

**DRAINAGE  
EASEMENT**



20051116000598400 1/12 \$45.00  
Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:49AM FILED/CERT

Document Number

Document Title

This Drainage Easement (this "**Easement**") is made as of this 15<sup>th</sup> day of November, 2005, by and between CONTINENTAL 120 FUND LLC, a Wisconsin limited liability company ("**Grantee**") and JOSEPH & WILLIAMS, L.L.C., an Alabama limited liability company ("**Grantor**").

WHEREAS, Grantor owns certain real property in the County of Shelby, State of Alabama (a) as more particularly described on Exhibit A attached hereto and incorporated herein by reference and as depicted as the "Grantor's Property" on Exhibit C attached hereto and incorporated herein by reference (the "**Grantor's Property**"); and

WHEREAS, Grantee owns certain real property in the City of Birmingham, County of Shelby, State of Alabama, as more particularly described on Exhibit B attached hereto and incorporated herein by reference and as depicted as the "Grantee's Property" on Exhibit C attached hereto and incorporated herein by reference (the "**Grantee's Property**"); and

WHEREAS, Grantee, its sole expense intends to construct a storm water drainage facility on Grantor's Property; and

WHEREAS, Grantor agrees to grant and Grantee wishes to accept from Grantor, a perpetual easement for the use of the storm water drainage facility and related facilities, upon the terms and conditions stated herein.

NOW, THEREFORE, in consideration of One and NO/100 Dollars (\$1.00) and the conditions, covenants and mutual agreements hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged by Grantor, the parties hereto agree as follows:

1. GRANTOR'S GRANT OF A PERPETUAL EASEMENT. Grantor does hereby grant, convey and warrant to Grantee and Grantee's agents, contractors, tenants, licensees, guests, invitees, grantees, employees, representatives, successors (including, without limitation, any and all successors to Grantee in title to the Grantee's Property) and assigns (collectively, the "**Grantee Parties**"), a perpetual right and easement (which easement shall be appurtenant to the Grantee's Property) to drain storm water from Grantee's Property onto the Grantor's Property, at the location shown (the "Storm Water Exit Area") on Exhibit C attached hereto and made a part hereof. The amount of storm water flowing

*All consideration paid by  
the proceeds of the mortgage  
filed simultaneously herewith*

Recording Area

Name and Return Address

Continental Properties Company, Inc.  
W134 N8675 Executive Parkway  
Menomonee Falls, WI 53051  
Attn: Legal Department

Parcel Identification Number (PIN)



from the Storm Water Exit Area from Grantee's Property shall not exceed 20 cubic feet per second, for 25 year flood occurrence. Grantee shall construct a storm water drainage facility on Grantor's Property, pursuant to Exhibit C hereto, which shall consist of an outflow pipe. Grantor shall have the right to inspect and approve the workmanship of such facility prior Grantee's completion of the facility provided Grantor completes such inspection within 24 hours of written notice of completion from Grantee. Grantor will not unreasonably withhold approval of the work. Grantor shall bear the expense of maintaining the facility after Grantee completes construction of the facility, including any applicable landscaping. Construction will be deemed complete once the system is fully installed in good working condition and Grantee restores Grantor's Property to existing grade before construction.

2. NONDISTURBANCE. Grantee will cause the least possible interference with the activities of Grantor and any of its agents, contractors, tenants, licensees, guests, invitees, grantees, employees, representatives, successors (including, without limitation, any and all successors in title to the Grantor's Property) and assigns (collectively, the "Grantor Parties") in connection with the exercise of its rights under 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 Grantor's Property 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 of any of the rights and privileges conferred herein.
4. INDEMNITY. Grantee, its successors or assigns, shall defend, indemnify and save harmless Grantor, its officers, agents and employees, and any mortgagee of Grantor's Property, from, against and with respect to any and all suits, demands, causes of actions, liabilities, claims, losses, costs and expenses relating to or arising from or with respect to any injury or damages of whatever nature, including death, or damage to property (i) arising out of or related to any improper activity of Grantee, its agents, employees, licensees or contractors, their agents or employees with respect to the Grantee's exercise of rights under this Easement or (ii) arising out of any defaults by Grantee hereunder.

Grantor, its successors or assigns, shall defend, indemnify and save harmless Grantee, its officers, agents and employees, and any mortgagee of Grantee's Property, from, against and with respect to any and all suits, demands, causes of actions, liabilities, claims, losses, costs and expenses relating to or arising from or with respect to any injury or damages of whatever nature, including death, or damage to property (i) arising out of any defaults by Grantor hereunder or (ii) arising out of Grantor's failure to accommodate storm water flow from the Storm Water Exit Area in accordance with this Easement.



5. GRANTEE'S USE. In no event shall any Grantee Party damage, obstruct, disrupt or otherwise interfere with the drainage facilities located on Grantor's Property, or the use or operation thereof by any Grantor Party.

8. NOTICES. Notices in demand required or permitted to be given hereunder shall be given by certified mail return receipt requested, or by a national overnight express service such as Federal Express, addressed to the parties at their respective addresses as follows:

If to Grantor:

W134 N8675 Executive Parkway  
Menomonee Falls, Wisconsin 53051  
Attn: Legal Department

If to Grantee:

1236 Blue Ridge Blvd.  
Hoover, Alabama 35226  
Attn: Leo Joseph

or at such other address as specified in writing by such party. Unless otherwise specified to the contrary in this Easement, all notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

9. COSTS. 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.
10. 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.
11. COUNTERPARTS. 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.



12. CAPTIONS. 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.
13. NO PARTNERSHIP. 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.
14. FURTHER ASSURANCES. 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.
15. EXHIBITS. All exhibits referred to herein and attached hereto shall be deemed part of the Easement.
16. RECORDING. The Easement shall be recorded in the records of Shelby County, Alabama.
17. GOVERNING LAWS. The internal laws of the State of Alabama shall apply to the Easement, without giving effect to the choice of law rules of such State.
18. SEVERABILITY. If any term, provision or condition contained in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this 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 this Easement shall be valid and enforceable to the fullest extent permitted by law.
19. BINDING ON FUTURE PARTIES. The perpetual easement and all covenants and easements contained herein shall run with the land and shall inure to the benefit of and be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

GRANTOR:

JOSEPH & WILLIAMS, L.L.C.,  
an Alabama limited liability company

By: *Leo E. Joseph Jr*  
Name: *Leo E. Joseph Jr*  
Its: *Managing Member*

GRANTEE:

CONTINENTAL 120 FUND LLC,  
a Wisconsin limited liability company


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

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

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

GRANTOR:

JOSEPH & WILLIAMS, L.L.C.,  
an Alabama limited liability company

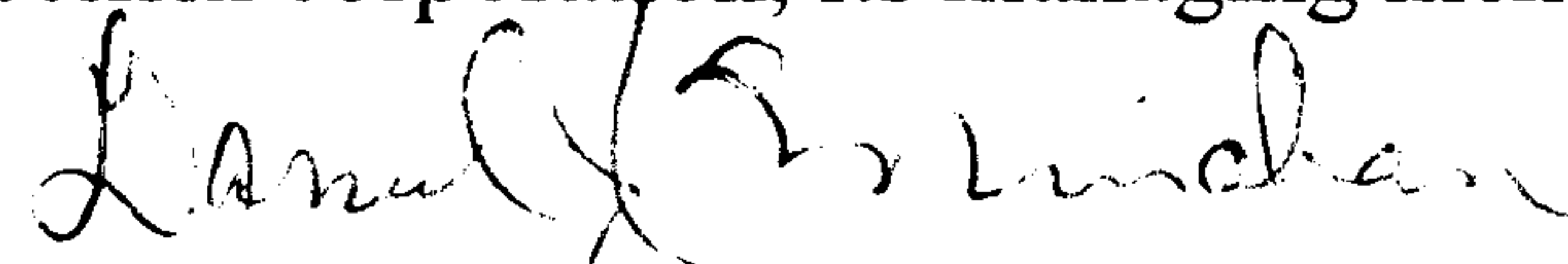
  
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Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:49AM FILED/CERT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

GRANTEE:

CONTINENTAL 120 FUND LLC,  
a Wisconsin limited liability company

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

By:   
Daniel J. Minahan, President



ACKNOWLEDGMENTS

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Shelby Cnty Judge of Probate, AL  
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STATE OF Alabama )  
 ) SS.  
Jefferson COUNTY )

Personally came before me this 15 day of November, 2005 the above named Lee Joseph, the Managing Member of Joseph B Williams, LLC, an Alabama limited liab. co. to me known to be such Managing Member and acknowledged that [s]he executed the foregoing instrument as the deed of said corporation, by its authority.

[Signature]  
Notary Public, Jefferson County, Alabama  
My Commission Expires: 6-21-06

STATE OF WISCONSIN )  
 ) SS.  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above named Daniel J. Minahan, President of Continental Properties Company, Inc., managing member of Continental 120 Fund LLC, to me known to be said President and acknowledged that he executed the foregoing instrument as such President as the deed of said corporation, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires:

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Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:49AM FILED/CERT

## ACKNOWLEDGMENTS

STATE OF \_\_\_\_\_ )  
 ) SS.  
\_\_\_\_\_ COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ the above named \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ a \_\_\_\_\_, to me known to be such \_\_\_\_\_ and acknowledged that [s]he executed the foregoing instrument as the deed of said corporation, by its authority.

Notary Public, \_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WISCONSIN )  
 ) SS.  
WAUKESHA COUNTY )

Personally came before me this 15<sup>th</sup> day of September, 2005, the above named Daniel J. Minahan, President of Continental Properties Company, Inc., managing member of Continental 120 Fund LLC, to me known to be said President and acknowledged that he executed the foregoing instrument as such President as the deed of said corporation, by its authority.

Cynthia A. Lehrke  
Notary Public, State of Wisconsin  
My Commission Expires: 6/10/07

Cynthia A. Lehrke  
Notary Public  
State of Wisconsin



EXHIBIT A

Grantor's Property

A parcel of land situated in the West ½ of the Southeast ¼ of Section 29, Township 18 South, Range 1 West, being more particularly described as follows:

Commence at the Southwest corner of the Southwest ¼ of the Southeast ¼ of Section 29, Township 18 South, Range 1 West; thence in a Northerly direction along the West line of Southeast ¼ of said section a distance of 1223.09 feet to the point of beginning; thence 114°31' to the right and in a Southeasterly direction a distance of 397.24 feet to a point on the Westerly right of way line of Cahaba Valley Road; thence 90°00' to the left and in a Northeasterly direction along the Westerly line of Cahaba Valley Road a distance of 141.13 feet to a point; thence 81°29' to the left and in a Northwesterly direction a distance of 501.26 feet to a point on the West line of the Southeast ¼ of said section; thence 123°02' to the left and in a Southerly direction along said West line a distance of 236.91 feet to the point of beginning.

LESS AND EXCEPT any part of subject property lying within a road right of way.

Situated in Shelby County, Alabama.



EXHIBIT "B"

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Lot 1, according to the survey of Springs @ Greystons, as recorded in Map Book 35, Page 96, in the Probate Office of Shelby County, Alabama; and being formerly described as follows: That certain real estate situated in D. N. Lee Estates as recorded in Map Book 3, page 115, in the Probate Office of Shelby County, Alabama, also being in the South  $\frac{1}{2}$  of the South  $\frac{1}{2}$  of Section 29 and the North  $\frac{1}{2}$  of the North  $\frac{1}{2}$  of Section 32, Township 18 South, Range 1 West, being more particularly described as follows:

Commence at the Southwest corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 29, Township 18 South, Range 1 West; thence run North along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 309.85 feet to an iron pin set at the point of beginning, said point being on the Northwest right of way of Alabama Highway No. 119 known as Cahaba Valley Drive; thence turn an angle to the right of  $27^{\circ}54'59''$  and run in a Northeasterly direction along said Northwest right of way for a distance of 131.41 feet to an iron pin set on a curve to the left having a central angle of  $3^{\circ}36'08''$  and a radius of 5,530.14 feet; thence turn an interior clockwise angle to the right of  $178^{\circ}22'28''$  to the chord of said curve and run in a Northwesterly direction along the arc of said curve and also along said Northwest right of way for a distance of 347.69 feet to a concrete monument found; thence turn an interior clockwise angle to the right of  $178^{\circ}12'00''$  from the chord of last stated curve and run in a Northeasterly direction along said Northwest right of way for a distance of 93.82 feet to an iron pin set; thence turn an interior clockwise angle to the right of  $101^{\circ}23'58''$  and run in a Northwesterly direction for a distance of 314.01 feet to an iron pin set on the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence turn an interior clockwise angle to the right of  $234^{\circ}06'35''$  and run in a Northerly direction along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 320.53 feet to an iron pin set at the Northeast corner of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 29; thence turn an interior clockwise angle to the right of  $89^{\circ}22'09''$  and run in a Westerly direction along the North line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1,328.95 feet to an iron pin set at the Northwest corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; thence turn an interior clockwise angle to the right of  $90^{\circ}37'24''$  and run in a Southerly direction along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1,077.51 feet to an iron pin found; thence turn an interior clockwise angle to the right of  $89^{\circ}23'23''$  and run in an Easterly direction for a distance of 1,296.79 feet to an iron pin found on the Northwest right of way of said Alabama Highway No. 119; thence turn an interior clockwise angle to the right of  $118^{\circ}32'03''$  and run in a Northeasterly direction along said Northwest right of way for a distance of 68.38 feet to the point of beginning.

LESS AND EXCEPT the following description:

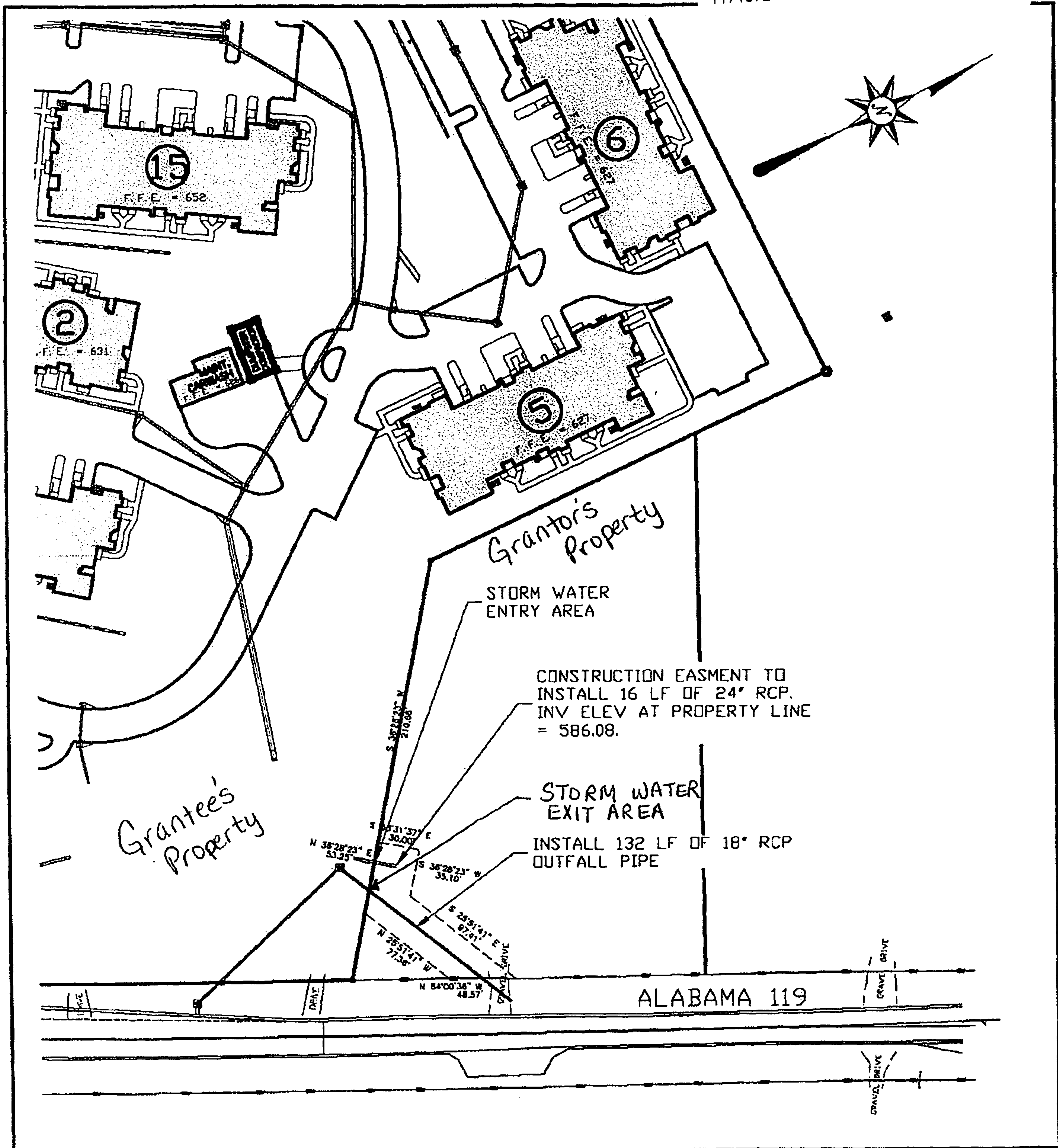
A part of Tracts 1, 2, 3 & 4 of D. N. Lee Estates as recorded in Map Book 3, page 115, in the Probate Office of Shelby County, Alabama, and also being in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 29, Township 18 South, Range 1 West, being more particularly described as follows:

Begin at an iron pin locally accepted to be the Northwest corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section and also being the Northwest corner of said Tract 4; thence run South along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section and also along the West line of Tracts 4, 3, 2 & 1 in said D. N. Lee Estates for a distance of 1,077.51 feet to an iron pin found; thence turn an angle to the left of  $90^{\circ}36'37''$  and run in an Easterly direction for a distance of 310.02 feet to a point; thence turn an angle to the left of  $89^{\circ}23'23''$  and run in a Northerly direction for a distance of 736.70 feet to a point; thence turn an angle to the right of  $20^{\circ}05'51''$  and run in a Northeasterly direction for a distance of 189.97 feet to a point; thence turn an angle to the right of  $35^{\circ}41'41''$  and run in a Northeasterly direction for a distance of 294.91 feet to a point on the North line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section and also on the North line of said Tract 4; thence turn an angle to the left of  $146^{\circ}24'41''$  and run in a Westerly direction along said North line for a distance of 619.20 feet to the point of beginning.



# EXHIBIT C

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**SMW Engineering Group, Inc.**  
208 Oak Mountain Circle  
Pelham, Alabama 35124  
(205) 252-6985  
Fax: (205) 320-1504

PROJECT NO. 05-196.04

**SHEET TITLE:**  
**EXHIBIT DRAWING**

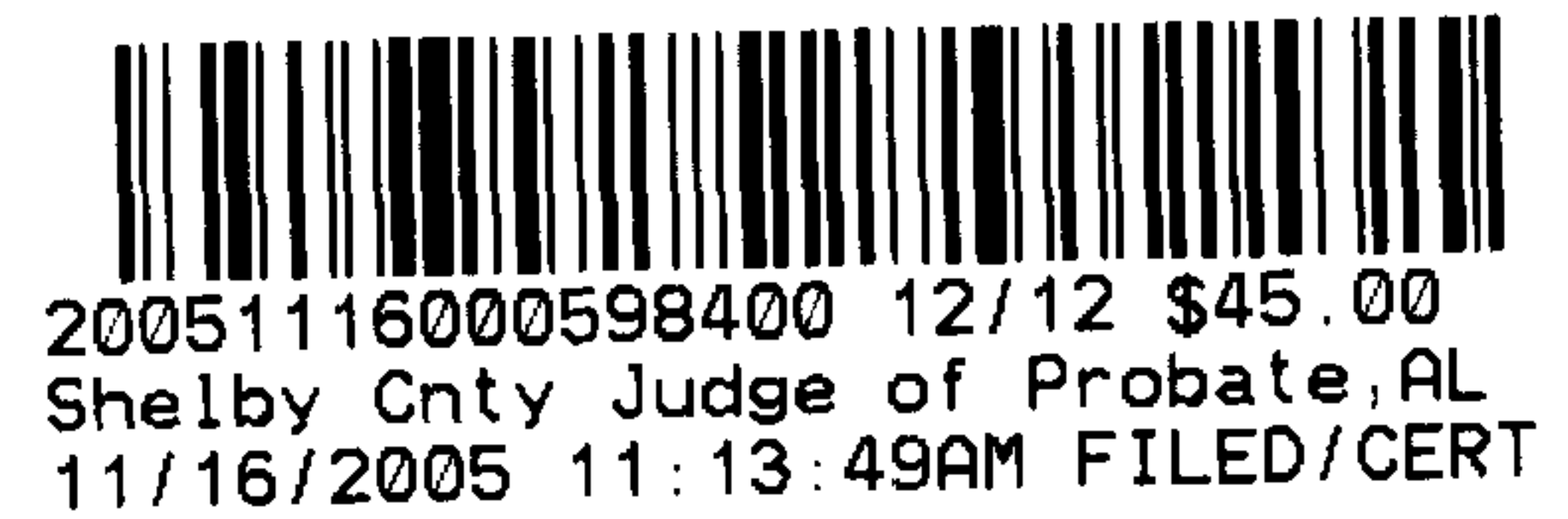
**CLIENT**

**CONTINENTAL 120 FUND LLC**  
W 134 N8675 EXECUTIVE PARKWAY  
MENOMONEE FALLS, WI 53051

<b>DATE:</b> 08/18/05	<b>DRAWN:</b> BLW	<b>CHKD:</b> BLW	<b>SCALE:</b> 1"=100'
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EXHIBIT C-1



Leo Construction Easement

A construction easement lying in Section 29, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commencing at the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 29; thence run S  $00^{\circ}14'00''$  W along the East line of said  $\frac{1}{4}$   $\frac{1}{4}$  for a distance of 319.71 feet to a point; thence S  $53^{\circ}31'37''$  E leaving said East line a distance of 210.66 feet to the Point of Beginning; thence N  $36^{\circ}28'23''$  E for a distance of 30.00 feet to a point; thence run S  $53^{\circ}31'37''$  E a distance of 35.10 feet to a point; thence N  $64^{\circ}08'19''$  E for a distance of 97.41 feet to a point; thence S  $25^{\circ}59'24''$  W along the right of way line of Alabama highway 119 for a distance of 48.57 feet to a point; thence S  $64^{\circ}08'19''$  W leaving said right of way for a distance of 77.36 feet to a point; thence N  $53^{\circ}31'37''$  E for a distance of 53.25 feet to the Point of Beginning. Said above described easement contains 0.09 acres, more or less.