Lease, as ground lessee of these Parcels shall be an Owner for purposes of this Declaration. If, at any time following commencement, CVS or its successors and assigns cease to operate a drug store on the Parcels for more than sixty (60) consecutive days for any reason other than repairs, remodeling, renovation, condemnation, casualty, civil disorder, riot, war, strikes, walkouts, lockouts, boycotts, operation of law, governmental order or regulation or unavailability of labor, materials, merchandise or utility services, or any other cause beyond the reasonable control of CVS or its successors and assigns, then Declarant shall have the right, upon thirty (30) days prior written notice to CVS or its successors and assigns, to terminate the CVS Restrictions; provided, however, that the CVS Restrictions shall not terminate if CVS or its successors and assigns has reopened for business as a drug store prior to the expiration of the thirty (30) day notice period. The provisions of this paragraph may be enforced only by Declarant or CVS, or their respective successors in interest. In the event that the CVS Restrictions are

terminated in accordance with this paragraph 10(b), Declarant may amend this Declaration to delete this paragraph 10(b) (and Exhibit D hereto) without the joinder or consent of any other party.

11. Signs. No sign shall be located on the Property which violates the Approved Guidelines and the following prohibitions:

(a) No sign shall be painted on the exterior surface of any building;

(b) No flashing, blinking, moving, animated or audible signs shall be permitted;

(c) No rooftop signs of any type will be permitted (provided, however, that signs affixed to the roof mansard which do not extend above the roof line are permitted subject to the Approved Guidelines);

(d) All cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed;

(e) No Parcel shall be permitted to have freestanding signage except in accordance with the Approved Guidelines, and in the event freestanding signage is permitted, the location and design of each such sign shall be approved by Declarant under Section 5 herein and all signs shall comply with the sign ordinances of the applicable governmental authorities and the Approved Guidelines; and

(f) No sign shall be permitted that violates the sign control ordinances or other statutes of the Town of Harrisburg or of Cabarrus County, North Carolina (as to portions of the Property located in Cabarrus County) or the City of Charlotte or of Mecklenburg County (as to portions of the Property located in Mecklenburg County).

12. Ownership and Maintenance of Common Areas. It is the intention of the Declarant that the Common Areas (as defined herein) and facilities and improvements located within the Common Areas be owned and maintained by the Parcel Owners

(a) The following definitions shall apply in this Declaration with reference to the Common Areas:

i. "Common Area" or "Common Areas" shall mean that portion of the Property shown and designated as such on any Plat, specifically including the Detention Basin labeled as Common Area on the Plat;

ii. "Declarant Control Period" shall mean the period commencing on the date on which this Declaration is filed in both the Mecklenburg County and Cabarrus County Register of Deeds office and terminating when Declarant no longer owns any of the Property;

iii. "Majority of Owners" shall mean and refer to Owners owning more than fifty percent of the undivided interests as tenants-in-common in the Common Area appurtenant to Parcels.

iv. "Proportionate Share" shall mean a percentage equal to each Owner's undivided ownership interest in the Common Area, which undivided interest shall be determined by dividing the area of a Parcel by the area of the Property, subject to Section 12(a) – exclusive of Outparcel 11 not including Common Area;

(b) Declarant (and Cochran), upon the conveyance of each Parcel, shall convey to each Owner a fee simple, Proportionate Share undivided interest in the Common Area as tenant-in-common with other Parcel Owners. Each Owner agrees that its interest in the Common Area as provided herein is an appurtenance to its Parcel and must be conveyed or transferred with said Parcel, and any conveyance or transfer purporting to convey a Parcel without conveying such Parcel's appurtenant interest in the Common Area or a purported conveyance of any interest in the Common Area without conveyance of the Parcel to which it is an appurtenance, shall be automatically deemed to include the appurtenant undivided interest or Parcel, as appropriate. The Common Area shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public. Each Owner, by acceptance of a deed to a Parcel and undivided interest in the Common Area, agrees that it will not commence an action for partition of the Common Area so long as this Declaration remains in effect, and hereby waives any such rights to a partition. Further, no such partition may take place or be instituted without the unanimous written consent of all Owners.

(c) Subject to the terms hereof, every Owner shall have a non-exclusive right and easement to use and enjoy fully the Common Area which right and easement shall be appurtenant to and shall pass with the title to every Parcel.

(d) Subject to the terms hereof, each Owner shall have a permanent, non-exclusive right and easement to the use of all utility, sewerage, water and permanent drainage lines and facilities located on the Property or to be located within the Common Area, and to connect thereto, to serve or benefit the Improvements on its Parcel or on the Common Area, together with the right, subject to the terms of this Declaration, to maintain, repair and replace the same, provided that any damage to the Common Area or any Parcel is repaired.

(e) Agreement to Pay for Maintenance. Subject to the terms hereof, the Declarant (and Cochran), for each Parcel owned by it within the Property, and each Owner of any Parcel by acceptance of a deed, therefor, whether or not it shall be so expressed in such deed, thereby and are deemed to covenant and agree to pay such Owner's Proportionate Share of the cost and expense of maintaining, repairing and replacing the Common Area, and improvements

located within the Common Area, and permanent drainage lines servicing the Property. Any amount due under the terms of this Declaration with respect to any Parcel, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Parcel, and its appurtenant interest in the Common Area, with respect to which such sum is payable. In the case of co-ownership of a Parcel, all of the co-owners shall be jointly and severally liable for the entire amount. Each Owner shall also pay all real estate taxes due and assessed against its portion or undivided interest in the Common Area.

(f) Management Firm. During the Declarant Control Period, Declarant shall designate a management firm (the "Management Firm") on or before the first day of each calendar year to perform the maintenance and repair of the Common Area and other areas required to be maintained, repaired and replaced under the terms hereof. Each Owner shall execute a contract with the Management Firm agreeing to pay such Owner's Proportionate Share of such costs and expenses. The Management Firm as so designated shall perform such maintenance and shall bill each Owner for its Proportionate Share of such costs, including a reasonable management fee, on a quarterly basis. The amounts so billed shall be paid to such Management Firm within thirty (30) days after the bills are rendered. In the event that the Management Firm is an affiliate of any Owner, the fee due such Management Firm shall not exceed competitive rates which would be charged by similar firms engaged in providing similar services in the Charlotte, North Carolina area. After the Declarant Control Period, the Management firm shall be designated on or before the first day of each calendar year by a Majority of Owners.

(g) Failure to Maintain. In the event that any portion of the Common Area or any other area required to be maintained hereunder is not maintained by the Owners in a first class condition, then any Owner or group of Owners may perform, or cause to be performed, the obligations of such Owner and claim a mechanics lien for the cost of such performance in the manner provided in Section 7 hereof.

(h) Failure to Pay Real Estate Taxes. In the event that any Owner fails to pay real estate taxes due on its undivided interest in the Common Area, then any other Owner or group of Owners may perform, or cause to be performed, the obligations of such Owner and claim a mechanics lien for the cost of such performance in the manner provided in Section 7 hereof.

(i) Effect of Nonpayment of Proportionate Share. If an Owner's Proportionate Share is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the rate of eighteen percent (18%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is less. Any Owner or group of Owners, their agents or representatives, may bring an action at law against any other Owner obligated to pay the same or may

perform, or cause to be performed, the obligations of such Owner and claim a mechanics lien for the cost of such performance in the manner provided in Section 7 hereof. No Owner may waive or otherwise escape liability for the Proportionate Share of costs and expenses or other charge provided for herein by abandonment of his or its portion of the Property or non-use of the Common Area.

(j) Subordination of the Lien to Mortgages. The liens provided for in this Declaration shall be subordinate to the lien of any first mortgage or first deed of trust on a Parcel or any portion of the Property and to other mortgages or deeds of trust. Sale or transfer of a Parcel or any portion of the Property shall not affect any lien thereon, but the sale or transfer of a Parcel or any portion of the Property which is subject to a mortgage or deed of trust to which the lien is subordinate, pursuant to a foreclosure of such mortgage or deed of trust or any proceeding in lieu of foreclosure thereof, shall extinguish such lien as to any amount which became due prior to such sale or transfer. No such sale or transfer shall relieve such Parcel from liability for any amount thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of those mortgages and deeds of trust identified in the first sentence of this subparagraph (j) of this Section 12.

(k) Exclusion as to Outparcel 11. Environmental and regulatory considerations relating to the creek bed which forms the westerly property line of Outparcel 11 as shown on the Plat recorded in Map Book 47, Pages 91 & 92 of the Cabarrus County Public Registry and Map Book 44, Pages 461 & 463 of the Mecklenburg County Public Registry ("Initial Plats"- all references in this Section 12(k) to Outparcel 11 being to Outparcel 11 as shown on the Initial Plats) require that storm drainage facilities within Outparcel 11 not traverse the creek to access the Common Area Detention Basin as depicted on the Initial Plats. Accordingly, notwithstanding the foregoing provisions of this Section 12 and any grant of rights for the non-exclusive use of storm drainage facilities contained in Section 4 of this Declaration, Owners of all or a portion of Outparcel 11:

- i. Are hereby prohibited from using any storm drainage easement shown upon a Plat or otherwise installed which ultimately drains to the Common Area Detention Basin depicted on the Initial Plats to service any portion of a Parcel located within Outparcel 11;
- ii. Shall not be conveyed or be deemed to have been conveyed, as to any portion of a Parcel located within Outparcel 11, any undivided interest in the Common Area Detention Basin, notwithstanding the provisions of Section 12(b) hereof
- iii. Shall not have allocated to their Proportionate Share, if any, any expense, as to any portion of a Parcel located within Outparcel

11, associated with the maintenance, repair or replacement of the Common Area Detention Basin

It is the intention of this Section 12(k) to cause Parcels or portions of Parcels within Outparcel 11 to provide for their own self contained storm water detention apart from use of the Common Area Detention Basin.

13. Notices. For purposes of this Declaration, written notices and invoices directed to the Owner of a Parcel shall be sent to the mailing address provided to Declarant in writing at the address below. However, if no such written notice has been given by any Owner, such notices and invoices shall be sent to the mailing address listed for such Owner on the official tax records of the Tax Collector's office for Cabarrus County or Mecklenburg County, North Carolina (as applicable). Any such notice or invoice given under this Declaration shall be effective and deemed given (i) two (2) business days after being sent by United States mail, certified or registered delivery with return receipt requested and postage prepaid or (ii) one (1) business day after being sent by national overnight courier. Declarant's address for written notices is:

c/o American Asset Corporation
3800 Arco Corporate Drive, Suite 200
Charlotte, NC 28273
Attn: President

14. Successor to Declarant. If approval of Declarant is required under the terms of this Declaration after the Declarant Control Period, the right of approval shall be exercised by a Successor Declarant designated in writing by Declarant ("**Successor Declarant**") who shall be either (i) the Owner of fee simple title to the Shopping Center or (ii) an Owner of a Parcel within the Property. Declarant expressly retains the right to assign any retained rights under the terms of this Declaration to a Successor Declarant by recording a written instrument in the office of the Registers of Deeds for Cabarrus County and Mecklenburg County, North Carolina. The parties acknowledge that the Declarant may collaterally assign as security for its rights as "**Declarant**" hereunder to an holder of a first lien deed of trust upon the Shopping Center, and upon foreclosure or deed in lieu of foreclosure thereof, the purchaser thereunder shall become the Successor Declarant hereunder.

15. Amendment to Declaration. Except as otherwise expressly provided in this Declaration, this Declaration may be amended only by a written agreement executed by Declarant (or its successor pursuant to the terms of Section 14 above) and the Owners of all of the Parcels in the Property and the holders of all first lien deeds of trust encumbering all or any portion of the Property, properly recorded in the office of the Registers of Deeds for Cabarrus County and Mecklenburg County, North Carolina; provided, further that the approval of the owner of the Shopping Center (and the holder of a first lien deed of trust upon the Shopping Center) shall be required in order to amend the following provisions: The restrictions against the use of the Property for a grocery store or supermarket in excess of 8,000 square feet (the "**Harris Teeter Exclusives**") (as set for the as item (xi) on Exhibit

C). Provided, however, that during the Declarant Control Period Declarant may amend Exhibit C or Section 10 (subject to the conditions of Section 10(b) and provided that item xi on Exhibit C may not be so amended) of this Declaration, solely for the purpose of adding a use restriction, without the joinder or consent of any other Parcel Owners or the holders of any first lien deeds of trust encumbering all or any portion of the Property so long as such amendment does not prohibit or exclude a then current use of any Parcel.

16. Binding Effect. It is understood that this Declaration is a covenant running with the Property (and to the extent set forth herein, the Shopping Center Property) and each portion thereof and that this Declaration shall be binding upon and inure to the benefit of all assignees, transferees, heirs and assigns of Declarant and any other party that may hereafter acquire any right in and to all or any part of the Property, and, to the extent set forth herein, the Shopping Center Property.

17. Remedies for Breach. The terms and conditions of this Declaration shall be enforceable by Declarant (or its successor pursuant to the terms of Section 14 above) and by any Owner, by actions for specific performance or injunction, in addition to any other remedies available at law; provided, however, prior to exercising such remedies, the party seeking enforcement hereunder shall provide written notice to the defaulting party and thirty (30) days opportunity to cure such default (from the date of such notice).

18. Private Agreement. This Declaration does not and shall not be construed to grant any rights to the public in general.

19. Subordination. Jefferson-Pilot Life Insurance Company ("Lender") is the owner and holder of a Promissory Note made by Declarant and dated December 30, 2004, which Note is secured by a Deed of Trust, Security Agreement and Fixture Filing dated December 30, 2004, executed and delivered by Declarant to The Fidelity Company, as Trustee ("Trustee"), for the benefit of Lender, and recorded in Book 5732, Page 271, Cabarrus County Public Registry and Book 18184, Page 731 of the Mecklenburg County Public Registry. The Deed of Trust constitutes a lien on the Entire Premises. Lender and Trustee join in the execution of this Declaration solely for the purpose of subordinating the lien and operation of the Deed of Trust to this Declaration and the easements and restrictions created hereby. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Entire Premises subject to the Deed of Trust (the "Security Property") in lieu of foreclosure, Lender and Trustee agree that the Purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Security Property together with and subject to all of the terms and conditions of this Declaration. The subordination and agreements in this Section 19 are subject to the following: (i) the subordination herein shall not be applicable to any liens or assessments created or arising under this Declaration, (ii) no violation of this Declaration shall defeat or render invalid the lien of the Deed of Trust, and (iii) should Lender acquire title to the property secured by the Deed of Trust, any liability Lender might have under this Declaration shall be non-recourse except to the extent of its interest in such property. The execution of this Declaration by Lender and Trustee shall not be deemed or construed to have the effect of creating any relationship of partnership or of joint

venture nor shall anything contained hereunder be deemed to impose upon Lender or Trustee any of the liabilities, duties or obligations of Declarant under this Declaration.

20. Bank of America, N.A. ("Lender") is the owner and holder of a Promissory Note made by Declarant and dated April 10, 2003, which Note is secured by a Deed of Trust, Assignment of Rents and Security Agreement dated April 10, 2003, executed and delivered by Declarant to PRLAP, Inc., as Trustee ("Trustee"), for the benefit of Lender, and recorded in Book 4450, Page 205, Cabarrus County Public Registry and Book 15141, Page 581 of the Mecklenburg County Public Registry. The Deed of Trust constitutes a lien on the Property. Lender and Trustee join in the execution of this Declaration solely for the purpose of subordinating the lien and operation of the Deed of Trust to this Declaration and the easements and restrictions created hereby. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Property subject to the Deed of Trust (the "Security Property") in lieu of foreclosure, Lender and Trustee agree that the Purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Security Property together with and subject to all of the terms and conditions of this Declaration. The subordination and agreements in this Section 20 are subject to the following: (i) the subordination herein shall not be applicable to any liens or assessments created or arising under this Declaration, (ii) no violation of this Declaration shall defeat or render invalid the lien of the Deed of Trust, and (iii) should Lender acquire title to the property secured by the Deed of Trust, any liability Lender might have under this Declaration shall be non-recourse except to the extent of its interest in such property. The execution of this Declaration by Lender and Trustee shall not be deemed or construed to have the effect of creating any relationship of partnership or of joint venture nor shall anything contained hereunder be deemed to impose upon Lender or Trustee any of the liabilities, duties or obligations of Declarant under this Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Declaration under seal as of the day and year first above written.

AAC/APS DEVELOPMENT LIMITED PARTNERSHIP

By: Brookdale GP Limited Partnership,
General Partner

By: AAC-Brookdale, LLC, General Partner

By: 
Paul Herndon, Manager

STATE OF NORTH CAROLINA

COUNTY OF Catawba,

I, Michelle T. Bernard, a Notary Public in and for the County and State aforesaid, certify that Paul L. Herndon, Manager of AAC-Brookdale, LLC, general partner of Brookdale GP Limited Partnership, general partner of AAC/APS Development Limited Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as Manager of and on behalf of said limited partnership.


NOTARY PUBLIC

My Commission Expires: March 28, 2009



Samuel G Cochran

Junius G. Cochran by Samuel G. Cochran, his
Attorney-in-fact

Samuel G Cochran

Mary K. Cochran by Samuel G. Cochran, her
Attorney-in-fact

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

The undersigned does hereby certify that Samuel G. Cochran, Attorney-in-Fact for Junius G. Cochran, personally appeared before me this day, and being duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of Junius G. Cochran, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged and recorded August 16, 2005 in Book 19195, Page 267 in the Mecklenburg County Public Registry and recorded August 17, 2005 in Book 6166, Page 87 in the Cabarrus County Public Registry, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said Samuel G. Cochran acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Junius G. Cochran.

Lakeisha S. Steele
NOTARY PUBLIC

My Commission Expires: March 15, 2008





FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2005 OCT 03 12:46 PM
BK:44 PG:461-462 FEE:\$21.00

INSTRUMENT # 2005195378



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

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Book: MAP 44 Page: 461-462
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