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Register of Deeds, Douglas County, NE  
05/16/2017 10:57:05.00



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**SECOND AMENDMENT TO MEMORANDUM OF LEASE AND SUBLEASE**  
**AND**  
**AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS**  
**AFFECTING LANDS**

THIS SECOND AMENDMENT TO MEMORANDUM OF LEASE AND SUBLEASE AND AMENDMENT TO EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LANDS (this "**Amendment**") is made and entered into as of \_\_\_\_\_, 2017, by and among Joan Held, as Trustee of the Christopher R. Held Irrevocable Trust ("**Landlord**"), Hardee's Restaurants LLC, a Delaware limited liability company, as successor in interest to Hardee's Food Systems, Inc., a North Carolina corporation ("**Sublandlord**"), Westar Foods, Inc., a Colorado corporation ("**Subtenant**"), and QUIKTRIP CORPORATION, an Oklahoma corporation ("**QUIKTRIP**").

WITNESSETH:

WHEREAS, pursuant to that certain unrecorded Ground Lease dated February 21, 1990 as amended by that certain Amendment to Memorandum of Lease and Sublease dated as of August 15, 2016, and recorded on August 29, 2016, as Instrument No. 2016070351, Official Records, Douglas County, Nebraska and as again recorded on September 19, 2016, as Instrument No. 2016076932, Official Records, Douglas County, Nebraska (as each may be amended from time to time, collectively, the "**Ground Lease**") by and between Landlord, as successor-in-interest to Stockyards Plaza Limited Partnership, a Nebraska limited partnership ("**Stockyards Plaza LP**"), as landlord, and Sublandlord, as tenant, whereby Landlord (i) leased to Sublandlord that certain real property legally described as Lot 1, in Stockyards Plaza II, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska (the "**Leased Premises**"), and (ii) granted Sublandlord a non-exclusive easement over and across the adjacent real property for parking, use of common areas, and ingress/egress, which adjacent real property was owned by Stockyards Plaza LP at the time of the execution of the Ground Lease and which is legally known as Lot 3, in Stockyards Plaza II, an Addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Nebraska (the "**Adjacent Premises**").

WHEREAS, the Ground Lease was memorialized by that certain Memorandum of Lease executed by Landlord and Sublandlord and recorded on April 17, 1990 in Book 920, Page 281, Official Records, Douglas County, Nebraska (the "**Lease Memorandum**").

WHEREAS, pursuant to that certain unrecorded Sublease Agreement by and between Sublandlord, as sublandlord, and Subtenant as subtenant, dated as of July 24, 2007 (the "**Sublease**"), Sublandlord subleased all of its rights to the Leased Premises and the Adjacent Premises, as set forth in the Ground Lease, to Subtenant, which Sublease was memorialized by that certain Memorandum of Sublease by and between Sublandlord and Subtenant dated July 24, 2007 and recorded on August 6, 2007 as Instrument No. 2007089348, Official Records, Douglas County, Nebraska (the "**Sublease Memorandum**").

WHEREAS, that certain Easements With Covenants and Restrictions Affecting Lands dated as of December 21, 1989, and recorded on February 8, 1996 in Book 1168 at Page 302 of the Miscellaneous Records of Douglas County, Nebraska (the "**ECR**") (i) granted Sublandlord a nonexclusive and nonrevocable easement and right to use the parking and common areas of the Adjacent Premises, (ii) required the owner of the Adjacent Premises to maintain and keep the Adjacent Premises in good order, repair and condition, (iii) restricted the owner of the Adjacent Premises from erecting any barrier or fence which would impede the flow of traffic from the Leased Premises to the Adjacent Premises.

WHEREAS, QUIKTRIP is the current owner of the Adjacent Premises.

WHEREAS, QUIKTRIP is in the process of completing an administrative subdivision of the Adjacent Premises splitting the Adjacent Premises into two (2) separate lots (the "**Lot Split**") consisting of Lot 1 Stockyards Plaza 2 Replat 1 (the "**Retained Adjacent Premises**") and Lot 2 Stockyards Plaza 2 Replat 1 (the "**Excess Adjacent Premises**") each as depicted on Exhibit A, attached hereto and by this reference incorporated herein and intends to sell the Excess Adjacent Premises to a third party.

WHEREAS, the parties hereto wish to enter into this Amendment for the purposes of amending and clarifying the terms and rights as set forth in the Ground Lease, Sublease and ECR, as memorialized in the Lease Memorandum, Sublease and ECR.

NOW, THEREFORE, in consideration of \$1.00 and other good and valuable consideration, the receipt and adequacy whereof are hereby acknowledged, the parties hereto agree as follows:

- (1) Effective upon the recording in the Official Records of Douglas County, Nebraska of a replat of the Adjacent Premises reflecting the Lot Split (the "**Replat**"): (a) any and all non-exclusive easements over and across that portion of the Excess Adjacent Premises described and depicted on Exhibit B attached hereto and by this reference incorporated herein (the "**Released Excess Adjacent Premises**") for parking, use of common areas, ingress/egress or otherwise under the Ground Lease or the Sublease shall terminate with respect to the Released Excess Adjacent Premises and be of no further force or effect; (b) the terms of the

Ground Lease and/or Sublease shall be deemed to not restrict in any way the rights of QUIKTRIP, as the current owner of the Released Excess Adjacent Premises, and/or any future owner of the Released Excess Adjacent Premises, to modify any improvements and/or construct new improvements on the Adjacent Premises in any manner deemed advisable by QUIKTRIP and/or or any future owner, in such owner's sole and absolute discretion, including, without limitation, modifications or improvements made to the formerly common areas, parking and/or easement areas and the erection of barriers or fences which would eliminate the flow of vehicular or pedestrian traffic to and from the Released Excess Adjacent Premises to the remainder of the shopping center, the Leased Premises or the Retained Adjacent Premises and (c) Landlord, Sublandlord and Subtenant do hereby remise, release and quitclaim unto QUIKTRIP, as the current owner of the Released Excess Adjacent Premises, and/or any future owner of the Excess Adjacent Premises, without warranty, all the estate and interest derived under Ground Lease and/or Sublease in and to the Excess Adjacent Premises.

- (2) Effective upon the recording of the Replat: (a) any and all nonexclusive and nonrevocable easements or right to use the parking and common areas of the Released Excess Adjacent Premises pursuant to the ECR shall be terminated and be of no further force or effect; (b) any obligation of Landlord, Sublandlord, Subtenant or the owner of the Released Excess Adjacent Premises under the ECR to maintain and keep the Released Excess Adjacent Premises in good order, repair and condition or otherwise shall terminate and be of no further force or effect, (c) any and all restrictions on the owner of the Released Excess Adjacent Premises from erecting any barrier or fence which would impede the flow of traffic from the Leased Premises to the Released Excess Adjacent Premises shall terminate and be of no further force or effect, (d) the terms of the ECR shall not be deemed to create any obligation of, or restrict the rights of, QUIKTRIP, as the current owner of the Released Excess Adjacent Premises, and/or any future owner of the Released Excess Adjacent Premises, under the ECR, (e) Landlord, Sublandlord and Subtenant do hereby remise, release and quitclaim unto QUIKTRIP, as the current owner of the Released Excess Adjacent Premises, and/or any future owner of the Released Excess Adjacent Premises, without warranty, all the estate and interest derived under ECR in and to the Released Excess Adjacent Premises, (f) QUIKTRIP, as the current owner of the Released Excess Adjacent Premises, with respect to the Released Excess Adjacent Premises only (and not with respect to the Retained Adjacent Property) does hereby remise, release and quitclaim unto Landlord, Sublandlord and Subtenant, without warranty, all the estate and interest derived under ECR in and to the Leased Premises.
- (3) The parties hereby expressly acknowledge and agree that the foregoing Sections (1) and (2) of this Amendment do not amend, terminate, diminish or effect any easement, right or interest of those currently, or in future, holding an interest in the Leased Premises derived under the Ground Lease, the Sublease and/or the ECR with respect to any portion of the Excess Adjacent Premises other than the Released Excess Adjacent Premises. Except as set forth herein, the terms and

conditions of the Lease Memorandum, Sublease Memorandum and the ECR shall remain in full force and effect with respect to the Leased Premises and the Retained Adjacent Premises and the Excess Adjacent Premises other than the Released Excess Adjacent Premises.

- (4) Without limiting the foregoing Section (3), the parties hereby also expressly acknowledge and agree that the foregoing Sections (1) and (2) of this Amendment do not amend, terminate, diminish or effect the provisions of Section 18 of the Ground Lease which provisions restrict the use of the Adjacent Premises during the term of the Ground Lease for any type of restaurant primarily engaged in the sale of hamburgers.

**[Remainder of Page Left Intentionally Blank; Execution Pages Follow.]**

IN WITNESS WHEREOF, this Amendment has been duly executed the day and year first above written.

**LANDLORD**

**Joan Held, as Trustee of the Christopher R. Held Irrevocable Trust**

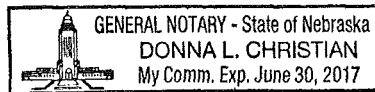
*Joan Held*  
Joan Held, Trustee

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2017, by Joan Held, Trustee of the Christopher R. Held Irrevocable Trust.

*Donna L. Christian*  
Notary Public

Commission Expires: 6/30/17



**SUBLANDLORD**

**Hardee's Restaurants LLC,**  
a Delaware limited liability company

By: *Kathy Steininger*  
Name: **Kathy Steininger**  
Its: **Vice President**  
**Real Estate Asset Management**

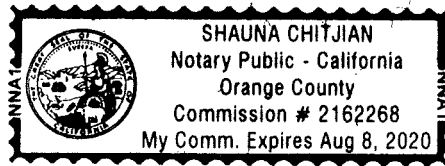
STATE OF CALIFORNIA )  
  )  
COUNTY OF ORANGE )

On May 15, 2017 before me, Shauna Chitjian, Notary Public, personally appeared Kathy Steininger, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: *[Handwritten Signature]* (Seal)



SUBTENANT

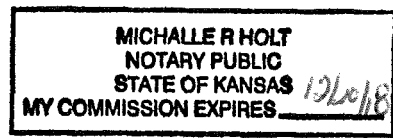
Westar Foods, Inc., a Colorado corporation

By: [Signature]  
Name: Frank Westerman  
Its: President

STATE OF Kansas )  
                                  ) ss.  
COUNTY OF Johnson )

The above and foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2017, by Frank Westerman the President of Westar Foods, Inc., a Colorado corporation, on behalf of said corporation.

Michelle R Holt  
Notary Public  
Commission Expires: 12/20/18



**QUIKTRIP**

**QUIKTRIP CORPORATION,**  
an Oklahoma corporation

By: [Signature]  
Name: Larry Dickerson  
Its: Director of Real Estate

STATE OF Kansas

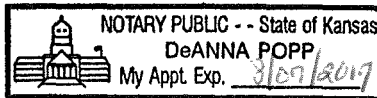
COUNTY OF Johnson

This instrument was acknowledged before me on this 8th of May, 2017, by Larry Dickerson, to me personally known, who, being by me duly sworn, did say that he is the Director of Real Estate of QuikTrip Corporation and acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

DeAnna Popp  
Notary Public

My Commission Expires:

8/07/2017

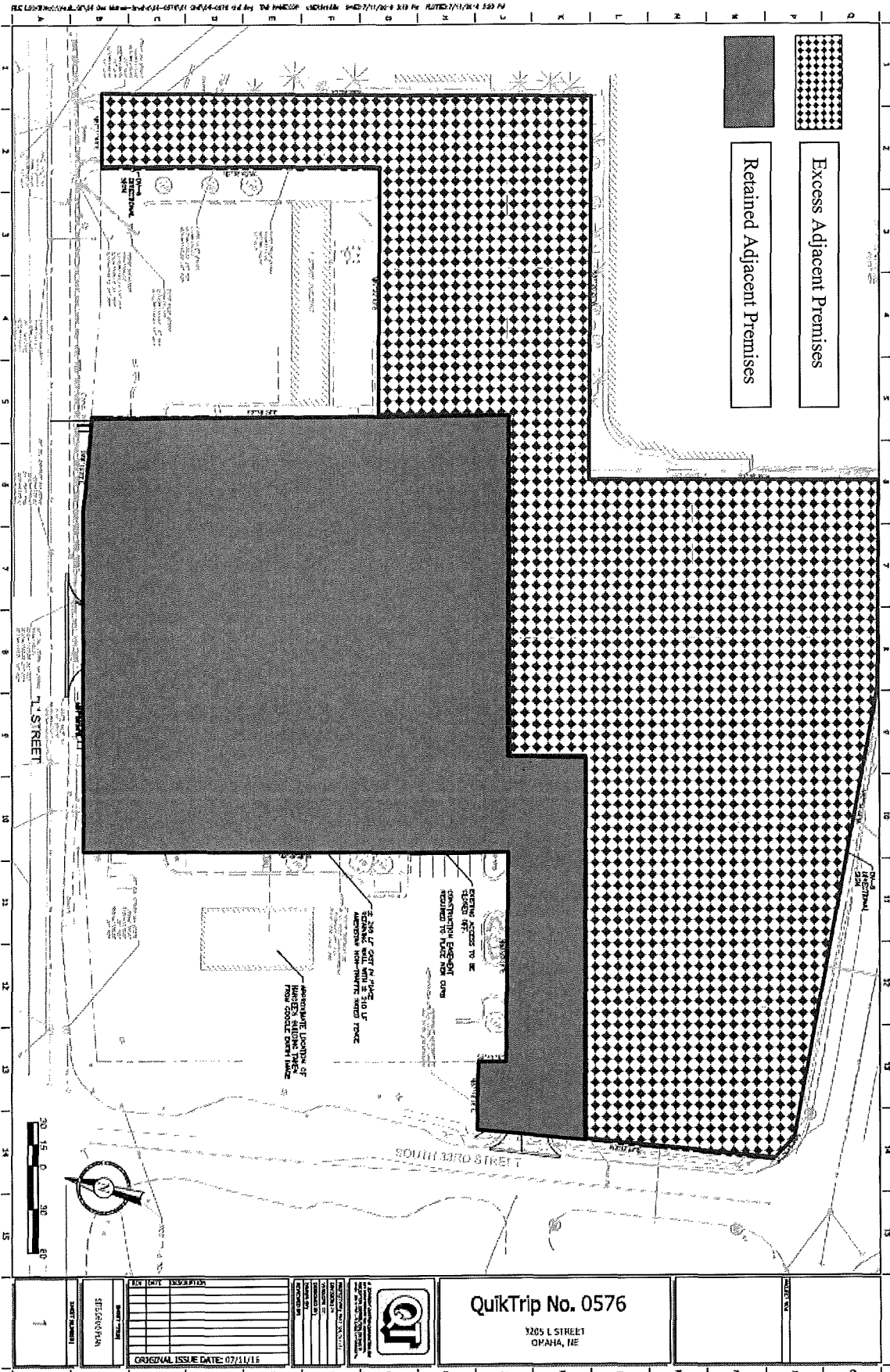


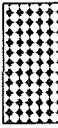



**Exhibit A**

**Adjacent Premises**

**Retained Adjacent Premises  
(Lot 1, Stockyards Plaza II Replat 1)  
and  
Excess Adjacent Premises  
(Lot 2, Stockyards Plaza II Replat 1)**



 Excess Adjacent Premises  
 Retained Adjacent Premises

**QuikTrip No. 0576**  
 3205 L STREET  
 OMAHA, NE



PREPARED BY: _____ CHECKED BY: _____ DATE: _____ APPROVED BY: _____ DATE: _____	CREDENCEAL ISSUE DATE: 07/11/16
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SHEET NO. _____ TOTAL SHEETS _____ DRAWING NO. _____
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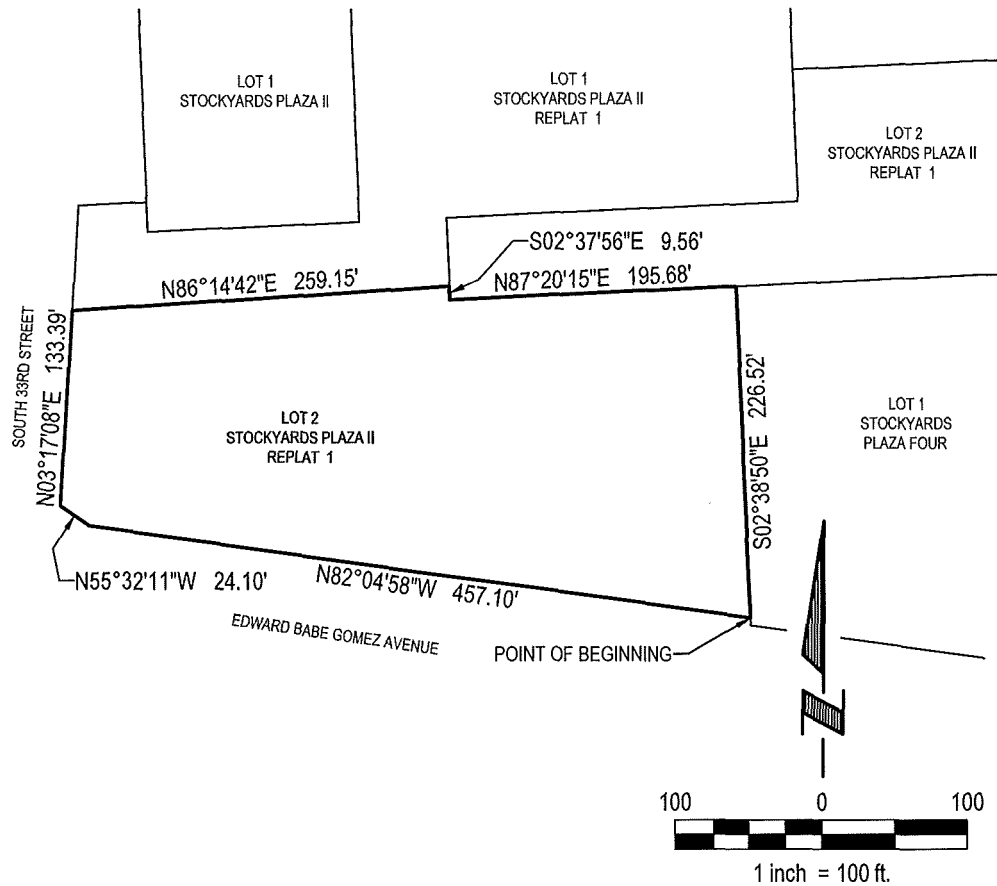
**Exhibit B**

**Released Excess Adjacent Premises**

That portion of Lot 2, Stockyards Plaza II Replat 1, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska described as follows:

Attached.

# EXHIBIT "B"



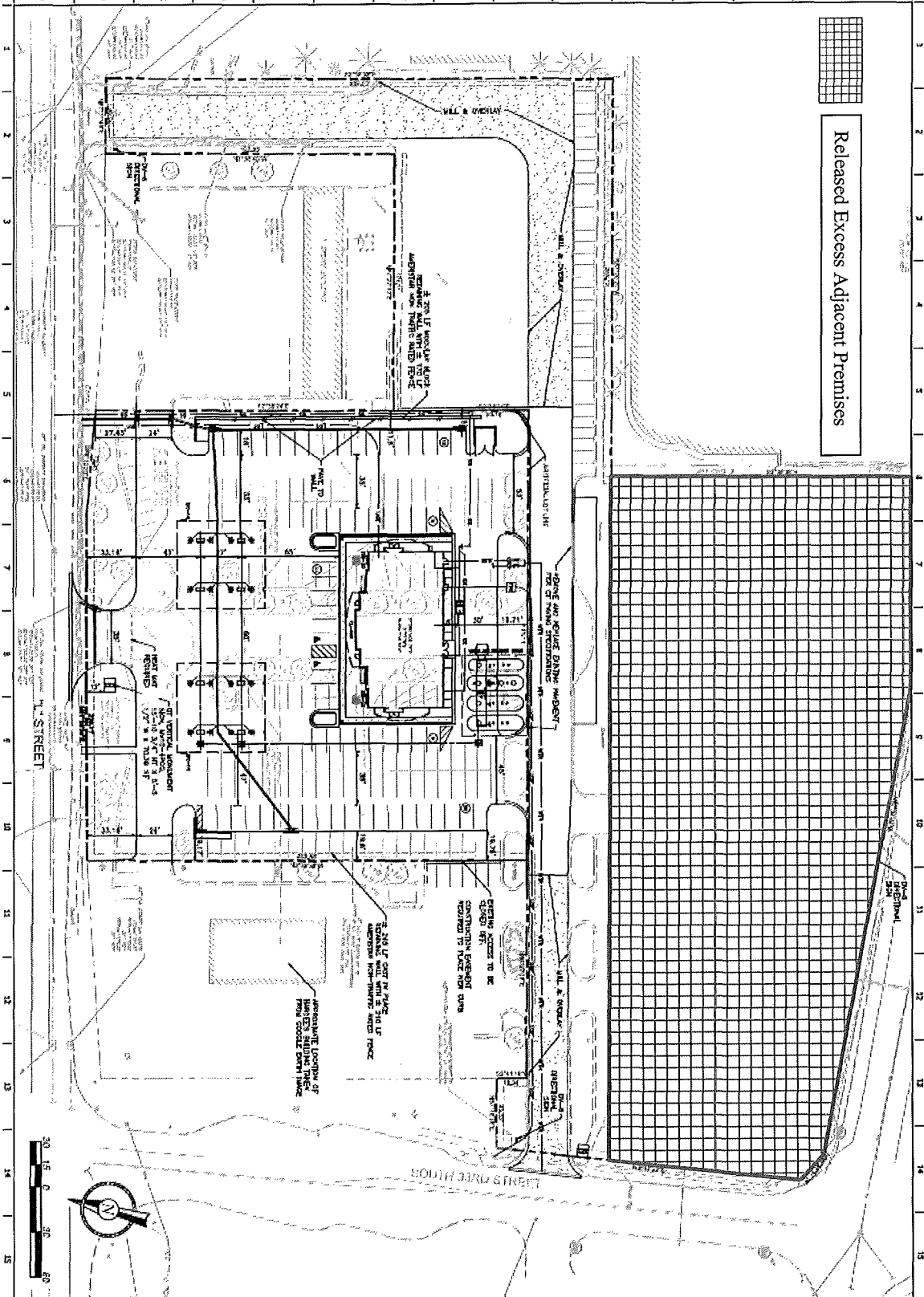
**LEGAL DESCRIPTION**

PART OF LOT 2, STOCKYARDS PLAZA II REPLAT 1, A SUBDIVISION LOCATED IN THE SW1/4 OF SECTION 4, TOWNSHIP 14 NORTH, RANGE 13 EAST OF THE 6TH P.M., NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID POINT ALSO BEING ON THE WESTERLY LINE OF LOT 1, STOCKYARDS PLAZA FOUR, A SUBDIVISION LOCATED IN SAID SW1/4 OF SECTION 4, AND ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE; THENCE N82°04'58"W (ASSUMED BEARING) ALONG THE SOUTHERLY LINE OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID LINE ALSO BEING SAID NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE, A DISTANCE OF 457.10 FEET; THENCE N55°32'11"W ALONG SAID SOUTHERLY LINE OF LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID LINE ALSO BEING SAID NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE, A DISTANCE OF 24.10 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID POINT ALSO BEING THE INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF EDWARD BABE GOMEZ AVENUE AND THE EASTERLY RIGHT-OF-WAY LINE SOUTH 33RD STREET; THENCE N03°17'08"E ALONG THE WESTERLY LINE OF LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID LINE ALSO BEING SAID EASTERLY RIGHT-OF-WAY LINE SOUTH 33RD STREET, A DISTANCE OF 133.39 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1; THENCE N86°14'42"E ALONG THE NORTHERLY LINE OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1, A DISTANCE OF 259.15 FEET; THENCE S02°37'56"E, A DISTANCE OF 9.56 FEET; THENCE N87°20'15"E, A DISTANCE OF 195.68 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, STOCKYARDS PLAZA FOUR; THENCE S02°38'50"E ALONG SAID EASTERLY LINE OF LOT 2, STOCKYARDS PLAZA II REPLAT 1, SAID LINE ALSO BEING SAID WESTERLY LINE OF LOT 1, STOCKYARDS PLAZA FOUR, A DISTANCE OF 226.52 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 86,518 SQUARE FEET OR 1.986 ACRES, MORE OR LESS.

<p><b>E &amp; A CONSULTING GROUP, INC.</b> Engineering • Planning • Environmental &amp; Field Services 10909 Mill Valley Road, Suite 100 • Omaha, NE 68154 Phone: 402.895.4700 • Fax: 402.895.3599</p>	<p><b>E &amp; A CONSULTING GROUP, INC.</b> Engineering • Planning • Environmental &amp; Field Services</p>		<p><b>RELEASED EXCESS ADJACENT PREMISES</b></p> <p>PART OF LOT 2, STOCKYARDS PLAZA II REPLAT 1 DOUGLAS COUNTY, NEBRASKA</p>
	<p>Drawn by: FCE Chkd by: _____ Date: 04/17/2017</p> <p>Job No.: P2013.355.008</p>		



	<b>QuikTrip No. 0576</b> 3205 L STREET OMAHA, NE
	ORIGINAL ISSUE DATE: 07/11/11
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