

WHEN RECORDED RETURN TO:

NEW MEXICO KWIK LUBE, LLC
c/o Matt Musgrave
2855 Cottonwood Circle
Santa Clara, Utah 84765

THIS DOCUMENT IS FILED FOR
RECORD BY FIDELITY NATIONAL
TITLE INS., CO. AS AN ACCOMMODATION
ONLY. IT HAS NOT BEEN EXAMINED
AS TO ITS EXECUTION OR AS TO ITS
EFFECT UPON THE TITLE.

DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS (the "Declaration") is made and executed as of the 24th day of September 2005, by NEW MEXICO KWIK LUBE, LLC, a New Mexico limited partnership ("Declarant").

STATEMENT OF PURPOSE

A. Declarant is the owner of fee simple title to two adjoining Lots of land in Albuquerque, Bernalillo County, New Mexico. "Lot 40-A and "Lot 40-B" which abuts and lies directly to the south of Lot 40-A, both of which are more particularly described on Exhibit A attached hereto and incorporated herein by reference.

B. The term "Lot" as used herein shall mean either one of the above described lots, and any parcel created hereafter by subdivision of such lots; the term "Lots" as used herein shall mean two or more of the above described lots or of any other lots created hereafter by subdivision; and the term "Premises" as used herein shall mean all of the Lots

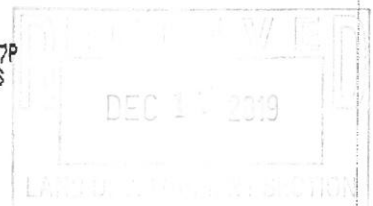
C. The term "Owner(s)" shall individually refer to any person or group of persons, corporation, partnership, limited liability company or other entity that may, from time to time, own fee simple title to any portion of the Premises.

D. Declarant believes that proposed further development of the Premises makes it desirable for itself and its successors and assigns to declare, grant, establish, and create certain easements on, under and above the Premises.

TERMS

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and conditions herein contained, and other good and valuable consideration, the legal sufficiency of which are hereby acknowledged, Declarant hereby declares and establishes the following:

1. Purpose; No Public Dedication. Declarant is the sole owner of the Premises, and therefore currently controls the use thereof. The intent of this Declaration is to set forth certain reciprocal easements and rights for the benefit of the Premises, and each portion thereof. Notwithstanding the foregoing, however, and notwithstanding anything to the contrary set forth herein, in no event shall any of the rights and easements hereby created benefit or be an appurtenance to any portion of the Premises that is now or hereafter owned by or dedicated to any government or governmental authority, for public road right-of-way purposes; nor shall any of the rights and easements hereby created benefit or be an appurtenance to any property



adjoining the Premises; nor shall any of the rights and easements hereby created benefit or be exercisable by the general public.

2. Common Areas.

"Common Areas" shall be all of the Lots except the Building Areas, and shall include a dumpster and enclosure to be built in the proximity of the boundary line between the Lots and in a location that shall mutually benefit the Lots. The dumpster and enclosure shall be constructed in a manner that does not interfere with the use, ingress or egress of the Lots, and which provides convenient access for trash removal vehicles. Cost of construction of said enclosure, installation of a dumpster and any and all costs, including periodic fees for collection of trash shall be shared equally by each and every person, firm, entity, or corporation hereafter owning any portion of the Premises.

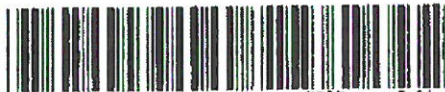
3. Buildings.

3.1 Design and Construction. The structures to be constructed on the shall be designed so that the exterior elevations are architecturally and aesthetically compatible or complementary with respect to the colors and materials of each structure. Nothing in the preceding sentence shall prevent any Owner from employing any design element, including color scheme or logo, that is part of its trademarked appearance or has otherwise become associated with such Owner's business operations from other established locations of the type constructed on the Premises. The building wall footings shall not encroach from one Lot onto another Lot.

3.2 Prohibitions on Use. No night club, adult video, magazine or similar adult oriented store, or other place of recreation or amusement or any business serving alcoholic beverages for on-premises consumption (except as an incidental part of its restaurant business) shall occupy space within either of the Lots without the prior written consent of the Declarant.

4. Specific Access Easement. Declarant hereby declares, establishes, and grants, to each and every person, firm, entity, or corporation hereafter owning any portion of the Premises, for the benefit of all said grantees, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Premises, as an appurtenance to and for the benefit of the Premises and each and every portion thereof, a perpetual, non-exclusive right and easement (the "24' Private Access and Public Utility Easement") over that portion of Lot 40-BLot 1-A (the "24' Private Access and Public Utility Easement") shown Exhibit C, for the purposes of providing pedestrian and vehicular traffic (including without limitation construction and delivery vehicles and equipment) ingress, egress and regress to, from and between the Premises and Candelaria Road. Costs of improving, including paving, and maintenance shall be shared equally each and every person, firm, entity, or corporation hereafter owning any portion of the Premises.

4.1 The location of the Access Easement Area may be changed with the consent of the Owners of fee simple title to all portions of the Premises. Such change shall be effected by an amendment to this Declaration signed by all Owners of fee simple title to the Premises, and recorded in the deed records of Bernalillo County, showing the



new location of the Access Easement Area; no tenants or mortgagees of the Premises shall be required to join in any such amendment.

4.2 It is hereby agreed that the Private Access and Public Utility Easement is granted solely to the Owners of the Premises, their successors and assigns, and for the benefit of their officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and for the benefit of other persons lawfully upon the Premises, and that the grant of such easement, right and privilege as well as the benefits therefrom, is not intended nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it be construed as creating any rights in or for the benefit of any property adjoining the Premises.

4.3 The Private Access and Public Utility Easement shall be kept open at all times for free use as intended in this Declaration.

4.4 Declarant, any Owner(s), and their successors and assigns owning the Private Access and Public Utility Easement may develop, operate, use, and maintain the Private Access and Public Utility Easement in any manner which does not prevent or substantially interfere with the exercise by any other Owners of the Premises of the Private Access and Public Utility Easement.

4.5 Declarant, for itself and its successors and assigns, hereby agrees that it shall not erect or permit the erection of any curbing, fencing, or other barriers or obstructions on the Premises that will in any way interfere with the exercise of the Private Access and Public Utility Easement. The Private Access and Public Utility Easement shall be kept open at all times for the free use thereof as intended herein; provided, however, that all reasonable efforts shall be made to provide an integrated design of the respective developments to be located on Lot 40-A and Lot 40-B.

4.6 Notwithstanding the foregoing, the Owners of the Premises shall have the right, one day in each calendar year, but more often if legally desirable, to erect barriers or chains for the purpose of blocking off access to the Premises to avoid the possibility of dedicating the Private Access and Public Utility Easement Area for public use, it being mutually agreed, nevertheless, that if possible, such barriers or chains shall be erected for such purpose at a time, or upon a day, when the businesses operating on the Premises are not open for business.

5. General Easement for Ingress, Egress, and Parking. Declarant, for itself and its successors and assigns, does hereby declare, establish, and grant, to each and every person, firm, entity, or corporation hereafter owning any portion of the Premises, for the benefit of all said grantees, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of Premises, as an appurtenance to and for the benefit of the Premises and each and every portion thereof, a mutual, reciprocal and nonexclusive easement, right and privilege of use, both pedestrian and automotive, for the purpose of ingress and egress, passage, and parking on and over such parking areas, curb cuts, entrances, exits, drive aisles, sidewalks, and other areas provided, or to be provided, for such purposes and uses by the respective owners thereof, from time to time, on the Premises, as such areas and facilities may change from time to time. Nothing in this Paragraph 6 shall obligate Declarant or its successors, assigns, or grantees, to



construct any such areas or facilities, or limit the Declarant, its successors, assigns, and grantees, from altering, removing, relocating, or otherwise changing any such areas or facilities from time to time (the "General Easement").

5.1 It is agreed that the General Easement is granted solely to the owners from time to time of the Premises, or any parts thereof, and that the grant of said easement, rights and privileges as well as the benefits from said grant, is not intended nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it be construed as creating any rights in or for the benefit of any property adjoining the Premises.

5.2 Declarant, for itself and its successors and assigns, hereby agrees that it shall not erect or permit the erection of any curbing, fencing, or other barriers or obstructions on the Premises that would prevent or substantially interfere with the ingress, egress, and regress of pedestrian and automotive traffic over, between, and among the Lots. However, the locations of drives, entrances, and exits on the Premises, with the exception of the Private Access and Public Utility Easement provided above, shall be in the discretion of the owner of each such Lot. Such drives, entrances, and exits shall be kept open at all times for the free use thereof as intended herein; provided, however, that all reasonable efforts shall be made to provide an integrated design of the developments located on the Premises. This paragraph shall not be construed, however, as prohibiting installation of landscaping and the making of similar improvements, as long as such ingress, egress and regress is not prevented or substantially interfered with.

5.3 Notwithstanding the foregoing, the Owners of the Lots shall have the right, one day in each calendar year, but more often if legally desirable, to erect barriers or chains for the purpose of blocking off access to the Lots, or either of them, to avoid the possibility of dedicating same for public use, it being mutually agreed, nevertheless, that if possible, such barriers or chains shall be erected for such purpose at a time, or upon a day, when the businesses operating on the Lots are not open for business.

5.4 The Owners of the Lots, their respective successors in interest, assigns, and grantees, shall maintain at all times improved parking areas on each such Lot in such manner as to provide a parking ratio of not less than the greater of the following: (i) five (5) parking spaces for each one thousand (1,000) square feet of building area located in such Lot; or (ii) a parking ratio as may be required by any governmental authority having jurisdiction over such Lot; provided, however, in no event shall parking spaces on any one of such Lots be included in determining compliance with parking spaces required to be included in any of the other of such Lots, it being the intent of this Declaration that a sufficient number of parking spaces be maintained at all times on each of such Lots to comply with the above described requirements as applied to such Lot. Notwithstanding the foregoing, the Owner of either of such Lots shall be relieved of the requirements set forth in this paragraph to the extent parking spaces are taken pursuant to the exercise of the power of eminent domain, or conveyance in lieu thereof.

6. Utilities Easements. Declarant, for itself, its successors and assigns, hereby declares, establishes, and grants, to the benefit of the Owner(s), from time to time, of the Premises, and each and every portion thereof, perpetual, nonexclusive rights and easements to install, connect, tap-in, use, operate, maintain, relocate, repair and replace. at locations

reasonably acceptable to the affected party or parties, and at times reasonably acceptable to such parties so as not to adversely affect the current or contemplated commercial operations of such affected parties, any reasonably required utility facilities including, but not limited to, water, gas, electricity, telephone, storm and sanitary sewers, water retention and drainage facilities, to provide proper service for the improvements built or to be built on the Premises, and each and every portion thereof. All such utility facilities shall be installed underground, with the exception of meters, catch basins, manholes, light poles, and similar facilities that cannot be installed underground. Provided, however, the utility easements granted hereunder shall not interfere with any existing or contemplated structural improvements on the affected Lots or the operation of the facilities thereon, with the exception of any temporary construction required for such utility facilities and the temporary closing of any reasonable amount of parking area therefor. The party initially installing such utility facilities shall be responsible for the cost and expense of the initial construction, including repair and restoration of any damage to the property of the affected party or parties following the completion of such initial construction, and including third party liability claims resulting from or arising out of the exercise of the rights granted under this paragraph. During any such construction, all construction areas shall be fenced in order to prevent access to such areas by invitees, customers, and other parties present on the Premises other than parties performing such construction work. After such initial construction, such utility facilities shall be maintained in accordance with Paragraph 11 below, except that if any utility facilities located on a Lot exclusively serve another Lot, then the owner of the benefited Lot shall have sole responsibility for maintenance of such utility facilities at its own expense, and shall have an easement to enter upon the burdened Lot to perform such maintenance, subject to the same provisions as apply with respect to the initial installation thereof.

7. Compliance with Laws. Any easement provided hereunder shall be subject to compliance with all laws, ordinances and regulations as may be applicable for continuous operation of the businesses located on the Premises. Each owner of any portion of the Premises shall comply with all laws, ordinances, regulations and other governmental requirements with respect to such Owner's Lot, and each Owner (an "Indemnifying Owner") shall handle for and on behalf of the other Owners (the "Indemnified Owners") and shall defend, in the event of litigation, indemnify, and save the Indemnified Owners and their respective successors in interest, heirs, grantees, devisees and assignees, tenants, licensees, invitees and agents harmless from any and all loss, cost, damage, claim or liability suffered by the Indemnified Owner arising out of the noncompliance by the Indemnifying Owner with such laws, ordinances, regulations, or other governmental requirements with respect such Indemnifying Owner's Lot.

8. Easement for Entry. The Owners, for themselves and their successors and assigns, hereby grant to each other and to the owners of the Premises from time to time, an easement, subject to the terms of Paragraph 11 below, to come upon any Lot to perform any work which must be performed on such Lot to maintain the easement of ingress, egress and parking as set forth herein, and to perform any work to cure the failure of a "Defaulting Owner" (as defined in Paragraph 13 below) to comply with the performance of any obligation set forth herein, subject to the requirement of notice and other requirements set forth in Paragraph 13.

9. Priority of Easements. All easements as specified herein are to be superior to all leases, sales, conveyances, transfers, assignments, contracts, mortgages and other encumbrances and documents in any way affecting the Premises, and each and every portion thereof, and any



party foreclosing any such mortgage, deed of trust, lien or encumbrance, and all persons or entities acquiring title or interest in any portion of the Premises shall acquire and hold the title of such property or any portion thereof subject to the aforementioned easement.

10. Maintenance of Facilities. The owners of the Premises shall be responsible for the cost and expense relating to those improvements and facilities located within their respective Lots at their sole cost and expense, unless otherwise provided hereunder. In the event any of the improvements or facilities on the Premises are damaged or destroyed by fire or any other casualty, the Owner of the Lot on which the affected improvements or facilities are located shall, at its sole cost and expense, and at its election, either repair or restore, or cause to be repaired or restored, such improvements and facilities to their prior condition with all due diligence; or shall demolish all damaged improvements, remove all debris, and restore the affected Lot (or portion thereof) to clean, level grade, and shall maintain appropriate ground cover plantings so as to maintain a neat and attractive appearance. In the event any of the improvements or facilities on the Premises is taken by condemnation or conveyance in lieu thereof, the owner of the Lot on which such affected improvements or facilities is located shall, with all due diligence and at its sole cost and expense, either restore the remaining improvements and facilities to a functional condition, compatible and integrated with and complementary to the remaining improvements and facilities; or shall demolish all damaged improvements, remove all debris, and restore the affected Lot (or portion thereof) to clean, level grade, and shall maintain appropriate ground cover plantings so as to maintain a neat and attractive appearance.

10.1 After completion of construction of any building improvements on any Lot, the owner of such Lot shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas and loading docks, any outside sales or storage areas, canopies, paving areas, lighting, landscaped areas, and signage in a first-class, safe, and sightly condition and state of repair, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. The standard of maintenance shall be that comparable to other first class retail facilities in the Bernalillo County area.

11. Indemnification. Each owner of a Lot (an "Indemnifying Owner") shall handle for and in behalf of the other owners (the "Indemnified Owners") and shall defend, in the event of litigation, indemnify, and save the Indemnified Owners and their respective successors in interest, heirs, grantees, devisees and assignees, tenants, licensees, invitees and agents harmless from any and all claims for injury or death to persons or damage to or loss of property arising out of or alleged to have arisen out of or occasioned by the construction, use, operation and maintenance by the Indemnifying Owner of the buildings, improvements, structures, parking areas, utilities, driveways, sidewalks and landscaped areas on the Indemnifying Owner's Lot, except to the extent that such damage or injury shall have been due to the negligence or intentional act of an Indemnified Owner, or its respective successors, devisees, assignees, agents, tenants, licensees or invitees.

12. Enforcement. The easements and covenants contained herein shall be enforceable by suit for specific performance and injunctive relief, in addition to any other remedy provided herein or by law or equity. In any litigation arising hereunder, the prevailing party shall be entitled to reasonable attorney's fees, in addition to all other costs and expenses thereof.

12.1 If the owner of any Lot fails to comply with any provision herein (a "Defaulting Owner"), including, without limitation, the payment of any sum of money or the performance of any other obligation pursuant to the terms of this Declaration, then any other Owner (an "Affected Party") at its option and with thirty (30) days prior written notice to the Defaulting Owner, in addition to any other remedies such Affected Party may have in law or equity, may proceed to perform such defaulted obligation on behalf of such Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Owner cures the default, or (ii) if curable, the default cannot be reasonably cured within that time period but the Defaulting Owner begins to cure such default within such time period and thereafter diligently and continuously pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists or if such default causes interference with the construction, operation or use of the Affected Party's Lot which requires immediate attention; and in such event, the Affected Party shall give such notice (if any) to the Defaulting Owner as is reasonable under the circumstances.

12.2 Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse the Affected Party for any sum reasonably expended by the Affected Party due to the default or in correcting the same, together with interest thereon and, if such reimbursement is not paid within said ten (10) days and collection is required, the Affected Party's reasonable costs of collection, including, without limitation, reasonable attorneys' fees.

12.3 Any claim of an Affected Party for reimbursement, together with interest accrued thereon and collection costs, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Lot of the Defaulting Owner and all improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the Lot involved, except that such lien shall not be prior and superior to any mortgages or deeds of trust of record prior to the recording of such Lien Notice or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Paragraph 13 after the date of such foreclosure sale or conveyance in lieu of foreclosure. To evidence a lien accruing pursuant to this Paragraph, the Affected Party curing the default of a Defaulting Owner or the Affected Party performing such maintenance, as the case may be, shall prepare a written notice (a "Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; (ii) the Lot to which the payment(s) relate; (iii) the name of the owner or reputed owner owning the Lot involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Affected Party desiring to file the same and shall be recorded in the public real estate records in Bernalillo County, New Mexico. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in like manner



as a mortgage or deed of trust on real property is judicially foreclosed under the laws of New Mexico. In any foreclosure, the Lot being foreclosed shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure.

12.4 In the event any Affected Party shall institute any action or proceeding against another Owner relating to the provisions of this Declaration or any default hereunder or to collect any amounts owing hereunder or in the event an arbitration proceeding is commenced hereunder by agreement of the parties to any dispute, then and in such event the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for such reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

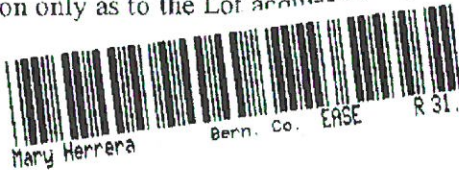
12.5 Any remedies provided for in this Paragraph 13 are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

13. Binding Effect; Running with the Land. All the covenants, terms, agreements, conditions, and restrictions set forth in this Declaration are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto, their respective successors in interest, grantees and assignees, upon the terms, provisions and conditions herein set forth. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

14. Identity of Declarant; Assignment of Declarant Rights. NEW MEXICO KWIK LUBE, LLC is the initial Declarant hereunder. NEW MEXICO KWIK LUBE, LLC shall remain the Declarant hereunder, and be vested with all of the rights of Declarant hereunder, for as long as NEW MEXICO KWIK LUBE, LLC owns any portion of the Premises. If at any time after the date hereof NEW MEXICO KWIK LUBE, LLC no longer owns any portion of the Premises, then any entity owned or controlled by the principals of NEW MEXICO KWIK LUBE, LLC, principals meaning the partners, and their heirs, personal representatives, successors, and assigns as shareholders) owning any portion of the Premises shall be the Declarant hereunder.

14.1 The rights of Declarant hereunder may be assigned by any Declarant hereunder to any party owning the Premises, or any portion thereof, by written assignment executed by the then current Declarant under the terms hereof, recorded in the deed records for Bernalillo County, New Mexico.

15. Release from Liability. Any person acquiring fee title to any Lot hereunder shall be bound by this Declaration only as to the Lot acquired.



person shall be bound by this Declaration only during the period such person is the fee owner of such Lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Lots running with the land.

16. Modification. This Declaration may be modified by written instrument executed by the owners of fee title to the Premises, or such portion or portions thereof as are affected by such modification, who are vested with such fee title at the time such modification is executed. The consent of tenants of the Premises, or any portion thereof, shall not be required for such modification to be effective.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed pursuant to proper authority duly given as of the day and year first above written.

DECLARANT:

NEW MEXICO KWIK LUBE, LLC,
a New Mexico limited liability company

By: _____

Matthew C. Musgrave
Name: Matthew C. Musgrave
Its: Manager

Utah
STATE OF ~~New Mexico~~)

) ss.

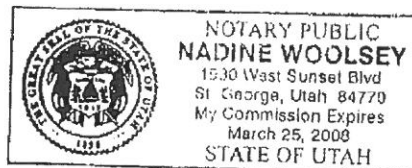
County of ~~Bernalillo~~ *Washington*

The foregoing instrument was acknowledged before me this 29 day of September 2005, by Matthew C. Musgrave, who acknowledged himself to be the Managing Member of New Mexico Kwik Lube, a New Mexico LLC, and that he executed the foregoing instrument on behalf of New Mexico Kwik Lube, LLC.

[Signature]
Notary Public

My Commission Expires:

3.25.08



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Page: 9 of 12
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EXHIBIT A

LEGAL DESCRIPTION FOR LOT 40-A

Lot numbered Forty-A (40-A) in Block numbered Six (6) of Unit No. 1 Casa Grande Estates, an addition filed in the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on August 19, 2005, in Plat Book 2005C, page 284.



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EXHIBIT B

LEGAL DESCRIPTION FOR LOT 40-B

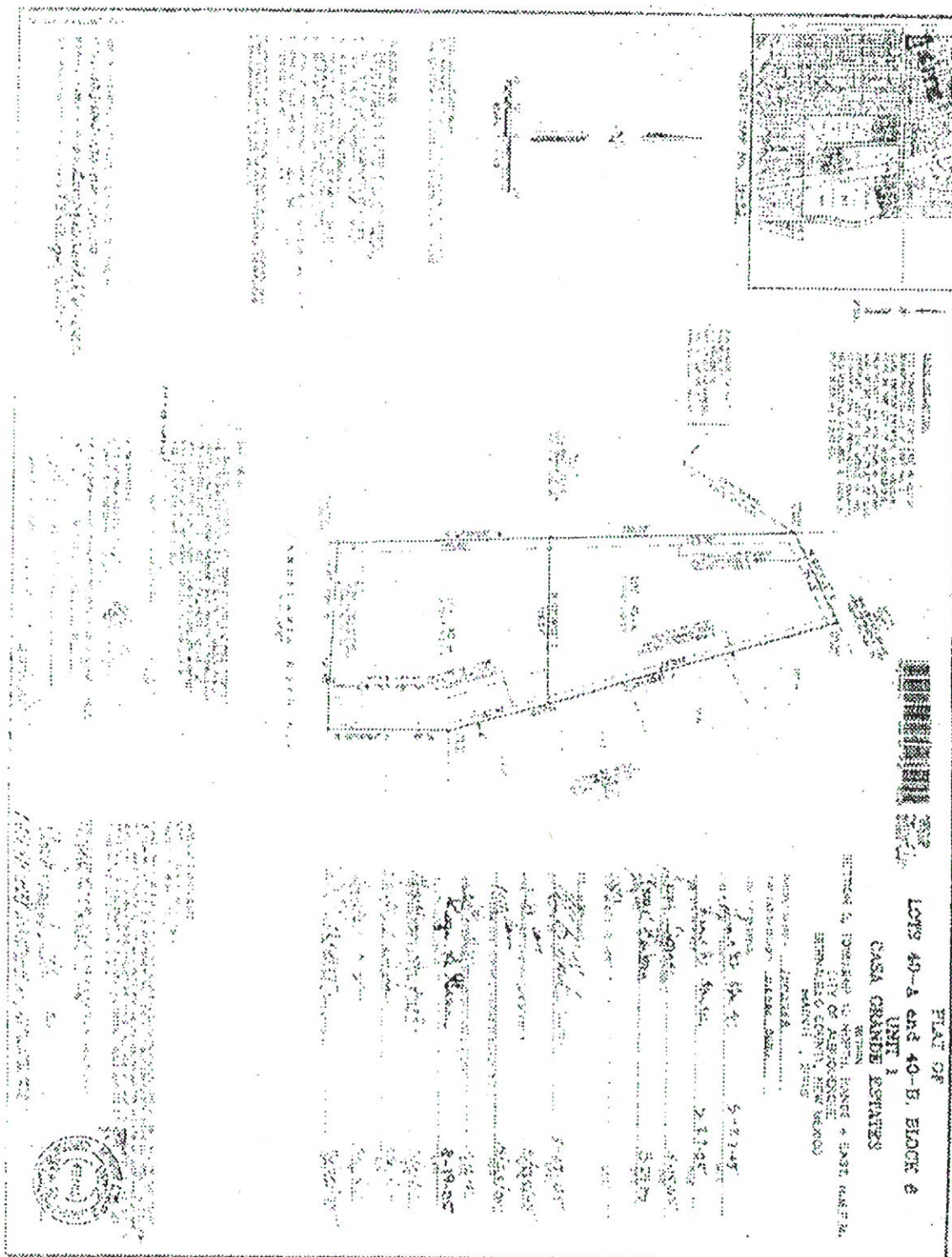




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LOTS 40-B, BLOCK 6 UNIT 1

CASA GRANDE ESTATES



WHEN RECORDED RETURN TO:

NEW MEXICO KWIK LUBE, LLC
c/o Matt Musgrave
2855 Cottonwood Circle
Santa Clara, Utah 84765

DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS (the "Declaration") is made and executed as of the 21st day of September 2005, by NEW MEXICO KWIK LUBE, LLC, a New Mexico limited partnership ("Declarant").

STATEMENT OF PURPOSE

A. Declarant is the owner of fee simple title to two adjoining Lots of land in Albuquerque, Bernalillo County, New Mexico. "Lot 40-A and "Lot 40-B" which abuts and lies directly to the south of Lot 40-A, both of which are more particularly described on Exhibit A attached hereto and incorporated herein by reference.

B. The term "Lot" as used herein shall mean either one of the above described lots, and any parcel created hereafter by subdivision of such lots; the term "Lots" as used herein shall mean two or more of the above described lots or of any other lots created hereafter by subdivision; and the term "Premises" as used herein shall mean all of the Lots

C. The term "Owner(s)" shall individually refer to any person or group of persons, corporation, partnership, limited liability company or other entity that may, from time to time, own fee simple title to any portion of the Premises.

D. Declarant believes that proposed further development of the Premises makes it desirable for itself and its successors and assigns to declare, grant, establish, and create certain easements on, under and above the Premises.

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NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and conditions herein contained, and other good and valuable consideration, the legal sufficiency of which are hereby acknowledged, Declarant hereby declares and establishes the following:

5. Purpose: No Public Dedication. Declarant is the sole owner of the Premises, and therefore currently controls the use thereof. The intent of this Declaration is to set forth certain reciprocal easements and rights for the benefit of the Premises, and each portion thereof. Notwithstanding the foregoing, however, and notwithstanding anything to the contrary set forth herein, in no event shall any of the rights and easements hereby created benefit or be an appurtenance to any portion of the Premises that is now or hereafter owned by or dedicated to any government or governmental authority, for public road right-of-way purposes; nor shall any of the rights and easements hereby created benefit or be an appurtenance to any property adjoining the Premises; nor shall any of the rights and easements hereby created benefit or be exercisable by the general public.

6. Common Areas.



Mary Herrera

Bern. Co. DEC

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"Common Areas" shall be all of the Lots except the Building Areas, and shall include a dumpster and enclosure to be built in the proximity of the boundary line between the Lots and in a location that shall mutually benefit the Lots. The dumpster and enclosure shall be constructed in a manner that does not interfere with the use, ingress or egress of the Lots, and which provides convenient access for trash removal vehicles. Cost of construction of said enclosure, installation of a dumpster and any and all costs, including periodic fees for collection of trash shall be shared equally by each and every person, firm, entity, or corporation hereafter owning any portion of the Premises.

7. Buildings.

3.1 Design and Construction. The structures to be constructed on the shall be designed so that the exterior elevations are architecturally and aesthetically compatible or complementary with respect to the colors and materials of each structure. Nothing in the preceding sentence shall prevent any Owner from employing any design element, including color scheme or logo, that is part of its trademarked appearance or has otherwise become associated with such Owner's business operations from other established locations of the type constructed on the Premises. The building wall footings shall not encroach from one Lot onto another Lot.

Prohibitions on Use. No night club, adult video, magazine or similar adult oriented store, or other place of recreation or amusement or any business serving alcoholic beverages for on-premises consumption (except as an incidental part of its restaurant business) shall occupy space within either of the Lots without the prior written consent of the Declarant.

1. Specific Access Easement. Declarant hereby declares, establishes, and grants, to each and every person, firm, entity, or corporation hereafter owning any portion of the Premises, for the benefit of all said grantees, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of the Premises, as an appurtenance to and for the benefit of the Premises and each and every portion thereof, a perpetual, non-exclusive right and easement (the "24' Private Access and Public Utility Easement") over that portion of Lot 40-B/Lot 1-A (the "24' Private Access and Public Utility Easement") shown Exhibit C, for the purposes of providing pedestrian and vehicular traffic (including without limitation construction and delivery vehicles and equipment) ingress, egress and regress to, from and between the Premises and Candelaria Road. Costs of improving, including paving, and maintenance shall be shared equally each and every person, firm, entity, or corporation hereafter owning any portion of the Premises.

1.1 The location of the Access Easement Area may be changed with the consent of the Owners of fee simple title to all portions of the Premises. Such change shall be effected by an amendment to this Declaration signed by all Owners of fee simple title to the Premises, and recorded in the deed records of Bernalillo County, showing the new location of the Access Easement Area; no tenants or mortgagees of the Premises shall be required to join in any such amendment.

1.2 It is hereby agreed that the Private Access and Public Utility Easement is granted solely to the Owners of the Premises, their successors and assigns, and for the benefit of their officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and for the benefit of other persons lawfully upon the Premises, and that the grant of such easement, right and privilege as well as the benefits therefrom, is



not intended nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it be construed as creating any rights in or for the benefit of any property adjoining the Premises.

1.3 The Private Access and Public Utility Easement shall be kept open at all times for free use as intended in this Declaration.

1.4 Declarant, any Owner(s), and their successors and assigns owning the Private Access and Public Utility Easement may develop, operate, use, and maintain the Private Access and Public Utility Easement in any manner which does not prevent or substantially interfere with the exercise by any other Owners of the Premises of the Private Access and Public Utility Easement.

1.5 Declarant, for itself and its successors and assigns, hereby agrees that it shall not erect or permit the erection of any curbing, fencing, or other barriers or obstructions on the Premises that will in any way interfere with the exercise of the Private Access and Public Utility Easement. The Private Access and Public Utility Easement shall be kept open at all times for the free use thereof as intended herein; provided, however, that all reasonable efforts shall be made to provide an integrated design of the respective developments to be located on Lot 40-A and Lot 40-B.

1.6 Notwithstanding the foregoing, the Owners of the Premises shall have the right, one day in each calendar year, but more often if legally desirable, to erect barriers or chains for the purpose of blocking off access to the Premises to avoid the possibility of dedicating the Private Access and Public Utility Easement Area for public use, it being mutually agreed, nevertheless, that if possible, such barriers or chains shall be erected for such purpose at a time, or upon a day, when the businesses operating on the Premises are not open for business.

2. General Easement for Ingress, Egress, and Parking. Declarant, for itself and its successors and assigns, does hereby declare, establish, and grant, to each and every person, firm, entity, or corporation hereafter owning any portion of the Premises, for the benefit of all said grantees, as well as for the benefit of each of their respective officers, tenants, employees, agents, customers, business visitors, guests, licensees, invitees, and all other persons lawfully upon any portion of Premises, as an appurtenance to and for the benefit of the Premises and each and every portion thereof, a mutual, reciprocal and nonexclusive easement, right and privilege of use, both pedestrian and automotive, for the purpose of ingress and egress, passage, and parking on and over such parking areas, curb cuts, entrances, exits, drive aisles, sidewalks, and other areas provided, or to be provided, for such purposes and uses by the respective owners thereof, from time to time, on the Premises, as such areas and facilities may change from time to time. Nothing in this Paragraph 6 shall obligate Declarant or its successors, assigns, or grantees, to construct any such areas or facilities, or limit the Declarant, its successors, assigns, and grantees, from altering, removing, relocating, or otherwise changing any such areas or facilities from time to time (the "General Easement").

2.1 It is agreed that the General Easement is granted solely to the owners from time to time of the Premises, or any parts thereof, and that the grant of said easement, rights and privileges as well as the benefits from said grant, is not intended nor shall it be construed as creating any rights in or for the benefit of the general public, nor shall it be



construed as creating any rights in or for the benefit of any property adjoining the Premises.

2.2 Declarant, for itself and its successors and assigns, hereby agrees that it shall not erect or permit the erection of any curbing, fencing, or other barriers or obstructions on the Premises that would prevent or substantially interfere with the ingress, egress, and regress of pedestrian and automotive traffic over, between, and among the Lots. However, the locations of drives, entrances, and exits on the Premises, with the exception of the Private Access and Public Utility Easement provided above, shall be in the discretion of the owner of each such Lot. Such drives, entrances, and exits shall be kept open at all times for the free use thereof as intended herein; provided, however, that all reasonable efforts shall be made to provide an integrated design of the developments located on the Premises. This paragraph shall not be construed, however, as prohibiting installation of landscaping and the making of similar improvements, as long as such ingress, egress and regress is not prevented or substantially interfered with.

2.3 Notwithstanding the foregoing, the Owners of the Lots shall have the right, one day in each calendar year, but more often if legally desirable, to erect barriers or chains for the purpose of blocking off access to the Lots, or either of them, to avoid the possibility of dedicating same for public use, it being mutually agreed, nevertheless, that if possible, such barriers or chains shall be erected for such purpose at a time, or upon a day, when the businesses operating on the Lots are not open for business.

2.4 The Owners of the Lots, their respective successors in interest, assigns, and grantees, shall maintain at all times improved parking areas on each such Lot in such manner as to provide a parking ratio of not less than the greater of the following: (i) five (5) parking spaces for each one thousand (1,000) square feet of building area located in such Lot; or (ii) a parking ratio as may be required by any governmental authority having jurisdiction over such Lot; provided, however, in no event shall parking spaces on any one of such Lots be included in determining compliance with parking spaces required to be included in any of the other of such Lots, it being the intent of this Declaration that a sufficient number of parking spaces be maintained at all times on each of such Lots to comply with the above described requirements as applied to such Lot. Notwithstanding the foregoing, the Owner of either of such Lots shall be relieved of the requirements set forth in this paragraph to the extent parking spaces are taken pursuant to the exercise of the power of eminent domain, or conveyance in lieu thereof.

3. Utilities Easements. Declarant, for itself, its successors and assigns, hereby declares, establishes, and grants, to the benefit of the Owner(s), from time to time, of the Premises, and each and every portion thereof, perpetual, nonexclusive rights and easements to install, connect, tap-in, use, operate, maintain, relocate, repair and replace, at locations reasonably acceptable to the affected party or parties, and at times reasonably acceptable to such parties so as not to adversely affect the current or contemplated commercial operations of such affected parties, any reasonably required utility facilities including, but not limited to, water, gas, electricity, telephone, storm and sanitary sewers, water retention and drainage facilities, to provide proper service for the improvements built or to be built on the Premises, and each and every portion thereof. All such utility facilities shall be installed underground, with the exception of meters, catch basins, manholes, light poles, and similar facilities that cannot be installed underground. Provided, however, the utility easements granted hereunder shall not interfere with any existing



or contemplated structural improvements on the affected Lots or the operation of the facilities thereon, with the exception of any temporary construction required for such utility facilities and the temporary closing of any reasonable amount of parking area therefor. The party initially installing such utility facilities shall be responsible for the cost and expense of the initial construction, including repair and restoration of any damage to the property of the affected party or parties following the completion of such initial construction, and including third party liability claims resulting from or arising out of the exercise of the rights granted under this paragraph. During any such construction, all construction areas shall be fenced in order to prevent access to such areas by invitees, customers, and other parties present on the Premises other than parties performing such construction work. After such initial construction, such utility facilities shall be maintained in accordance with Paragraph 11 below, except that if any utility facilities located on a Lot exclusively serve another Lot, then the owner of the benefited Lot shall have sole responsibility for maintenance of such utility facilities at its own expense, and shall have an easement to enter upon the burdened Lot to perform such maintenance, subject to the same provisions as apply with respect to the initial installation thereof.

4. Compliance with Laws. Any easement provided hereunder shall be subject to compliance with all laws, ordinances and regulations as may be applicable for continuous operation of the businesses located on the Premises. Each owner of any portion of the Premises shall comply with all laws, ordinances, regulations and other governmental requirements with respect to such Owner's Lot, and each Owner (an "Indemnifying Owner") shall handle for and on behalf of the other Owners (the "Indemnified Owners") and shall defend, in the event of litigation, indemnify, and save the Indemnified Owners and their respective successors in interest, heirs, grantees, devisees and assignees, tenants, licensees, invitees and agents harmless from any and all loss, cost, damage, claim or liability suffered by the Indemnified Owner arising out of the noncompliance by the Indemnifying Owner with such laws, ordinances, regulations, or other governmental requirements with respect such Indemnifying Owner's Lot.

5. Easement for Entry. The Owners, for themselves and their successors and assigns, hereby grant to each other and to the owners of the Premises from time to time, an easement, subject to the terms of Paragraph 11 below, to come upon any Lot to perform any work which must be performed on such Lot to maintain the easement of ingress, egress and parking as set forth herein, and to perform any work to cure the failure of a "Defaulting Owner" (as defined in Paragraph 13 below) to comply with the performance of any obligation set forth herein, subject to the requirement of notice and other requirements set forth in Paragraph 13.

6. Priority of Easements. All easements as specified herein are to be superior to all leases, sales, conveyances, transfers, assignments, contracts, mortgages and other encumbrances and documents in any way affecting the Premises, and each and every portion thereof, and any party foreclosing any such mortgage, deed of trust, lien or encumbrance, and all persons or entities acquiring title or interest in any portion of the Premises shall acquire and hold the title of such property or any portion thereof subject to the aforementioned easement.

7. Maintenance of Facilities. The owners of the Premises shall be responsible for the cost and expense relating to those improvements and facilities located within their respective Lots at their sole cost and expense, unless otherwise provided hereunder. In the event any of the improvements or facilities on the Premises are damaged or destroyed by fire or any other casualty, the Owner of the Lot on which the affected improvements or facilities are located shall, at its sole cost and expense, and at its election, either repair or restore, or cause to be repaired or



restored, such improvements and facilities to their prior condition with all due diligence; or shall demolish all damaged improvements, remove all debris, and restore the affected Lot (or portion thereof) to clean, level grade, and shall maintain appropriate ground cover plantings so as to maintain a neat and attractive appearance. In the event any of the improvements or facilities on the Premises is taken by condemnation or conveyance in lieu thereof, the owner of the Lot on which such affected improvements or facilities is located shall, with all due diligence and at its sole cost and expense, either restore the remaining improvements and facilities to a functional condition, compatible and integrated with and complementary to the remaining improvements and facilities; or shall demolish all damaged improvements, remove all debris, and restore the affected Lot (or portion thereof) to clean, level grade, and shall maintain appropriate ground cover plantings so as to maintain a neat and attractive appearance.

7.1 After completion of construction of any building improvements on any Lot, the owner of such Lot shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas and loading docks, any outside sales or storage areas, canopies, paving areas, lighting, landscaped areas, and signage in a first-class, safe, and slightly condition and state of repair, in compliance with all laws, rules, regulations, orders, and ordinances of any governmental agency exercising jurisdiction thereover, and in compliance with the provisions of this Declaration. The standard of maintenance shall be that comparable to other first class retail facilities in the Bernalillo County area.

8. Indemnification. Each owner of a Lot (an "Indemnifying Owner") shall handle for and in behalf of the other owners (the "Indemnified Owners") and shall defend, in the event of litigation, indemnify, and save the Indemnified Owners and their respective successors in interest, heirs, grantees, devisees and assignees, tenants, licensees, invitees and agents harmless from any and all claims for injury or death to persons or damage to or loss of property arising out of or alleged to have arisen out of or occasioned by the construction, use, operation and maintenance by the Indemnifying Owner of the buildings, improvements, structures, parking areas, utilities, driveways, sidewalks and landscaped areas on the Indemnifying Owner's Lot, except to the extent that such damage or injury shall have been due to the negligence or intentional act of an Indemnified Owner, or its respective successors, devisees, assignees, agents, tenants, licensees or invitees.

9. Enforcement. The easements and covenants contained herein shall be enforceable by suit for specific performance and injunctive relief, in addition to any other remedy provided herein or by law or equity. In any litigation arising hereunder, the prevailing party shall be entitled to reasonable attorney's fees, in addition to all other costs and expenses thereof.

9.1 If the owner of any Lot fails to comply with any provision herein (a "Defaulting Owner"), including, without limitation, the payment of any sum of money or the performance of any other obligation pursuant to the terms of this Declaration, then any other Owner (an "Affected Party") at its option and with thirty (30) days prior written notice to the Defaulting Owner, in addition to any other remedies such Affected Party may have in law or equity, may proceed to perform such defaulted obligation on behalf of such Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Owner. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Owner cures the default, or (ii) if curable, the default cannot be reasonably cured within



that time period but the Defaulting Owner begins to cure such default within such time period and thereafter diligently and continuously pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists or if such default causes interference with the construction, operation or use of the Affected Party's Lot which requires immediate attention; and in such event, the Affected Party shall give such notice (if any) to the Defaulting Owner as is reasonable under the circumstances.

9.2 Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) the Defaulting Owner shall reimburse the Affected Party for any sum reasonably expended by the Affected Party due to the default or in correcting the same, together with interest thereon and, if such reimbursement is not paid within said ten (10) days and collection is required, the Affected Party's reasonable costs of collection, including, without limitation, reasonable attorneys' fees.

9.3 Any claim of an Affected Party for reimbursement, together with interest accrued thereon and collection costs, shall constitute a personal obligation and liability of the Defaulting Owner and shall be secured by an equitable charge and lien on the Lot of the Defaulting Owner and all improvements located thereon. Such lien shall attach and be effective from the date of recording of the Lien Notice hereinafter described. Upon such recording, such lien shall be superior and prior to all other liens encumbering the Lot involved, except that such lien shall not be prior and superior to any mortgages or deeds of trust of record prior to the recording of such Lien Notice or any renewal, extension or modification (including increases) of previously recorded mortgages or deeds of trust; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Paragraph 13 after the date of such foreclosure sale or conveyance in lieu of foreclosure. To evidence a lien accruing pursuant to this Paragraph, the Affected Party curing the default of a Defaulting Owner or the Affected Party performing such maintenance, as the case may be, shall prepare a written notice (a "Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; (ii) the Lot to which the payment(s) relate; (iii) the name of the owner or reputed owner owning the Lot involved; and (iv) reference to this Declaration as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by the Affected Party desiring to file the same and shall be recorded in the public real estate records in Bernalillo County, New Mexico. A copy of such Lien Notice shall be mailed to the Defaulting Owner within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Lot to which the lien attached in like manner as a mortgage or deed of trust on real property is judicially foreclosed under the laws of New Mexico. In any foreclosure, the Lot being foreclosed shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice, as provided herein, and all reasonable costs, expenses and attorneys' fees in connection with the foreclosure.

9.4 In the event any Affected Party shall institute any action or proceeding against another Owner relating to the provisions of this Declaration or any default hereunder or to collect any amounts owing hereunder or in the event an arbitration proceeding is commenced hereunder by agreement of the parties to any dispute, then and in such event



the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for such reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

9.5 Any remedies provided for in this Paragraph 13 are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Declaration and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

10. Binding Effect; Running with the Land. All the covenants, terms, agreements, conditions, and restrictions set forth in this Declaration are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto, their respective successors in interest, grantees and assignees, upon the terms, provisions and conditions herein set forth. This Declaration shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

11. Identity of Declarant; Assignment of Declarant Rights. NEW MEXICO KWIK LUBE, LLC is the initial Declarant hereunder. NEW MEXICO KWIK LUBE, LLC shall remain the Declarant hereunder, and be vested with all of the rights of Declarant hereunder, for as long as NEW MEXICO KWIK LUBE, LLC owns any portion of the Premises. If at any time after the date hereof NEW MEXICO KWIK LUBE, LLC no longer owns any portion of the Premises, then any entity owned or controlled by the principals of NEW MEXICO KWIK LUBE, LLC, principals meaning the partners, and their heirs, personal representatives, successors, and assigns as shareholders) owning any portion of the Premises shall be the Declarant hereunder.

11.1 The rights of Declarant hereunder may be assigned by any Declarant hereunder to any party owning the Premises, or any portion thereof, by written assignment executed by the then current Declarant under the terms hereof, recorded in the deed records for Bernalillo County, New Mexico.

12. Release from Liability. Any person acquiring fee title to any Lot subject hereto shall be bound by this Declaration only as to the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee owner of such Lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Lots running with the land.

13. Modification. This Declaration may be modified by written instrument executed by the owners of fee title to the Premises, or such portion or portions thereof as are affected by such modification, who are vested with such fee title at the time such modification is executed. The consent of tenants of the Premises, or any portion thereof, shall not be required for such modification to be effective.



IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed pursuant to proper authority duly given as of the day and year first above written.

DECLARANT:

NEW MEXICO KWIK LUBE, LLC,
a New Mexico limited liability company

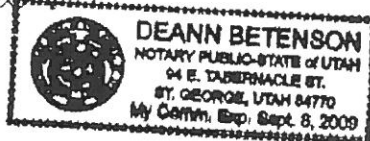
By: *Matthew C. Musgrave*
Name: Matthew C. Musgrave
Its: Manager

Utah
STATE OF ~~New Mexico~~)
Washington) ss.
County of ~~Bernalillo~~)

The foregoing instrument was acknowledged before me this 24 day of September ~~2006~~ ^{April}, by Matthew C. Musgrave, who acknowledged himself to be the Managing Member of New Mexico Kwik Lube, a New Mexico LLC, and that he executed the foregoing instrument on behalf of New Mexico Kwik Lube, LLC.

Deann Betenson
Notary Public

My Commission Expires: 9-8-2009



Mary Herrera

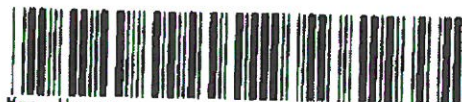
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EXHIBIT A

LEGAL DESCRIPTION FOR LOT 40-A



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LOT 40- A, BLOCK 6
UNIT 1
CASA GRANDE ESTATES
WITHIN
SECTION 2, TOWNSHIP 10 NORTH, RANGE 4 EAST,
N.M.P.M.
CITY OF ALBUQUERQUE
BERNALLIO COUNTY, NEW MEXICO



Mary Herrera

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EXHIBIT B

LEGAL DESCRIPTION FOR LOT 40-B



Mary Herrera

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LOT 40- B, BLOCK 6
UNIT 1
CASA GRANDE ESTATES
WITHIN
SECTION 2. TOWNSHIP 10 NORTH, RANGE 4 EAST,
N.M.P.M.
CITY OF ALBUQUERQUE
BERNALLIO COUNTY, NEW MEXICO



Mary Herrera

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EXHIBIT C

PLAT OF LOTS 40-ANS 40-B, BLOCK 6 UNIT 1

CASA GRANDE ESTATES



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