

When Recorded Mail To:
Continental 139 Fund LLC
10850 W. Park Place, #600
Milwaukee, WI 53224

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E 1932414 B 3417 P 1157
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2003 NOV 14 4:07 PM FEE 29.00 DEP MT
REC'D FOR LANDMARK TITLE CO

2 Petersen Motor Co.
10 - 233 - 0006 pt

**DECLARATION OF RESTRICTIVE COVENANTS
AND EASEMENT AGREEMENT**

THIS DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENT AGREEMENT (hereinafter "**Agreement**"), is made and declared as of this 12 day of November, 2003, by Continental 139 Fund LLC, a limited liability company organized under the laws of the State of Wisconsin ("**Continental**") and Petersen Investment II ("**Petersen**").

WITNESSETH:

WHEREAS, Continental is the owner in fee simple of a tract of land located in the City of Layton, County of Davis, State of Utah, which land is described on **Exhibit "A"** attached hereto and by this reference made a part hereof, and is depicted upon the site plan attached hereto as **Exhibit "B"** ("**Continental Property**"), and by this reference made a part hereof, and

WHEREAS, Petersen is the owner in fee simple interest of a tract of land located in the City of Layton, County of Davis, State of Utah, more particularly described on **Exhibit "C"** attached hereto and made a part hereof (the "**Petersen Property**"); and

WHEREAS, Continental and Petersen desire to establish certain covenants and conditions including, but not limited to, drainage as hereinafter are more specifically set forth;

NOW, THEREFORE, in consideration of the foregoing, and the covenants and declarations, as hereinafter set forth, IT IS DECLARED as follows:

1. RETENTION POND/DRAINAGE EASEMENT. Continental has agreed to construct a regional storm water detention pond ("**Detention Pond**") on the Petersen Property as shown on **Exhibit "B"** attached hereto. Petersen does hereby establish for the benefit of the Continental Property a non-exclusive easement for the construction of the Detention Pond. After completion of the Detention Pond, Petersen shall repair, maintain and replace the drainage equipment serving the Detention Pond.
2. NOXIOUS USE RESTRICTION. No portion of the Continental Property or the Petersen Property shall be used for any of the uses set forth in **Exhibit "D"** attached hereto.
3. GRANT OF TEMPORARY EASEMENT. Petersen hereby grants to Continental, a temporary easement over and across the Petersen Property for the purpose of (i) having access across Petersen Property to construct the Detention Pond and (ii) storing construction equipment on Petersen Property. The foregoing grant of easement shall vest in Continental the right to enter upon Petersen's Property by itself, its employees and contractors. This easement shall terminate upon the completion of the Detention Pond. Continental agrees to restore or cause to be restored Petersen Property as nearly as is reasonably practicable to the condition existing prior to such entry by Continental or to the condition required by other agreements between Continental and Petersen by the date of termination of the temporary easement granted herein.
4. ACCESS EASEMENT. Continental does hereby grant, convey and warrant to Petersen, forever, a nonexclusive easement and right of way, without charge, upon the Continental Property Access Drive as depicted on the Site Plan solely for the ingress and egress of

LTC# 32980

motor vehicles (non-agricultural) and pedestrians to the Petersen Property. The parties hereby expressly acknowledge that there are no parking, utility or other easements granted herein, expressed or implied. The easement granted in the Agreement shall run for the benefit of the Petersen Property, but shall be otherwise unassignable.

5. NOTICES. Any notices which may be given hereunder shall be given by certified mail return receipt requested, or by a national overnight express service such as Federal Express, in the case of Continental, addressed to it at 10850 W. Park Place, Suite 600, Milwaukee, Wisconsin 53224 ATTN: Legal Department, or at such other address as specified in writing by Continental and in the case of Petersen, addressed to it at: Attorney John P. Sampson, 2650 Washington Boulevard, Suite 102, Ogden, Utah 84401.
6. EXHIBITS. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.
7. RECITALS. The recitals set forth above are deemed a part of and are hereby incorporated into this Agreement.
8. RECORDING. This Agreement shall be recorded in the real property records of Davis County, Utah.
9. GOVERNING LAWS. The laws of the State of Utah shall apply to this Agreement.
10. SEVERABILITY. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
11. WAIVER. No waiver of breach of any of the easements, covenants and/or agreements herein contained shall be construed as, or constitute a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.
12. MODIFICATION. This Agreement may be terminated or amended only by the recording of the appropriate written documents in the records of Davis County, Utah, which documents must be executed by all of the owners and mortgagees and other holders of recorded interest in any of the properties affected thereby as of the date of such documents.
13. BINDING ON FUTURE PARTIES. The Agreement shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and the respective heirs, successors and assigns including without limitation, all subsequent owners of the Petersen Property and the Continental Property and all persons claiming under them. The obligations imposed by the Agreement shall apply only to the then current owners of the Petersen Property and the Continental Property. The Agreement shall not operate to convey to Continental the other party's fee or any part thereof.
14. FAILURE TO PERFORM. If there is a failure by either party to perform, fill or observe any agreement contained within this Agreement to be performed, filled or observed by it, continuing for thirty (30) days after written notice from any other party, the other party may,

at its election, cure such failure or breach on behalf of the defaulting party. Any amount which the party so electing to cure shall expend for such purpose or which will otherwise be due from any party to the other shall be paid to the party due on demand upon delivery of its' invoice.

15. LIEN. It is agreed that upon failure of one party to pay any amounts due and owing to the other party, that such party shall have a lien upon the other parties property to secure such payment provided, however, that any such lien shall be subordinate to a lien of any first mortgage recorded.
16. ATTORNEY'S FEES. In the event any party shall institute an action or proceeding against the other party relating to the provisions of this Agreement, and in a default hereunder then and in the event the unsuccessful litigant in such action agrees to reimburse the successful litigant therein for the reasonable expense of attorney's fees and disbursements incurred by the successful litigant.
17. ESTOPPEL CERTIFICATE. Each party hereby severally covenants that upon written request of the other party it will issue to such other party or to any mortgagee or to any other persons specified by such requesting party within fifteen (15) days an estoppel certificate stating (i) whether the party to whom the request has been directed knows of any default under the Agreement by requesting party and if there are known defaults by the requesting party, specifying the nature thereof; (ii) whether to its knowledge the Agreement has been assigned, modified or amended in any manner; and (iii) that to such parties knowledge the Agreement as of that date is in full force and effect.

(SEPARATE SIGNATURE PAGES TO FOLLOW)

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

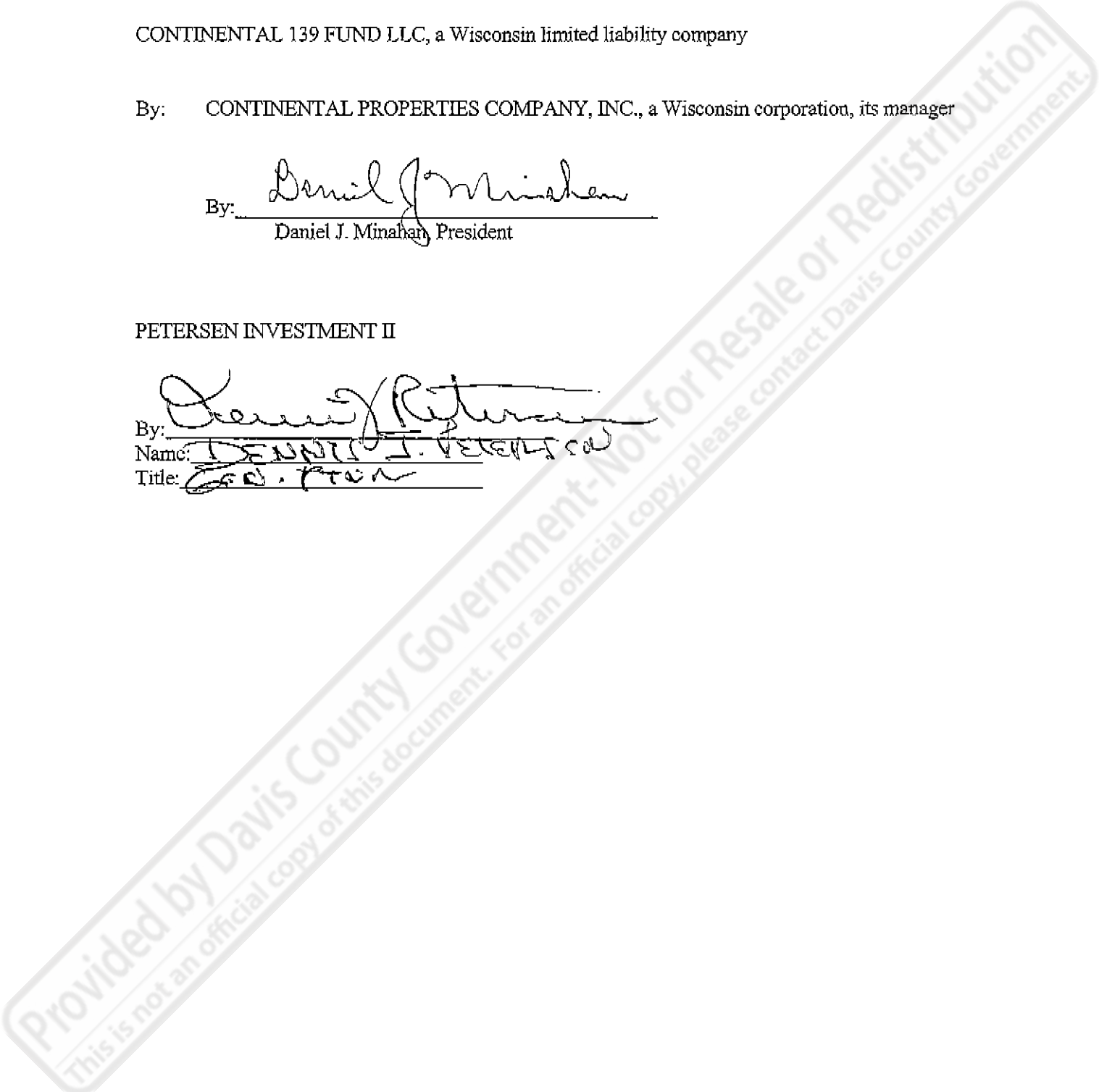
CONTINENTAL 139 FUND LLC, a Wisconsin limited liability company

By: CONTINENTAL PROPERTIES COMPANY, INC., a Wisconsin corporation, its manager

By: Daniel J. Minahan
Daniel J. Minahan, President

PETERSEN INVESTMENT II

By: Dennis J. Petersen
Name: DENNIS J. PETERSEN
Title: CEO, PTC



ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) ss.
MILWAUKEE COUNTY)

Personally came before me this 11 day of November, 2003, the above named Daniel J. Minahan, President of Continental Properties Company, Inc., the manager of, and on behalf of, Continental 139 Fund LLC, to me known to be such officer and acknowledged that he executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

Jill M. Richard
Notary Public, State of Wisconsin
My Commission Expires: 6/18/06

JILL M. RICHARD
NOTARY PUBLIC
STATE OF WISCONSIN

STATE OF UTAH)
) ss.
Weber COUNTY)

Personally came before me this 12 day of November, 2003, the above named ~~Donna General~~ General of Petersen Investment II, to me known to be such officer and acknowledged that he executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

John P. Sampson
Notary Public, State of Utah
My Commission Expires: _____


 JOHN P. SAMPSON
NOTARY PUBLIC • STATE of UTAH
2650 WASHINGTON BLVD STE 102
OGDEN, UT 84401
COMM. EXP. 01-06-2004

EXHIBIT A

Continental Property

All of Lots 1 and 2, PETERSEN MOTOR CO. SUBDIVISION, according to the official plat thereof, filed on August 23, 2001, as Entry No. 1684019, in Book 2872, at Page 207 of the Official Records of the Davis County Recorder.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

A part of the Southwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah:

Beginning at a point which is 1873.66 feet North $0^{\circ}03'20''$ West along the Section line and 33.00 feet North $89^{\circ}56'40''$ East and 127.84 feet South $0^{\circ}03'20''$ East and 782.81 feet South $51^{\circ}45'09''$ East and 216.89 feet North $38^{\circ}51'57''$ East and 81.61 feet North $0^{\circ}03'15''$ East and 186.01 feet North $89^{\circ}54'50''$ East from the Southwest corner of said Section 17; and running thence North $0^{\circ}05'10''$ West 175.41; thence North $23^{\circ}15'39''$ West 41.17 feet to a non-tangent point; thence Northeasterly along the arc of a 143.00 foot radius curve to the left a distance of 111.64 feet (Central Angle equals $44^{\circ}43'46''$, Long Chord bears North $44^{\circ}22'28''$ East 108.82 feet) to a point of reverse curvature; thence Northeasterly along the arc of a 75.30 foot radius curve to the right a distance of 24.84 feet (Central Angle equals $18^{\circ}53'56''$ and Long Chord bears North $31^{\circ}27'34''$ East 24.73 feet) to a non-tangent point; thence North $89^{\circ}54'50''$ East 277.85 feet; thence South $0^{\circ}03'15''$ West 312.00 feet; thence South $89^{\circ}54'50''$ West 350.04 feet to the point of beginning.

PART OF
TAX PARCEL NO. 10-233-0001
TAX PARCEL NO. 10-233-0002

E 1932414 B 3417 P 1163

1200 West Street (Sugar Street)

Utah State Highway 126 (Main Street)

CONTINENTAL
PROPERTY

CONTINENTAL
PROPERTY

ACCESS DRIVE

DETENTION
POND

PETERSEN
PROPERTY

CONTINENTAL
PROPERTY

Interstate 15



CONTINENTAL PROPERTIES

COMPANY INC.

P.O. Box 220, Menomonie Falls, Wisconsin 53052

PHONE: (262)502-5500 FAX: (262)502-5522 E-MAIL: ced_dug@cpproperties.com

BY LAYTON	DATE 1/11	DRAWN DATE 11/10/2003
BY MAIN STREET & ANGEL STREET LLC	DATE DRS	
SCALE 1:200		

RETENTION
EXHIBIT B

REVISIONS

REV	DESCRIPTION	DATE

EX-B

Sheet No.

Project No.
C-139



NORTH

VEHICLE EASEMENT RETENTION-EX-B

Provided by Davis County Government - Not for Resale or Redistribution. For an official copy, please contact Davis County Government.

EXHIBIT C E 1932414 B 3417 P 1164

Petersen Property

A part of the Southwest Quarter of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Layton City, Davis County, Utah:

Beginning at a point which is 1873.66 feet North $0^{\circ}03'20''$ West along the Section line and 33.00 feet North $89^{\circ}56'40''$ East and 127.84 feet South $0^{\circ}03'20''$ East and 782.81 feet South $51^{\circ}45'09''$ East and 216.89 feet North $38^{\circ}51'57''$ East and 81.61 feet North $0^{\circ}03'15''$ East and 186.01 feet North $89^{\circ}54'50''$ East from the Southwest corner of said Section 17; and running thence North $0^{\circ}05'10''$ West 175.41; thence North $23^{\circ}15'39''$ West 41.17 feet to a non-tangent point; thence Northeasterly along the arc of a 143.00 foot radius curve to the left a distance of 111.64 feet (Central Angle equals $44^{\circ}43'46''$, Long Chord bears North $44^{\circ}22'28''$ East 108.82 feet) to a point of reverse curvature; thence Northeasterly along the arc of a 75.30 foot radius curve to the right a distance of 24.84 feet (Central Angle equals $18^{\circ}53'56''$ and Long Chord bears North $31^{\circ}27'34''$ East 24.73 feet) to a non-tangent point; thence North $89^{\circ}54'50''$ East 277.85 feet; thence South $0^{\circ}03'15''$ West 312.00 feet; thence South $89^{\circ}54'50''$ West 350.04 feet to the point of beginning.

PART OF THE PARCEL NO.
10-233-0002

EXHIBIT D

Prohibited Uses

(i) Any operation primarily used as a distilling, refining, smelting, agricultural or mining operation;

(ii) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);

(iii) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

(iv) Any fire sale, going out of business sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, except for such sales within 30 days of close;

(v) Any bowling alley or skating rink;

(vi) Any club or live performance theater;

(vii) Any veterinary hospital or animal raising facility (except that this prohibition shall not prohibit pet shops or pet supply superstores and veterinary services which are incidental thereto);

(viii) Any adult book store, adult video store, adult movie theater or other establishment selling, renting or exhibiting pornographic or other adult oriented materials not lawfully available for sales to minors or drug-related paraphernalia (except that this provision shall not prohibit the operation of a bookstore or video store which carries a broad inventory of books or videos and other materials directed towards the interest of the general public [as opposed to specific segment thereof]);

(ix) Any flea market, amusement or video arcade, pool or billiard hall, car wash, tattoo parlor or dance hall (except that this provision shall not prohibit a restaurant from including three [3] or fewer video games as an incidental use to its operations);

(x) Any church, school, day care center or related religious or educational facility or religious reading room;

(xi) Any massage parlor (except that this provision shall not prohibit massages in connection with a beauty salon, health club or athletic facility); and

(xii) Any casino or other gambling facility or operation, including but not limited to, off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video gambling machines and similar devices, and bingo halls (except that this provision shall not prohibit government sponsored gambling activities or charitable gambling activities if such activities are incidental to the business operation being conducted by the occupant).