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Register of Deeds, Douglas County, NE  
2/24/2012 15:06:22.61



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SPACE ABOVE RESERVED FOR REGISTER OF DEEDS OFFICE RECORDING INFORMATION

File Number: 6063162

*Please Return recorded document to:*  
Nebraska Title Company  
PO Box 6169  
6003 Old Cheney Road, 3rd Floor  
Lincoln, NE 68506-0169

TITLE OF DOCUMENT: Temporary Construction Easement

113386

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

### TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement (this “**Easement**”) is made as of this 24<sup>th</sup> day of February, 2012, by and between CONTINENTAL 159 FUND LLC, a Wisconsin limited liability company (“**Grantee**”), and LEGACY UPSTREAM, L.L.C. (“**Legacy Upstream**” or “**Grantor**”).

WHEREAS, Legacy Upstream is the owner of that certain real property in the City of Omaha, State of Nebraska, (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 Omaha, State of Nebraska, 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, Grantor desires to provide to Grantee, and Grantee desires to receive from Grantor, a temporary easement within the area depicted as the “Easement Area” on Exhibit C (the “**Easement Area**”) for purposes of constructing certain head-in street parking stalls, a parking lot and portions of a sidewalk as depicted on Exhibit C (collectively, the “**Parking Stalls**”), 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 TEMPORARY 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, temporary right and easement (which easement shall be appurtenant to the Grantee's Property) within the Easement Area for the purposes of constructing the Parking Stalls within the Easement Area. This easement shall terminate thirty (30) days after Grantee's receipt of a certificate of completion of the construction of the Parking Stalls.

2. 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 immediately commence to have said liens discharged of record.
3. 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.
4. REPAIR. Except for the Parking Stalls and related improvements, Grantee will, at its sole cost and expense and promptly after completion of its work, replace the surface (including, without limitation, the surface paving) and subsurface of the soil as may be disturbed in connection with Grantee's activities in the Easement Area in substantially the same condition as existed as of the date hereof or immediately prior to such work, and repair all driveways and other paved areas and replace portions of lawns or fences which may be damaged by Grantee's activities in the Easement Area or by the exercise of the rights herein granted.
5. 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 or of any of the rights and privileges conferred herein.
6. GRANTOR'S USE. In no event shall any Grantor Party obstruct, disrupt or otherwise interfere with the use by any Grantee Party of the Easement Area as contemplated herein.
7. 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:  
Legacy Upstream, L.L.C.  
17110 Mercy Street, Suite 1  
Omaha, NE 68118  
Attn: Jodi Johnson

If to Grantee:  
Continental 159 Fund LLC  
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 the 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 Douglas County, Nebraska.
18. GOVERNING LAWS. The internal laws of the State of Nebraska 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.
20. BINDING ON FUTURE PARTIES. The temporary 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.

**(signature page to follow)**

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

GRANTEE:

CONTINENTAL 159 FUND LLC,  
a Wisconsin limited liability company

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

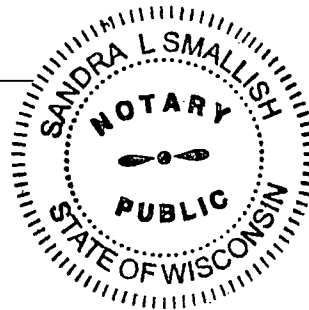
By: *Daniel J. Minahan*  
Daniel J. Minahan, President

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN     )  
  ) SS.  
WAUKESHA COUNTY     )

Personally came before me this 14th day of February, 2012, the above named Daniel J. Minahan, President of Continental Properties Company, Inc., managing member of Continental 159 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.

*Sandra L. Smallish*  
Notary Public, State of Wisconsin  
My Commission Expires: 5/10/2015



GRANTOR:

LEGACY UPSTREAM, L.L.C.,  
an Iowa limited liability company

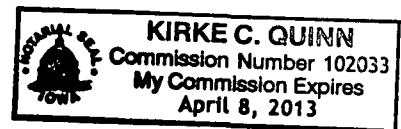
By: [Signature]  
Name: Jeff Johnson  
Its: Manager

**ACKNOWLEDGEMENT**

STATE OF Iowa )  
 ) SS.  
Boone COUNTY )

Personally came before me this 6<sup>th</sup> day of January, 2012 the above named Jeff Johnson, the Manager of LEGACY UPSTREAM, L.L.C., an Iowa limited liability company, to me known to be such Manager and acknowledged that [s]he executed the foregoing instrument as the deed of said corporation, by its authority.

[Signature: Kirke C. Quinn]  
Notary Public, Boone County, Iowa  
My Commission Expires: 4/8/2013



The undersigned hereby joins in this Easement for the purposes of consenting and agreeing to all matters contained herein.

UPSTREAM BREWING COMPANY WEST, LLC,  
a Nebraska limited liability company

By: *Brian Magee*

Name: *BRIAN MAGEE, MANAGING MEMBER, UPSTREAM WEST PARTNERS, LLC*

Its: *MANAGING MEMBER*

**ACKNOWLEDGEMENT**

STATE OF NEBRASKA       )  
  ) SS.  
DOUGLAS COUNTY        )

Personally came before me this 23 day of November, 2011, the above named Brian Magee, the Managing Member of UPSTREAM BREWING COMPANY WEST, LLC, a Nebraska limited liability company, to me known to be such person and acknowledged that [s]he executed the foregoing instrument as the deed of said corporation, by its authority.

*Michael J. Howe*  
Notary Public, *Nebraska* County, *Douglas*  
My Commission Expires: *June 11, 2015*

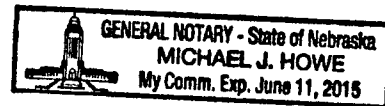






EXHIBIT A

Grantor's Property

Lot 1 of LEGACY REPLAT 5, subdivisions as surveyed, platted and recorded in Douglas County, Nebraska.

m1-22275

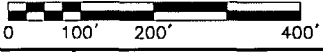
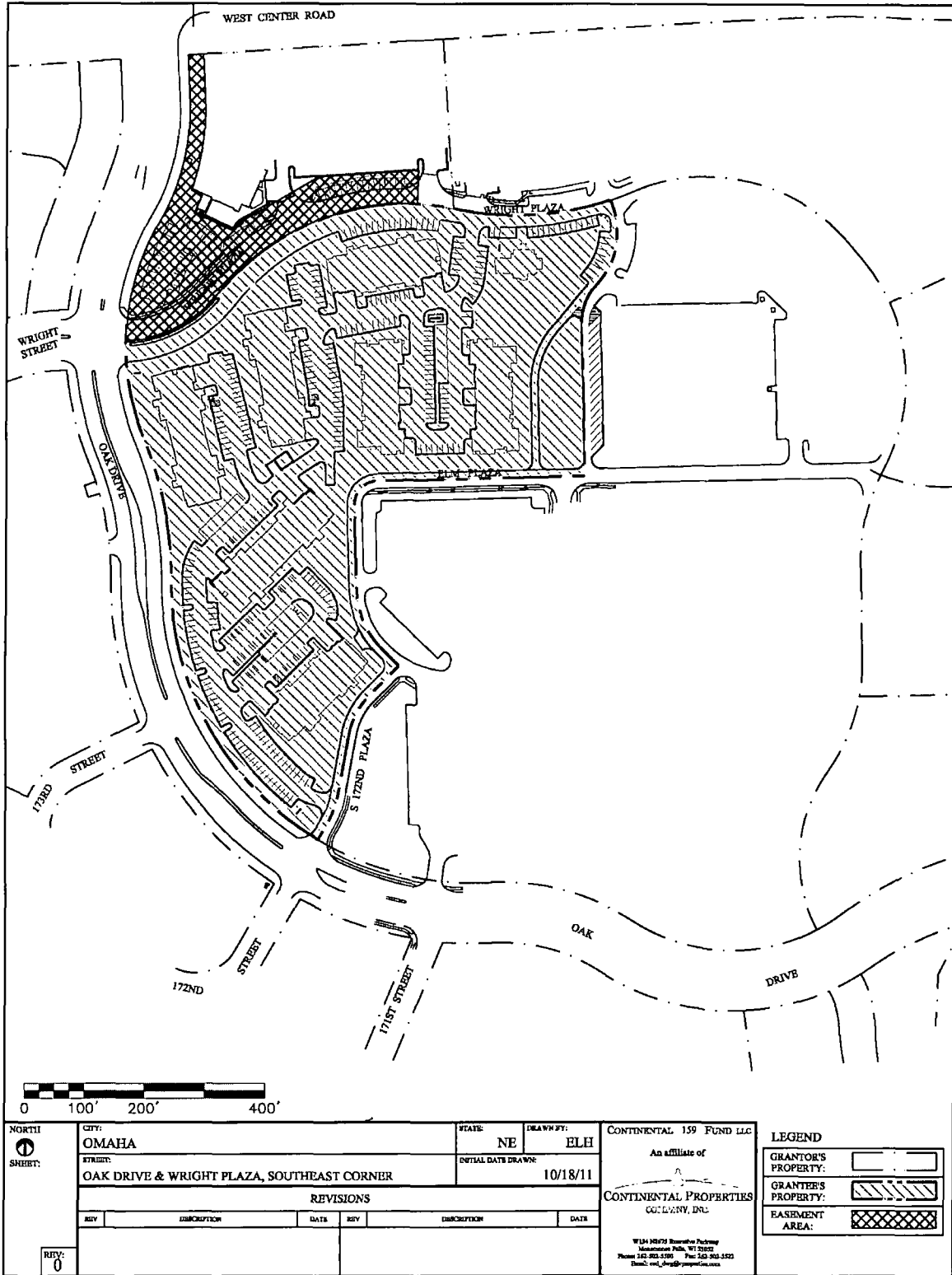
EXHIBIT B

Grantee's Property

Lot 1 of LEGACY REPLAT 16, being a replatting of Lot 2, LEGACY REPLAT 10, and Lots 1 and 2 of LEGACY REPLAT 12, subdivisions as surveyed, platted and recorded in Douglas County, Nebraska.

# EXHIBIT C

## Depiction of Properties and Easement Area



NORTH  SHEET:	CITY: OMAHA STREET: OAK DRIVE & WRIGHT PLAZA, SOUTHEAST CORNER	STATE: NE INITIAL DATE DRAWN: 10/18/11	DRAWN BY: ELH CONTINENTAL 159 FUND LLC An affiliate of CONTINENTAL PROPERTIES CO., L.P., D/L	<b>LEGEND</b> GRANTOR'S PROPERTY: GRANTEE'S PROPERTY: EASEMENT AREA:												
	<b>REVISIONS</b>		W134 184728 International Parkway Menasha, WI 53051 Phone: 920-920-5199 Fax: 920-920-5522 Email: <a href="mailto:elg@continental.com">elg@continental.com</a>													
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