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WESTERN TITLE COMPANY, INC.
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

Assessor's Parcel Number: 1420-00-502-007 2003 OCT 24 PM 3:46

Recording Requested By:

Name: Western Title Co.

WERNER CHRISTEN
RECORDER
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Address: 1626 Hwy. 395

City/State/Zip Minden, NV 89423

R.P.T.T.: _____

Dec. Easement CC&R's
(Title of Document)

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APN. 1420-06-502-007
RECORDING REQUESTED BY
AND WHEN RECORDER RETURN TO:
Jeffrey E. Langan, Esq.
Coachella Properties LLC
668 North Pacific Coast Highway, Suite 517
Laguna Beach, California 92651

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**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (“Agreement”) is made and entered into effective this 21st day of September, 2003, in the County of Douglas, State of Nevada.

ARTICLE I - PARTIES AND RECITALS

The parties to this Agreement are Coachella Properties LLC, a California limited liability company (“**Coachella**”), The Peter O. Gulhaich Farms Partnership, a California general partnership (“**Gulhaich**”) (Coachella and Gulhaich, collectively, are “**The Owner of the Jiffy Lube Parcel**”) and Del Taco, Inc., a California corporation “**Owner of Parcel 2**”. This Agreement is entered into with reference to the following facts:

Recitals

- A. The Owner of the Jiffy Lube Parcel is the fee owner of real property described as Exhibit “A” attached (“**Property**”), which Property was the subject of Tract Map Number FPM LDA 03-003 recorded September 12, 2003 APN 1420-06-502-007, as Document Number 589891 Official Records, Douglas County, Nevada, consisting of Parcels One and Two (“**Tract Map**”).
- B. Parcel One (“**Jiffy Lube Parcel**”) consists of 17, 457 square feet (38% of the Property prior to the Tract Map recordation) and is currently being developed as a Jiffy Lube Facility and Parcel Two consisting of 28,833 square feet (62% of the Property prior to the recordation of the Tract Map) will be developed with a fast food drive-through facility for Del Taco, Inc. (“**Parcel Two**”) (collectively, Jiffy Lube Parcel and Parcel Two are the “**Parcels**”).
- C. Parcel Two is landlocked and as a condition of recording the Tract Map, Douglas County Nevada required the recordation of a “**Declaration of Easement**” as to utilities and ingress and egress over the Jiffy Lube Parcel for the benefit of Parcel Two, such Declaration recorded September 12, 2003 as Instrument Number 589892.
- D. The Owner of the Jiffy Lube Parcel desires to establish a common, general plan for the joint protection, development, maintenance, and improvement of all of the parcels comprising the Property, as an integrated commercial center. To this end, each Parcel shall be subject to certain protective provisions, covenants, conditions, easements and restrictions described herein, for the mutual benefit of the current and future owners (“**Owners**”). To the extent that each Parcel within the Property is benefited by such servitudes, it shall constitute a dominant tenement; and to the

extent that each Parcel is burdened by such servitudes, it shall constitute a servient tenement.

- E. The Property is an "Outparcel" as defined in "Easements With Covenants and Restrictions Affecting Land ("ECR")," recorded February 12, 2001, in Book 0201, Page 2028, Document Number 588505, Official Records of Douglas County, Nevada ("Master ECR") and the Parcels are subject to the entirety of the Master ECR. In the event of a conflict between the terms herein and those contained in the Master ECR, the Master ECR shall prevail.
- F. The parties hereto, intending to be legally bound, and in consideration of the respective covenants, representations, promises and undertakings herein contained, and incorporating the aforementioned recitals, agree as hereinafter set forth.

ARTICLE II - DEFINITIONS

2.1 **Defined Terms.** When used in this Agreement or as the context of this Agreement requires, the following terms shall have the respective meanings specified below.

- A. "**Affiliate:**" Shall mean any Person (hereinafter defined) that directly or indirectly controls, is controlled by, or is under common control with another Person and for greater certainty includes a subsidiary. For the purposes of this definition, a Person "controls" another Person if that Person directly or indirectly possesses the power to direct or cause the direction of the management and policies of that other Person, whether through the ownership of securities, by contract or by any other means. The terms "controlled by" and "under common control" with have corresponding meanings.
- B. "**Agreement:**" Shall mean this Agreement, including any recitals and exhibits hereto, as supplemented from time to time.
- C. "**Commercial Areas:**" Shall mean the portion of each Parcel and the portions of the Property other than the Common Areas used and occupied by improvements to be constructed as shown on Exhibit "C."
- D. "**Common Areas:**" Shall mean the portion of the Jiffy Lube Parcel designated as two easement areas consisting of two strips, each 18 feet wide on the Site Plan attached hereto as Exhibit "A". Common Areas are those portions of the Property designated for the non-exclusive use of the parties, Occupants (hereinafter defined), and Users (hereinafter defined) in common. The term "Common Areas" does not include any Commercial Areas."
- E. "**Common Areas Expenses:**" Shall have the meaning given to it in sub-section 7.3(B).

- F. **“Covered Property:”** Shall mean and refer to all the real property described as Parcels One and Two on Exhibits “B” and “C” attached hereto.
- G. **“Exhibit B:”** Shall mean and refer to the 32 foot wide strip of land designated on Exhibit B, an easement for private utilities and attached hereto.
- H. **“Jiffy Lube Parcel”** shall mean Parcel One of the Tract Map.
- I. **“Notice:”** Means any notice, approval, demand, consent, designation, request, document, or other communication required or permitted under this Agreement, given in conformity with the provisions of Section 10.9 hereof.
- J. **“Owner:”** Shall mean and refer to one or more persons or entities who alone or collectively are the record owner(s) of fee simple title to a Parcel, or the vendee(s) of a Parcel under an installment sales contract, but excluding those having such interest merely as security for the performance of an obligation.
- K. **“Occupant:”** Shall mean any Person entitled at any time to the use and occupancy of any portion of the Commercial Areas in the Property under any lease, license, concession agreement or other instrument or arrangement.
- L. **“Parcel:”** Shall mean and refer to each and every recorded parcel on the Tract Map.
- M. **“Parcel Two:”** Shall mean Parcel Two of the Tract Map.
- N. **“Person:”** Shall mean an individual or a partnership, firm, association, corporation, trust or any other form of legal or business entity.
- O. **“Property:”** Shall mean all Parcels comprising the Tract Map.
- P. **“Users:”** Shall mean all Persons who have been granted permission to use the Common Areas, including without limiting the generality of the foregoing, Owners, Occupants, employees, service and other personnel, invitees, customers, agents and contractors.
- Q. **“Utility System(s):”** Shall have the meaning given to it in Paragraph 4.3 below.

ARTICLE III – TRANSFER, LIMITATIONS, RIGHTS, AND OBLIGATIONS

3.1 **Limits on Transfer.** Except as otherwise expressly permitted by the provisions hereof, no Owner may transfer or assign any right, power, or obligation created under this Agreement without also transferring the Parcel. Any instrument of transfer or assignment shall state that the transfer or assignment is subject to this Agreement and shall refer to and incorporate by reference this Agreement. Any such reference shall recite the recording information for this Agreement (or any memorandum of this Agreement), including the date and location of recordation and the Instrument number together with the recording information for the Master ECR.

3.2 **Release on Transfer.**

- A. If an Owner conveys, assigns, sells or otherwise transfers his, her or its entire right, title and interest in a Parcel, he, she or it shall be released from any obligations for acts or conduct arising with respect to such Parcel subsequent to the date of the transfer provided the transfer, party delivers written notice of the transfer and a written assumption statement, in recordable form and executed by the transferee, to all other Owners of Parcels within the Property. The written assumption statement referred to in this subparagraph shall be executed by the transferee in recordable form, shall contain an express statement that the transferee expressly assumes and agrees to be bound by the covenants and restrictions contained in this Agreement and shall be delivered to the transferring party prior to or at the time the instrument effecting the transfer of title or interest is filed for recording. A transferee's failure to comply with these requirements relating to assumption statements constitutes a default under this Agreement by the transferee, but does not modify or negate that transferees liability under this Agreement or affect the running of any covenants with the land provided for under this Agreement. Notwithstanding anything contained herein to the contrary, any notice required shall not apply to a transfer to Owner's qualified franchisee or to a sale/leaseback investor or from Owner's qualified franchisee back to the franchisor.
- B. A transferee [that is not an Affiliate] of a transferring party shall not be liable for any default of such transferring party occurring prior to the time the transferee acquires its right title, or interest in a Parcel, with the following exception: the acquired right, title or interest shall be subject to any prior recorded claim or lien described in Section 6.6 below.
- C. Any Owner who intends to transfer title to a Parcel shall give at least thirty (30) days advance written notice of the intended transfer to all other Owners. The written notice shall state the name, address and telephone number of the proposed transferee. Notwithstanding anything contained herein to the contrary, any notice required shall not apply to a transfer to Owner's franchisee or from Owner's franchisee back to the franchisor.

ARTICLE IV - GRANT OF EASEMENTS

4.1 **Common Area Easements.** Pursuant to this Agreement, which supercedes the Declaration of Easement, the following non-exclusive easements over, across, in, under and through the Common Areas of the Jiffy Lube Parcel were granted for the benefit of Parcel Two:

- A. For ingress and egress over, across, in, and through the Common Areas by vehicular and pedestrian traffic.
- B. For the installation, maintenance, removal and replacement of existing water mains, telephone lines, gas mains, sewers, electrical systems or conduits water drainage systems or structures, and other public utilities and services (collectively "Utility System(s)") which serve both Parcels within the Property.

4.2 **Nature of Easements.** In connection with and for purposes of the easements granted under section 4.1 above, the Parcels benefited by each such easement shall constitute the dominant tenements, and the Parcel burdened by each such easement shall constitute the servient

tenement. The grant of an easement to an Owner for such Owner's benefit shall also be a grant to and for the benefit of that Owner's successors, heirs, assigns, Occupants, and Users. Each easement granted under section 4.1 above shall be appurtenant to and for the benefit of each Parcel. No easement may be transferred, assigned, or encumbered except as an appurtenance to the benefited Parcels. Any Owner who intends to transfer, assign or encumber any easement, shall give the other Owners at least thirty (30) days advance written notice of the intended transfer, assignment or encumbrance. Notwithstanding anything contained herein to the contrary, any notice required shall not apply to a transfer to Owner's franchisee or from Owner's franchisee back to the franchisor.

4.3 **Relocation and Maintenance Of Utility Systems.** The beneficiary of any easement for Utility Systems solely serving a particular Parcel shall be responsible for all maintenance and repairs performed or made. All maintenance and repairs shall be performed so as to not unreasonably interfere with or obstruct the business undertaken at or access to and/or from the Parcel burdened by the easement. Each Owner may relocate utility drains, mains, lines, sewers, and related equipment located on his, her or its Parcel, provided the following conditions and requirements are satisfied: the Owner pays the cost and expense of the relocation; the relocation is performed only after thirty (30) days' written notice has been given to the Owner of the Parcel of the easement in question; the relocation does not reduce or unreasonably impair the usefulness or function of the Utility Systems; the relocation does not interrupt the utility services to the Parcels; and the relocation will not interfere with an Owner's business operations or the business operations of any tenant of the Owner of the Parcel.

4.4 **Temporary Encroachment.** Each Owner agrees that during the construction of improvements for the Common Areas and Commercial Areas, certain minor or temporary encroachments within the Common Areas may occur due to the use of equipment (such as ladders, scaffolds and barricades), and that such temporary encroachments shall be permitted, but only for a limited time and only to the extent reasonably necessary for the construction involved.

ARTICLE V - OPERATIONS AND USE

5.1 Rules for Common Areas

- A. The Owners of the Property have agreed to the rules and regulations ("Rules") reflected on Exhibit "D" attached hereto and made a part hereof. The Owners may from time to time adopt reasonable rules and regulations pertaining to use of the Common Areas of the Property by Occupants and Users provided that no rule or regulation shall abrogate, abridge, or otherwise modify the rights granted to any party under this Agreement.
- B. No portion of the Common Areas may be used for any commercial purpose by any Owner, Occupant or User except as may otherwise be expressly permitted by this Agreement or by the rules and regulations adopted for use of the Common Areas pursuant to this Agreement.
- C. The parties agree that notwithstanding anything contained in either original CUP for both the Jiffy Lube Parcel and Parcel Two to the contrary, no Owner nor successor Owner may economically compete with the other Owner.

5.2 **Prohibited Operations and Nuisance.** No Owner or Occupant may conduct or permit any activity or use on the property which constitutes a private or public nuisance; emits any noise or sound that is objectionable; produces dust or dirt involves the burring or incineration of garbage or refuse; or violates any law, ordinance, or regulation of any governmental entity having jurisdiction over the Property. No Parcel may be used for storage or warehouse purposes, except that an Owner may temporarily store goods and merchandise intended for commercial use or sale at the establishment.

5.3 **Manufacturing and Industrial Uses Are Prohibited on Either Parcel.** The Common Area shall not be used for the display of merchandise by any Occupant or for any related commercial activity of any Occupant, except when such activity is conducted as part of a common promotional plan for the Property, which has been approved by the Owners of Property.

5.4 **Cooperation Amongst Owners.** Each Owner covenants and agrees that it shall perform construction required under this Agreement in a manner that will not unreasonably interrupt or interfere with the performance of construction or the operation of the respective businesses of the Owners. In the event that the Owner of Parcel Two excavates the Utilities Easement shown on Parcel C, the Owner shall provide an equal number of parking spaces, on its parcel to the Owner of the Jiffy Lube Parcel, which are being disrupted or removed, however temporary the disruption or removal.

5.5 **Reconstruction of the Common Area.** The Owner of the Parcel Two shall reconstruct, at it's own expense, the asphalt, concrete curbing, parking, striping, landscaping and any other Property improvement damaged, removed or altered on Parcel One during the course of construction on Parcel Two. Such reconstruction shall be complete prior to the issuance of the Certificate of Occupancy for Parcel Two.

ARTICLE VI - BUILDING AND RELATED IMPROVEMENTS

6.1 **Management and Maintenance.** Subject to the provisions of section 5.1 below, the Owner of Parcel Two shall be responsible for the management, maintenance and operation of all Common Areas located within Property. The Owner of Parcel Two may contract with third parties to assist it in the performance of its management and maintenance duties with respect to the Property.

6.2 **Common Area Expenses: Covenant for Payment of Assessments.** Subject to the provisions of Section 6.6 below, the Owner of Parcel Two shall advance all costs, charges and expenses incurred in managing, operating, and maintaining the Common Areas of the Property. However, the Owner of the Jiffy Lube Parcel shall be responsible for reimbursing the Owner of Parcel Two for such Owner's pro rata share (hereinafter defined) of the Common Area Expenses incurred by the Owner of Parcel Two to operate and maintain the Common Areas. Each Parcel Owners pro rate share of such Common Area Expenses shall be as follows: (i) The Owner of the Jiffy Lube Parcel: 38%; (ii) the Owner of Parcel Two: 62%. In the event that a Parcel is enlarged or reduced, the allocable share of Common Area Expenses attributable to such Parcel shall be appropriately adjusted.

6.3 **Common Area Expenses.** For purposes of this Section 6.3, Common Area Expenses shall mean the total of all items of direct cost and expense necessarily and reasonably incurred

for the supervision, operation, maintenance, and repair of the Common Areas of the Property, including without limiting the generality of the foregoing: maintenance, replacement, and reconstruction work as required to preserve the condition of the Common Areas for traffic direction and control, costs of cleaning and removal of rubbish and debris, . Any cost incurred by the Owner of the Jiffy Lube Parcel for the operation of its Commercial Areas and may not be considered a Common Area Expense.

6.4 **Acceptance of Agreement.** The Owner of the Jiffy Lube Parcel and each subsequent owner of both Parcels at the Property hereby consents to the provisions of the Agreement and is deemed to covenant and agree to pay the pro rata share of the Common Area Expenses allocable to such Parcel. Such Assessments, together with such interest thereon and costs of allocation thereof, shall be a charge upon the interest of the Owner of such Parcel and shall be continuing lien upon the interest of the Owner of such Parcel against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable Attorney's fees, shall also be the personal obligation of the Owner at the time when the Assessment falls due. From and after the time the Owner of a Parcel becomes subject to Assessments as herein provided, such covenant to pay Assessments shall burden and run with the Parcel and each successive Owner of such Parcel shall likewise be subject to such covenant.

6.5 **Accounting and Record Keeping: Payment of Assessments.**

- A. The Owner of Parcel Two shall send the Owner of the Jiffy Lube Parcel a statement ("Statement") showing the amount of such Owners pro rata share of Common Area Expenses, for the yearly period just expired ("Accounting Period"). Such Statement shall summarize by category the amounts expended by Owner for the operation and maintenance of the Common Areas during the Accounting Period.
- B. Each Owner's pro rata share of Common Area Expenses shall be payable to the Owner of the Jiffy Lube Parcel within ten (10) days of the Owner's receipt of such Statement.
- C. The Owner of Parcel Two shall maintain complete and accurate books of accounting with supporting documentation for each and every amount expended for maintaining and operating the Common Areas. For each Accounting Period all books and records shall be kept by the Owner of Parcel Two for at least two years following the end of that Accounting Period.
- D. The Owner of the Jiffy Lube Parcel, at such Owner's sole cost and expense, shall have the right to inspect or audit the books and records of the Owner of Parcel Two regarding Common Area Expenses. Any inspection or audit shall be performed only during reasonable business hours, after providing the Owner of Parcel Two with at least 5 business days advance notice.

6.6 **Non-Payment of Assessments.**

- A. Any Assessment payable under this Agreement which is not paid when due shall be delinquent because any late payment is acknowledged to cause the Owner of Parcel Two or the successors to incur costs not contemplated by this Agreement,

the exact amount of which would be extremely difficult to ascertain. If any such Assessment is not paid within thirty (30) days after the due date, a late charge equal to ten percent (10%) of such overdue amount shall be charged. It is hereby agreed that such charge represents a fair and reasonable estimate of the costs incurred by reason of any late payment by an Owner. An action at law may be brought against the Owner personally obligated to pay such Assessment. Alternatively, upon compliance with the Notice provisions below, an action to foreclose the legal proceedings. In the event a judgment is obtained, such judgment shall include said late charge, interest and reasonable attorney's fees, together with the costs of such proceedings. The Owner of the Jiffy Lube Parcel hereby vests in the Owner of Parcel Two or its assignees, the right and power to bring actions at law or proceedings for lien foreclosure against such Owner for the purpose of collecting delinquent Assessments.

- B. No action shall be brought to foreclose any Assessment lien to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim is deposited in the United States mail, certified or registered postage prepaid, to the Owner of said Parcel and a copy thereof is recorded by the Owner of Parcel Two (or its assignees) in the Office of the County Recorder of Douglas County. Such notice of claim must recite a good and sufficient legal description of the Parcel against which such proceedings are brought against the recorded Owner thereof, the amount claimed which shall include interest on the unpaid Assessment at the rate of ten percent (10%) per annum plus the aforementioned late charge, plus reasonable attorneys fees and expenses of collection in connection with the debt secured by said lien, and the name and address of the claimant.
- C. Upon that timely curing of any default for which a notice of claim of lien was filed, an appropriate release, of such notice shall be filed upon payment by the defaulting owner of a fee to cover the costs of preparing and filing such release together with the payment of such other costs, interest or fees as shall have been incurred.
- D. Assertion of such Assessment lien and the rights to foreclosure and sale there hereunder shall be in addition to and not in substitution of all other rights and remedies which the Owner of Parcel Two and its assignees may have hereunder and by operation of law, including a suit to recover a money judgment for unpaid Assessments as above provided.
- E. If any Parcel subject to a monetary lien created by any provision hereof shall be subject to the lien of a deed of trust; (i) the foreclosure of any lien created by anything set forth in this Agreement shall not operate to affect or impair the lien of such deed of trust; and (ii) the foreclosure of the lien of deed of trust, the acceptance of a deed in lieu of foreclosure of the deed of trust or sale under a power of sale included in such deed of trust shall not operate to affect or impair the lien hereof, except that the lien hereof for said charges as shall have accrued up to the foreclosure, the acceptance of the deed in lieu of foreclosure or sale under said power of sale shall be subordinate to the lien of the deed of trust with the foreclosure-purchaser, deed-in-lieu grantee or purchaser at such sale taking

title free of the lien hereof for all said charges that have accrued up to the time of the foreclosure, deed given in lieu of foreclosure or sale under said power of sale but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure, deed given in lieu of foreclosure or sale under said power of sale.

ARTICLE VII - INSURANCE

7.1 Liability Insurance.

A. The Owner of Parcel Two agrees to maintain or cause to be maintained during the term hereof, at its own expense, public liability insurance in the amount of One Million Dollars (\$1,000,000.00) Single Limit Bodily Injury Liability per person and per occurrence, including Property Damage Liability per occurrence, such coverage to name the Owner of the Jiffy Lube Parcel as an additional insured.

ARTICLE VIII – DAMAGE AND DESTRUCTION

8.1 **Repair or Replacement.** Any restoration, repair or rebuilding for a Parcel shall comply with all applicable requirements imposed under this Agreement. Each Owner shall be commercially reasonable in securing their Parcel through fencing or other security measures until completion of such restoration.

8.2 **Obligations When Rebuilding Not Required or Elected.** If an Owner is not required to or elects not to rebuild, repair or restore all or any portion of any damaged or destroyed building or other improvement located on the Commercial Area of that Owner's Parcel, the Owner shall raze and demolish the damaged or destroyed building or other improvement and clear all debris from the affected area of the Parcel. The affected area shall then either be landscaped with ground cover or fenced off in an aesthetically reasonable fashion from the remaining portion of the Property, as determined by the Owner of the Jiffy Lube Parcel.

ARTICLE IX - DEFAULT AND REMEDIES

9.1. **Legal and Default Remedies.** In the event of any actual or threatened violation, default or breach (hereafter collectively referred to as a "Default") of or under any of the terms, restrictions, covenants, or conditions of this Agreement by any Owner or by the Occupant(s) of any Owner's Parcel, any other Owner shall have the right in addition to specific remedies described in this Agreement to pursue any available legal or equitable remedy, including damages, injunctions and restraining orders. All remedies shall be cumulative and the pursuit of any available remedy shall not constitute a waiver or election of remedies with respect to all other available remedies. An Owner shall be responsible for any Default by an Occupant of that Owner's Parcel.

9.2 **Notice as Prerequisite to Breach.** Except as otherwise provided in this Agreement, an Owner shall not be deemed to be in Default under this Agreement until it has been given a written Notice, in the manner provided by Article 10.a, which shall

describe the act or omission constituting the Default, and (i) the Owner's failure to cure the Default within thirty (30) days after the date of Notice of such Default is given (the "Cure Period"), or (ii) In the case of a Default that is not capable of being cured within the Cure Period, the party fails to commence the cure within the Cure Period and to diligently pursue it to completion within a period of time thereafter.

9.3 **Right of Non Defaulting Party To Cure.**

- A. Except as provided below, any party hereto shall have the right but not the obligation, to cure a Default of a defaulting Owner on behalf of and at the sale expense of the defaulting Owner. In such case, the defaulting Owner shall pay to the curing party (i) all costs and expenses reasonably incurred in affecting the cure, plus interest at the then going legal rate, and (ii) all court costs and expenses, including reasonable attorneys' fees, incurred by the curing party. The right to cure described in this paragraph may not be exercised until the Cure Period described in the Section above has elapsed and the defaulting Owner has neither cured nor commenced a reasonable cure of the Default as provided above.

- B. All costs and expenses described in the Section above incurred by a curing party shall constitute a lien on the parcel of the defaulting Owner or on the interest of the defaulting Owner in its Parcel, effective on the date the curing party records a claim of them in Douglas County, Nevada. The claim of lien shall set forth, at a minimum, a legal description of the Parcel of the defaulting Owner, a reference to this Agreement (as recorded) a statement that the lien is authorized by this Agreement, the amount of the lien and descriptions of the Default and the curative action taken. The curing party shall (a) give a copy of the claim of lien to the defaulting Owner in the manner specified in this Article, and (b) mail a copy to the address of record in the County of Douglas for the mailing of tax statements for the Parcel or interest against which the lien is filed. Any lien created under this section shall be subordinate to any right, or interest in a Parcel created or acquired of record prior to the date the claim of lien is recorded even if the claim of lien relates to matters that occurred prior to the time any right, title or interest in the Parcel was created or acquired of record.

9.4 **Termination Not Permitted for Breach.** It is expressly agreed that any breach of this Agreement shall not entitle any Owner or Person to cancel, rescind, or otherwise terminate this Agreement or any of its provisions. However, the limitation shall not in any way affect any other rights or remedies that an Owner or Person may have for breach of this Agreement.

9.5 **Force Majure.**

- A. No party hereto shall have any liability for non-performance or defective or late performance of any of their respective obligations hereunder to the extent and for such period(s) of time as such non-performance, defective or late performance is attributable to acts of God, war (declared or undeclared), unforeseeable acts beyond the party's reasonable control,

including failures to act on any governmental authority, riots, revolutions, floods, explosions, sabotage, earthquakes, epidemics or strikes. The obligations and rights of each party shall be extended on a day-to-day basis for the duration of such excusable delay.

- B. The party claiming the benefit of excusable delay hereunder shall promptly give Notice thereof to every other party hereto and detail the circumstances creating the delay and provide a statement of the impact. Such party shall also work diligently to cure or find a way around such delay.

ARTICLE X - MISCELLANEOUS PROVISIONS

10.1 **Covenants Run With Land.** The covenants, conditions, easements, restrictions and/or other provisions contained in this Agreement whether defined or negative in nature (i) are made for the direct mutual and reciprocal benefit of each Parcel in the Property (ii) shall constitute and be enforceable as mutual equitable servitudes on each Parcel in the Property in favor of every other Parcel; (iii) shall constitute covenants running with the land; (iv) shall bind every Person having any fee, leasehold or other interest in a Parcel, to the extent that the covenants, restrictions, conditions, or provisions apply to the Parcel; and (v) shall insure to the benefit of the parties and their respective successors and assignees.

10.2 **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes set forth herein.

10.3 **No Partnership or Joint Venture.** This Agreement shall not be construed or deemed to create a relationship of partnership or joint venture among the parties or between any of them.

10.4 **Mortgage Protection Clause.** No breach of the covenants, conditions, or restrictions herein contained, nor the enforcement of any lien provisional herein shall defeat or render invalid the ban of any deed of trust made in good faith and for value but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Parcel within the Property.

10.5 **Nuisance.** The result of every act or omission of a party that is violative of Articles IV, V, and VI inclusive, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private, shall be applicable against every such result, and may be pursued by any party hereto who has not caused such act or failure to act.

10.6 **Entire Agreement.** This Agreement (including the other and further agreements or documents attached hereto as exhibits), and any additional documents to which reference is made herein, contain the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements between them whether written or oral, concerning the subject matter hereof. Correspondence, memoranda and oral or written agreements, which originated before the date of this Agreement are deemed completely superseded and replaced by this Agreement unless otherwise expressly

stated to the contrary herein.

10.7 **Amendments.** No modification or amendment of the provisions of this Agreement or statement or representation in connection herewith, shall be effective or binding upon any of the parties hereto unless the same is reduced to a writing approved and executed by [all] parties hereto and designated as an amendment to this Agreement are deemed completely superseded and replaced by this Agreement unless otherwise expressly stated to the contrary herein.

10.8 **Non-Waiver of Performance.** The failure of any party hereto to take action or insist upon strict performance of any duty or obligation required by this Agreement or to pursue any remedy allowed by reason of the provisions hereof, shall not be deemed a waiver of the breach or remedy; nor shall any custom of practice which may evolve between the parties in the course of implementing this Agreement be construed as waiving or lessening the right of any party to thereafter insist upon performance of the terms and conditions hereof. In addition, a waiver of a particular breach or default shall not be deemed to constitute a waiver of the same or any other subsequent breach or default.

10.9 **Notices.** Any Notice or other communications required or permitted to be given under this Agreement shall be in writing, and may be effected by (i) personal delivery; (ii) registered or recorded United States mail or via a nationally recognized overnight courier service (such as Federal Express), postage prepaid; or (iii) by transmittal over electronic transmitting devices such as a facsimile machine provided that any original any such transmission shall also be delivered to the addressee by a nationally recognized overnight delivery service on the first business day following such transmission. Telephone facsimiles shall be deemed delivered on the date of such transmission, if transmitted during the normal business hours of the recipient or if transmission occurs on a weekend or holiday delivery will be deemed to have been made on the first business day following the day of transmission. With respect to any other manner of delivery, Notice shall be deemed received the earlier of any of the following: (a) the day of delivery of the Notice or other documents to the address specified below, as shown on the return receipt or the date of actual receipt, or (b) in the case of refusal to accept delivery or inability to deliver the Notice or other document, the earlier of the date of the attempted delivery or refusal to accept delivery or the date of receipt of notice of refusal or notice of non-delivery. Notices shall be directed as follows:

TO:

ADDRESS:

Owner of the
Jiffy Lube Parcel

Jeffrey E. Langan, Esq.
General Counsel
Coachella Petroleum Inc.
668 N. Coast Highway, Suite 517
Laguna Beach, CA 92651

Del Taco, Inc.
(Parcel Two)

Michael Annis, Esq.
General Counsel
Del Taco
25521 Commercecentre Drive
Lake Forest, CA 92630

Any Person who becomes a party to this Agreement by virtue of an assignment, transfer, sale or conveyance of a Parcel or an interest therein shall give Notice of his, her or its address to each other party hereto. Further, any party hereto may specify a different address for notice purposes by giving written notice to the other parties in the manner required by this paragraph.

10.10 **Attorney's Fees.** Should any dispute arise between the parties, or if any party shall commence any legal (or arbitration) proceedings against any other party hereto, with respect to any of the terms and/or conditions of this Agreement, or to declare or enforce rights hereunder, or in the event that a party is involuntarily made a party defendant to any litigation concerning this Agreement, or as a result of a bankruptcy proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all expenses reasonably incurred by the prevailing party, including reasonable attorney's fees and costs in connection with same, or in connection with the enforcement of any judgment or award arising in connection therewith, including but not limited to post judgment motions, contempt proceedings, garnishment, levy and debtor and third party examinations, discovery and bankruptcy litigation, without regard to any schedule or rule of court purporting to restrict any such award. For the purposes of this provision, the term "attorney's fees" or "attorney's fees and costs" shall mean the fees and expenses of legal counsel, including printing, photocopying, messenger, and overnight mail delivery, investigators, expert witnesses, filing fees, and charges of law clerks and paralegals. The recovery of such attorney's fees may be sought in the initial proceedings or by way of any separate action brought for the purpose of enforcing the provisions of this Section.

10.11 **Successors.** All the terms, covenants, representations, provisions and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and upon any Person acquiring a Parcel or any portion thereof or any interest therein, whether by operation of law or otherwise. However, notwithstanding the foregoing, the provisions of this Section shall not be interpreted or construed as creating any right of assignment inconsistent with any other provision of this Agreement.

10.12 **Partial Invalidity.** It is intended that each paragraph and provision of this Agreement shall be viewed as separate and divisible: and in the event that any paragraph or provision hereof, as applied to any Party or to any circumstance, shall be found by a court of competent jurisdiction to be void, illegal, invalid or unenforceable. Such finding shall in no way affect, impair or invalidate any other provision of this Agreement or the application of any such provision in any other circumstance or the validity or enforcement of this Agreement; and the rest and remainder of the terms and provisions hereof shall continue to be valid and enforceable to the fullest extent permitted by law, unless a party demonstrates by a preponderance of the evidence that the invalidated provision was an essential economic term of this Agreement.

10.13 **Mediation of Disputes.** The parties hereto agree to mediate any dispute or claim between them arising out of this Agreement or any resulting transaction before resulting to arbitration/litigation. Mediation is a process by which parties attempt to resolve a dispute by submitting it to an impartial, neutral, mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. The mediation fee, if any, shall be divided equally among the parties involved. Before the mediation begins, the parties agree to sign a document limiting the admissibility in mediation or litigation of anything said, any admission made, and/or any documents prepared with respect to the mediation, consistent

with California Evidence Code Section 1152.5. If any party commences legal proceedings based on a dispute or claim to which this paragraph applies without having first attempted to resolve the matter through mediation, such party shall not be entitled to recover attorney's fees even if they would otherwise be available to the party in any such arbitration/litigation. To the extent that the parties are able to resolve their differences through mediation, they may unanimously agree to submit any such dispute or claim to mediation, in which the provisions of Code of Civil Procedure Section 1283.05 et seq. shall apply to same.

10.14 **Governing Law.** All questions concerning the interpretation and/or enforcement of this Agreement, and the rights and liabilities of the parties referenced hereto, shall be governed by the laws of the State of Nevada. Any mediation conducted pursuant to a request of the Owners of the Parcels shall be conducted in accordance with the laws of the State of California.

10.15 **Further Representation and Warranties.**

- A. By their execution of this Agreement, such party hereto represents and warrants that they (i) have thoroughly read this Agreement, (ii) fully understand the same, and (iii) have been advised to seek and have received independent representation and advice from attorneys of their own choice concerning this Agreement and the meaning and legal effect of same, or have knowingly and voluntarily declined to do so.
- B. Each party, and their attorneys or agents, have made such investigations of the subject matter hereof, and all matters pertaining thereto, as they deem necessary; and in executing this Agreement, no party is relying upon any statement, representation or promise made by any other party that is not explicitly set forth herein. Each party further recognizes and agrees that for the purposes of this Agreement, no attorney representing any party hereto has undertaken any duty to disclose any act or knowledge had or processed by said attorney to any party not represented by said authority.

10.16 **Negative Covenants.** To the extent any party has agreed herein not to do any act or omission, he shall be deemed to have agreed not to do the act or omission directly or indirectly.

10.17 **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall wherever possible be cumulative with all other remedies at law or in equity.

10.18 **Time of the Essence.** Time is of the essence with respect to each and every provision hereof whereby time is a factor.

10.19 **Counterpart Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages and when attached to this Agreement, shall constitute one complete document.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Declaration on the day and year first written above.

GRANTOR/THE OWNER OF THE JIFFY LUBE PARCEL:

THE PETER O. GLUHAICH FARMS PARTNERSHIP, a California general partnership

COACHELLA PROPERTIES LLC a California limited liability company

By: _____
Jeffrey E. Langan, Esq,
Vice-President and General Counsel
As authorized agent for Peter O. Gluhaich Farms as to an undivided one-third interest

By: _____
Jeffrey E. Langan, Esq,
Vice-President and General Counsel
As to an undivided two-thirds interest

GRANTEE/OWNER OF PARCEL TWO:

DEL TACO, INC.,
a California corporation

By: *Janet D. Erickson*
Janet D. Erickson
Executive Vice President

[NOTARY ACKNOWLEDGEMENTS FOLLOW]

SIGNED IN COUNTERPART

ALL-PURPOSE ACKNOWLEDGMENT

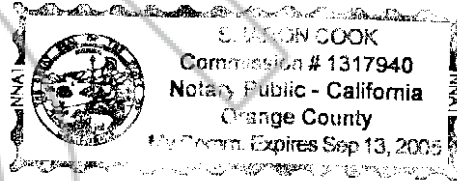
State of California)

County of Orange)

On September 22, 2003 before me, Sharon Cook, Notary Public, personally appeared Janet D. Erickson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument she executed the instrument.

WITNESS my hand and official seal.

Sharon Cook

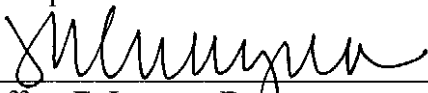


(Affix seal in the above blank space)

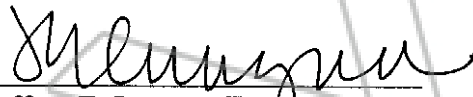
IN WITNESS WHEREOF, the undersigned parties hereto have executed this Declaration on the day and year first written above.

GRANTOR/THE OWNER OF THE JIFFY LUBE PARCEL:

THE PETER O. GLUHAICH FARMS PARTNERSHIP, a California general partnership

By: 
Jeffrey E. Langan, Esq.,
Vice-President and General Counsel
As authorized agent for Peter O. Gluhaich Farms as to an undivided one-third interest

COACHELLA PROPERTIES LLC
a California limited liability company

By: 
Jeffrey E. Langan, Esq.
Vice-President and General Counsel
As to an undivided two-thirds interest

GRANTEE/OWNER OF PARCEL TWO:

DEL TACO, INC.,
a California corporation

By: _____

[NOTARY ACKNOWLEDGEMENTS FOLLOW]

SIGNED IN COUNTERPART

ACKNOWLEDGEMENT OF NOTARY PUBLIC

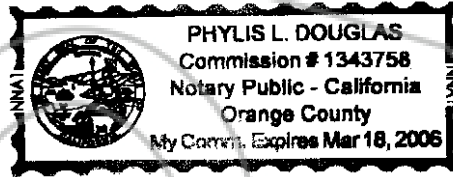
STATE OF CALIFORNIA)
COUNTY OF ORANGE)

OCTOBER 7th

On ~~September~~ *6*, 2003, before me, PHYLIS L. DOUGLAS a notary public in and for said County and State, personally appeared Jeffrey E. Langan personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal:

Phylis L. Douglas



1.1 SEAL

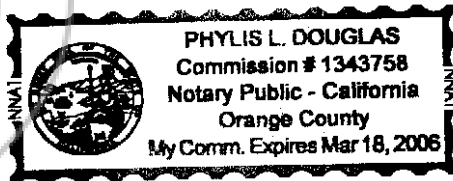
STATE OF CALIFORNIA)
COUNTY OF ORANGE)

OCTOBER 7th

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WITNESS my hand and official seal:

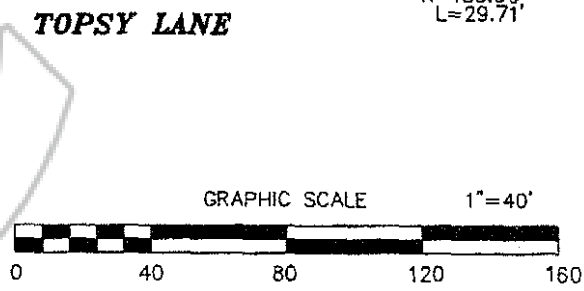
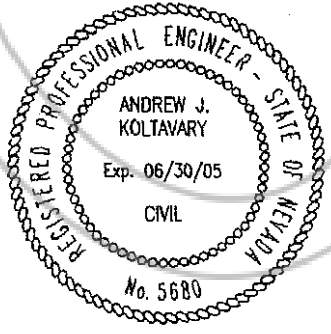
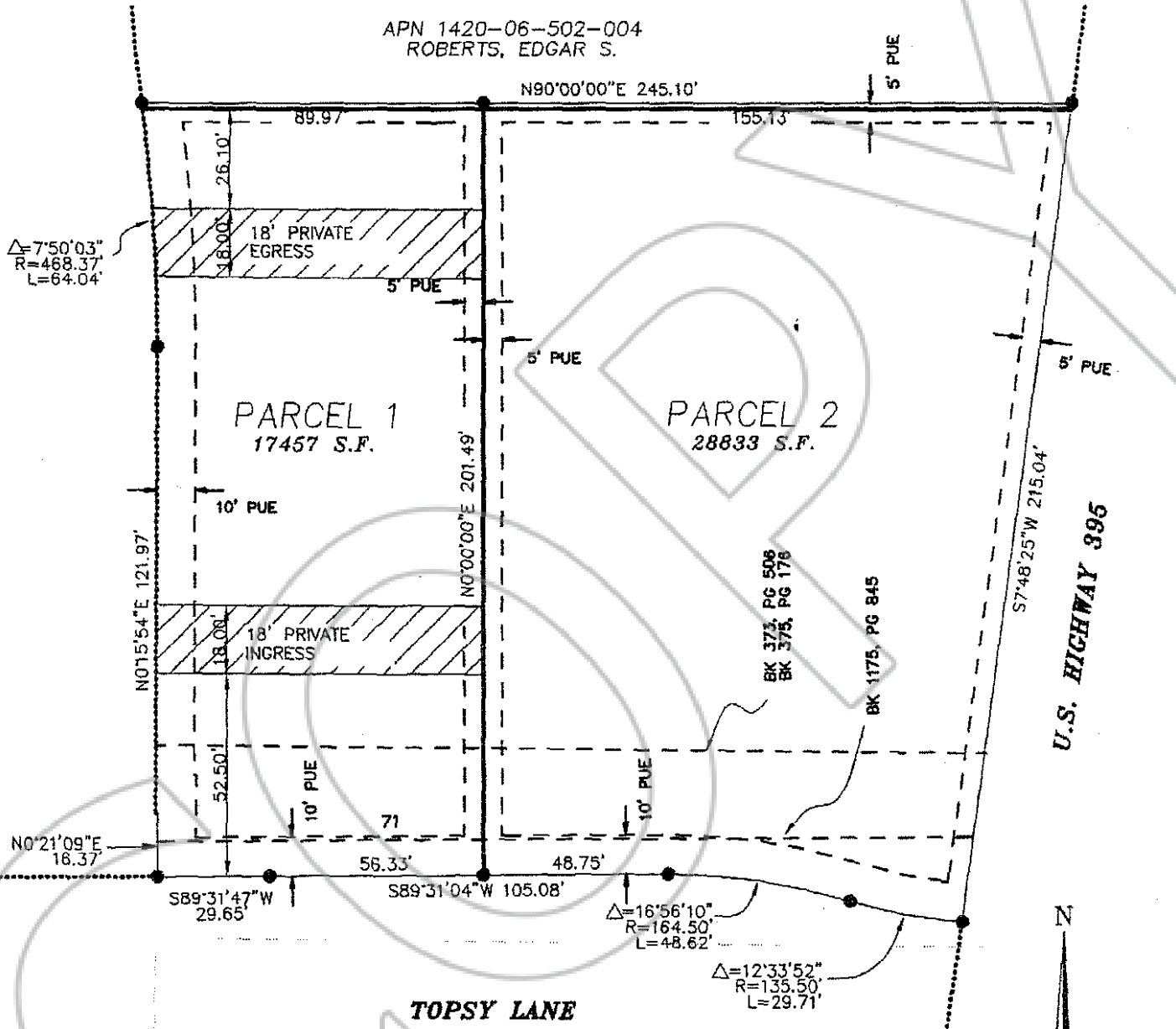
Phylis L. Douglas



SEAL

EXHIBIT "A"

APN 1420-06-502-004
ROBERTS, EDGAR S.



\\neptune\neptune-f\drawings\pl\carson-city\final\map\090303\UN-EG Parcel Map\8.5-11.dwg, 09/16/2003 01:33:41 PM, OCE 9600 PC3

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EXHIBIT "B"

APN 1420-06-502-004
ROBERTS, EDGAR S.

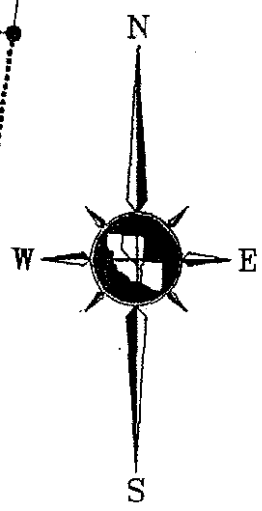
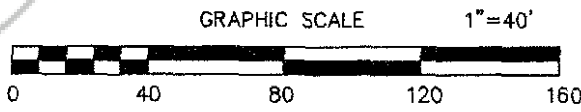
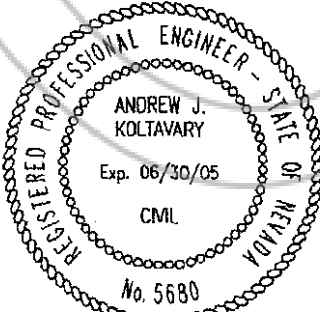
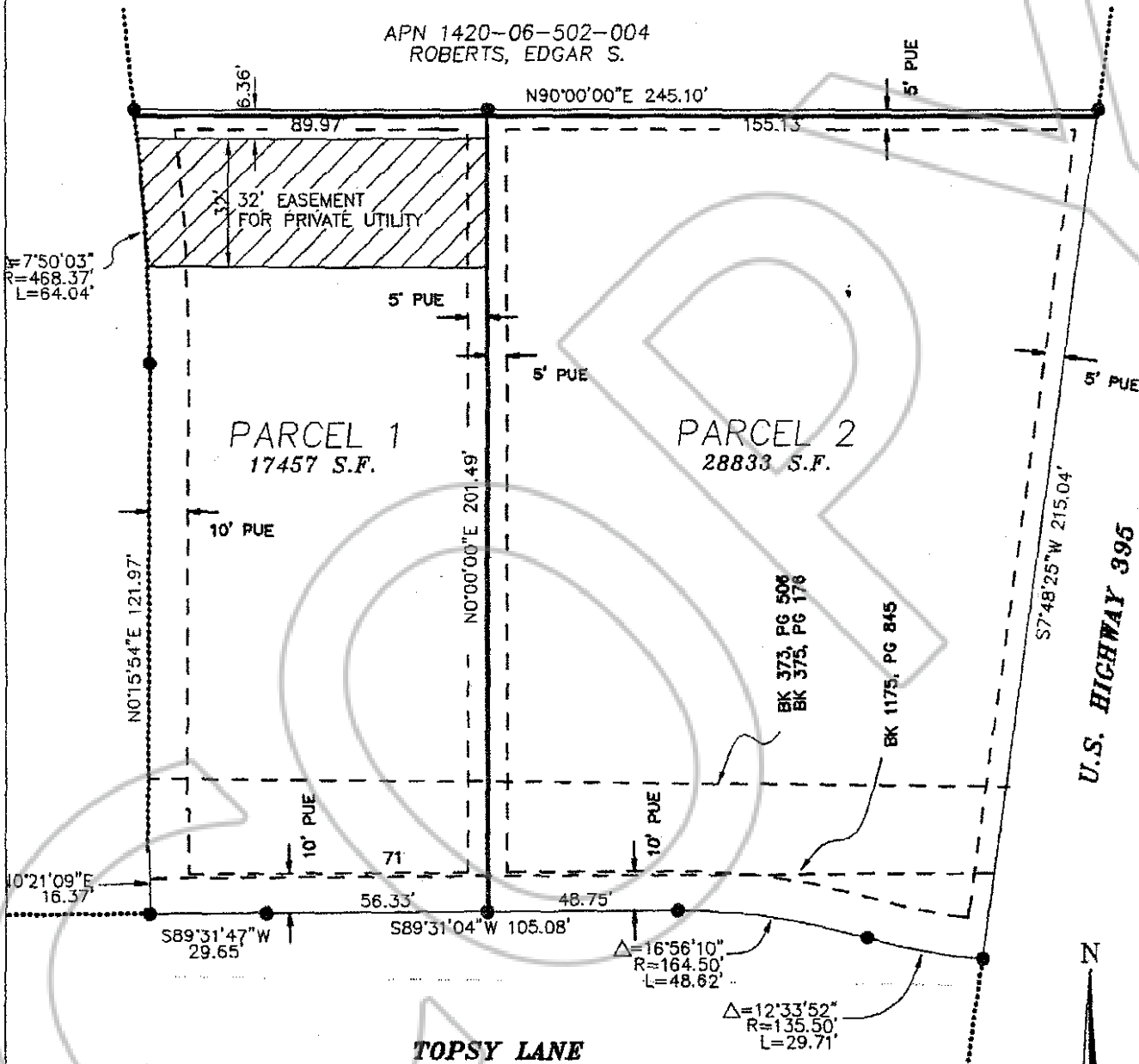
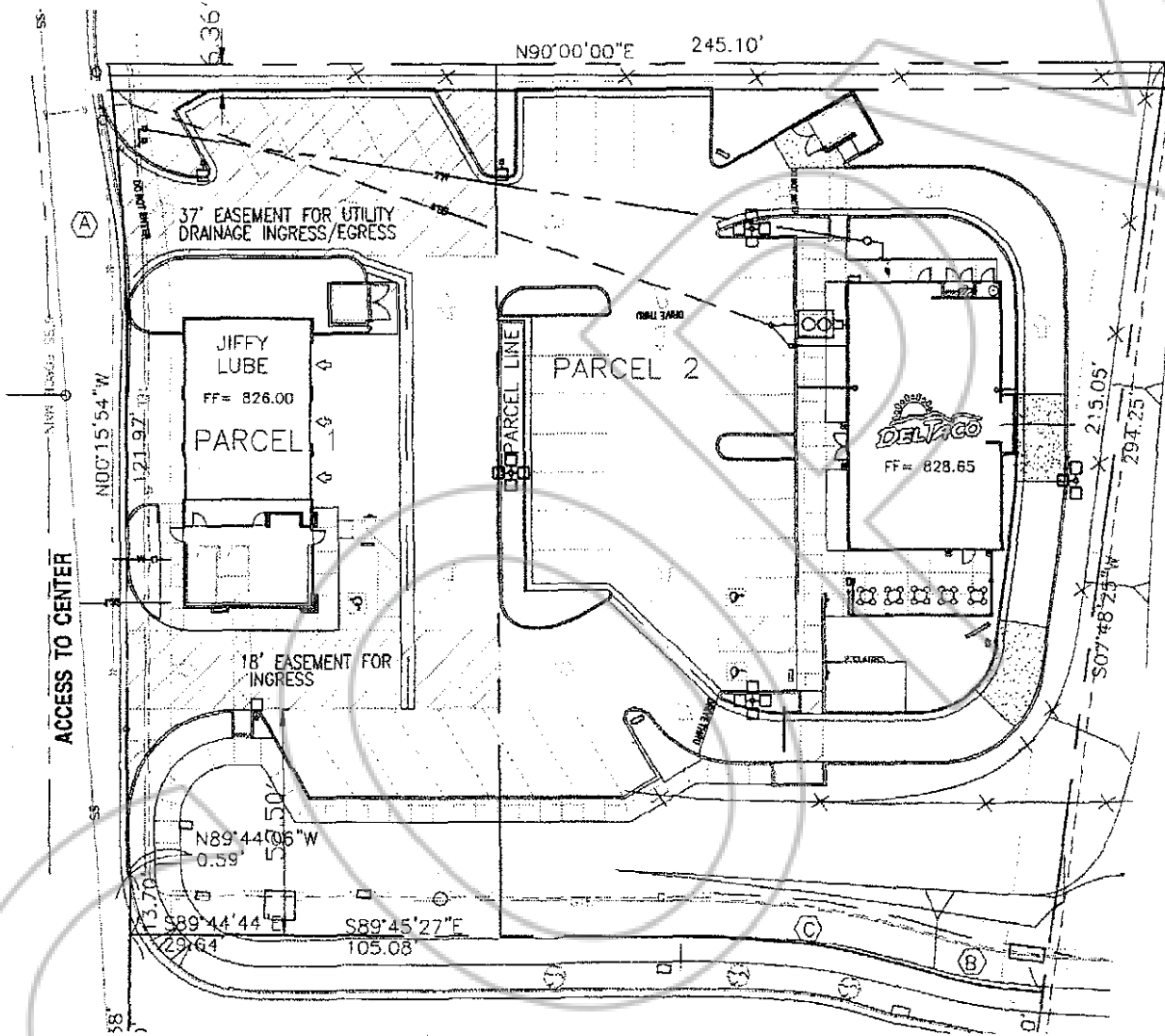
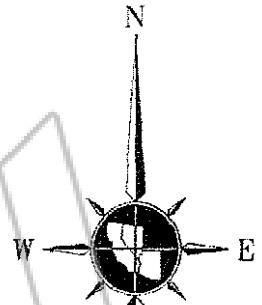


EXHIBIT "C"



CURVE DATA

- (A) $\Delta = 07^{\circ}50'03''$
L = 64.04'
R = 468.37'
- (B) $\Delta = 12^{\circ}33'52''$
L = 29.71'
R = 135.50'
- (C) $\Delta = 16^{\circ}56'10''$
L = 48.62'
R = 164.50'
- (D) $\Delta = 01^{\circ}46'04''$
L = 30.38'
R = 1000.65'

GRAPHIC SCALE

1" = 40'

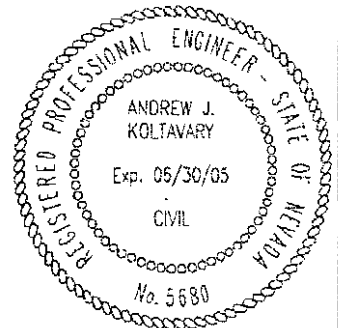
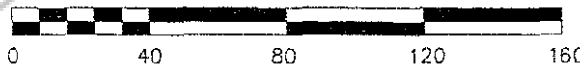
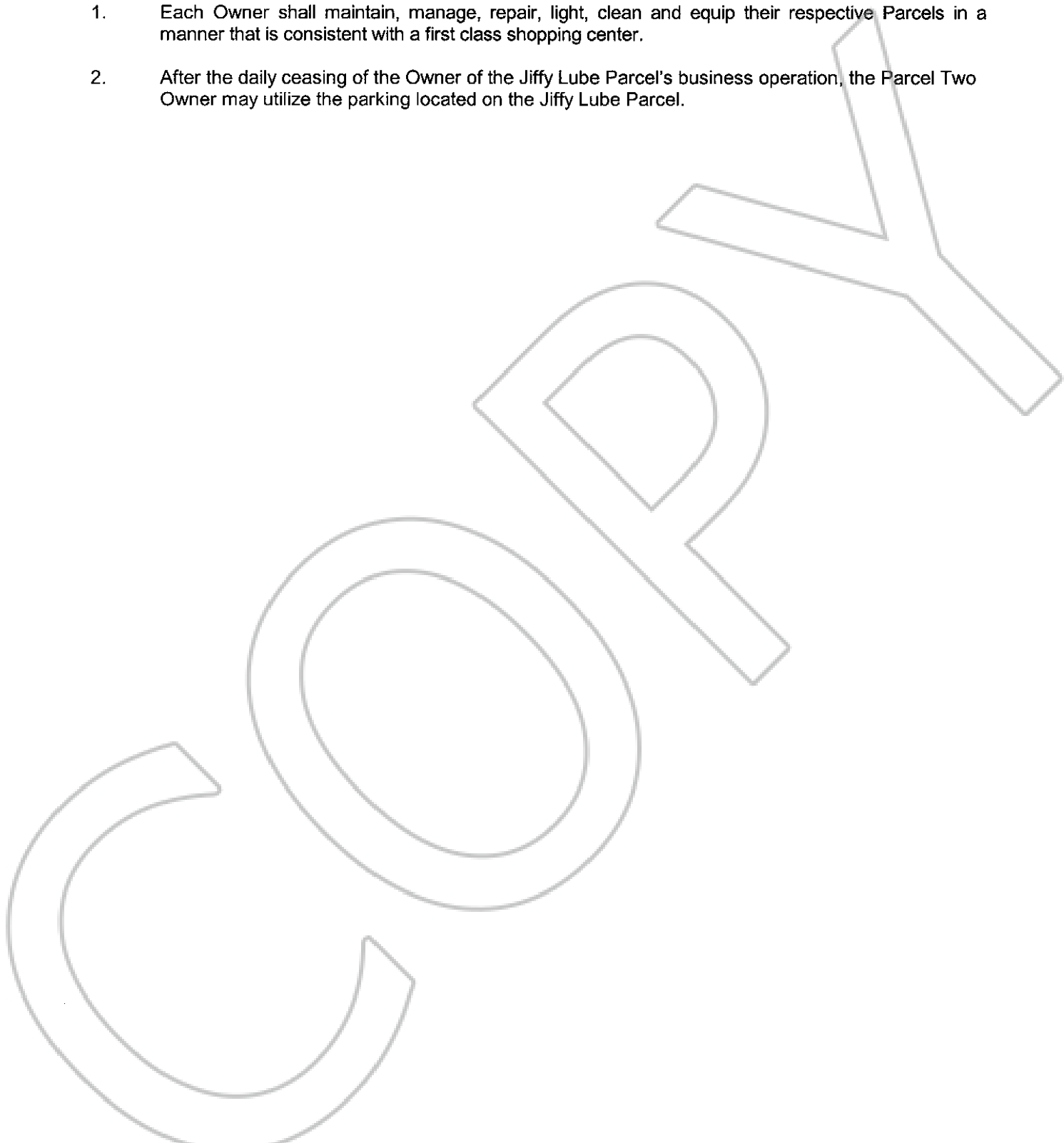


EXHIBIT "D"

RULES AND REGULATIONS

1. Each Owner shall maintain, manage, repair, light, clean and equip their respective Parcels in a manner that is consistent with a first class shopping center.
2. After the daily ceasing of the Owner of the Jiffy Lube Parcel's business operation, the Parcel Two Owner may utilize the parking located on the Jiffy Lube Parcel.



Legal Description

All that real property situate in the County of Douglas , State of Nevada, described as follows:

Parcel One:

A parcel of land located within a portion of the Northwest ¼ of Section 6, Township 14 North, Range 20 East, M.D.M.

Parcel 2 as shown on Parcel Map LDA 03-003 for the Peter O. Gluhaich Farms Partnership and Coachella Properties, LLC., recorded September 12, 2003, in Book 903, of Official Records, at Page 7197, Document No. 589891, Douglas County Nevada.

Parcel Two:

TOGETHER WITH those Easements which among other things, provides for access, ingress and egress as described in that document entitled Easements with Covenants and Restrictions Affecting Land ("ECR") recorded February 12, 2001, in Book 201, Page 2028, as Document No. 508581, Official Records, Douglas County, Nevada.

Parcel Three:

TOGETHER WITH those Easements which among other things, provides for access, ingress and egress as described in that document entitled Declaration of Easement, recorded September 12, 2003, in Book 903, Page 7198, as Document No. 589892, Official Records, Douglas County, Nevada.

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