

**GRADING  
EASEMENT**

Document Number

Document Title



20051116000598420 1/15 \$54.00  
Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:51AM FILED/CERT

This Grading 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 HAROLD H. WEHBY, an individual ("**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 D attached hereto and incorporated herein by reference (the "**Grantor's Property**") and (b) as more particularly described on Exhibit B attached hereto and incorporated herein by reference and as depicted as the "Permanent Grading Easement Area" on Exhibit D (the "**Easement Area**"); and

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

WHEREAS, Grantee desires to construct one or more improvements (the "**Improvements**") on Grantee's Property; and

WHEREAS, Grantor desires to provide to Grantee, and Grantee desires to receive from Grantor, a perpetual easement within the Easement Area for purposes of grading Grantor's Property within the Easement Area in accordance with the grading plan attached hereto as Exhibit F (the "Grading Plan"), and planting, irrigating and maintaining the ground cover within the Easement Area, all upon the terms, provisions and conditions set forth in this Easement; and

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 non-exclusive, perpetual right and easement

*All consideration paid by  
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)



(which easement shall be appurtenant to the Grantee's Property) within the Easement Area for the purposes of grading the Easement Area in accordance with the Grading Plan, and planting, irrigating and maintaining the ground cover within the Easement Area. Grantor agrees to allow Grantee to make temporary use of area depicted as the "Temporary Grading Easement Area" on Exhibit D and as more particularly described on Exhibit E attached hereto and made a part hereof as is necessary to accomplish such grading and landscaping within the Easement Area. Grantee, at Grantee's sole cost and expense, shall have Grantor's Property staked-out at the permanent elevation and the twenty foot (20') Easement Area boundary line.

2. RETAINING WALL. Notwithstanding anything to the contrary in this Easement, Grantor shall build a retaining wall on Grantor's Property, subject to all applicable laws, and in accordance with the provisions of this Section 2, and Exhibit F hereto, which depicts the location and elevations of such retaining wall. Within sixty (60) days after the day on which Grantee acquires fee title to Grantee's Property, Grantee shall commence the grading work depicted in Exhibit F hereto, as provided for in this Section. Upon completion of the grading work depicted on Exhibit F, Grantee shall give Grantor written notice that the grading work is complete. Thereafter, Grantor shall construct the retaining wall depicted on Exhibit F within ninety (90) days, provided that such period may be extended for up to an additional thirty (30) days for inclement weather delays, after Grantee provides written notice that the grading work is complete. The retaining wall shall be placed on Grantor's property in accordance with the location of such wall as depicted on Exhibit F hereto. The retaining wall will be a reinforced concrete wall, designed by a licensed professional engineer. Grantor agrees to backfill the retaining wall at its expense; however, Grantee shall be responsible for constructing a swale near the edge of the retaining wall in accordance with the swale location on Exhibit F hereto for the purpose of directing water away from the edge of the wall. Grantor shall be responsible for maintaining the retaining wall including all property in the Easement Area that is located on the low-side of the retaining wall. Grantee shall be responsible for maintaining all other portions of the Easement Area up to the edge of the retaining wall in the Easement Area, as provided for in Section 4 below. In connection with the construction of such wall, Grantor may temporarily alter the grade within the Easement Area, provided that Grantor shall restore the grade and groundcover within the Easement Area in accordance with the Grading Plan promptly upon completion of construction. Grantee agrees to remove all vegetation in the Easement Area at its expense prior to beginning work in the Easement Area. Furthermore, Grantee, at its expense, will cause all other property within the Easement Area to be graded in accordance with Exhibit F.
3. CONSTRUCTION LIENS. In the event any liens are filed against Grantor's Property, or any part thereof, in connection with any work performed by or on behalf of Grantee or in connection with any act or omission of Grantee pursuant to the Easement, Grantee shall have the said liens immediately discharged of record.
4. MAINTENANCE OF EASEMENT AREA. Grantee will plant, irrigate and maintain the groundcover and swale (once constructed) within the Easement Area that lies between the Grantee's Property and the retaining wall on Grantor's Property.



5. NONDISTURBANCE. Grantee will not unreasonably interfere 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 its operations in the Easement Area.
6. 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 of any of the rights and privileges conferred herein.
7. GRANTOR'S USE. In no event shall any Grantor Party alter the grade established by Grantee in the Easement Area pursuant to Grantee's rights under this Easement.
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:

1994 Shades Crest Road  
Birmingham, Alabama 35216

If to Grantee:

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

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.

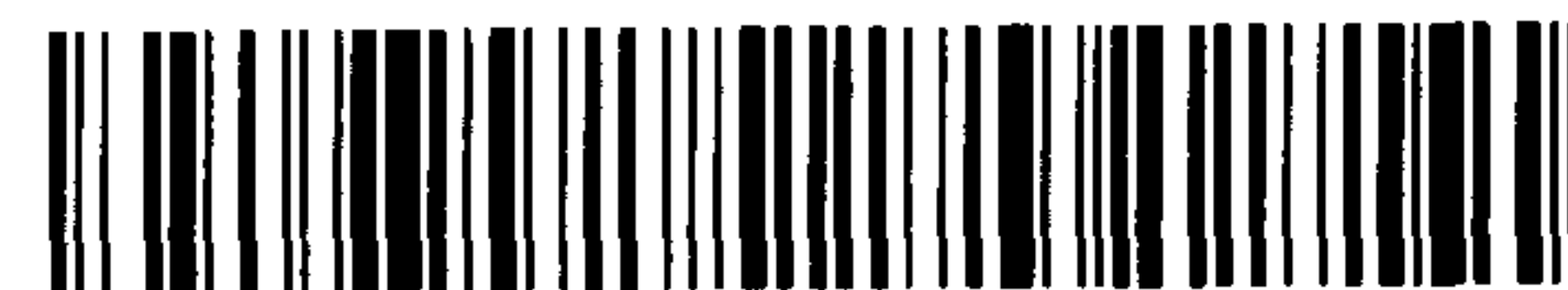
9. COSTS. Upon the occurrence of any breach or default under this Easement by either party, the defaulting party shall be liable for and shall reimburse the non-defaulting party upon demand for all reasonable attorney's fees and costs incurred by non-defaulting party in enforcing the defaulting party's 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. NO CANCELLATION UPON BREACH. It is expressly agreed that no breach of this Easement shall entitle any party to cancel, rescind or otherwise terminate this Easement.
15. 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.
16. EXHIBITS. All exhibits referred to herein and attached hereto shall be deemed part of the Easement.
17. RECORDING. The Easement shall be recorded in the records of Shelby County, Alabama.
18. GOVERNING LAWS. The internal laws of the State of Alabama shall apply to the Easement without giving effect to the choice of law provisions of such State.
19. 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.





20051116000598420 5/15 \$54.00  
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11/16/2005 11:13:51AM FILED/CERT

20. 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.
21. LANDSCAPING. Grantee shall plant non-deciduous trees, such as evergreens (minimum 8' height, with a growth potential of 20' to 25'), in accordance with Exhibit G (the "Landscaping Plan"), the purpose of which is to provide a year-round visual screen separating Grantor's property and Grantee's property along the boundary line of Grantee's Property and Grantor's Property. The trees shall be approximately ten (10) feet apart corner to corner and shall be in the approximate location depicted on the Landscaping Plan. Grantee shall maintain the landscaping at Grantee's expense. This Section 21 shall run with Grantee's 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:

HAROLD H. WEHBY

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

20. 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.
21. LANDSCAPING. Grantee shall plant non-deciduous trees, such as evergreens (minimum 8' height, with a growth potential of 20' to 25'), in accordance with Exhibit G (the "Landscaping Plan"), the purpose of which is to provide a year-round visual screen separating Grantor's property and Grantee's property along the boundary line of Grantee's Property and Grantor's Property. The trees shall be approximately ten (10) feet apart corner to corner and shall be in the approximate location depicted on the Landscaping Plan. Grantee shall maintain the landscaping at Grantee's expense. This Section 21 shall run with Grantee's 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:

HAROLD H. WEHBY

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  
Daniel J. Minahan, President



## ACKNOWLEDGMENTS

STATE OF Alabama )  
 ) SS.  
Jefferson COUNTY )

I W. Scott Simpson, a Notary Public for the State of Alabama, hereby certify that Harold H. Wehby whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand this 15 day of November, 2005.

W. Scott Simpson  
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:

ACKNOWLEDGMENTS

20051116000598420 8/15 \$54.00  
Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:51AM FILED/CERT

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

I \_\_\_\_\_, a Notary Public for the State of Alabama, hereby certify that Harold H. Wehby whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand this \_\_\_ day of \_\_\_\_\_, 2005.

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

STATE OF WISCONSIN )  
 ) SS.  
WAUKESHA COUNTY )

Personally came before me this 15th 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





20051116000598420 9/15 \$54.00  
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EXHIBIT A


Grantor's Property

A part of Tracts 6 and 7 of a survey of the D.N. Lee Estate, as surveyed by W.R. Walker, on August 2, 1951 and recorded in the Office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the Southwest Quarter of the Southeast Quarter of Section 29, Township 18 South, Range 1 West, thence South along the West line of said quarter-quarter a distance of 104.74 feet (104.82 feet deed) an iron pipe found at the point of beginning, thence continue along said line a distance of 215.43 feet to an axle found, thence turn an interior angle of  $125^{\circ}53'37''$  to the right and in a Southeasterly direction a distance of 312.29 feet to an iron pin set on the Western right-of-way of Alabama Highway 119, also known as Cahaba Valley Road ( $80^{\circ}$  R.O.W.), thence turn an interior angle of  $79^{\circ}00'07''$  to the right and in a Northeasterly direction along said right-of-way a distance of 255.14 feet to an iron pin set, thence turn an interior angle of  $89^{\circ}58'54''$  ( $90^{\circ}00'00''$  deed) to the right and in a Northwesterly direction 397.34 feet to the point of beginning.



EXHIBIT B

  
20051116000598420 10/15 \$54.00  
Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:51AM FILED/CERT

Webhy Grading Easement

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

Beginning at the Northeast Corner of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 29; thence run N 00°14'00" E along the East line of Section 29 for a distance of 10.00 feet to a point; thence N 89°42'54" E for a distance of 20.00 feet to a point; thence run S 00°14'00" W a distance of 124.10 feet a point; thence N 65°05'02" E for a distance of 22.01 feet to a point; thence N 00°14'00" E for a distance of 104.72 feet to the point of beginning. Said above described easement contains 0.06 acres, more or less.



EXHIBIT "C"

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:

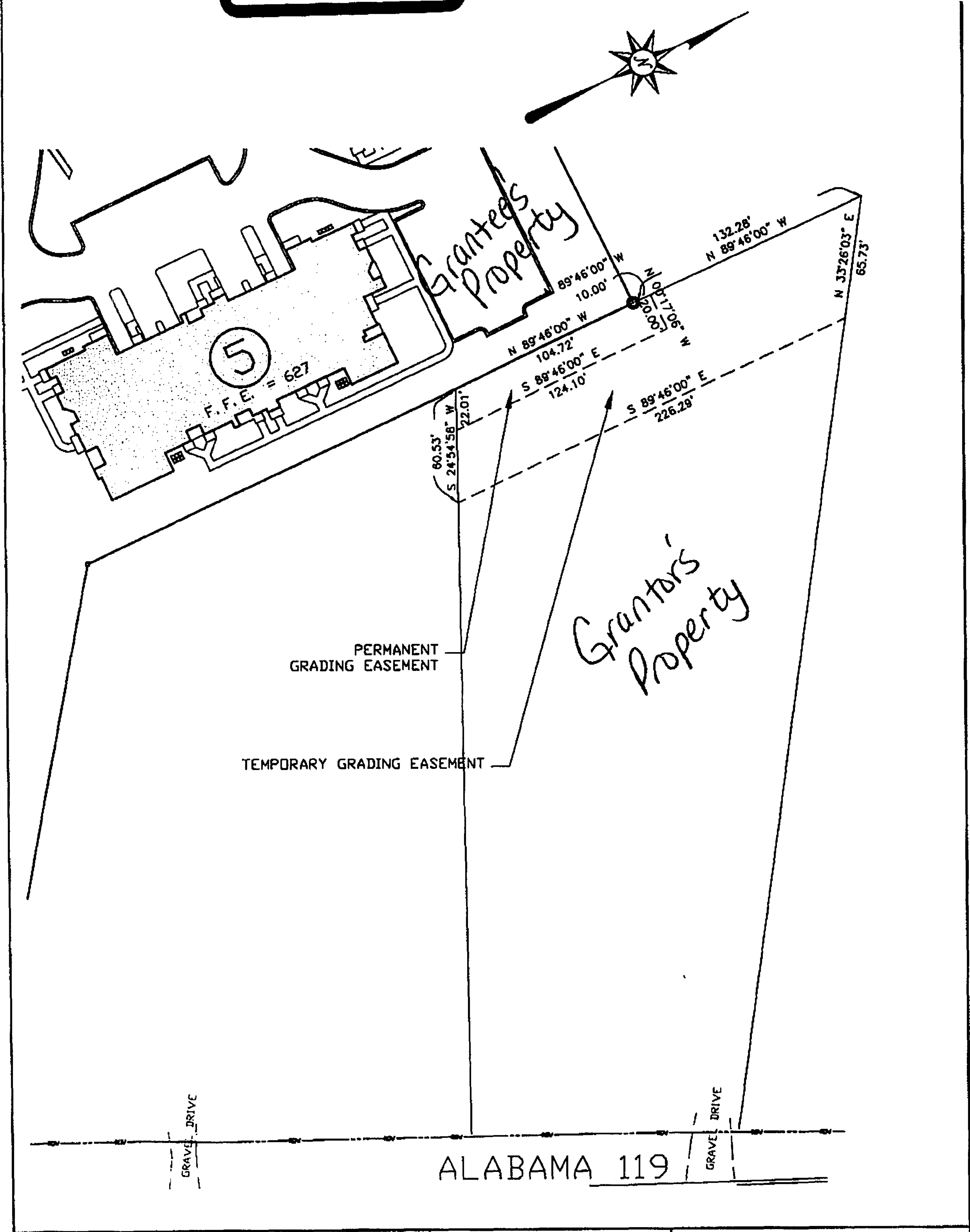
A part of Tracts 1, 2, 3 & 4 of D. N. Lee Estates as recorded in Map Book 3, page 115, in the Probate Office of Shelby County, Alabama, and also being in the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 29, Township 18 South, Range 1 West, being more particularly described as follows:

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  
tabbles  
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Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:51AM FILED/CERT



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

SHEET TITLE: EXHIBIT DRAWING			
CLIENT CONTINENTAL 120 FUND LLC W 134 N8675 EXECUTIVE PARKWAY MENOMONEE FALLS, WI 53051			
DATE: 05/09/04	DRAWN: BLW	CHKD: BLW	SCALE: 1"=50'

PROJECT NO. 05096405



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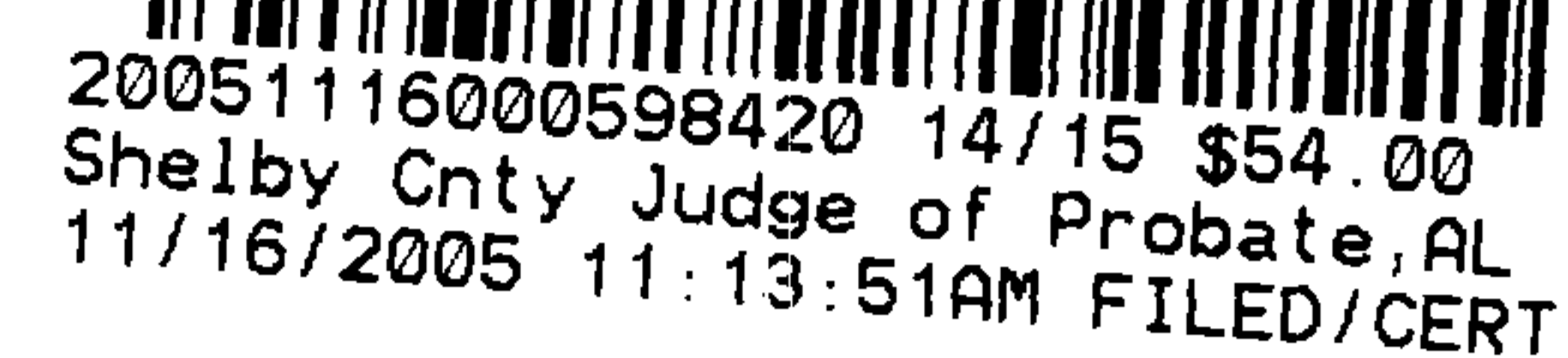
EXHIBIT E

Description of Temporary Easement Area

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

Commencing at the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 29 also being to point of beginning; thence run N  $89^{\circ}46'00''$  W along the South line of Section 29 for a distance of 104.72 feet to a point; thence S  $24^{\circ}54'58''$  W for a distance of 60.53 feet to a point; thence run S  $89^{\circ}46'00''$  E a distance of 226.29 feet a point; thence N  $33^{\circ}26'03''$  E for a distance of 65.73 feet to a point; thence N  $89^{\circ}46'00''$  W for a distance of 132.28 feet to the point of beginning. Said above described easement contains 0.34 acres, more or less.





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

## OVERALL GRADING PLAN

**CLERK**

JOSEPH & COMPANY  
AL 119 OFFICE BUILDINGS  
SHELBY CO., ALABAMA

## REFERENCES

**2000**

1999

**TABLE 1**

1967 FEB 20 11 00

DATE 08/07/01

1-20

**PAGE 1 OF 1**

## REVIEWS

150

### **DESCRIPTION**

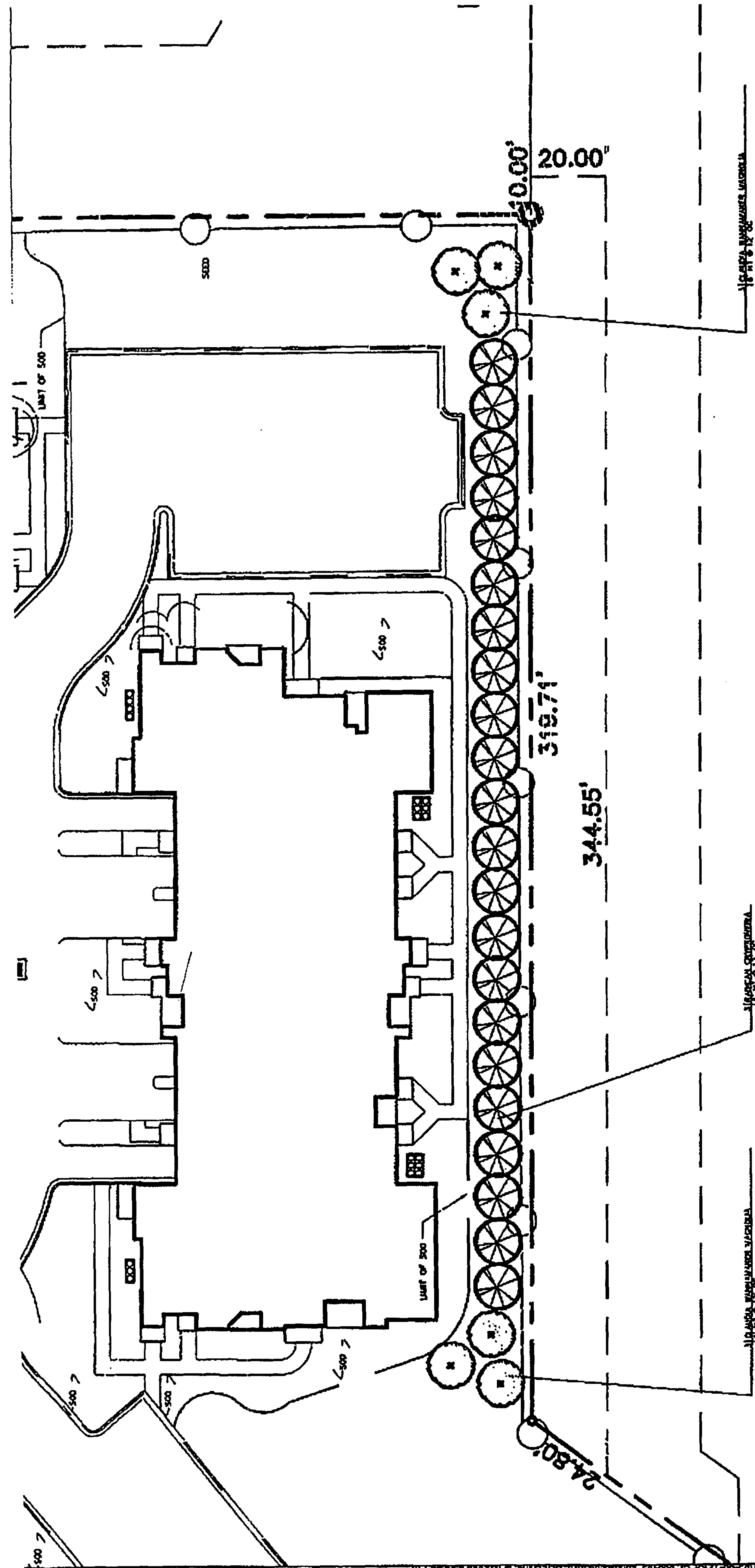
DATE \_\_\_\_\_

44

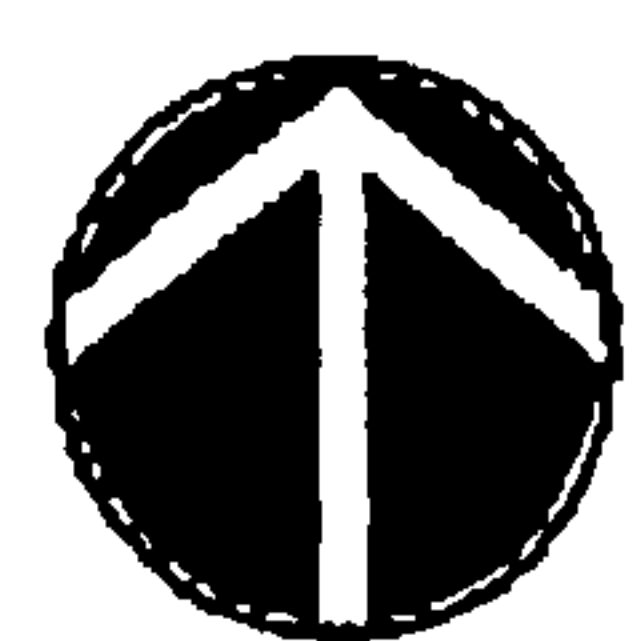
**SECRET**

**0.24/06**





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NORTH  
 SCALE: 1" = 40'

# EXHIBIT G