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FEE 41.00 FB 62-06279  
BKP C/O COMP 58  
DEL SCAN FV



MISC 2008074827



JUL 30 2008 08:00 P 8

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
7/30/2008 08:00:23.28  
 2008074827

**DECLARATION OF EASEMENT FOR INGRESS AND EGRESS AND OTHER COVENANTS**

This Declaration is made this 14<sup>th</sup> day of April, 2008, by Hodges Enterprises #4, LLC, a Nebraska limited liability company, located at 12829 West Dodge Road, Suite 202, Omaha, Nebraska 68154 ("Owner").

**RECITALS**

WHEREAS the Owner holds fee simple title to that parcel of real estate described as follows:

Part of the South 200 feet of the East 200 feet of Lot 1 in Mockingbird Hills West, a Subdivision in Douglas County, Nebraska, more particularly described as follows: Beginning at the Southeast corner of Lot 1; thence N89°40'W (assumed bearing) along the North right-of-way line of "Q" Street a distance of 200.00 feet; thence N00°00'E a distance of 200.00 feet; thence S89°40'E a distance of 200.00 feet to a point on the West right of way line of 107<sup>th</sup> Street; thence S00°00'W along the West right of way line of 107<sup>th</sup> Street a distance of 200.00 feet to the point of beginning, EXCEPTING THEREFROM that portion conveyed to the City of Omaha, by Warranty Deed filed January 4, 1994, in Book 1968 at Page 538;

which is being replatted as Charleston Pointe Replat 1, consisting of Lots 1 and 2 (each a "Lot" and jointly the "Lots"), the legal descriptions of which are attached hereto and incorporated herein as Exhibits "A" and "B", respectively;

WHEREAS Owner has developed Lot 1 as a fast food restaurant consistent with the drawing attached hereto and incorporated herein as Exhibit "C" and contemplates the development of Lot 2 by a third party substantially consistent with the depiction shown in such exhibit;

WHEREAS the Owner, for its benefit and for the benefit of future owners or tenants of Lots 1 and 2, desires to establish an easement and certain rules for the orderly flow of traffic over and across such easement and to provide for certain parking rights for customers of businesses conducted on Lots 1 and 2;

WHEREAS the Owner, for its benefit and for the benefit of all future owners and tenants of Lot 1, desires to establish an easement for the location of a sign on Lot 2; and

**RETURN TO:  
THOMPSON, DRESSSEN & DORNER, INC.  
10836 OLD MILL ROAD  
OMAHA, NEBRASKA 68154**

ⓐ

WHEREAS the Owner desires to reserve certain rights of approval governing the construction of improvements on Lot 2 and to provide for the orderly development thereof.

NOW THEREFORE, the Owner hereby covenants, declares and agrees that Lots 1 and 2 shall be held, conveyed, leased or otherwise used subject to the following easements, covenants, conditions and obligations:

1. **Ingress and Egress Easement**. All present and future owners and tenants of Lots 1 and 2 are granted a non-exclusive right of vehicular and pedestrian ingress and egress across the easement areas depicted by cross-hatching on Exhibits "A" and "B" (the "Easement Area") to provide ingress and egress across such Lots to "Q" Street and 107<sup>th</sup> Street. These rights of ingress and egress shall extend to and may be exercised by the tenants, servants, visitors, customers, employees, agents, invitees and licensees of such parties, and are conditioned on the following terms and conditions:

- (a) All such rights are subject to (1) the right of the owner or tenant of the Lot on which the Easement Area exists to use the Lot for such current and future purposes as determined by the then-owner or tenant thereof (subject to the provisions hereof in regard to construction and modification of improvements on Lot 2), (2) the temporary limitation or restriction on rights that may occur during periods of performance of the obligations of an owner to maintain the driveway or other traffic way across the Easement Area, (3) the right of the Owner or its successors to adopt and enforce reasonable rules and regulations for the use of the Easement Area and for the orderly flow of traffic over and across such Easement Area and, (4) the right of the Owner or its successors, upon written notice to the then-owner of Lot 2, to relocate the Easement Area on Lot 1 to provide equivalent ingress and egress over a different portion of Lot 1 with the same connection point to the Easement Area on Lot 2 unless otherwise agreed by the then-owner of Lot 2.
- (b) In the absence of written approval by the Owner or its successors, no owner shall use, or permit or allow the use of any portion of the Easement Area for parking, loading or unloading or for any other use which would otherwise obstruct vehicular or pedestrian access over the Easement Area or otherwise interfere with business operations as now or in the future conducted by the owner or tenant of either Lot 1 or Lot 2 and any such owner or tenant shall take all reasonable action to prohibit and prevent any such interference or obstruction with the free flow of vehicular and pedestrian access across the Easement Area by its tenants, servants, visitors, customers, employees, agents, invitees and licensees.
- (c) The owner of each of Lot 1 and 2 shall respectively maintain or cause the surface of the Easement Area located on the Lot owned by such owner in a reasonably safe and serviceable condition for vehicular and pedestrian traffic, consistent with the grade and construction of the Easement Area on Lot 1. If any owner fails to reasonably maintain (such maintenance shall include the cost of reconstruction when reasonably necessary) an Easement Area as required hereunder, the owner of the other Lot shall, upon fourteen (14) days written notice supported by reasonable documentation, have the right, but not the obligation, to complete the reasonably required maintenance, at which time the owner completing the repair shall be entitled to reimbursement from the other owner for the cost of the repairs.

- (d) The easement granted herein is intended and limited to use for automobile, light truck and pedestrian traffic. Any use in excess of that granted herein shall be subject to an obligation of the owner or tenant allowing such non-conforming use to repair any roadway damage caused by the non-conforming use on the Easement Area of the other owner.

2. **Parking Rights.** Customers of the business conducted on Lot 1 shall have the right to park in the parking areas along the common boundary with Lot 2 and customers of the business conducted on Lot 2 shall similarly have the right to park in the parking areas along the common boundary with Lot 1; provided, however, such right of cross parking shall be monitored with discretion by the owners of such lots and the operators of businesses thereon to prevent interference with the business conducted on the Lot on which the parking areas are located and take all reasonable action to prohibit and prevent any such interference. In the event that such interference shall occur, Owner or its successors may attempt to remedy the same by the adoption and enforcement of reasonable rules and regulations for the use of such parking areas or, by written notice to the then-owner of Lot 2, terminate the parking rights provided under this provision. The rights as provided under this provision shall be construed as a license and not as an easement or other interest in land.

3. **Sign Easement.** All present and future owners and tenants of Lot 1 shall have the non-exclusive right to place signage on Lot 2 advertising the business use of Lot 1, said signage to be located within the area described on Exhibit "D" attached hereto and incorporated herein. The easement hereby granted shall include reasonable rights of ingress and egress across Lot 2 for purposes of maintenance and use of the signage; provided, however, such ingress and egress shall be conducted in such a fashion so as not to interfere with the operation of business conducted on Lot 2.

4. **Improvement of Lot 2** All improvements to be constructed on Lot 2 shall be constructed substantially in accordance with Exhibit "C" so as to avoid interference with the contemplated traffic flow across the Easement Area and the operation of the existing business on Lot 1. The improvement of Lot 2, including any enlargements or additions thereto, shall be subject to the written approval of the Owner, which approval shall not be unreasonably delayed, conditioned or withheld.

5. **Binding Effect.** The provisions hereof shall be appurtenant to and run with and bind Lots 1 and 2 and shall be binding upon any party taking an interest in Lots 1 or 2 and their respective successors and assigns. Nothing contained herein shall prevent the then-current owners of Lots 1 or 2 from granting any other easements or other interests in the Easement Areas provided the same shall not interfere with the rights or obligations of the parties hereunder. The provisions hereof shall continue in force for so long as either Lot shall be used for commercial activities or forty (40) years, whichever period shall be longer.

6. **Rules and Regulations.** Nothing contained herein shall place an obligation upon the Owner or its successors to adopt rules and regulations as described herein or to implement or enforce the same. The Owner of Lot 2 shall indemnify and hold the Owner and its successors harmless in regard to any claims arising by, through or under the owner of Lot 2, except to the extent arising solely from the gross negligence or intentional misconduct of Owner or its successors.

7. **Enforcement.** Enforcement of rights hereunder shall be by proceedings at law or in equity against any party violating or attempting to violate any covenant, condition or restriction set forth herein, to restrain the violation and/or to recover damages related thereto. In any

action to enforce any term hereof, the enforcing party shall be entitled to recover its costs incurred, including its attorney fees. Failure to enforce any covenant, condition or restriction herein shall not be deemed a waiver of the right to do so thereafter. Invalidation of any one of the covenants, conditions or restrictions contained herein shall in no way affect any other provisions which may remain in full force and effect.

8. **Notices.** Notices hereunder shall be sent to Owner at the address set forth above or such other location as the Owner shall designate from time to time. Notice to any other owner shall be sent to the address maintained by Douglas County for the delivery of tax statements related to the respective Lot.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

HODGES ENTERPRISES #4, LLC, a Nebraska limited liability company

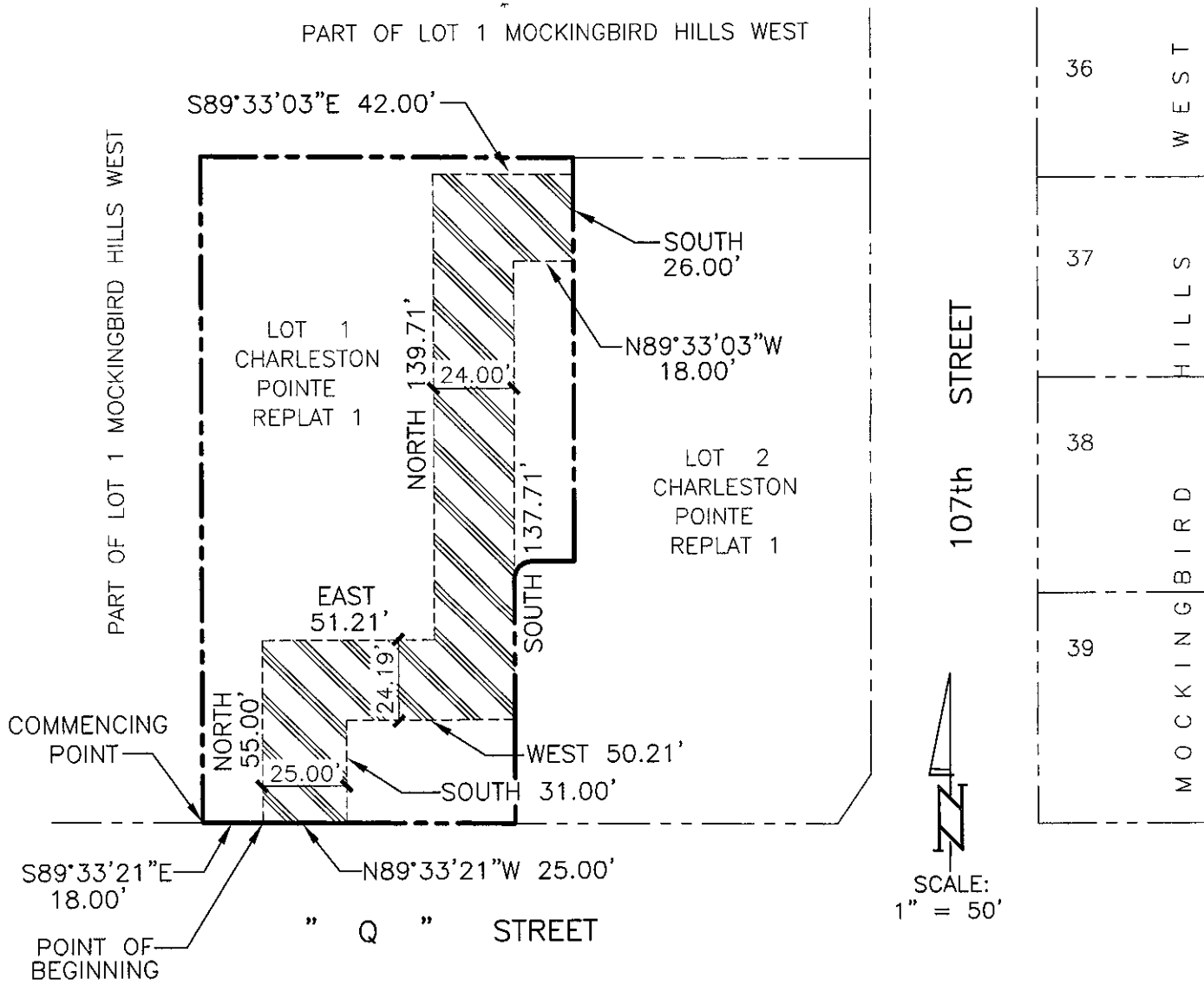
By: *Dean Hodges*  
Dean Hodges, Managing Member

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 15<sup>th</sup> day of April, 2008, by Dean Hodges, Managing Member of Hodges Enterprises #4, LLC, a Nebraska limited liability company, on behalf of the company.

*Joseph C. Franco*  
Notary Public





## LEGAL DESCRIPTION

THAT PART OF LOT 1, CHARLESTON POINTE REPLAT 1, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, COMMENCING AT THE SW CORNER OF SAID LOT 1;

THENCE S89°33'21"E (ASSUMING THE WEST LINE OF SAID LOT 1 TO BEAR NORTH AND SOUTH) 18.00 FEET ON THE SOUTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING;

THENCE NORTH 55.00 FEET; THENCE EAST 51.21 FEET;

THENCE NORTH 139.71 FEET TO A POINT 5.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 1;

THENCE S89°33'03"E 42.00 FEET ON A LINE 5.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1 TO THE EAST LINE THEREOF;

THENCE SOUTH 26.00 FEET ON THE EAST LINE OF SAID LOT 1;

THENCE N89°33'03"W 18.00 FEET;

THENCE SOUTH 137.71 FEET ON A EAST LINE OF SAID LOT 1 AND ITS NORTHERLY EXTENSION;

THENCE WEST 50.21 FEET;

THENCE SOUTH 31.00 FEET TO THE SOUTH LINE OF SAID LOT 1;

THENCE N89°33'21"W 25.00 FEET ON THE SOUTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.

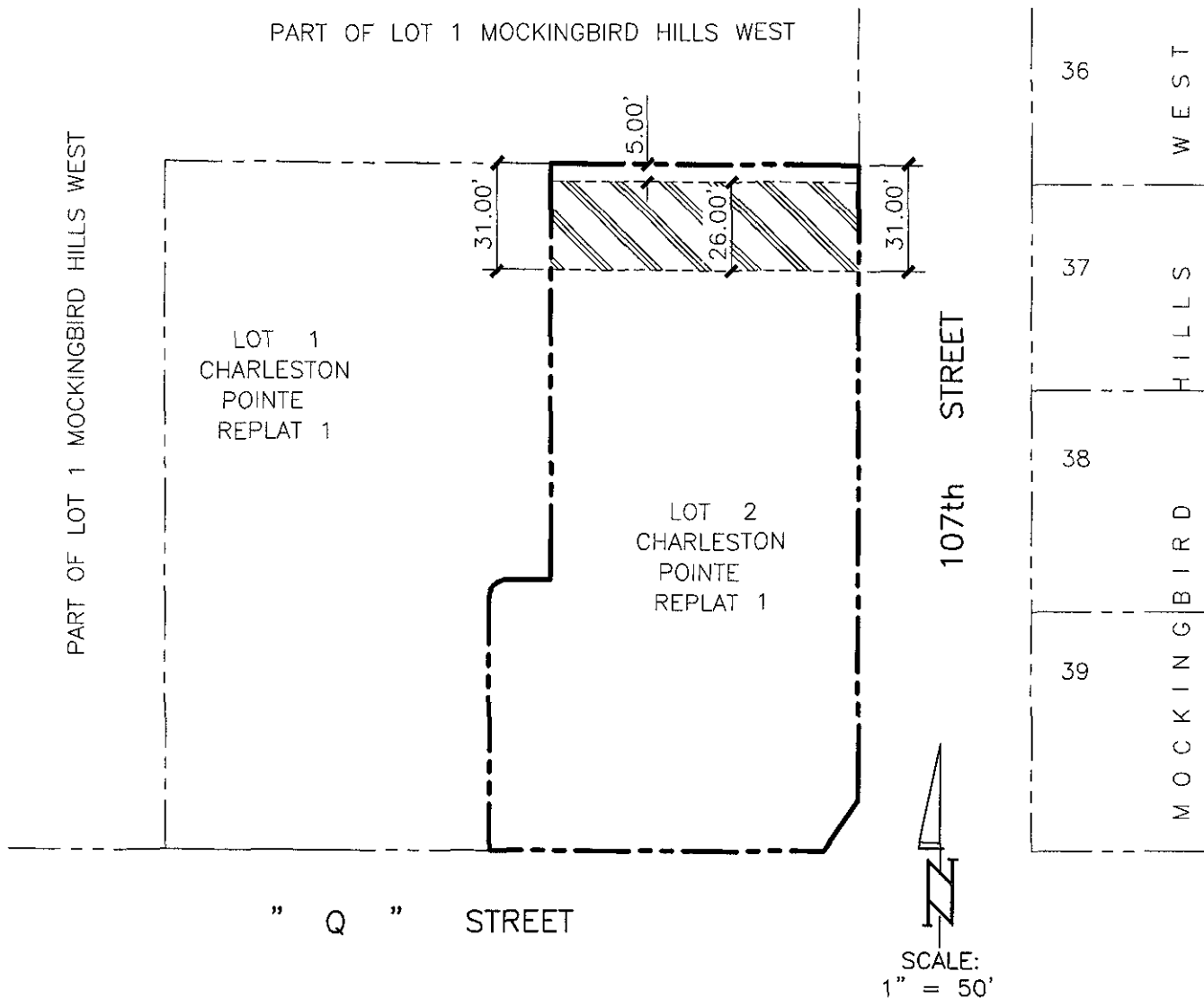
## EXHIBIT "A"

HODGES ENTERPRISES

TD2 FILE NO.: 1452-146-EXIE

DATE: MARCH 17, 2008

THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860



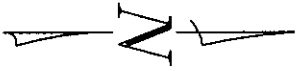
**LEGAL DESCRIPTION**

THE SOUTH 26.00 FEET OF THE NORTH 31.00 FEET OF LOT 2, CHARLESTON POINTE REPLAT 1, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

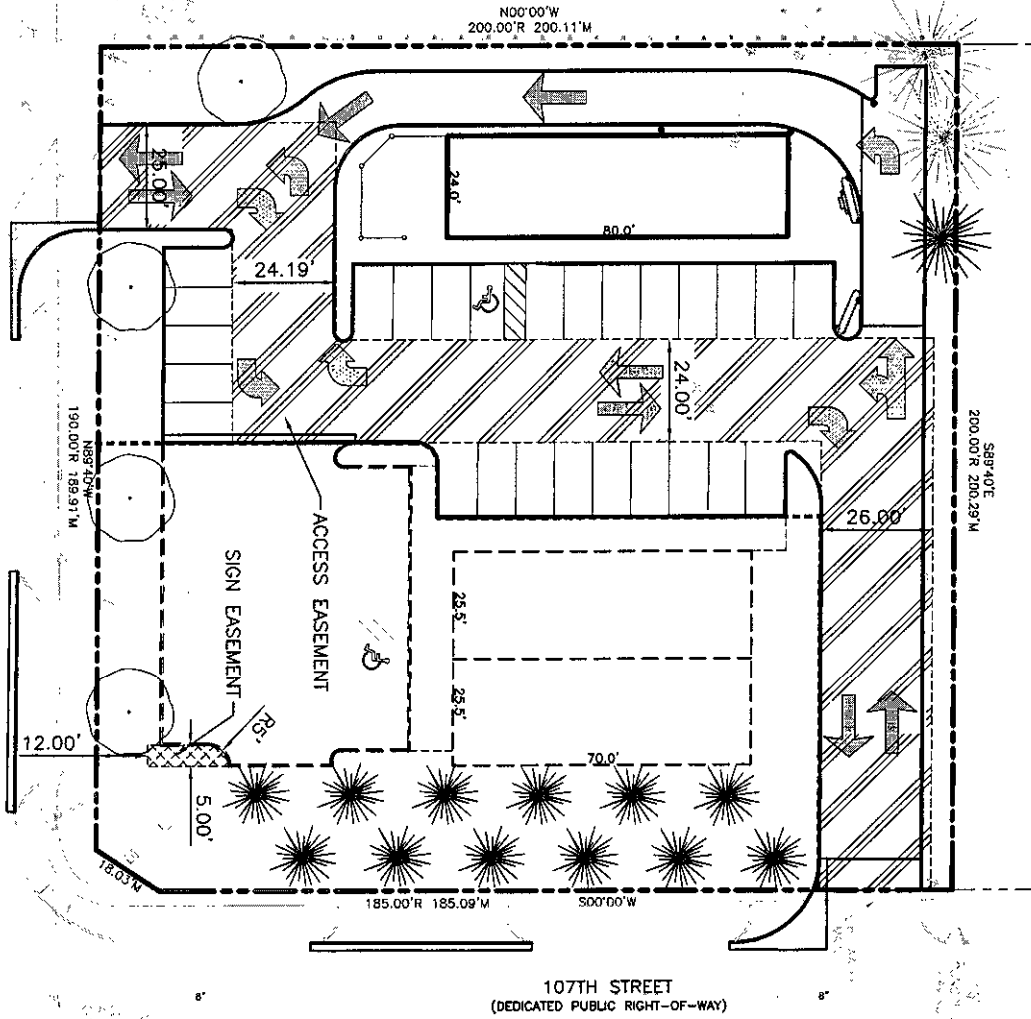
**EXHIBIT "B"**

**HODGES ENTERPRISES**                      **TD2 FILE NO.: 1452-146-EXIE**                      **DATE: MARCH 17, 2008**  
**THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860**

0' 15' 30' 60'  
SCALE IN FEET



PART OF LOT 1 MOCKING BIRD HILLS WEST



# JIMMY JOHN'S RESTAURANT

EXHIBIT "C"



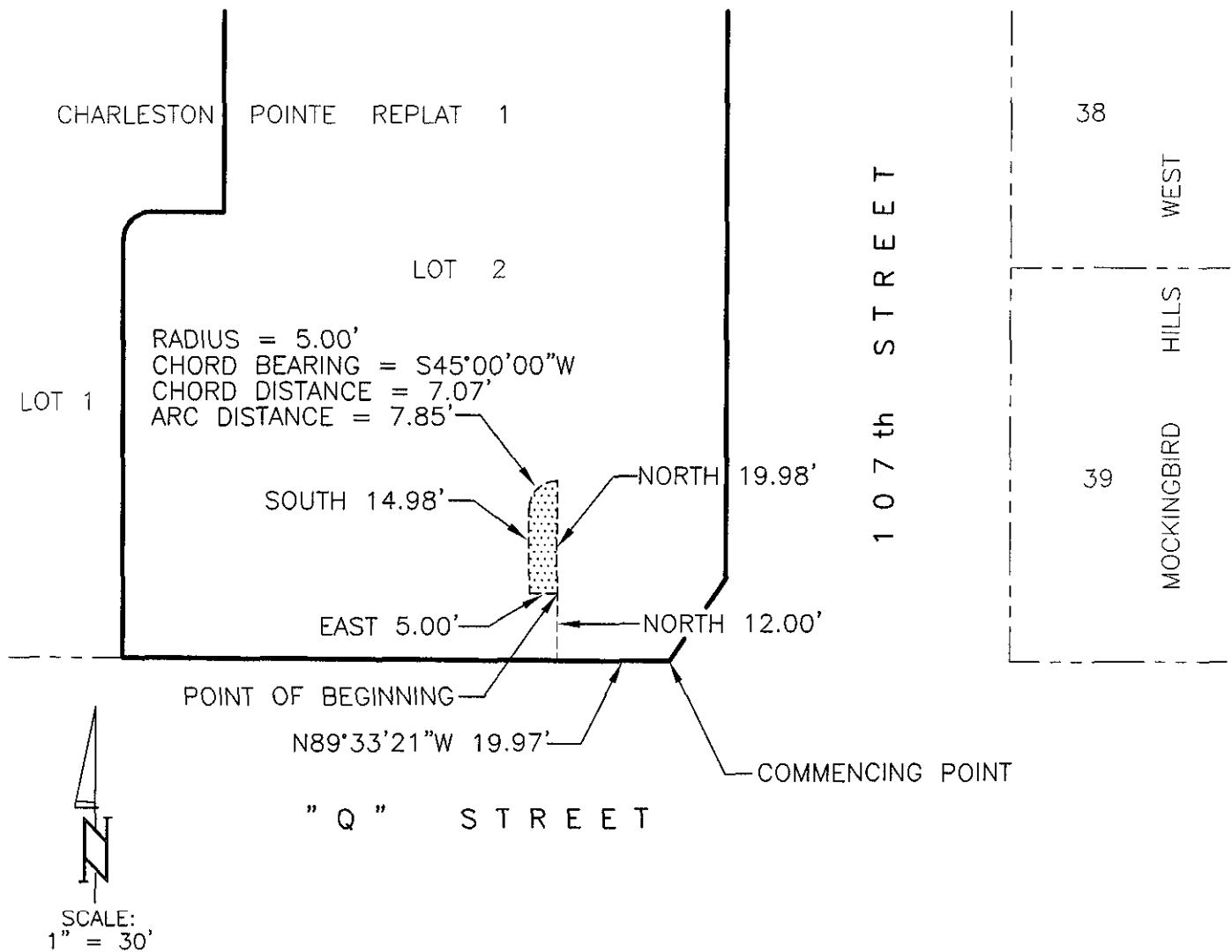
**THOMPSON, DREESSEN & DÖRNER, INC.**  
Consulting Engineers & Land Surveyors  
10830 OLD MILL ROAD CAMAHA, NEBRASKA 68154  
PHONE 412 302 5560 FAX 402 312 5865 EMAIL TD@TD&D.COM  
WEBSITE WWW.TD&D.COM

**JIMMY JOHN'S RESTAURANT**

HODGES ENTERPRISES 4 L.L.C.

Date:	12-20-06
Drawn:	12-12-06
Check by:	EDP
Printed by:	DSD
Released:	5-10-07

1452-146



## LEGAL DESCRIPTION

THAT PART OF LOT 2, CHARLESTON POINTE REPLAT 1, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, COMMENCING AT THE SE CORNER OF SAID LOT 2;

THENCE N89°33'21"W (ASSUMING THE WEST LINE OF LOT 1 SAID CHARLESTON POINTE REPLAT 1, TO BEAR NORTH AND SOUTH) 19.97 FEET ON THE SOUTH LINE OF SAID LOT 2;

THENCE NORTH 12.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 19.98 FEET;

THENCE SOUTHWESTERLY ON A 5.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S45°00'00"W, CHORD DISTANCE 7.07 FEET AN ARC DISTANCE OF 7.85 FEET:

THENCE SOUTH 14.98 FEET;

THENCE EAST 5.00 FEET TO THE POINT OF BEGINNING.

## EXHIBIT "D"

HODGES ENTERPRISES

TD2 FILE NO.: 1452-146-EXS

REVISED APRIL 9, 2008

DATE: MARCH 17, 2008

THOMPSON, DREESSEN & DORNER, INC., 10836 OLD MILL ROAD, OMAHA, NEBRASKA 68154, 402-330-8860