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RICHARD T. MAUGHAN

DAVIS COUNTY, UTAH RECORDER

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ACCESS EASEMENT AGREEMENT

DEP RT REC'D FOR LAYTON CITY CORP

This Access Easement Agreement (this "Easement") is made as of this 17th day of December, 2008 by and between The Courtyards at Angel Street, LC, a Utah limited liability company ("Grantor"), Continental 139 Fund LLC, a Wisconsin limited liability company ("Continental Grantee") and SFP-C Limited Partnership ("SFP-C Grantee", and together with the Continental Grantee, the "Grantee").

WHEREAS, Grantor owns certain real property in the City of Layton, County of Davis, State of Utah, (a) as more particularly described on <u>Exhibit A</u> attached hereto and incorporated herein by reference and as depicted as the "Grantor Parcel" on <u>Exhibit E</u> attached hereto and incorporated herein by reference (the "Grantor Parcel") and (b) as more particularly described on <u>Exhibit D</u> attached hereto and incorporated herein by reference and as depicted as the "Easement Area" on <u>Exhibit E</u> (the "Easement Area"); and

WHEREAS, Continental Grantee owns certain real property in the City of Layton, County of Davis, State of Utah, as more particularly described on Exhibit B attached hereto and incorporated herein by reference and as depicted as the "Continental Grantee Parcel" on Exhibit E attached hereto and incorporated herein by reference (the "Continental Grantee Parcel"); and

WHEREAS, SFP-C Grantee owns certain real property in the City of Layton, County of Davis, State of Utah, as more particularly described on <u>Exhibit C</u> attached hereto and incorporated herein by reference and as depicted as the "SFP-C Grantee Parcel" on <u>Exhibit E</u> attached hereto and incorporated herein by reference (the "SFP-C Grantee Parcel" and together with the Continental Grantee Parcel, the "Grantee Parcel"); and

WHEREAS, Grantor desires to provide to Grantee, and Grantee desires to receive from Grantor, an easement upon, over, across and along the Easement Area for purposes of pedestrian and vehicular access, ingress and egress at any and all times on and over the Easement Area to, from and between the Grantee Parcel and any and all streets, roadways and highways adjacent to the Easement Area, all upon the terms, provisions and conditions set forth in this Easement; and

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and the terms, conditions, covenants and mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GRANT OF EASEMENT. Grantor does hereby grant, convey and warrant to Grantee and Grantee's agents, contractors, tenants, licensees, lessees, guests, invitees, grantees, employees, representatives, successors (including, without limitation, any and all successors to Grantee in title to the Grantee Parcel) and assigns (collectively, the "Grantee Parties"), a non-exclusive, perpetual right and

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easement (which easement shall be appurtenant to the Grantee Parcel) upon, over, through, across and along the Easement Area for the purposes of pedestrian and vehicular access, ingress and egress at any and all times to, from and between the Grantee Parcel and to and from any and all streets, roadways, paths, driveways and highways located at any time adjacent to the Easement Area.

- 2. MAINTENANCE OF EASEMENT AREA: USE OF GRANTOR PARCEL. Grantor shall at all times keep and maintain the Easement Area, in good condition and repair, reasonable wear and tear excepted, and otherwise in a manner consistent with the use and occupancy thereof by the Grantee Parties for the purposes specified in this Easement. Neither Grantor nor any of Grantor's agents, contractors, tenants, licensees, lessees, guests, invitees, grantees, employees, representatives, successors (including, without limitation, any and all successors to Grantor in title to the Grantor Parcel) and assigns (collectively, the "Grantor Parties") shall use or occupy the Easement Area, nor grant or confer upon any other person or entity any right to use or occupy the Easement Area, for any purpose which is inconsistent with Grantee's use thereof for the purposes specified in this Easement.
- 3. NO PUBLIC RIGHTS: NO THIRD PARTY BENEFICIARIES. Nothing contained in this Easement shall or shall be deemed to constitute a gift or dedication of any portion of the Easement Area to the general public, for the benefit of the general public, or for any public purpose whatsoever, it being the intention of Grantor and Grantee that the Easement shall be strictly limited to and for the purposes expressed herein. Grantor and Grantee agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Easement nor any of the rights and privileges conferred herein.
- 4. <u>CONDEMNATION OF EASEMENT AREA</u>. If all or any part of the Easement Area is condemned or taken by any duly constituted authority for a public or quasipublic use, then that portion of the resulting award attributable to the value of any land within the Easement Area so taken shall be payable only to Grantor. No claim shall be made by Grantee against the Grantor Parcel or any portion thereof.
- 5. NONDISTURBANCE. Grantee shall not interfere with the activities of the Grantor Parties in connection with Grantee's use of the Easement Area.
- 6. NOTICES. Any notice or election herein required or permitted to be given or served by any party hereto upon the other shall be in writing and delivered by a national courier service or sent by certified mail addressed as follows:

If to Grantor: Trophy Land Development LLC Attention: Bill Pepperone 785 S 400 E Orem, UT 84097

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If to Continental Grantee:
Continental 139 Fund LLC
c/o Continental Properties Company, Inc.
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051
Attention: Law Department

If to SFP-C Grantee: SFP-C Limited Partnership 646 N.W. Madras Highway, Prineville, OR 97754

or to such other address as any party may from time to time designate by notice in writing to the other delivered in accordance with this Section. Any such notice if mailed as provided herein shall be deemed to have been given or served on the date mailed and shall be deemed to have been received upon the earlier of expiration of five (5) business days after the date of mailing or upon actual receipt by the receiving party. Any notice delivered by courier shall be deemed to have been given or served upon the party to whom delivered upon the delivery date. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

- 7. <u>COSTS</u>. Upon the occurrence of any breach or default under this Easement by either party, the defaulting party shall be liable for and shall reimburse the non-defaulting party upon demand for all reasonable attorney's fees and costs incurred by non-defaulting party in enforcing the defaulting party's obligations under this Easement, whether or not the non-defaulting party files legal proceedings in connection therewith.
- 8. NO STRICT CONSTRUCTION. The rule of strict construction does not apply to the grant of easement contained herein. This grant shall be given a reasonable construction in order that the intention of the parties to confer a commercially useable right of enjoyment to Grantee with respect to such easement shall be effectuated. The parties acknowledge that the parties and their counsel have reviewed and revised this Easement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement or any exhibits or amendments hereto.
- 9. <u>COUNTERPARTS</u>. This Easement may be executed in several counterparts, each of which shall be deemed an original. The signature of the parties hereto on this Easement may be executed and notarized on separate pages, and when attached to this Easement shall constitute one complete document.

- 10. <u>CAPTIONS</u>. The section headings appearing in this Easement are for convenience of reference only, and are not intended, to any extent and for any purpose, to limit or define the text of any section or subsection hereof.
- 11. <u>NO PARTNERSHIP</u>. None of the terms and provisions of this Easement shall be deemed to create a partnership between or among the parties hereto in their respective businesses or otherwise, nor shall any terms or provisions of this Easement cause them to be considered joint venturers or members of any joint enterprise.
- 12. <u>FURTHER ASSURANCES</u>. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.
- 13. <u>EXHIBITS</u>. All exhibits referred to herein and attached hereto shall be deemed part of this Easement.
- 14. <u>RECORDING</u>. This Easement shall be recorded in the records of Davis County, Utah.
- 15. GOVERNING LAWS. The internal laws of the State of Utah shall apply to the Easement without giving effect to the choice of law provisions of such State.
- 16. <u>SEVERABILITY</u>. If any term, provision or condition contained in the Easement shall, to any extent, be invalid or unenforceable, the remainder of the Easement (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 the Easement shall be valid and enforceable to the fullest extent permitted by law.
- 17. <u>NO WAIVER</u>. 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.
- 18. MODIFICATION. This Easement, or any covenant, restriction or undertaking contained herein, may be terminated, extended or amended as to any portion of any of the properties subject hereto only by the recording of the appropriate documents in the records of Davis County, Utah, which documents must be executed by all of the owners, mortgagees and other holders of recorded interest in any of the properties affected thereby as of the date of such documents.
- 20. <u>COVENANTS RUNNING WITH THE LAND</u>. The terms, conditions, rights and easements contained herein shall be covenants running with the land and shall be perpetual. This Easement shall be recorded against the Easement Area, and the terms and conditions contained herein shall bind, inure to the benefit of, and be

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enforceable by, the parties hereto and their respective successors and assigns (including, without limitation, the successors in title to Grantor to the Easement Area and the Grantor Parcel, and the successors in title to Grantee to the Grantee Parcel). The rights of use described herein shall extend to the Grantee Parties. The obligations imposed by this Easement shall apply only to the then current owners of the Grantor Parcel and the Grantee Parcel. The Agreement shall not operate to convey to Grantee Grantor's fee interest in the Grantor Parcel or any part thereof.

- 21. WAIVER OF JURY TRIAL. Grantor and Grantee hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Easement against the other on any matters whatsoever arising out of or in any way connected with this Easement.
- 22. <u>ESTOPPEL</u>. Each party hereto shall from time to time as requested by the other party execute and deliver to the requesting party (or to a party designated), within thirty (30) days of demand therefore, a written statement which shall confirm that there is no default under this Easement (or specifying any default) and which shall contain such other information or confirmations as may reasonably be required.

(SEPARATE SIGNATURE PAGE(S) TO FOLLOW)

(Remainder of Page Intentionally Left Blank)



CONTINENTAL GRANTEE:

CONTINENTAL 139 FUND LLC, a Wisconsin limited liability company

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

Daniel J. Minthan,

The

SFP-C GRANTEE:

SFP-C LIMITED PARTNERSHIP

By:

By: SLC-C LLC, its general partner

By:
Name:
Its:

GRANTOR:

THE COURTYARDS AT ANGEL STREET, LC a Utah limited liability company

By: Trophy Homes, LC, its Manager

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have exe	ecuted this cross access agreement this
CONTINENTAL GRANTEE:	
CONTINENTAL 139 FUND LLC, a W sconsin limit	ted liability company
By: CONTINENTAL PROPERTIES Corporation, its manager By:	
Daniel J. Minahan, President	
SFP-C GRANTEE:	The Carity
SFP-C LIMITED PARTNERSHIP	
By: SLC-C LLC, its general partner	rot / com
By:	Corey J. Parks, Secretary of SLC-C LLC, an Oregon Limited Liability Company it's General Partner
GRANTOR:	
THE COURTYARDS AT ANGEL STREET, LC a Utah limited liability company	
By: Trophy Homes, LC, its Manager	
By:	·
Name: William Mostspary Title: Marager	
- U	

ACKNOWLEDGMENTS

STATE OF <u>()Isconsio</u>)) SS.
Wankasha_ COUNTY)
Personally came before me this 17th day of
Sanda S. Smallet
Notary Public, County, County, Wy Commission Expires: Shahi
STATE OF UTAH))SS
COUNTY OF)
Personally came before me this 22 relian of represent 2008, the above named Nilliam L. Mary Mary Mary of Trophy Homes LC, the Manager of The Courtyards At Angel Street, LC 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. Mary Melic State of Utah Notary Public, Mary Melic State of Utah Notary Public, Mary Melic State of Utah
STATE OF OREGON)) ss.
COUNTY OF CROOK)
On the day of of , 2008, personally appeared before me , the General Partner of SFP-C
Limited Partnership, the signer of the within instrument who duly acknowledged to me that he executed the same.
Notary Public, State of Oregon My commission expires:

ACKNOWLEDGMENTS

STATE OF
) \$ S.
COUNTY)
Personally came before me this, and, 2008 the above
named Daniel J. Minahan, the President of Continental Properties Company, Inc., manager
of Continental 139 Fund LLC, to me known to be such President and acknowledged that he
executed the foregoing instrument as the deed of said corporation, by its authority.
Notary Public, County,
My Commission Expires:
STATE OF UTAH)
)SS
COUNTY OF
Personally came before me this 22rday of (sptember, 2008, the above named
William L. Montgomen Marricel of Trophy Homes LC, the Manager of The
Courtyards At Angel Street, LC 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.
Stolar Samen
Notary Public, County, Utah (8 462 NORTH 1200 EAST
My Commission: 1.12.10 COMM. EXP. 07-12-2010
COMM. EAT. 07-18-2010
STATE OF OREGON)) ss.
COUNTY OF CROOK)
On the 25 day of Naviember 2008 personally appeared before me
On the 25 day of November, 2008, personally appeared before me 2008, Secretary of SLC-C LLC, the General Partner of SFP-C Limited Partnership, the signer of the within instrument who duly acknowledged to me that he
Limited Partnership, the signer of the within instrument who duly acknowledged to me that he
executed the same.
K. : 1/2 / 1/2000
DUMLEY OFFICIAL SEAL
Notary Public, State of Oregon Day Notary Public, State of Oregon Notary Public Mind Notary Public Oregon
My commission expires: 7/10/2011 NOTARY FUELIC-OREGON COMMISSION NO. 417109

COMMISSION NO. 417162 MY COMMISSION EXPIRES JULY 10, 2011

EXHIBIT A

Grantor's Parcel

Beginning at a point on the East right-of-way line of 1200 West Street and the West boundary of Lot 5, Main Street Commons Subdivision, an official subdivision on file with the Davis County Recorder, South 00° 03' 20" East 600.15 feet along the Section line and East 33.00 feet from the West 1/4 corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian;

Thence along the boundaries of said Lot 5 the following courses and distances, North 00° 03' 20" West 51.88 feet along said East right-of-way; thence North 89° 56' 40" East 112.00 feet; thence North 00° 24' 45" West 73.86 feet; thence North 89° 59' 17" West 111.54 feet to said East right-of-way; thence North 00° 03' 20" West 186.08 feet, leaving said West boundary of Lot 5 and continuing along the right-of-way to the Southwest corner of the Seng Chwee Wang Property, Book 2895 Page 273; thence along said property line North 89° 25' 20" East 155.88 feet to the Sandry Property, Book 3735 Page 2591; thence along said Sandry Property the following courses and distances, South 00° 56' 00" East 0.18 feet; thence North 89° 28' 40" East 34.73 feet; thence South 00° 03' 20" East 11.81 feet; thence East 232.11 feet to the line common to Lots 1 and 5 of the aforesaid subdivision; thence leaving said Sandry Property line and proceeding along said common lot line the following courses and distances, South 00° 17' 00" West 89.15 feet; thence South 10° 56' 09" West 86.59 feet; thence South 00° 05' 09" East 127.68 feet; thence leaving said common lot line, West 405.75 feet to the beginning.



EXHIBIT B

Continental Grantee Parcel

Parcel 1

Lot 5 of Main Street Commons Subdivision, according to the official plat thereof, filed March 17, 2004, as Entry 1970660, in Book 3498, at Page 1169, of the Official Records of the Davis County Recorder, excepting therefrom the following tract of land:

That portion of Lot 5 of Main Street Commons Subdivision and other unplatted lands, previously conveyed via the Special Warranty Deed, filed on June 6, 2008, as Entry 2370817, in Book 4549, at Pages 281-283, of the Official Records of the Davis County Recorder, which excepted tract is more particularly described as follows:

Beginning at a point on the East right-of-way line of 1200 West Street and the West boundary of Lot 5, Main Street Commons Subdivision, an official subdivision on file with the Davis County Recorder, South 00° 03' 20" East 600.15 feet along the Section line and East 33.00 feet from the West 1/4 corner of Section 17, Township 4 North, Range 1 West, Salt Lake Base and Meridian;

Thence along the boundaries of said Lot 5 the following courses and distances, North 00° 03' 20" West 51.88 feet along said East right-of-way; thence North 89° 56' 40" East 112.00 feet; thence North 00° 24' 45" West 73.86 feet; thence North 89° 59' 17" West 111.54 feet to said East right-of-way; thence North 00° 03' 20" West 186.08 feet, leaving said West boundary of Lot 5 and continuing along the right-of-way to the Southwest corner of the Seng Chwee Wang Property, Book 2895 Page 273; thence along said property line North 89° 25' 20" East 155.88 feet to the Sandry Property, Book 3735 Page 2591; thence along said Sandry Property the following courses and distances, South 00° 56' 00" East 0.18 feet; thence North 89° 28' 40" East 34.73 feet; thence South 00° 03' 20" East 11.81 feet; thence East 232.11 feet to the line common to Lots 1 and 5 of the aforesaid subdivision; thence leaving said Sandry Property line and proceeding along said common lot line the following courses and distances, South 00° 17' 00" West 89.15 feet; thence South 10° 56' 09" West 86.59 feet; thence South 00° 05' 09" East 127.68 feet; thence leaving said common lot line, West 405.75 feet to the beginning.

Parcel 2:

Lot 3 Main Street Commons Subdivision, according to the official plat thereof, filed March 17, 2004, as Entry 1970660, in Book 3498, at Page 1169, of the Official Records of the Davis County Recorder.

Parcel 3:

A part of Lot 4 Main Street Commons Subdivision, according to the official plat thereof; filed March 17, 2004, as Entry 1970660, in Book 3498, at Page 1169, of the Official Records of the Davis County Recorder.

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.

EXHIBIT C

SFP-C Grantee Parcel

A part of Lot 4 Main Street Commons Subdivision, according to the official plat thereof; filed March 17, 2004, as Entry 1970660, in Book 3498, at Page 1169, of the Official Records of the Davis County Recorder.

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

EXHIBIT D

Easement Area

BEGINNING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF 1200 WEST STREET AND THE WEST BOUNDARY OF LOT 5, MAIN STREET COMMONS SUBDIVISION, AN OFFICIAL SUBDIVISION ON FILE WITH THE DAVIS COUNTY RECORDER, S.00°03'20"E. 600.15 FEET ALONG THE SECTION LINE AND EAST 33.00 FEET FROM THE WEST 1/4 CORNER OF SECTION 17, T.4N., R.1W., SLB&M;

THENCE N.00°03'20"W. 33.65 FEET; THENCE S.89°57'49"E. 98.54 FEET; THENCE S.85°48'30"E. 50.01 FEET; THENCE S.89°57'42"E. 199.15 FEET TO A POINT OF CURVATURE OF A NON-TANGENT 50.18-FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 68.72 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 78°28'20" AND BEING SUBTENDED BY A CHORD THAT BEARS N.48°14'49"E. 63.48 FEET TO THE CURVES END; THENCE N.11°03'06"E. 55.69 FEET TO THE EAST LINE OF GRANTORS PROPERTY; THENCE ALONG SAID EAST LINE S.00°05'09"E. 126.73 FEET TO THE SOUTHEAST CORNER OF GRANTORS PROPERTY; THENCE WEST ALONG GRANTORS SOUTH PROPERTY LINE, 405.75 FEET TO THE BEGINNING.

CONTAINS 0.32 ACRES OF LAND.

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EXHIBIT E

Depiction of Parcels and Easement Area

(see attached)

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