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Polk County Iowa
TIMOTHY J. BRIEN RECORDER
File# 2007-00025716
BK 11857 PG 944-955

Type of Document:

Access Agreement and Temporary Easement

Return Document To:

RETURN TO:
Brett T. Osborn, Wetsch & Abbott, PLC, 974-73rd Street, Ste. 20, Des Moines, IA 50312
Telephone (515)223-6000

Preparer Information:

Brett T. Osborn, Wetsch & Abbott, PLC, 974-73rd Street, Ste. 20, Des Moines, IA 50312
Telephone (515)223-6000

Taxpayer Information:

Grantor:

Quiktrip Corporation

Grantee:

A Development Company, L.C.

Legal Description:

Legal pg 2

ACCESS AGREEMENT AND TEMPORARY EASEMENT

THIS ACCESS AGREEMENT AND TEMPORARY EASEMENT is made this 23rd day of August 2006, by and between **A DEVELOPMENT COMPANY, L.C.**, an Iowa limited liability company ("Development Company"); **HOUSBY MACK, INC.**, an Iowa Corporation ("Lessee/Tenant"), and **QUIKTRIP CORPORATION**, an Oklahoma corporation ("QuikTrip")

WITNESSETH:

WHEREAS A Development Company, L.C. and QuikTrip Corporation hereinafter agree to the following terms and conditions of this Access Agreement and Temporary Easement which would provide access easement rights to property owned by A Development Company, L.C. and their lessees, sub tenants, invitees, licensees, permittees, employees, agents, customers and successors and assigns, access through and across QuikTrip Corporation's property as identified in the attached Easement Plat.

WHEREAS QuikTrip Corporation is the owner of the following described real property situated in Polk County, Iowa, being legally described as:

A Parcel of land in the SW 1/4 of Section 13, Township 79 North, Range 24 West of the 5th P.M. and Lot 1, **KEMPER ESTATE**, an Official Plat, Polk County, Iowa that is more particularly described as follows:

Commencing as a point of reference at the W 1/4 corner of said Section 13; thence S00°00'00"E, 1355.03 feet along the West line of said SW 1/4 to a point; thence N90°00'00"E, 124.29 feet to the point of beginning, said point being on the East right-of-way line of U.S. Highway No. 69; thence N12°37'02"E, 263.48 feet along said East right-of-way line to a point; thence N00°10'17"E, 290.94 feet along said East right-of-way line to a point; thence N36°18'23"E, 150.50 feet along said East right-of-way line to a point on the South right-of-way line of U.S. Interstate No. 35; thence N84°23'00"E, 487.64 feet along said South right-of-way line to a point; thence S08°28'40"W, 623.30 feet to a point, thence S89°40'12"E, 519.11 feet along a line 31 feet South of and parallel to the North line of said Lot 1, **KEMPER ESTATE** to the point of beginning and containing 7.078 acres more or less.

WHEREAS A Development Company, L.C. is the owner of the following described real property situated within Polk County, Iowa, being legally described as:

The West 429 feet of the South 210 feet of the North 241 feet of Lot 1 in KEMPER ESTATES, an Official Plat, in Polk County, Iowa (except that part conveyed to the State of Iowa by Warranty Deed recorded in Book 3101, Page 393), situated in Polk County, Iowa;

and the following parcel: The South 210 feet of the North 241 feet of Lots 1 and "A" in KEMPER ESTATES (except the West 429 feet) and a triangular tract adjacent to the above tract described as follows: Beginning at a point on the East line of said Lot "A" that is 241 feet South of the Northeast corner thereof; then South along the East line of Lot "A" 200 feet; thence North $36^{\circ}59'$ West 249.4 feet more or less to a point on the South line of the North 241 feet of said Lot 1; thence East 150 feet to the point of beginning, Polk County, Iowa.

WHEREAS Housby Mack, Inc., Lessee of A Development Company, L.C.'s property has caused an Easement Plat to be drawn by Tigges-Campbell Engineering, Inc. which is attached hereto and incorporated herein by this reference which depicts and describes the easement which will benefit A Development Company, L.C.'s parcels above described and burden QuikTrip Corporation's parcel which has been above described. Exhibit A. The easement area is described as follows:

An access easement across Parcel "A" (Parcel "A" was recorded in Book 6834, Page 440), a parcel of land in the SW 1/4 of Section 13, Township 79 North, Range 24 West of the 5th P.M. and Lot 1, KEMPER ESTATE, an Official Plat, Polk County, Iowa, said easement described as follows: Commencing at the W1/4 corner of said Section 13; thence $S00^{\circ}00'00"E$, 1355.03 feet along the West line of said SW1/4 to a point; thence $N90^{\circ}00'00"E$, 124.29 feet to the SW corner of said Parcel "A"; thence $N12^{\circ}37'02"E$, 10.26 feet along the West line of said Parcel "A" to the Point of Beginning; thence continuing $N12^{\circ}37'02"E$, 35.91 feet; thence $N89^{\circ}40'12"E$, 499.24 feet; thence $S00^{\circ}19'48"E$, 45.00 feet to the South line of said Parcel "A"; thence $S89^{\circ}40'12"W$, 35.00 feet along said South line; thence $N00^{\circ}19'48"W$, 10.00 feet; thence $S89^{\circ}40'12"W$, 472.28 feet to the Point of Beginning (the "Driveway Easement").

WHEREAS the temporary easement shall be located upon a parcel of QuikTrip Corporation's property legally described below for the purpose of constructing a surface water detention basin and related infrastructure including access to a modification of existing surface water drainage facilities located in the temporary easement area and/or on the property of QuikTrip Corporation's and/or A Development Company, L.C.'s property. The temporary

easement shall provide access and the right to disturb land on QuikTrip Corporation's property as indicated in the Site Plan Map attached hereto and identified as Exhibit "B" Grading and Stormwater Detention Easement. The rights of the easement shall extend to the contractors and subcontractors of A Development Company, L.C. and Housby Mack for purposes of the installation of the detention basin and appropriate grading necessary and related thereto. A Development Company, L.C. and Housby Mack shall bear the burden of cost of all work related thereto and shall replace the property to a like condition being sodded and shall repair any damages to any other structures located on QuikTrip Corporation's property which should occur during the temporary easement grading work. This easement shall be known as a grading and storm water detention easement. The grading and storm water detention easement is described as follows:

The East 300 feet of the South 15 feet of the property described in the Warranty Deed recorded in Book 6833, Page 998 at the Polk County Recorder's Office said property is described as follows:

A parcel of land in the SW1/4 of Section 13, Township 79 North, Range 24 West of the 5th P.M. and Lot 1, Kemper Estate, an Official Plat, Polk County, Iowa that is more particularly described as follows:

Commencing as a point of reference at the W1/4 corner of said Section 13; thence S00°00'00"E, 1355.03 feet along the West line of said SW1/4 to a point; thence N90°00'00"E, 124.29 feet to the point of beginning, said point being on the east right-of-way line of U.S. Highway No. 69; thence N12°37'02"E, 163.48 feet along said East right-of-way line to a point; thence N00°10'17"E, 290.94 feet along said East right-of-way to a point; thence N36°18'23"E, 150.50 feet along said East right-of-way to a point on the South right-of-way line of U.S. Interstate No. 35; thence N84°23'00"E, 487.64 feet along said South right-of-way line to a point; thence S08°28'40"W, 623.30 feet to a point; thence S89°40'12"W, 519.11 feet along a line 31 feet South of parallel to the North line of said Lot 1 Kemper Estate to the point of beginning and containing 7.078 acres more or less, subject to easements, rights of way, protective covenants and restrictions of record.

WHEREAS QuikTrip Corporation hereby grants to A Development Company, L.C. and Housby Mack, Inc. a temporary easement for the construction of a detention basin in connection the grading and storm water detention easement which shall be for a temporary period of time to include the completion of the construction project on the A Development Company, L.C. property described above. This easement shall terminate upon the completion of construction of Housby Mack's Quick Lube project as confirmed by the site plan manager and/or contractor or the certification by the site plan manager and/or contractor that the storm water detention easement is complete and the temporary easement is no longer necessary. Upon completion of the project QuikTrip Corporation agrees that the storm water detention basin shall not be

disturbed and shall be permitted to remain as constructed and hereby affirmatively confirms the use of the property both before and after construction of the detention basin was and is to be used as a storm water flowage apparatus and basin for the benefit of A Development Company, L.C. and Housby Mack, Inc. The existing driveway shall not be altered from its present condition/placement.

During the construction of the detention basin, being the subject of the temporary easement and for its duration; no trucks, equipment, or materials shall be parked, left, or stored in areas of the easement during non-working hours or overnight or on QuikTrip's property such that it would impede, obstruct, or impair the driveway or pedestrian ways or otherwise disturb QuikTrip's operation. This restriction applies to trucks, equipment, materials or other items whether owned by A Development Company, L.C., Housby Mack, Inc. or any of their agents, contractors, sub-contractors, or employees of the same. A Development Company, L.C. agrees to indemnify and hold Quiktrip Corporation harmless of and from all claims, lawsuits, damages and costs of defense arising out of the construction or use of the detention basin during the term of the temporary easement up to termination upon completion or certification by the site plan manager/contractor.

A Development Company, L.C. or Housby Mack, Inc. shall give QuikTrip Corporation ten (10) days notice prior to the start of construction of the detention basin or project to enable QuikTrip Corporation to prepare for the construction and notify appropriate personnel of the same.

NOW, THEREFORE, in consideration of the foregoing premises, the grants, reservations, easements and agreements herein made, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto (each such party hereinafter sometimes referred to as "Owner" or collectively as "Owners") intending to be legally bound do hereby agree as follows:

1. Grant of Easement by QuikTrip Corporation for the benefit of A Development Company, L.C.:

1.1 QuikTrip Corporation hereby grants to A Development Company, L.C. a non-exclusive use of the Driveway Easement over and across part of the tract owned by QuikTrip Corporation to allow A Development Company, L.C. licensees, permittees, employees, agents, customers, subtenants, and its lessees, invitees, concessioners, and its successors and assigns access from NE 14th Street over and across the "Driveway Easement" to the entrance of A Development Company, L.C.'s property, being approximately 500 feet from the boundary of QuikTrip Corporation's property on the West traveling eastward to the rear portion of the gate area already existing on A Development Company, L.C.'s property described above second. The Driveway Easement shall be used for pedestrian, equipment, and/or vehicular ingress and egress from NE 14th Street to the entrance of the A Development Company L.C.'s property being described above.

1.2 The Driveway Easement over across and through the QuikTrip parcel in lieu of A Development Company, L.C. utilizing an existing easement and access located in the western portion of the parcel described above, being that of the QuikTrip parcel and benefiting A

Development Company, L.C.'s property first described above. The original easement and access area is depicted on the plat map. The easement referenced in this paragraph results from an instrument entered into between QuikTrip Corporation and the Department of Transportation acting for the State of Iowa, filed July 22, 1993, in Book 6818 at Page 926.

1.3 QuikTrip Corporation hereby grants to A Development Company, L.C. a temporary easement for the purpose of constructing a surface water detention basin and related infrastructure including access to and modification of existing surface water drainage facilities located in the temporary easement area and/or on the property of QuikTrip Corporation's and/or A Development Company, L.C.'s property over, across, and through property identified fourth above and set forth in Exhibit B attached hereto. The terms of the temporary easement are set forth above.

2. Maintenance of the Driveway Easement. The parties have also agreed to a maintenance or cost sharing agreement relative to the repairs and/or replacement of the concrete lying within the Driveway Easement area due to the normal wear and tear of traffic in the Driveway Easement area. The parties recognize that there is a 20-foot natural gas pipeline easement lying within the Driveway Easement area above described. Any such repairs or replacements related to the maintenance of the natural gas pipeline easement shall be governed by the agreement between Midwest Gas and QuikTrip Corporation recorded in Book 6834, Page 446. Any costs associated with the gas pipeline easement benefitting Midwest Gas, or its successors or assigns shall be born by QuikTrip Corporation, according to the agreement between QuikTrip Corporation and Midwest Gas and not by A Development Company, LC or Housby Mack. The Access Agreement and Temporary Easement are also subject to a preexisting ingress and egress agreement and easement between QuikTrip Corporation and Midwest Power Systems, Inc. through its division, Midwest Gas. Said agreement was recorded in the Polk County Recorder's Office on August 12, 1993, in Book 6834, Page 441. The parties recognize the rights of Midwest Gas and that the QuikTrip property is subject to the agreement between Midwest Gas and QuikTrip Corporation. A Development Company, L.C. hereinafter agrees to pay three-thousand five hundred dollars (\$3,500.00) for maintenance, repairs and/or replacement of the Portland Cement Concrete lying within the Driveway Easement area. QuikTrip Corporation agrees to maintain in good condition and working order all of the facilities located within the Driveway Easement. A Development Company, L.C., its successors and assigns shall pay \$3,500.00 per year during the pendency of this agreement or during the years of use of the easement. QuikTrip's maintenance obligations shall not include any such maintenance and/or repair necessitated by any damage to the Driveway Easement or improvements therein caused by the intentional or negligent acts of A Development Company, L.C., its agents, lessees, tenants, subtenants, employees, customers, invitees or successors and assigns. A Development Company, L.C. shall be responsible for the repair of such damage. The improvements located within the Driveway Easement shall not be altered, changed or modified (except for routine maintenance and repair) without the prior written consent of QuikTrip; such consent can be withheld in QuikTrip's sole discretion, however consent shall not be unreasonably withheld.

3. Use of the Driveway Easement Area. QuikTrip Corporation and A Development Company, L.C. agree that no barrier, barricade or other divider will be constructed to prohibit the free use of the Driveway Easement; however, such Driveway Easement may be obstructed from time to time in connection with (i) the maintenance of the Driveway Easement and the

improvements located thereon, or (ii) an emergency, and then only during the term thereof. QuikTrip Corporation and A Development Company, L.C. will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic over and across the Driveway Easement. A Development Company, L.C. agrees to indemnify and hold QuikTrip Corporation harmless of and from all claims, lawsuits, damages and costs of defense arising out of its use of the Driveway Easement and the use of such easement by its lessees, subtenants, invitees, employees and/or agents.

4. Amendment. A Development Company, L.C. and QuikTrip hereby agree that only upon the written consent of both A Development Company, L.C. and QuikTrip, or their respective successors or assigns, may this Access Agreement and Temporary Easement be amended.

5. Waiver. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge them from their obligations hereunder.

6. Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent of necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to person, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.

7. Binding Effect; Dedication; Appurtenances. This Access Agreement and Temporary Easement shall be binding upon and inure to the benefit of Development Company and QuikTrip and their respective successors and assigns. Notwithstanding the foregoing, each Owner shall be responsible only for the obligations, indemnities, duties, liabilities and responsibilities set forth in this Access Agreement and Temporary Easement that accrue during the period of time during which such Owner hold fee simple title to a parcel described herein or a portion thereof. Upon conveyance of its parcel or a portion thereof, the Owner making such conveyance shall be relieved from the obligations, duties, indemnities and responsibilities hereunder arising from and after the date of such conveyance as to such parcel, or portion thereof conveyed, and the successor Owner shall become obligated hereunder for all matters arising from and after the date of conveyance. Upon the conveyance or dedication of any of the easements created hereunder, the facilities located therein, and the real property burdened thereby, to the appropriate governmental authority, such governmental authority shall take title to any property so conveyed or dedicated free and clear of any obligations, duties, indemnities, liabilities and responsibilities created by this Access Agreement and Temporary Easement. The rights, privileges and easements granted and conveyed hereunder shall exist for the benefit of, and be a burden upon, the Development Company parcel, and the QuikTrip parcel and shall run with title to, and be appurtenant to, such parcels.

8. Notices. All notices required under this Access Agreement and Temporary Easement shall be deemed to be properly served if reduced to writing and sent by (i) certified or registered mail; (ii) Federal Express or similar overnight courier; (iii) facsimile transmission; or (iv) personal delivery and the date of such notice will be deemed to have been the date on which such notice is

delivered or attempted to be delivered as shown by the certified mail return receipt or a commercial delivery service record or in the case of facsimile on the date of receipt of the transmission as shown on a successful transmission confirmation receipt. All notices shall be addressed as follows, unless otherwise specified in writing:

A Development Company, L.C.:
c/o Kelly Housby
4747 NE 14th Street
Des Moines, IA 50313

Housby Mack, Inc.:
c/o Kelly Housby
4747 NE 14th Street
Des Moines, IA 50313

QUIKTRIP:
QuikTrip Corporation
P.O. Box 3475, Tulsa, Oklahoma 74101
or, 4705 S. 129th E. Ave., Tulsa, Oklahoma 74134-7008
Attention: President
Fax: (918) 615-7680

with a copy to:

QuikTrip Corporation
P.O. Box 3475, Tulsa, Oklahoma 74101
or, 4705 S. 129th E. Ave., Tulsa, Oklahoma 74134-7008
Attn: General Counsel
Fax: (918) 615-7301

9. Remedies. In the event any Owner breaches the terms of this Access Agreement and Temporary Easement, the non-defaulting Owner(s) may notify the defaulting Owner and shall specify the breach. If the breach is not cured, within thirty (30) days after receipt of such notice, then the non-defaulting Owner(s) shall have the right to cure the breach, and recover all costs and expenses related thereto from the defaulting Owner. Any amounts due and payable to an Owner pursuant to this Access Agreement and Temporary Easement shall be due on January 1 of each year during the pendency of this agreement and shall be remitted within 30 days of the due date. Any amounts not paid within 30 days of the due date shall bear interest at a rate equal to the lesser of (i) ten percent (10%) per annum, or (ii) the maximum rate of interest permitted by the laws of the State of Iowa for such obligations. The first installment shall be due on January 1, 2007 constituting the 2007 calendar year payment.

10. Reservation of Rights. QuikTrip reserves the right to use the area of the easement created hereby in any manner which is consistent with the easement rights set forth in this Access Agreement and Temporary Easement, including without limitation, the right to install signage in such easement areas on the QuikTrip parcel to the extent such signage does not conflict with any of the rights, covenants or restrictions set forth in this Access Agreement and Temporary Easement.

State of Iowa)
)ss
County of Polk)

On this 23rd day of August, 2006, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Kelly Housby, to me personally known, who being by me duly sworn, did say that that person is the President of said corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that said instrument was signed on behalf of the corporation by authority of its Board of Directors and the said Kelly Housby acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it them voluntarily executed



Brett T. Osborn
NOTARY PUBLIC

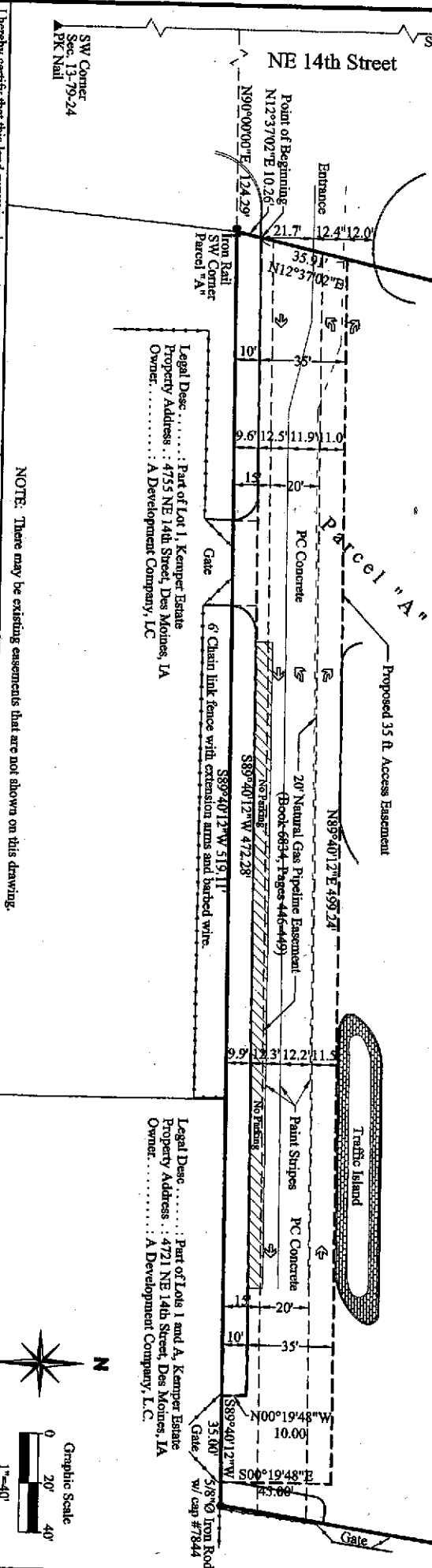


Easement Plat

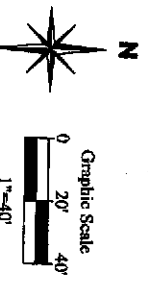
35 ft. Access Easement

An access easement across Parcel "A" (Parcel "A" was recorded in Book 6834, Page 440), a parcel of land in the SW 1/4 of Section 13, Township 79 North, Range 24 West of the 5th P.M. and Lot 1, Kemper Estate, an Official Plat, Polk County, Iowa, said easement described as follows: Commencing at the W1/4 corner of said Section 13; thence S00°00'00"E, 1355.03 feet along the West line of said SW 1/4 to a point; thence N90°00'00"E, 124.29 feet to the SW corner of said Parcel "A"; thence N12°37'02"E, 10.26 feet along the West line of said Parcel "A" to the Point of Beginning; thence continuing N12°37'02"E, 35.91 feet; thence N89°40'12"E, 499.24 feet; thence S00°19'48"E, 45.00 feet to the South line of said Parcel "A"; thence S89°40'12"W, 35.00 feet along said South line; thence N00°19'48"W, 10.00 feet; thence S89°40'12"W, 472.28 feet to the Point of Beginning.

Legal Desc: Part of Parcel "A" (Book 6834, Page 440)
 Property Address: 4801 NE 14th Street, Des Moines, IA
 Owner: QuikTrip Corporation

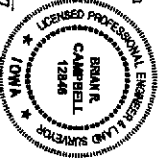


NOTE: There may be existing easements that are not shown on this drawing.



I hereby certify that this land surveying document was prepared by me or under my direct personal supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Iowa.

Signed: Brian R. Campbell, P.E., P.L.S.
 Lic. No. _____



TIGGSS-CAMPBELL ENGINEERING, INC.
 301 NE TRULLEN DRIVE, SUITE 1
 ANKENY, IOWA 50021
 PHONE: (515) 963-4385
 FAX: (515) 963-4386

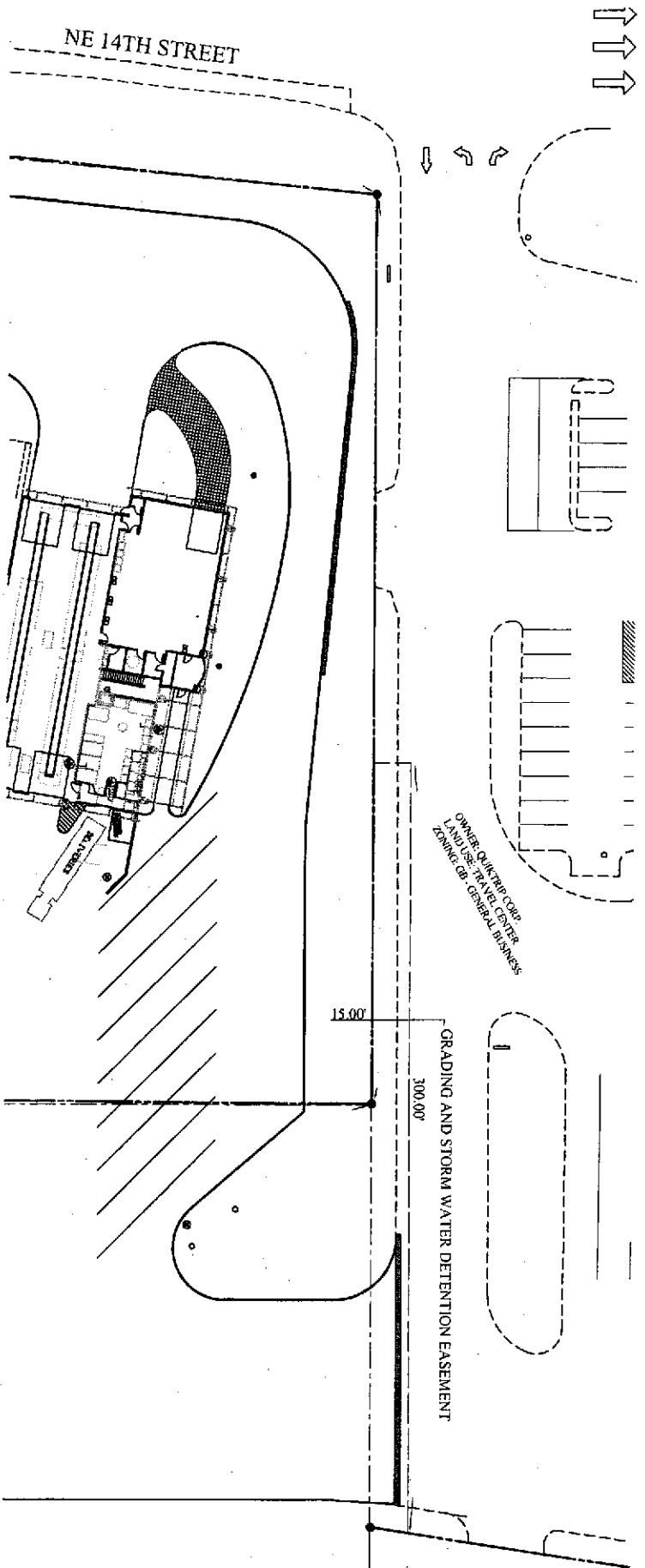
FIELD WORK	DATE
DRAWN BY: LAM	3/7/06
CHECKED BY: BRC	3/9/06
REVISD BY:	
REVISD BY:	
REVISD BY:	

EASEMENT PLAT
 Requested by: Brett Osborn for Housby Mack
 Titleholder: QuikTrip Corporation
 Part of Parcel "A" of the SW 1/4 of Section 13-79-24 & part of Lot 1, Kemper Estates
 4801 NE 14th Street
 Des Moines, IA 50313

PROJECT #:	B100601
FILE #:	EP0601
SCALE:	SHEET
VERT.:	1
HORIZ.:	1 OF 1

Date: _____
 My license renewal date is December 31, 2007.

EXHIBIT A
**GRADING AND STORM WATER
DETENTION EASEMENT**



CFC CIVIL ENGINEERING CONSULTANTS, INC.
2400 86TH STREET, UNIT 12 DES MOINES, IOWA 50322-4379
PHONE: 515.276.4884 FAX: 515.276.7084