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Shelby Cnty Judge of Probate, AL  
11/16/2005 11:13:53AM FILED/CERT

**ASSIGNMENT OF RENTS, LEASES AND PROFITS**

between

Continental 120 Fund LLC

and

Richter-Schroeder Company, Inc.

November 15 2005

This instrument prepared by and  
after recordation should be returned to:

Charles H. McMullen, Esq.  
Quarles & Brady, LLP  
411 East Wisconsin Avenue  
Milwaukee, WI 53202  
(414) 277-5000

## ASSIGNMENT OF RENTS, LEASES, AND PROFITS

THIS ASSIGNMENT OF RENTS, LEASES, AND PROFITS ("Assignment") dated as of November 15, 2005 is given by **CONTINENTAL 120 FUND LLC**, a Wisconsin limited liability company ("Assignor"), to **RICHTER-SCHROEDER COMPANY, INC.**, a Wisconsin corporation (together with its successors and assigns, "Assignee"),

### WITNESSETH:

WHEREAS, pursuant to a construction loan agreement of even date herewith between Assignor and Assignee (the "Loan Agreement"), Assignor is indebted to Assignee as evidenced by a promissory note in the principal sum of Twenty-One Million Six Hundred Thousand and 00/100 Dollars (\$21,600,000.00), payable to the order of Assignee, to which promissory note reference is hereby made (together with any and all extensions, renewals, modifications and amendments thereof, the "Note");

WHEREAS, Assignor has executed a certain Mortgage and Security Agreement and Fixture Financing Statement (the "Mortgage") dated this same date with respect to the property described on Exhibit A attached hereto and the improvements located thereon (collectively, the "Property"), to secure performance of all of its covenants, agreements, and provisions contained in the Note.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby presently and absolutely grants, transfers, and assigns to Assignee all of Assignor's right, title, and interest in and to (including those now owned or hereafter acquired) (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Property, together with any and all extensions, modifications or renewals thereof (singularly referred to as "Lease" and collectively referred to as the "Leases"), and (ii) all rents, profits, and other income or payments of any kind due or payable or to become due and payable to Assignor as the result of any use, possession, or occupancy of all or any portion of the Property or as the result of the use of or lease of any personal property constituting a part of the Property (all of which collectively are referred to as "Rents"), all for the purpose of providing a source of payment of:

- A. The indebtedness of Assignor evidenced by the Note; and
- B. The performance and discharge of each and every obligation, covenant, and agreement of Assignor contained herein and in the Note, the Mortgage, and any of the other loan documents related thereto.

Assignor warrants and covenants that it has the right under applicable law, the Leases, and otherwise to execute and deliver this Assignment and to keep and perform all of its obligations pursuant to it. Assignor further covenants that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

Assignor further covenants and agrees with Assignee as follows:



1. Performance of Leases. Assignor faithfully will: (a) abide by, perform, and discharge each and every obligation, covenant, and agreement which it becomes liable to observe or perform under any present or future Leases, (b) at its sole cost and expense, enforce or secure the performance in a prudent manner of each and every material obligation, covenant, condition, and agreement to be performed by the tenant under each and every Lease, (c) observe and comply with all provisions of law applicable to the operation and ownership of the Property, (d) give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease, (e) at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with any Lease or the obligations, duties, or liabilities of Assignor or any tenant pursuant to said Leases, and (f) except as expressly permitted by the Loan Agreement, not lease or otherwise permit the use of all or any portion of the Property for any purpose without the prior written consent of Assignee.

2. Collection of Rents. This Assignment is intended to vest in Assignee the present and absolute right, title, and interest in and to the Leases and the Rents and not an assignment for additional security only. Moreover, the parties expressly agree that Assignee shall have a perfected security interest in the Rents immediately upon recordation of this Assignment and without any further action being required. However, unless and until there occurs a default under the various provisions of this Assignment, the Note, or the Mortgage, Assignor may continue to function as lessor under all Leases and to collect all Rents; provided, however, that upon the occurrence of any breach by Assignor of any covenant or agreement of Assignor in the Mortgage or this Assignment, and without the necessity of Assignee entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Assignee shall immediately be entitled to possession of all Rents as specified in this paragraph 2 as the same become due and payable, including but not limited to Rents then due and unpaid, and all such Rents shall immediately be held by Assignor as trustee for the benefit of Assignee only. Assignor agrees that commencing upon delivery of notice of a breach by the Assignee to a tenant, each tenant of the Property shall make such Rents payable to and pay such Rents to Assignee or Assignee's agents on Assignee's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Assignor.

3. Protecting the Security of This Assignment. If Assignor fails to perform or observe any covenant or agreement contained in this Assignment (said failure constituting a "default" for the purposes of this provision), then Assignee, after giving Assignor written notice of such a default and if said default is not cured within thirty (30) days after said notice is given (provided that, in the case of what Assignee in good faith perceives to be an emergency situation, Assignee need not give prior notice before taking any action and that, in other cases where the Assignor commences the cure of such default within such 30 days and thereafter diligently pursues the cure at all times, the 30 day period may be extended for up to sixty (60) additional days to permit the Assignor to cure the default), without obligation to do so and without releasing Assignor from any obligation of any kind, may make or do the same in such manner and to such extent as Assignee deems appropriate to protect its security (including, specifically, without limitation, the right to commence, appear in, and defend any action or proceeding purporting to affect its said security, or the rights or powers of Assignor to perform and discharge each and every obligation, covenant, and agreement of Assignor contained in the Leases). In exercising any such powers, Assignee may pay necessary costs and expenses.



Assignor agrees and covenants to pay immediately upon demand all sums expended by Assignee under the authority of this Assignment, together with interest thereon at the default rate of interest as provided in the Note.

4. Present Assignment. This Assignment constitutes a perfected, absolute, and present assignment, subject only to the conditions of Paragraph 2 above.

5. Defaults and Remedies. In the event of any default specified in this Assignment, or in the various provisions of the Note, or the Mortgage, which is not cured within any applicable grace period, Assignee, at its option and after notice to Assignor, may at any time, in person, by agent or by a court appointed receiver:

(a) in the name, place, and stead of Assignor and without becoming a mortgagee in possession: (i) enter upon, manage, and operate the Property or retain the services of one or more independent contractors to manage and operate all or any part of the Property; (ii) make, enforce, modify, and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix, or modify the Rents and enforce all rights of the lessor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment;

(b) with or without exercising the rights set forth in subparagraph A above, give, or require Assignor to give, notice to any or all tenants under the Leases, authorizing and directing the tenants to pay all Rents under the Leases directly to Assignee; or

(c) apply for the appointment of a receiver regarding the Property, whether or not foreclosure proceedings are pending under the Mortgage and, if such proceedings were commenced, whether or not a foreclosure sale has occurred. Assignor consents to such an application and agrees that Assignee or the receiver shall be entitled to receive a reasonable fee for managing the Property.

The exercise of any of the foregoing rights or remedies and the application of the Rents shall not cure or waive any event of default, or notice of default, under this Assignment or the Note or Mortgage, nor invalidate any act done pursuant to such notice. The rights and powers of the Assignee hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption from said sale, regardless of whether a deficiency remains from said sale. The purchaser at any foreclosure sale, including the Assignee, shall have the right, at any time, to advance money to any receiver appointed hereunder to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Property and the sum so advanced, with interest at the rate provided for in the Note, shall be a part of the sum required to be paid to redeem from any foreclosure sale.

The remedies provided herein are independent of any other remedies provided in the Note, the Mortgage, or any other collateral security document. If Assignee exercises a remedy provided herein for a default without also exercising other remedies provided in such other loan documents for that same default, or if Assignee exercises a remedy provided in any other such loan document for a default without exercising a remedy provided herein for that



same default, then the same shall not be construed as a waiver of Assignee's right to exercise such additional remedies for that same or any subsequent default. Furthermore, Assignee's failure to exercise its right to receive any Rents to which it is entitled by this Assignment shall not affect or be construed as a waiver of Assignee's right to receive any subsequently accruing Rents.

6. Application of Rents, Profits and Income. All Rents collected by Assignee or the receiver each month are to be applied in the following order of priorities, to the extent permitted by applicable law:

- (a) to payment of all reasonable fees of the receiver approved by the court;
- (b) to application of the tenant's security deposits, if required by law;
- (c) to payment of all prior or current real estate taxes and installments of special assessments with respect to the Property;
- (d) to payment of all premiums then due for the insurance required by the provisions of the Mortgage;
- (e) to payment of expenses incurred for normal operation and maintenance of the Property (including, without limitation, a reasonable fee for management of the Property by Assignee or any third party retained by Assignee to manage the Property); and
- (f) to payment of all other obligations under the Note or the Mortgage.

If the Property shall be foreclosed and sold pursuant to a foreclosure sale, then, to the extent permitted by applicable law:

- (i) If the Assignee is the purchaser at the foreclosure sale, the Rents shall be paid to the Assignee to be applied to the extent of any deficiency remaining after the sale and any balance shall be paid to the person or persons legally entitled thereto;
- (ii) If the Assignee is not the purchaser at the foreclosure sale, the Rents shall be paid to the Assignee to be applied first to the extent of any deficiency remaining after the sale and the balance shall be paid to the person or persons legally entitled thereto.

The rights and powers of Assignee under this Assignment and the application of Rents under this Paragraph 6 shall continue and remain in full force and effect, both prior to and after commencement of any foreclosure action and until the confirmation of a foreclosure sale whether or not any deficiency remains after a foreclosure sale.

7. Assignee Not to Become Liable. Assignee is not obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty, or liability of Assignor under the Leases. This Assignment shall not operate to place upon Assignee responsibility for the control, care, management, or repair of the Property or for the performance of any of the terms and conditions of the Leases. Assignee is not responsible or liable for any waste committed on the Property, or for any dangerous or defective condition of the Property,



except to the extent that the same arise out of the gross negligence or willful misconduct by Assignee or its agents or employees, or out of Assignee's default in any obligation to maintain or repair the Property which Assignee may undertake under any of the Leases in the course of exercising its rights hereunder.

8. Assignor's Indemnification. Assignor hereby agrees to indemnify and to hold Assignee harmless from and against any and all claims, demands, liability, loss, or damage, including all costs, expenses, and reasonable attorney's fees asserted against, imposed on, or incurred by Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases, or by reason of any alleged obligations or undertakings of Assignee to perform or discharge any of the terms, covenants, or agreements contained in the Leases, except to the extent that the same arise out of the gross negligence or willful misconduct by Assignee or its agents or employees, or out of Assignee's default in any obligation which Assignee may undertake under any of the Leases in the course of exercising its rights hereunder. If Assignee incurs any such liability, then the amount thereof, together with interest thereon at the default rate of interest as provided in the Note, shall be secured by this Assignment. Assignor shall reimburse Assignee therefor immediately upon demand.

9. Authorization to Tenant. Upon notice from Assignee that it is exercising the right to collect Rents, as set forth in Paragraph 2 of this Assignment, the tenants under the Leases hereby irrevocably are authorized and directed to pay to Assignee all sums due under the Leases. Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity of a judicial determination that a default has occurred or that Assignee is entitled to exercise its rights pursuant to this Assignment. To the extent such sums are paid to Assignee, Assignor agrees that the tenant has no further liability to Assignor for the same. The signature of Assignee alone is sufficient for the exercise of any rights under this Assignment and the receipt by Assignee alone of any sums received is full discharge and release of any such tenant or occupant of the Property for payment of such sums. Checks for all or any part of the Rents collected under this Assignment, upon notice from Assignee, shall be drawn to the exclusive order of Assignee. Assignor does not guarantee that tenants will comply with any notice concerning the payment of rents to Assignee, but Assignor shall endorse over to Assignee any rent or other payments that it receives from tenants after the giving of such notice and deliver the same to Assignee promptly.

10. Satisfaction. Upon full satisfaction of the Mortgage (including, without limitation, as a result of the transfer of title to the Property pursuant to a foreclosure proceeding), this Assignment automatically shall become null and void and of no further effect. However, Assignee, at Assignor's request, shall note the satisfaction of this Assignment on the instrument evidencing satisfaction of the Mortgage or on a separate instrument.

11. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment (short of actually taking physical possession of the Property) shall be construed as constituting Assignee as a mortgagee in possession.

12. Specific Assignment of Leases. Upon request by Assignee, Assignor agrees to transfer and assign to Assignee any and all specific Leases that Assignee identifies in a written



notice to Assignor. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are contained herein. Assignor properly will file or record such assignment, at Assignor's expense, if requested by Assignee.

13. Unenforceable Provisions Severable. All rights, powers, and remedies provided in this document are intended to be exercised only to the extent that such exercise does not violate any applicable provision of law and are intended to be limited to the extent necessary to not render this Assignment invalid, unenforceable, or unreasonable under any applicable law. If any term of this Assignment is held to be invalid, illegal, or unenforceable, then the validity of other terms is intended to remain unaffected.

14. Assignee Creditor Of The Tenants. Upon or at any time during the continuance of an event of default in the payment of any indebtedness secured hereby or in the performance of any obligation, covenant, or agreement herein or in the Note, or Mortgage contained, the Assignor agrees that the Assignee, and not the Assignor, shall be and be deemed to be the creditor of the tenants in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such tenants (without obligation on the part of the Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein, and reserving the right to the Assignor to make such filing in such event) with an option to the Assignee to apply any money received by Assignee as such creditor in reduction of the indebtedness secured hereby.

15. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall benefit, the respective heirs, legal representatives, successors, and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

16. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and are not intended to interpret or define the provisions of this Assignment. This Assignment can be amended only in a writing signed by Assignor and Assignee. All notices required by this Assignment shall be deemed sufficient on the second business day after deposit in the United States mail, postage prepaid, if addressed to the parties at their respective addresses as set forth in this Assignment, or at such other address as is specified in writing by either party to the other.

a. If to the Assignee:

Richter-Schroeder Company, Inc.  
Attention: August J. Richter V, President  
1110 North Old World Third Street, Suite 320  
Milwaukee, Wisconsin 53203

b. If to the Assignor:

Continental 120 Fund LLC  
P.O. Box 220  
Menomonee Falls, Wisconsin 53052



17. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one instrument.

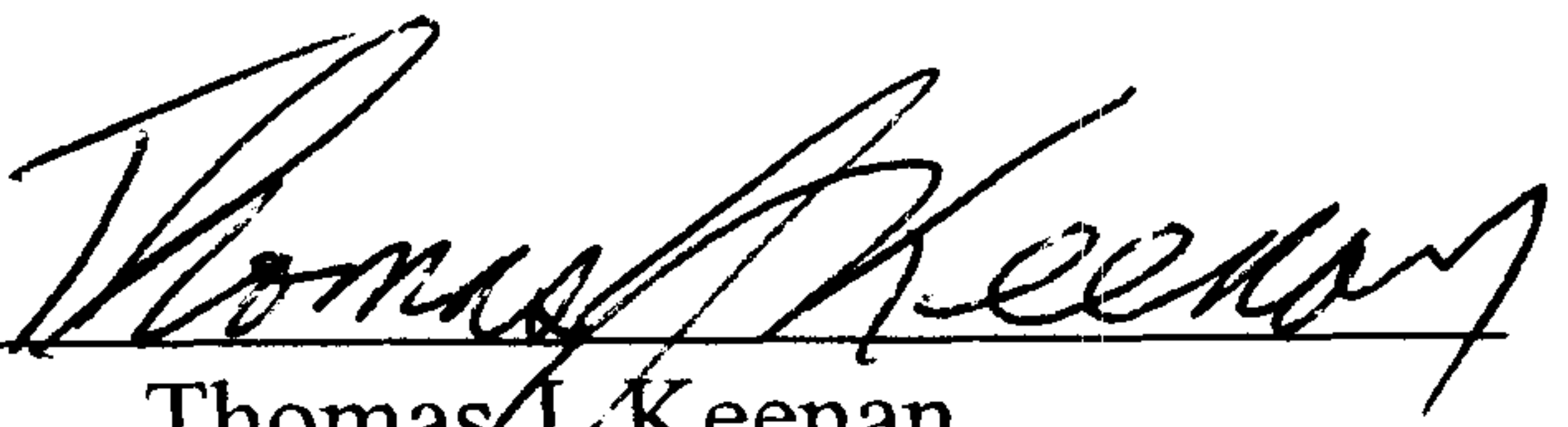
18. Governing Law/Venue. This Assignment shall be governed, construed, and enforced in accordance with the laws of the State of Alabama.

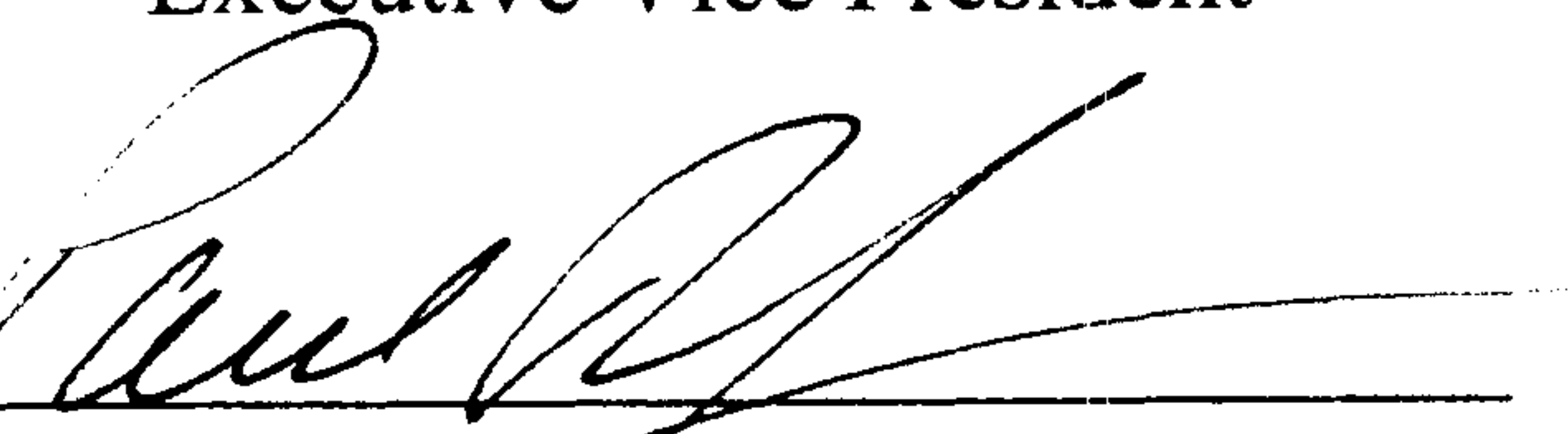
IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day first written above.

ASSIGNOR:

**CONTINENTAL 120 FUND LLC, a**  
Wisconsin limited liability company

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

By:   
Thomas J. Keenan  
Executive Vice President

By:   
Paul R. Seifert  
Vice President

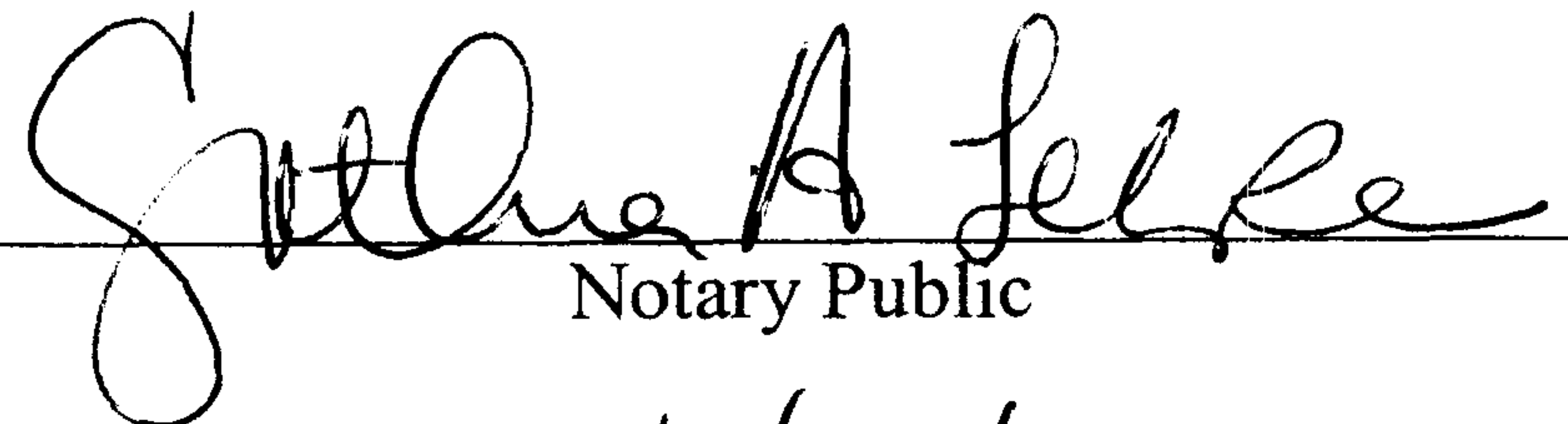


STATE OF WISCONSIN                    )  
:  
COUNTY OF WAUKESHA                )

I, the undersigned, a notary public in and for said county and state, hereby certify that Thomas J. Keenan, whose name as Executive Vice President of Continental 120 Fund LLC, a Wisconsin limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Executive Vice President of Continental Properties Company, Inc. and with full authority, executed the same voluntarily for and as the act of said Continental 120 Fund LLC.

Given under my hand and official seal this 10<sup>th</sup> day of November, 2005.

Cynthia A. Lehrke  
Notary Public  
State of Wisconsin  
[NOTARIAL SEAL]

  
Notary Public

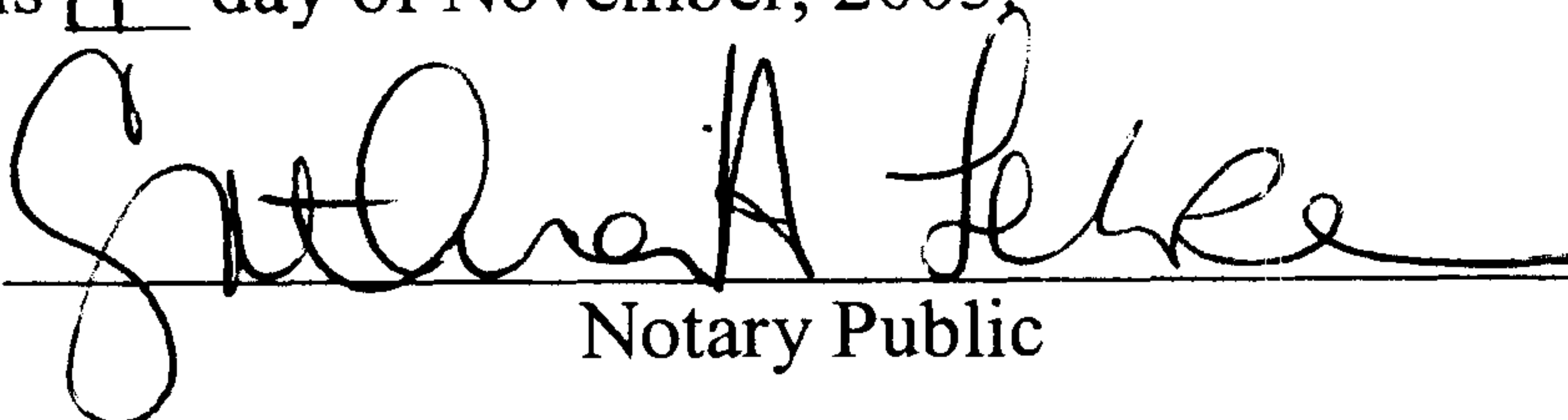
My commission: 6/10/07.

STATE OF WISCONSIN                    )  
:  
COUNTY OF WAUKESHA                )

I, the undersigned, a notary public in and for said county and state, hereby certify that Paul R. Seifert, whose name as Vice President of Continental 120 Fund LLC, a Wisconsin limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Vice President of Continental Properties Company, Inc. and with full authority, executed the same voluntarily for and as the act of said Continental 120 Fund LLC.

Given under my hand and official seal this 11<sup>th</sup> day of November, 2005.

Cynthia A. Lehrke  
Notary Public  
State of Wisconsin  
[NOTARIAL SEAL]

  
Notary Public

My commission: 6/10/07.





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EXHIBIT "A"

PARCEL A

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.

Continued:



  
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PARCEL B

Drainage Easement between Continental 120 Fund LLC and Joseph & Williams, L.L.C., recorded November \_\_, 2005 in Instrument 20051116000598440, in the Probate Office of Shelby County, Alabama; and

Grading Easement between Continental 120 Fund LLC and Harold H. Wehby recorded November \_\_, 2005 in Instrument 20051116000598440 in the Probate Office of Shelby County, Alabama; and

Grading Easement between Continental 120 Fund LLC and Joseph & Williams L.L.C., recorded November \_\_, 2005 in Instrument 20051116000598440, in the Probate Office of Shelby County, Alabama.