

CONSENT AND WAIVER

(NWC Southern Avenue and Val Vista Road)

WHEREAS, the undersigned is the owner of certain real property commonly known as Parcel 2 located at or near the northwest corner of Southern Avenue and Val Vista Road in Mesa, Arizona (the "Shopping Center");

WHEREAS, the Shopping Center is subject to that certain Declaration of Restrictions and Grants of Easements dated March 4, 1984, recorded at Maricopa County Recorder's Instrument No. 85-106894, as amended (the "CC&Rs"); and

WHEREAS, Item 4 of the Section of the CC&Rs entitled Restrictions on Use, a copy of which is set forth on Exhibit "A" hereto, prohibits any portion of the Shopping Center to be used for automobile, truck or other vehicular repair and/or service without the prior written consent of the vested title holder of Parcel 2; and

WHEREAS, Mohr Property Burbank LLC, (the "Parcel 6 Intended Owner") the intended owner of Parcel 6 of the Shopping Center, having an address of 3512 East Southern Avenue, Mesa, Arizona 85204 ("Parcel 6") have entered or shall enter into a lease for the premises on Parcel 6 to AEO Powersports, which lessee shall operate a retail motorcycle and all terrain vehicle dealership including service, parts and accessories on Parcel 6. In order to operate a motorcycle and all terrain vehicle dealership on Parcel 6, the Parcel 6 Intended Owner requests the approval of the undersigned and the undersigned hereby agrees to give its approval for AEO Powersport to sell and service motorcycles, and all terrain vehicles to the public according to the terms and conditions here in below; and

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the undersigned hereby waives the restrictive covenants set forth in Section Item 4 of the Section of the CC&Rs entitled Restrictions on Use with respect only to any occupant operating on Parcel 6 as a motorcycle and ATV dealership. This Consent and waiver valid only upon the successful closing of escrow # 15000624-040-DN2 Lawyers Title

THE UNDERSIGNED RESERVES ALL OF ITS RIGHTS UNDER THE CC&RS, EXCEPT AS PROVIDED HEREIN.

TBAD Investments, LLC

An Arizona Limited Liability Company

By: 

Morris France

Date: 6/12/15

EXHIBIT A

85 106894

the date of (a) written undertaking or (b) sixty (60) days from the notice referred to in paragraph 3(c), which ever first occurs. The vested title holder taking over the duties of the Manager or D&S may promptly cause an executed and acknowledged counterpart of such written undertaking to be duly recorded in the Office of the County Recorder of Maricopa County, Arizona. The Manager hereby grants to such successor or successors during said period all rights that the Manager shall possess hereunder including, but not limiting the foregoing, the right, in the place and stead of the Manager to issue the statements above contemplated, to collect, hold, receive, and disburse receipts on account thereof, and to have the full benefit of any liens above contemplated which may arise by reason of any non-payment on account hereof.

RESTRICTIONS ON USE

1. No portion of the Shopping Center other than Parcel 2 shall be occupied or used, directly or indirectly, for the purposes of a general food market or a grocery store, nor for the sale to the general public of meats, fruits, vegetables, bakery goods, delicatessen items (similar to delicatessens used in Bashas's Supermarkets), cheese and lunch meat sold in bulk form, or any combination thereof without the prior written consent of the vested title holder of Parcel 2, which consent may be withheld by that owner in its sole and absolute discretion and in no event shall any store building or other improvement at any time situated in the Shopping Center, without said consent, be used for the purpose of selling fresh or frozen meat or fish, fresh or frozen poultry or fresh or frozen produce or dairy products; provided, however, that without limiting or expanding the foregoing restrictions, said restriction shall not be deemed to apply to, or include in its terms: (a) a restaurant which sells cooked or prepared food for on or off-premises consumption or a food take-out service preparing or cooking food on the premises for off-premises consumption and commonly known or

referred to as a "carry-out," "take home," or "takeout" facility; however, no restaurant use shall include a delicatessen which sells milk, cooked or processed meats, preserves, relishes, bread, canned foods, and other related items for off premise consumption; (b) a store selling ice cream and candy; (c) a store selling donuts, pastries, or other items customarily sold at a Winchels or Dunkin Donuts operation, or health foods (but only with the prior written consent of ANCOR which consent may be withheld in ANCOR's sole and absolute discretion); (d) the operation on Parcel 3 of a drug store selling items customarily sold by other drug stores, so long as such items customarily sold do not include fresh or frozen meats, fresh or frozen fish, fresh or frozen produce, and/or fresh or frozen poultry. Additionally, no restaurant or other operation whose primary business is chicken or barbeque ribs shall be allowed without the prior written consent of ANCOR, which consent may be withheld in ANCOR's sole and absolute discretion.

2. No portion of the Shopping Center other than Parcel 3 shall be occupied or used for the conduct of any store, business, trade, or profession (whether separately or as part of another entity) which requires, or has, a license or permit to conduct a pharmacy from the Arizona State Board of Pharmacy, or other agency which hereinafter may be empowered to license or permit the conduct of a pharmacy, or which employs or is required to employ a registered pharmacist, nor for the conduct of any store, business, trade, or profession (whether separately or as part of another entity) which is called, labeled, named, or is commonly known as or referred to as a "drug store," "pharmacy," or "apothecary."

3. No portion of the Shopping Center shall be used for sale, or offering for sale of alcoholic beverages for off-premises consumption; provided, however, that this restriction shall not prohibit the operation of an alcoholic beverage department as a

part of the retail operations conducted in the building located on Parcel 2 and the drug store, if any, located on Parcel 3.

4. No portion of the Shopping Center shall be occupied or used for automobile, truck or other vehicular repair and/or service, without the prior written consent of ANCOR and D&S, which consent may be unreasonably withheld. The prohibition in this paragraph shall not apply to retail establishments which distribute and sell products, supplies, tools, parts, equipment, or other related items used or connected with the repair and/or service of vehicles such as establishments similar to "Checker Auto Parts" and "Auto Shack" as long as no actual repair and/or service takes place on the premises.

5. No vested title holder shall use or permit the use of its parcel, or any portion thereof, for (i) the conduct of any offensive, noisy, or dangerous trade, business, or manufacturing activity, (ii) the maintenance of any nuisance or the conduct of any activity which violates public policy, (iii) or any other use of its parcel not compatible with the operation of a first-class shopping center. No entertainment uses, recreational uses, or training or educational uses shall be permitted on any portion of the Shopping Center without the prior written consent of D&S (but only while D&S has an ownership interest in the Shopping Center) and the vested title holder of Parcel 2. As used herein, "entertainment use" includes, without limitation, bowling alleys, skating rinks, theaters, billiard rooms, video game parlors, health spas or health studios, and gyms; and "training or educational use" includes, without limitation, beauty schools, barber colleges, reading rooms, places of instruction, or any other operation catering primarily to students or trainees rather than to customers. Notwithstanding the prohibitions on use herein contained, dance studios and exercise studios not in excess of 1,500 square feet, shall be allowed; provided that no dance and exercise studios shall be permitted in the south 25 feet of the building area for Parcel 1 or the east 50 feet of the