

10-285-0001 thru 0011 **THIRD AMENDMENT TO OPERATION**

AND EASEMENT AGREEMENT

10-251-0001 thru 2003, 0009, 0010
10-283-0001 thru 0019
10-284-0001 thru 0017

THIS THIRD AMENDMENT TO OPERATION AND EASEMENT AGREEMENT ("Amendment"), made and entered into as of the 6th day of February, 2009, by CONTINENTAL 139 FUND LLC, a Wisconsin limited liability company ("Continental"), KOHL'S DEPARTMENT STORES, INC., a Delaware corporation ("Kohl's"), and COURTYARDS AT ANGEL STREET, LC, a Utah limited liability company ("Courtyards").

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, as amended by that certain First Amendment to Operation and Easement Agreement recorded on October 12, 2004 at the Davis County Recorder as E2023855, B3642, P922 ("First Amendment") and by that certain Second Amendment to Operation and Easement Agreement recorded on June 6, 2008 at the Davis County Recorder as E2370816, B4549 P272-80 ("Second Amendment") (the OEA, First Amendment and Second Amendment shall collectively be referred to as the "Agreement"); and

WHEREAS, due to a scrivener's error in the First Amendment the legal descriptions for the "Continental Property" and the "SPF-B Property," as each is defined in the First Amendment, were transposed in Exhibit D-1; and

WHEREAS, due to a scrivener's error, the Second Amendment failed to remove the property now owned by Courtyards from the "Shopping Center," as defined in the OEA and instead removed the Continental Property and the SPF-B Property; and

WHEREAS, Continental, Kohl's and Courtyards desire to amend the Agreement to correct such errors and further amend the Agreement in the respects hereinafter set forth.

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

1. Exhibit B-1 (attached to the Second Amendment) is hereby deleted and replaced with Exhibit B-1 attached hereto and incorporated herein.
2. Exhibit D-1 (attached to the First Amendment) is hereby deleted and replaced with Exhibit D-1 attached hereto and incorporated herein.
3. Exhibit X is hereby deleted and replaced with Exhibit X attached hereto and incorporated herein.

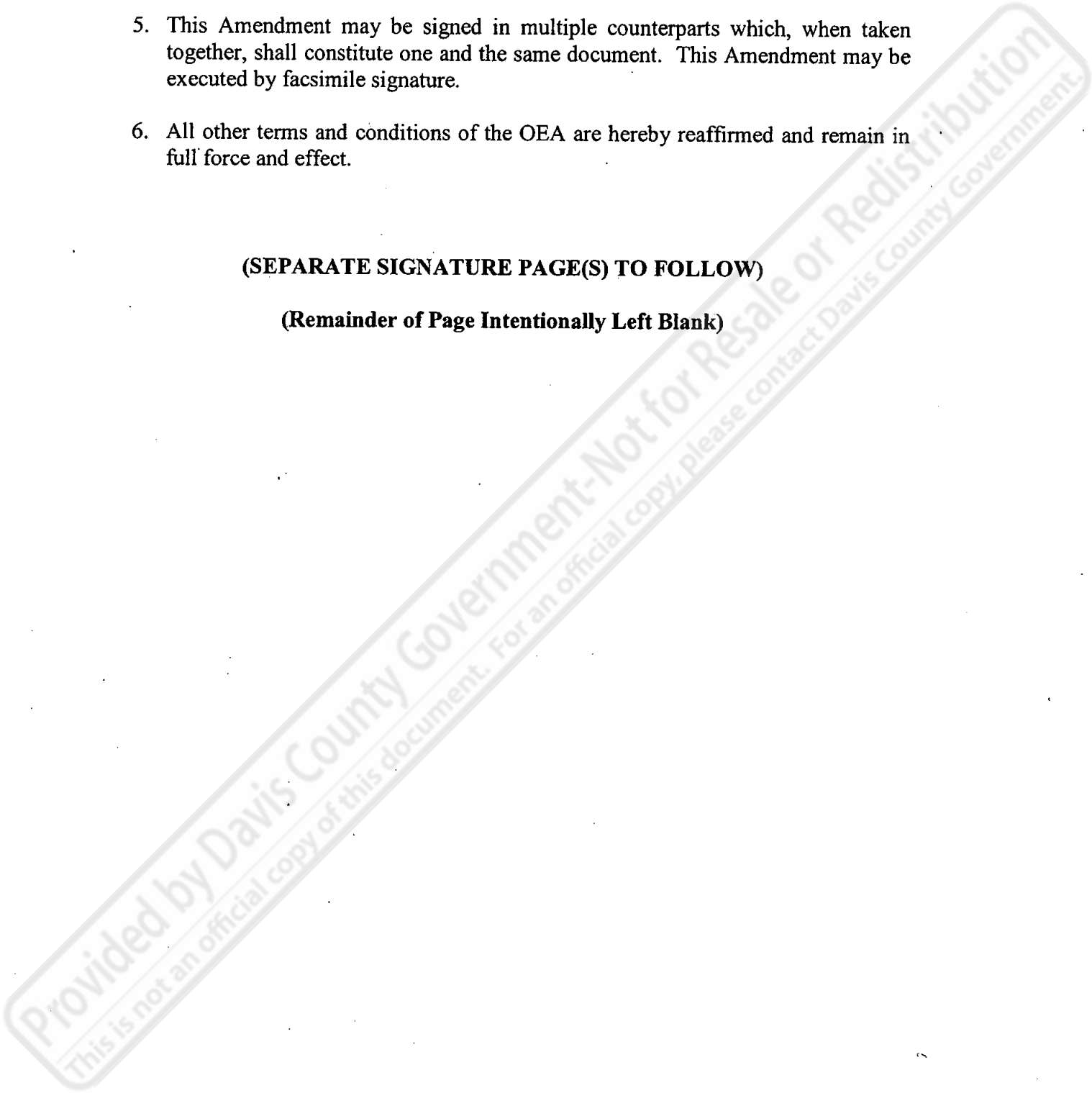
NKA lots 1, 2, 3, 8, 10 Main Street Commons
 units 1-6 bldg 1, Units 1-3 bldg 2 & Common Area Angel Street Townhomes 1
 Units 1-4 bldg 3, Units 1-6 bldg 4, Units 1-6 bldg 5 & Common Area Angel
 Street Townhomes 2
 Units 1-4 bldg 6 & Common Area } Angel Street Townhomes 3
 1-6 bldg 7

#2HF

4. Notwithstanding the fact that the Shopping Center no longer contains the property labeled as "Access Easement" on Exhibit X, the cost of lighting and irrigating the southern boundary of the Access Easement shall continue to be paid by Operator and shall constitute an Operator Maintenance Cost.
5. This Amendment may be signed in multiple counterparts which, when taken together, shall constitute one and the same document. This Amendment may be executed by facsimile signature.
6. All other terms and conditions of the OEA are hereby reaffirmed and remain in full force and effect.

(SEPARATE SIGNATURE PAGE(S) TO FOLLOW)

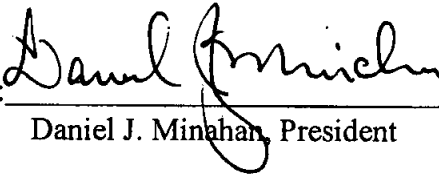
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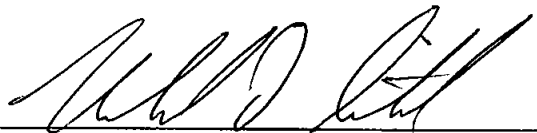
IN WITNESS WHEREOF, Continental, Kohl's and Courtyards have executed this Amendment as of the date first written above.


CONTINENTAL 139 FUND LLC, a Wisconsin limited liability company

By: Continental Properties Company, Inc., a Wisconsin corporation, its Manager

By: 
Daniel J. Minahan, President

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

By: 
Printed Name: Michael D. Distel
Title: Senior Vice President of Real Estate

Attest: 
Printed Name: Richard D. Schepp
Title: Secretary

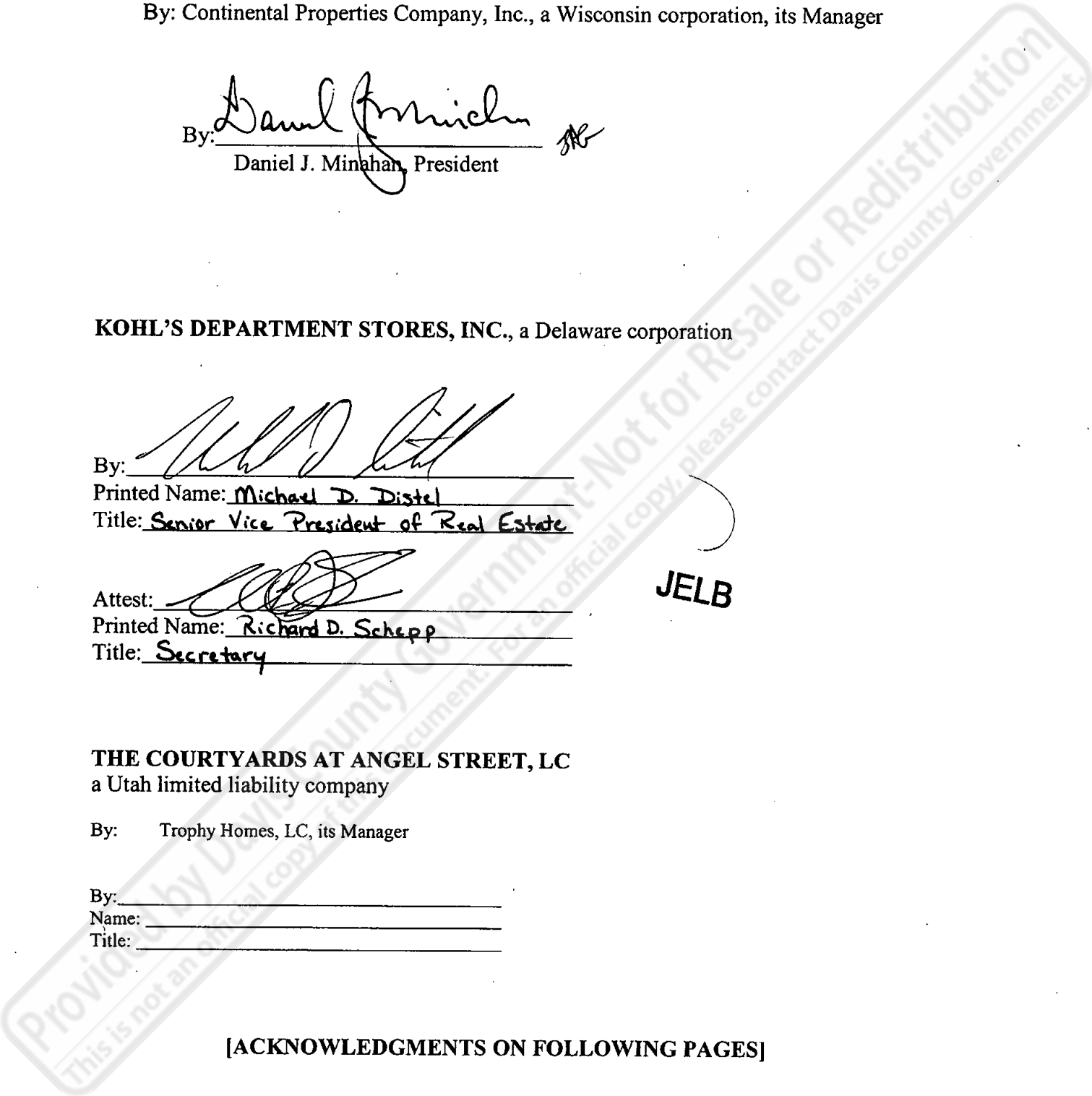
JELB

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

By: Trophy Homes, LC, its Manager

By: _____
Name: _____
Title: _____

[ACKNOWLEDGMENTS ON FOLLOWING PAGES]



IN WITNESS WHEREOF, Continental, Kohl's and Courtyards 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, President

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

By: _____
Printed Name: _____
Title: _____

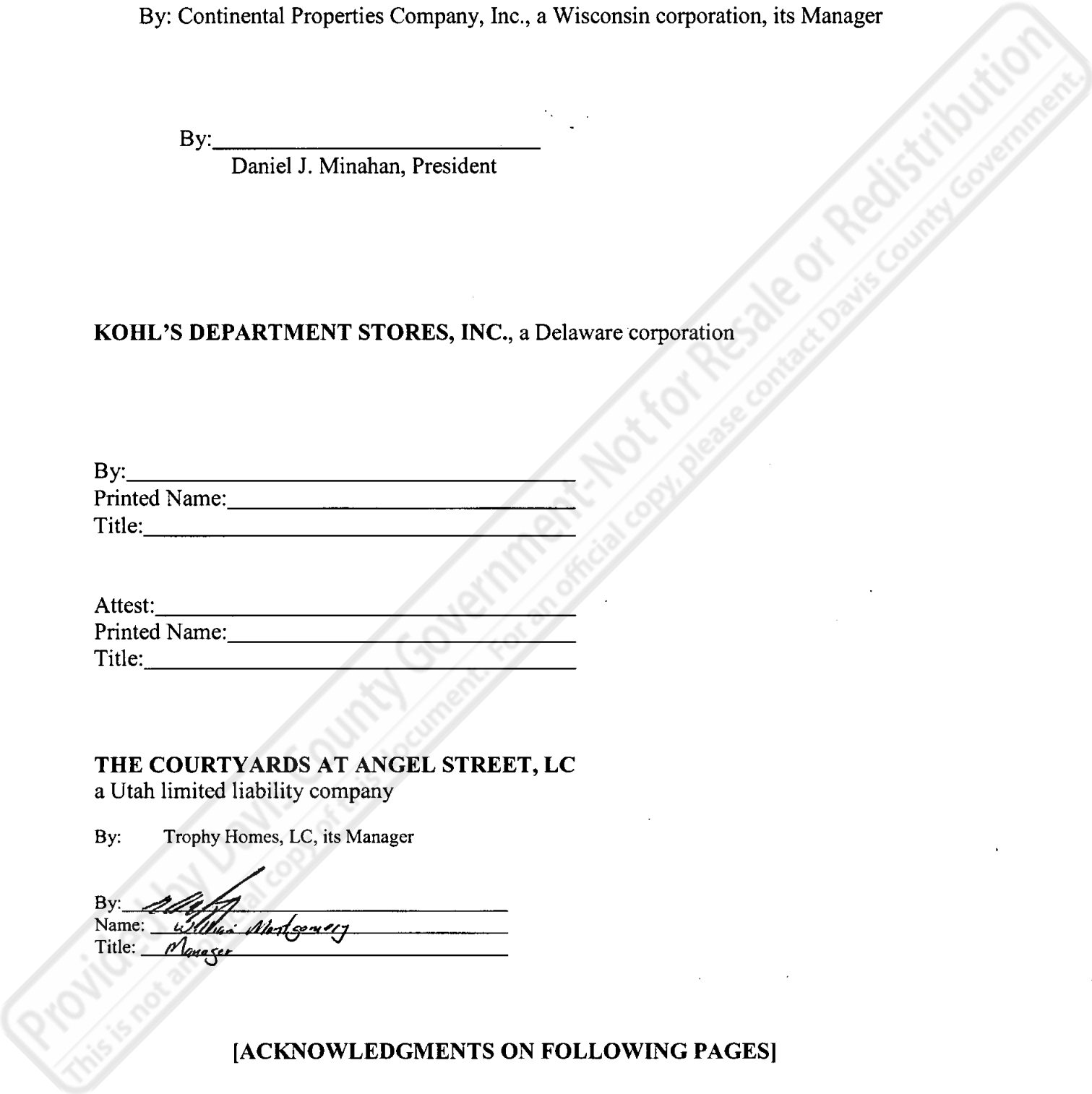
Attest: _____
Printed Name: _____
Title: _____

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

By: Trophy Homes, LC, its Manager

By: _____
Name: William Montgomery
Title: Manager

[ACKNOWLEDGMENTS ON FOLLOWING PAGES]

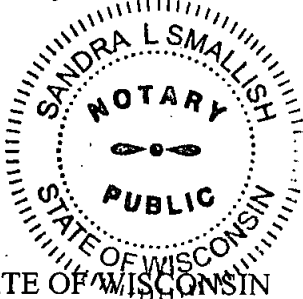


ACKNOWLEDGMENTS

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

This instrument was acknowledged before me on February 16, 2008, 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.



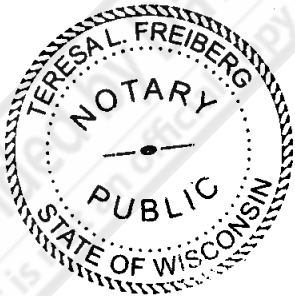
Sandra L. Smallish

Printed Name: Sandra L. Smallish
Notary Public, State of Wisconsin
My commission expires 5/15/11

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

This instrument was acknowledged before me on February 4, 2008⁹, by Michael D. Distel and Richard D. Schepp as SVP of Real Estate and Secretary 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.



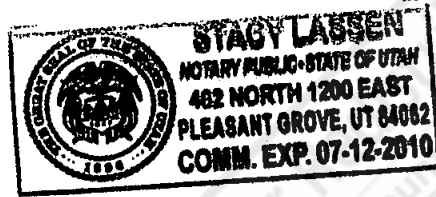
Teresa L. Freiberg

Printed Name: Teresa L. Freiberg
Notary Public, State of Wisconsin
My commission expires 8-5-12

STATE OF UTAH)
)SS
COUNTY OF Utah)

Personally came before me this 22nd day of September, 2008, the above named ^{William L. Montgomery} ~~Jeffery~~
~~D. Southard~~, Manager 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.

Stacy Larsen
Notary Public, Utah County, Utah
My Commission: 7.12.10



This instrument was drafted by:
Continental Properties Company, Inc.,
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051

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EXHIBIT B-1

Legal Description of the Outlot Tracts

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 $00^{\circ} 03' 20''$ 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 $00^{\circ} 03' 20''$ West 51.88 feet along said East right-of-way; thence North $89^{\circ} 56' 40''$ East 112.00 feet; thence North $00^{\circ} 24' 45''$ West 73.86 feet; thence North $89^{\circ} 59' 17''$ West 111.54 feet to said East right-of-way; thence North $00^{\circ} 03' 20''$ 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 $89^{\circ} 25' 20''$ East 155.88 feet to the Sandry Property, Book 3735 Page 2591; thence along said Sandry Property the following courses and distances, South $00^{\circ} 56' 00''$ East 0.18 feet; thence North $89^{\circ} 28' 40''$ East 34.73 feet; thence South $00^{\circ} 03' 20''$ 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 $00^{\circ} 17' 00''$ West 89.15 feet; thence South $10^{\circ} 56' 09''$ West 86.59 feet; thence South $00^{\circ} 05' 09''$ East 127.68 feet; thence leaving said common lot line, West 405.75 feet to the beginning.

Parcel 2:

Legal Description of Outlot 4

Lot 4 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.

EXHIBIT D-1

Legal Descriptions of Continental Property and SFP-B Property

CONTINENTAL PROPERTY:

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 $0^{\circ}03'20''$ West along the Section line and 448.89 feet North $89^{\circ}56'40''$ East perpendicularly distant from said Section line from the Southwest corner of said Section 17; said point also being 124.92 feet South $51^{\circ}45'09''$ 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 $51^{\circ}45'09''$ 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 $38^{\circ}14'51''$ East 145.00 feet; North $34^{\circ}43'15''$ 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 $51^{\circ}39'59''$ and Long Chord bears North $64^{\circ}04'50''$ East 85.41) feet to a point of tangency; thence North $89^{\circ}54'50''$ East 219.66 feet to the West boundary line of Lot 3, Main Street Commons Subdivision, Layton City, Davis County, Utah; thence South $0^{\circ}05'10''$ East 196.09 feet along said West boundary line; thence South $89^{\circ}54'50''$ West 38.73 feet; thence North $51^{\circ}44'27''$ West 16.33 feet; thence North $63^{\circ}20'55''$ West 39.49 feet; thence North $51^{\circ}45'09''$ West 115.83 feet; thence South $38^{\circ}14'51''$ West 253.48 feet to the point of beginning.

SFP-B PROPERTY:

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 $0^{\circ}03'20''$ West along the Section line and 448.89 feet North $89^{\circ}56'40''$ East perpendicularly distant from said Section line from the Southwest corner of said Section 17; said point also being 124.92 feet South $51^{\circ}45'09''$ 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 $38^{\circ}14'51''$ East 253.48 feet; thence South $51^{\circ}45'09''$ East 115.83 feet; thence South $63^{\circ}20'55''$ East 39.49 feet; thence South $51^{\circ}44'27''$ East 16.33 feet; thence North $89^{\circ}54'50''$ East 38.73 feet to the West line of Lot 3 of said subdivision; thence South $0^{\circ}05'10''$ East 5.63 feet along said West line to the Southwest corner of said Lot 3; thence South $0^{\circ}03'15''$ West 81.61 feet; thence South $38^{\circ}51'57''$ West 216.89 feet to the Northerly right-of-way line of said Main Street; thence North $51^{\circ}45'09''$ West 252.84 feet along said Northerly line to the point of beginning.

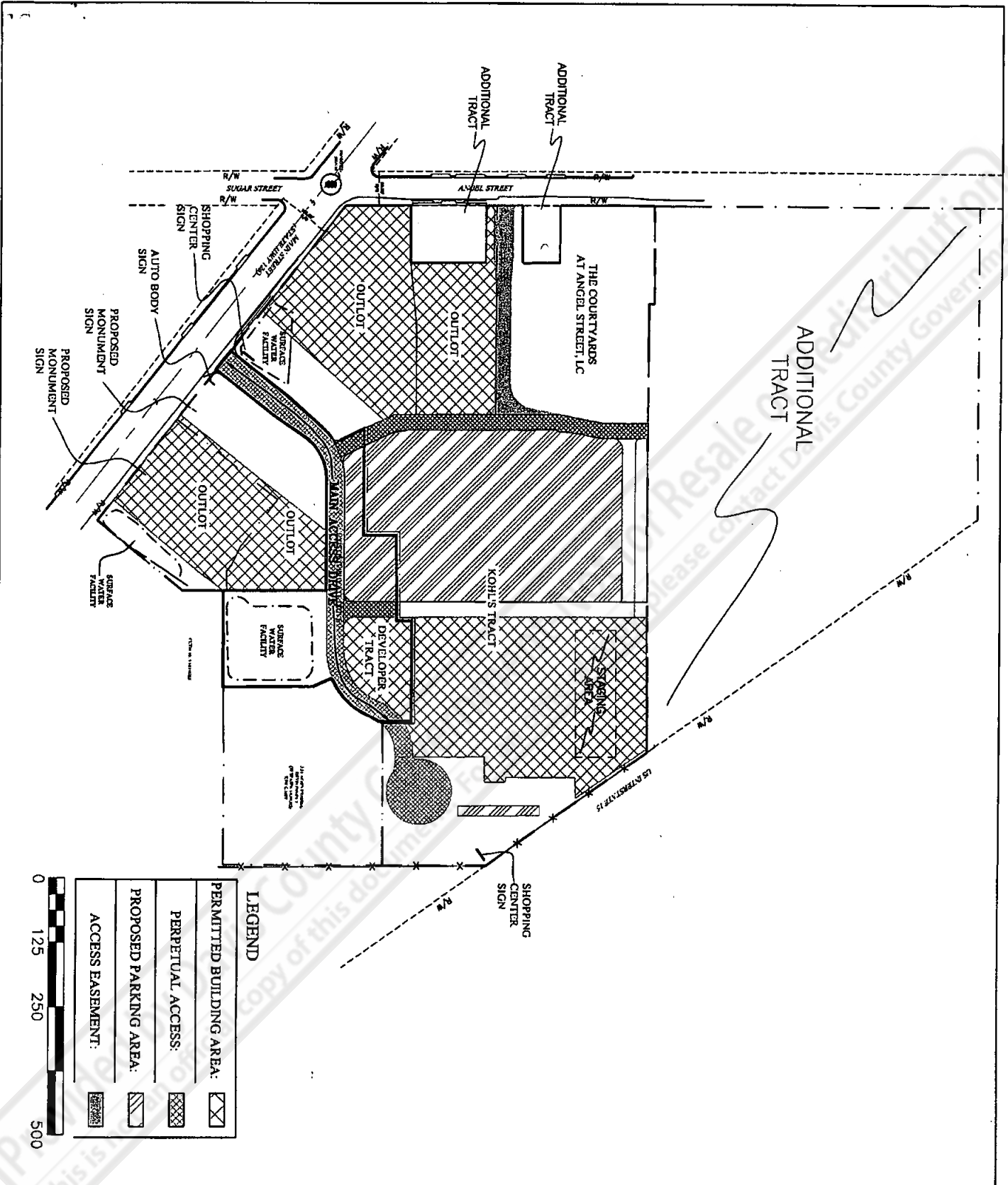
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EXHIBIT X

Site Plan

(see attached)

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ADDITIONAL TRACT

ADDITIONAL TRACT

ANGEL STREET

SUGAR STREET

THE COURTYARDS AT ANGEL STREET, LC

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

OUTLOT

KOHLS TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

DEVELOPER TRACT

SHOPPING CENTER SIGN

LEGEND

PERMITTED BUILDING AREA:

PERPETUAL ACCESS:

PROPOSED PARKING AREA:

ACCESS EASEMENT:



REVISIONS

REV	DESCRIPTION	DATE
1	MODIFIED PERMITTED BUILDING AREA	11/20/2008 PAJ

CONTINENTAL 139 FUND LLC
An affiliate of

CONTINENTAL PROPERTIES
COMPANY INC.
W134 N8675 Executive Parkway
Menomonee Falls, WI 53052
Phone: 262-502-5500 Fax: 262-502-6522
Email: cad_dwg@cpproperties.com

DATE: 11/20/08	BY: PHILIP JOHNSON	SCALE: UT	PROJECT: Main Street & Angel Street NEC
Thursday, November 20, 2008 4:35:03 PM			

EX-X

Sheet No.

