

Jill M. Richard
W. 134 M 8457
Executive Parkway
Menomonee, WI 53051
1074, Main Street
COMM-1074

E 2023855 B 3642 P 922
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER
2004 OCT 12 3:11 PM FEE 30.00 DEP MEC
REC'D FOR LANDMARK TITLE CO

**FIRST AMENDMENT TO OPERATION
AND EASEMENT AGREEMENT**

THIS FIRST AMENDMENT TO OPERATION AND EASEMENT AGREEMENT ("Amendment"), made and entered into as of the 29th day of September, 2004, by CONTINENTAL 139 FUND LLC, a Wisconsin limited liability company ("Continental"), and Kohl's Departments Stores, Inc., a Delaware corporation ("Kohl's").

WITNESSETH:

WHEREAS, Continental and Kohl's executed an Operation and Easement Agreement ("OEA") which was recorded on November 14, 2003, at the Davis County Recorder as E1932418, B3417, P1209; and

WHEREAS, Continental and Kohl's desire to amend the OEA in the respects hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, Continental and Kohl's agree as follows:

1. Exhibit C is hereby deleted and replaced with Exhibit C-1 and Exhibit C-2 attached hereto and incorporated herein.
2. Exhibit X is hereby deleted and replaced with Exhibit X attached hereto and incorporated herein.
3. The following language shall be added as Section 3.4:

"The property legally described on Exhibit D and depicted on the attached Exhibit E is hereafter known as Outlot 4. Outlot 4 may be legally subdivided into the SFP-B Property and Continental Property which are respectively legally described on the attached Exhibit D-1 and depicted on the attached Exhibit E-1. In order to ensure that the Continental Property and the SFP-B Property are adequately parked, each parcel must restrict the number of square feet of building permitted. Therefore, the Continental Property shall not contain more than 11,000 square feet of retail or business space and the SFP-B Property shall not contain more than 10,400 square feet (not including any warehouse use) of retail or business space "

4. The following language shall be added as Section 4.2(e):

"Notwithstanding anything to the contrary herein, including the division of Outlot 4 into two (2) separate tracts, the parking ratio shall not be applied individually to the SFP-B Property and Continental Property or against Outlot 4. However, the following parking restrictions shall apply. The owner of the SFP-B Property shall construct and maintain at least 29 parking spaces on the SFP-B Property. The owner of the Continental Property, (a) upon development of Continental's Property, shall construct and maintain at least 70 parking spaces and (b) prior to development of Continental's Property, shall construct and maintain at least 19 parking spaces on the Continental Property."

5. The following language shall be added as Section 7 1(e).

"The SFP-B Property cannot be used as a restaurant or a fast-food restaurant "

6. The following language shall be added as Section 7.1(e):

“Notwithstanding any provision herein that may be construed to the contrary, one Les Schwab (or its successors or assign) full service tire center, providing for the sales and service of tires, wheels, brakes, alignment, suspension, batteries, and related items may be located and operated within the Outlots.”

7. The following language shall be added as Section 9.1(d).

“There may be located upon each the Continental Property and the SFP-B Property a free-standing monument sign to advertise the businesses located on each such parcel.”

8 All other terms and conditions of the OEA are hereby reaffirmed and remain in full force and effect

IN WITNESS WHEREOF, Continental and Kohl’s have executed this Amendment as of the date first written 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

PM

KOHL’S DEPARTMENT STORES, INC., a Delaware corporation

By: *James T. McPhail*
Printed Name: James T. McPhail
Title: Sr. V.P. of Property Development

APPROVED
AJS

Attest: _____
Printed Name: _____
Title: _____

COURTESY RECORDING
This document is being recorded solely as a courtesy and an accommodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

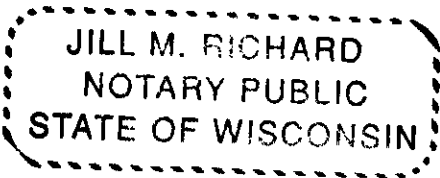
[ACKNOWLEDGMENTS ON FOLLOWING PAGE]

ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

This instrument was acknowledged before me on September 24, 2004, by Daniel J. Minahan, President of Continental Properties Company, Inc., Manager of Continental 139 Fund LLC, and that he executed such Agreement on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written

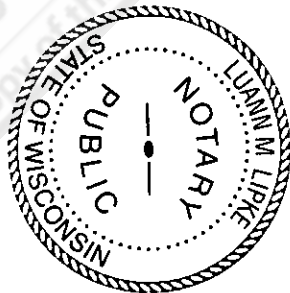


Jill M. Richard
Printed Name: Jill M. Richard
Notary Public, State of Wisconsin
My commission expires 6/18/06

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

This instrument was acknowledged before me on September 29th, 2004, by James T. McPhail as Sr. V.P. of Property Development of Kohl's Department Stores, Inc., a Delaware corporation, known to me to be the persons who executed the foregoing instrument on behalf of said corporation and acknowledged to me that they executed the same for the purposes therein stated.

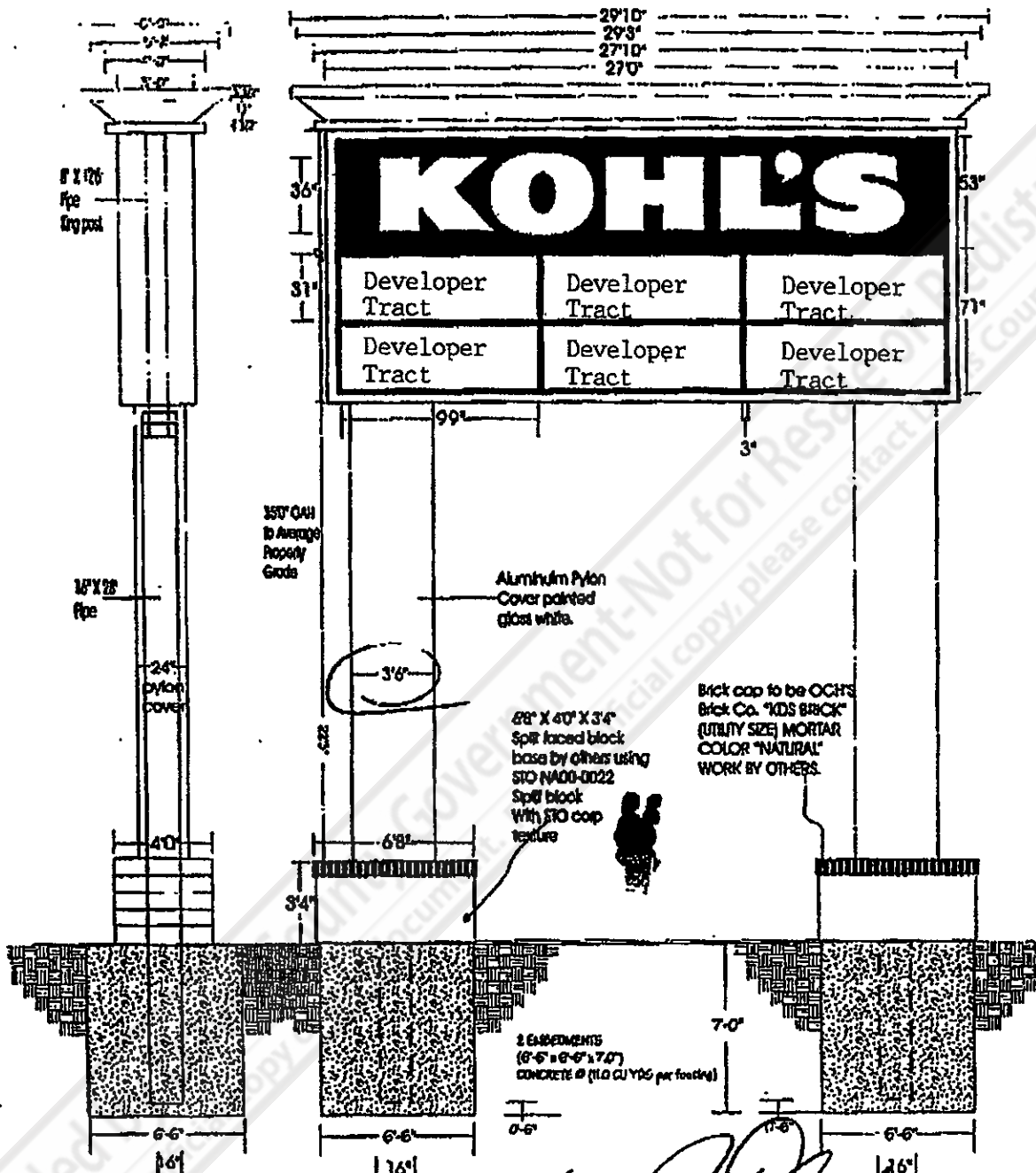
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.



LuAnn M. Lipke
Printed Name: LuAnn M. Lipke
Notary Public, State of Wisconsin
My commission expires 11-20-05

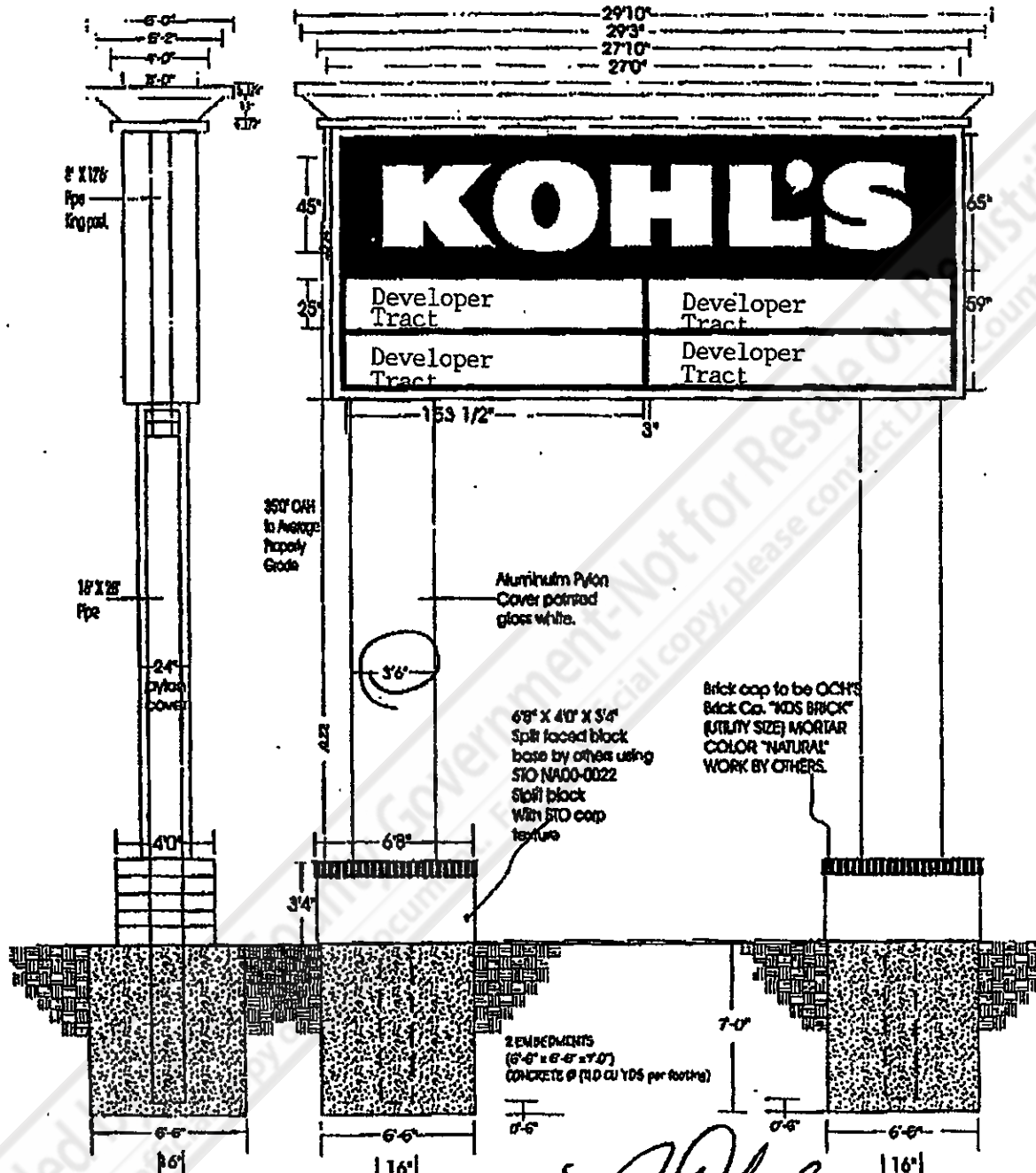
This instrument was drafted by:
Paul R. Seifert, Esq.
Continental Properties Company, Inc.,
10850 West Park Place, Suite 600, Milwaukee, WI 53224

Main Street Sign



Scope of Work: Manufacture and install (2) Internally Illuminated Q/F Display.
 Cabinet and Cornice to be Aluminum/Ange Iron Construction.
 Illumination to be 400 Watt Metal Halide Lamps.
 Cabinet to be Painted Gloss White. Cornice to be painted glass Light beige Grazi Nut ICI #554.
 Rectangular tubes to be painted Gloss white.
 Face material to be White Panoflex.
 "Kohl's" Burgundy vinyl to be contracted separately by Kohl's.
 Tenant Panels to be black vinyl border and Divider Lines with white reversed out areas for future tenants included by Yesco.
 Embedment and Pylon structure as per engineering.
 Stone base to be buy others.
 1. Each tenant may have its own logo, font, color, on sign panel.
 2. Continental to decide which retailers are allowed panels on signs.

Freeway Monument Sign



Scope of Work: Manufacture and install (2) internally illuminated D/F Display Cabinet and Conice to be Aluminum/Ange Iron Construction. Illumination to be 400 Watt Metal Halide Lamps. Cabinet to be Painted Gloss White, Conice to be painted glass Light beige Brazz Nut (CI #584). Rectangular tubes to be painted Gloss white. Face material to be White Panellex. "Kohl's" Burgundy vinyl to be contracted separately by Kohls. Tensile Panels to be black vinyl border and Divider lines with white reversed out areas for future tenants included by Yasca. Embedment and Pylon structure as per engineering. Stone base to be by others. 1: Each tenant may have its own logo, font, color on sign panel. 2: Continental to decide which retailers are allowed panels on signs.

[Handwritten Signature]
E/way

Legal Description of Outlot 4

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 on the Northerly right of way line of U.S. Highway 91, which is 1873.66 feet North 0°03'20" West along the Section line; 37.00 feet North 89°56'40" East; 131.00 feet South 0°03'20" East along the Future East right of way line of 1200 West Street (Sugar Street) to a point of intersection with said Northerly right of way line of U.S. Highway 91 and 399.95 feet South 51°45'09" East along said Northerly right of way line of U.S. Highway 91 from the Southwest corner of said Section 17; and running thence North 38°14'51" East 145.00 feet; thence North 34°43'15" East 81.28 feet; thence Northeasterly along the arc of a 98.00 foot radius curve to the right a distance of 88.37 feet (Central Angle equals 51°39'59" and Long Chord bears North 64°04'50" East 85.41 feet); thence North 89°54'50" East 219.66 feet; thence South 0°05'10" East 201.72 feet; thence South 0°03'15" West 81.61 feet; thence South 38°51'57" West 216.89 feet to the Northerly right of way line of U.S. Highway 91; thence North 51°45'09" West 377.76 feet along said Northerly right of way line of U.S. Highway 91 to the point of beginning.

TAX PARCEL NO. 10-251-0004



Legal Descriptions of Continental Property and SFP-B Property

SFP-B PROPERTY.

A part of Lot 4 Main Street Commons Subdivision, Layton City, Davis County, Utah; according to the official plat thereof; more particularly described as follows:

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

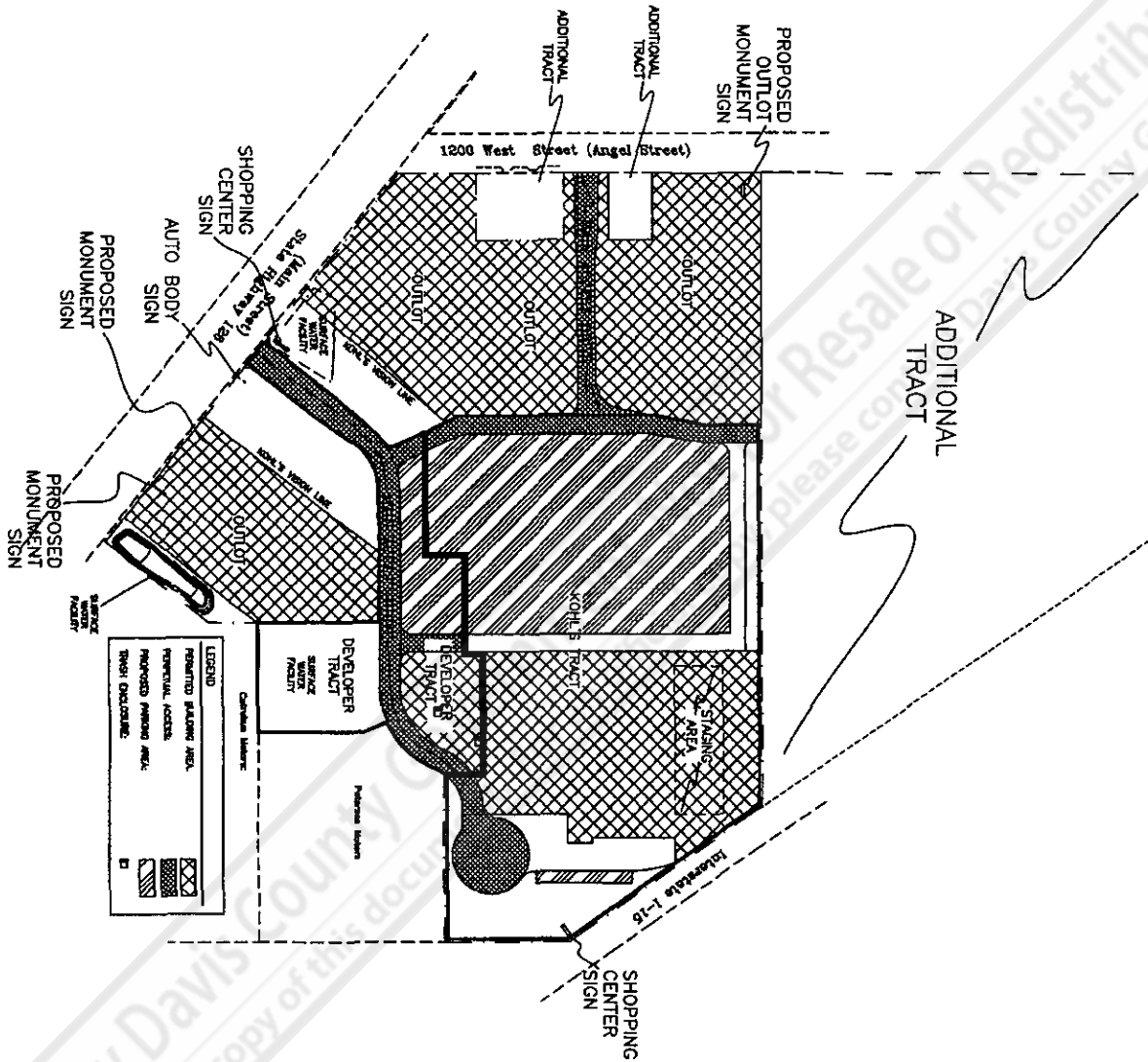
Beginning at a point on the Northerly right-of-way line of Main Street (U.S. Highway 126), which is 1417.33 North 0°03'20" West along the Section line and 448.89 feet North 89°56'40" East perpendicularly distant from said Section line from the Southwest corner of said Section 17; said point also being 124.92 feet South 51°45'09" East along said Northerly right-of-way line of Main Street from the Southwest corner of Lot 4, Main Street Commons Subdivision, Layton City, Davis County, Utah; running thence North 51°45'09" West 124.92 feet along said Northerly right-of-way line to the Southwest corner of said Lot 4 and the East right-of-way line of a private drive; thence Northeasterly along said East right-of-way line the following 4 (four) courses: North 38°14'51" East 145.00 feet; North 34°43'15" East 81.28 feet to a point of curvature; thence along the arc of a 98.00 foot radius curve to the right a distance of 88.37 feet (Central Angle equals 51°39'59" and Long Chord bears North 64°04'50" East 85.41) feet to a point of tangency; thence North 89°54'50" East 219.66 feet to the West boundary line of Lot 3, Main Street Commons Subdivision, Layton City, Davis County, Utah; thence South 0°05'10" East 196.09 feet along said West boundary line; thence South 89°54'50" West 38.73 feet; thence North 51°44'27" West 16.33 feet; thence North 63°20'55" West 39.49 feet; thence North 51°45'09" West 115.83 feet; thence South 38°14'51" West 253.48 feet to the point of beginning.

CONTINENTAL PROPERTY:

A part of Lot 4 Main Street Commons Subdivision, Layton City, Davis County, Utah; according to the official plat thereof; more particularly described as follows:

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

Beginning at a point on the Northerly right-of-way line of Main Street (U.S. Highway 126), which is 1417 33 North 0°03'20" West along the Section line and 448.89 feet North 89°56'40" East perpendicularly distant from said Section line from the Southwest corner of said Section 17; said point also being 124.92 feet South 51°45'09" East along said Northerly right-of-way line of Main Street from the Southwest corner of Lot 4, Main Street Commons Subdivision, Layton City, Davis County, Utah, and running thence North 38°14'51" East 253.48 feet; thence South 51°45'09" East 115.83 feet; thence South 63°20'55" East 39.49 feet; thence South 51°44'27" East 16.33 feet; thence North 89°54'50" East 38.73 feet to the West line of Lot 3 of said subdivision; thence South 0°05'10" East 5.63 feet along said West line to the Southwest corner of said Lot 3; thence South 0°03'15" West 81.61 feet; thence South 38°51'57" West 216 89 feet to the Northerly right-of-way line of said Main Street; thence North 51°45'09" West 252.84 feet along said Northerly line to the point of beginning



OEA-EX X

Project No. C-139
 Sheet No. NORTH

CONTINENTAL PROPERTIES
 COMPANY INC.
 P.O. Box 220, Menomonie Falls, Wisconsin 53062
 PHONE: (202)502-6600 FAX: (202)502-6622 E-MAIL: cont_dwg@properties.com

CITY: LAYTON	STATE: UT	DATE: 10/08/2003
PROJECT: MAIN AND ANGEL STRBTS NSC	DRAWN BY: DNS	CHECKED BY: [Signature]
EXHIBITS: V:\KOHLENOVA_EX_X.dwg	SCALE: 1:200	

OEA EXHIBIT X

REVISIONS		
REV	DESCRIPTION	DATE
6	UNRECORDED RETENTION AREA	08/21/2004 DNS
5	ADD PROPOSED SIGN ON SOUTHWEST OUTLOT	03/31/2004 DNS
4	REVISED DEVELOPER TRACT PER OEA AGREEMENT REVISED SIGNS TO MATCH SITE PLAN	01/27/2004 DNS
3	REVISED PER OEA AGREEMENT REVISED SIGNS	01/23/2004 DNS
2	REVISED PER REGA A'S COMMENTS	01/13/2004 DNS
1	REVISE REGA'S TRACT PER FINAL PLAN ADD ADDITIONAL LABELS FOR SIGNS AND RETENTION AREAS	01/03/2004 DNS

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**MAIN STREET
(STATE HWY 126)**

OUTLOT 4

EXISTING PRIVATE DRIVE



CONTINENTAL PROPERTIES
COMPANY INC.
 P.O. Box 220, Menomonie Falls, Wisconsin 53052
 PHONE: (262)502-5500 FAX: (262)502-5522 E-MAIL: cad_dwg@properties.com

OEA
EXHIBIT E

REVISIONS		
REV	DESCRIPTION	DATE

CITY	LAYTON	STATE	UT	DATE	07/24/2004
PROJECT	MAIN AND ANGEL STREETS NEC		DRAWN BY	DLS	
SCALE	1:100		CHECKED BY	---	

Sheet No. **EX-E**

Project No. **C-139**

NORTH

EXHIBITS\OUTLOT4\OEA_EX_E.DWG

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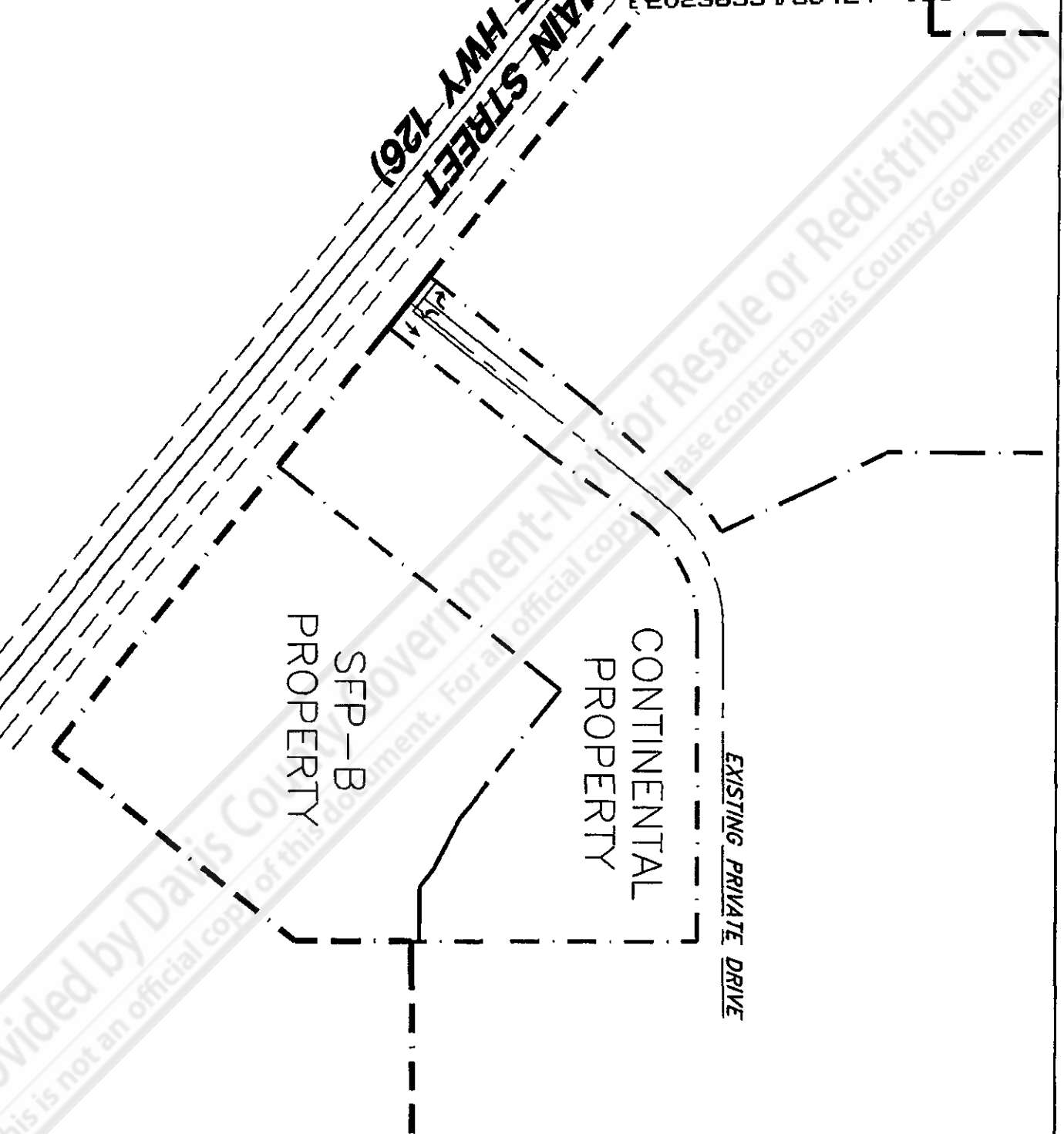
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STATE HWY (26)
MAIN STREET

SFP-B
PROPERTY

CONTINENTAL
PROPERTY

EXISTING PRIVATE DRIVE



Sheet No.
EX-E1

Project No.
C-139

CONTINENTAL PROPERTIES
COMPANY INC.
P.O. Box 220, Menomonie Falls, Wisconsin 53052
PHONE: (262)502-5600 FAX: (262)502-5522 E-MAIL: cad_dwg@properties.com

CITY	STATE	DATE
LAYTON	WI	07/28/2004
PROJECT	SCALE	DATE
MAIN AND ANGEL STREETS NEC	1:100	---
DATE	SCALE	DATE
08/27/04	1:100	---

OEA
EXHIBIT E1

REVISIONS		
REV	DESCRIPTION	DATE