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LOT 44

1701 Golf Rd. #100
Rolling Meadows
Ill. 60008

93084531

REAL ESTATE MORTGAGE

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THIS REAL ESTATE MORTGAGE (hereinafter referred to as the "Mortgage") is made this 10th day of November, 1993, by WAGNER CONSTRUCTION CORP, an Indiana Corporation of Porter County Indiana as Mortgagor, to CONTINENTAL OFFICES LTD., an Illinois corporation of Cook County, Illinois, as Mortgagee. The terms "Mortgagor" and "Mortgagee" shall, whenever hereinafter used, be construed to refer to and include heirs, legal representatives, successors and assigns of said parties.

WITNESSETH

A. DESCRIPTION OF PROPERTY SUBJECT TO LIEN: MORTGAGED PROPERTY

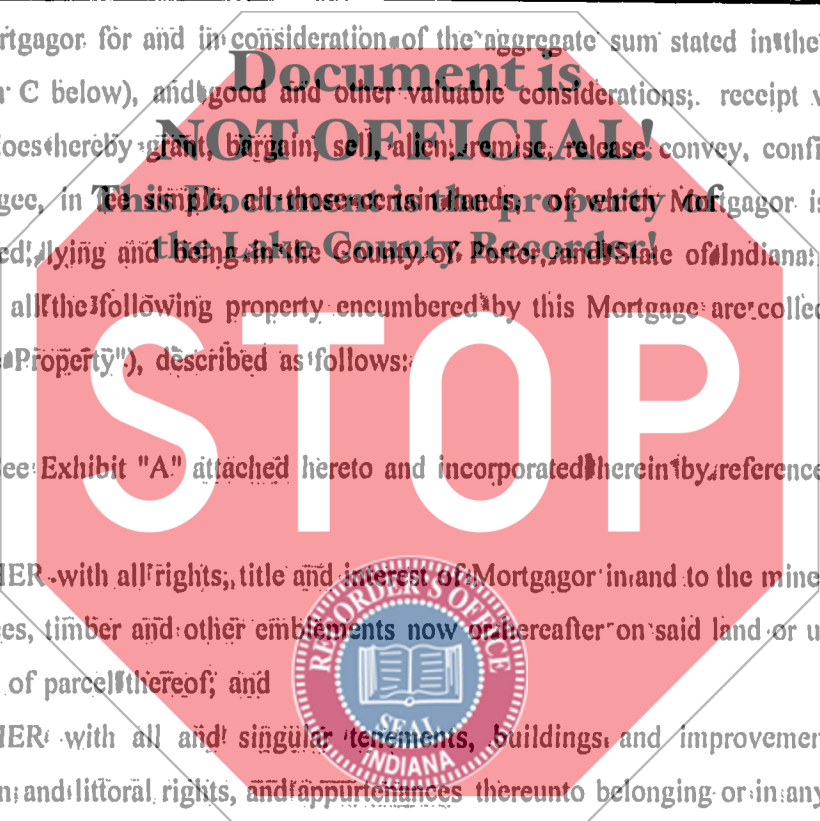
That Mortgagor for and in consideration of the aggregate sum stated in the Note (as defined herein in Section C below), and good and other valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey, confirm and mortgage unto the Mortgagee, in fee simple, all those certain lands, of which Mortgagor is now seized and possessed, situated, lying and being in the County of Porter, and State of Indiana (Hereinafter, said lands along with all the following property encumbered by this Mortgage are collectively referred to as the "Mortgage Property"), described as follows:

See Exhibit "A" attached hereto and incorporated herein by reference.

TOGETHER with all rights, title and interest of Mortgagor in and to the minerals, soil, flowers, shrubs, crops, trees, timber and other emblements now or hereafter on said land or under or above the same or any part of parcel thereof; and

TOGETHER with all and singular tenements, buildings, and improvements, hereditament, easement, riparian and littoral rights, and appurtenances thereunto belonging or in anyway appertaining whether now owned or hereafter acquired by Mortgagor, whether now or hereafter attached to said land or any part thereof, and including all rights of ingress and egress to and from adjoining property (whether such rights now exist or subsequently arise) together with the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, homestead, dower, right of dower, elective share, separate estate, property, possession, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof, and

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said land or any part thereof and including all trade, domestic and ornamental



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fixtures, and articles of personal property of every kind and nature whatsoever, now or hereafter located in; upon or under said land or any part thereof and used or usable in connection with any present or future operation of said land and now owned or hereafter acquired by Mortgagor, including, without limitation, the generality of the foregoing, all heating, air conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges; furnaces, oilburners or units thereof; appliances, air cooling and air conditioning apparatus; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; wall beds; refrigerators; attached cabinets; partitions; together with all building materials and equipment now or hereafter delivered to the land and intended to be installed therein, including, without limitation, lumber, plaster, cement, shingles, roofing, plumbing fixtures, pipe, lath, wallboard; cabinets, nails, paint, lighting fixtures, sinks, toilets, furnace, heaters, brick, tile, water heaters, screens, window frames, glass, doors, flooring, and attached refrigerating, cooking, heating and ventilating appliances and equipment, together with all additions and accessions thereto and replacements thereof (Mortgagor hereby agreeing with respect to all additions and replacements to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of the foregoing); and

TOGETHER with all of the water, sanitary and storm sewer systems now or hereafter owned by the Mortgagor which are now or hereafter located by, over and upon said land hereinbefore described, or any part and parcel thereof, and which water system includes all water mains, service laterals, hydrants, valves and appurtenances; and which sewer system includes all sanitary sewer lines, including mains, laterals, manholes and appurtenances; and

TOGETHER with all paving for streets, roads, walkways or entrance ways now or hereafter owned by Mortgagor and which are now or hereafter located on said land hereinbefore described or any part or parcel thereof; and

TOGETHER with all rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property to be applied against the Secured Indebtedness (as defined herein in Section G below), provided, however, that permission is hereby given to Mortgagor, so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable but not in advance thereof. The foregoing assignment shall be fully operative without any further action of the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all

rents, royalties, issues, profits, revenue income and other benefits from the Mortgaged Property whether or not Mortgagee takes possession of the property. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagee's specific consent. The exercise of any rights under this paragraph by Mortgagee or the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or any such notice, but shall be cumulative of all other rights and remedies; and

TOGETHER with all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Mortgaged Property together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of borrower in and to any and all leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission herein above given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease; and

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder; and

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the

grade of any street, or (c) any other injury to, taking of, or decrease in the value of, the Mortgaged Property, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee and of the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment; and

TOGETHER with all of the right, title and interest of the Mortgagor in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter provided pursuant to the terms of this Mortgage, and all proceeds or sums payable for the loss of or damage to (a) any of the Mortgaged Property, or (b) rents, revenues, income, profits or proceeds from leases, franchises, concessions or licenses of or on any part of the Mortgaged Property.

TO HAVE AND HOLD the Mortgaged Property until the Mortgagee and its successors and assigns until all the Secured Indebtedness (as defined herein in Section G below) is paid in full.

B: TITLE.

Mortgagor warrants that Mortgagor has good, absolute and marketable title to the Mortgaged Property and is lawfully seized and possessed of the Mortgaged Property and every part thereof, and has the right and authority to mortgage and give security upon all the Mortgaged Property; that the Mortgaged Property is unencumbered and unrestricted except as may be herein expressly provided; and that Mortgagor will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against the claims of all persons whomsoever.

C: EQUITY OF REDEMPTION.

CONDITIONED; HOWEVER, that if the maker of the Note (as defined herein in this Section C below) shall pay or cause to be paid to Mortgagee, at its office and principal place of business in Rolling Meadows, Illinois, or at such other place which may hereafter be designated by Mortgagee, its or their successors or assigns, with interest, if applicable, the principal sum of FIFTY THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$50,400.00), as stated in that certain Note; a copy of which is attached hereto as Exhibit "B" and incorporated herein; as well as all future advances and all other sums; indebtedness, obligations and liabilities for which this instrument is security; and if the Mortgagor shall also fully perform all the covenants, conditions and terms of this Mortgage, then these presents shall be void, otherwise to remain in full force and effect.

D. U.C.C. - SECURITY AGREEMENT.

IT IS FURTHER AGREED that if any of the Mortgaged Property is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Mortgagor agrees to join with the Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code. In regard thereto, the Mortgagee shall have, as additional and cumulative rights and remedies, all of the rights and remedies provided in said Uniform Commercial Code.

E. EXTENT OF SECURITY.

This Mortgage is also given as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind now or hereafter, during the term hereof, owing and to become due from the Mortgagor to the Mortgagee or to the holder of the Note, or to the assignees thereof, howsoever created, incurred, evidenced, required or arising, whether under the Note, this Mortgage, or any other instrument, obligations, contracts, or agreements or dealings of any and every kind now or hereafter existing or entered into between the Mortgagor and the Mortgagee, or otherwise, as amended or modified or supplemented from time to time, and whether direct, indirect, primary, secondary, fixed or contingent, and any and all renewals, modifications or extensions of any or all of the foregoing.

F. FUTURE ADVANCES.

It is agreed that any additional sum or sums advanced by the then holder of the Note secured hereby to or for the benefit of Mortgagor, whether such advances are obligatory or are made at the option of Mortgagee, or otherwise, at any time within one (1) year from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional loan or advance, shall be equally secured with and have the same priority as the original indebtedness and be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a promissory note of the Mortgagor and whether or not identified by a recital that it is secured by this Mortgage, provided further that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances. Any reference hereafter to Note shall include any promissory note or other instrument evidencing such future advance.

G. SECURITY OF DISBURSED OR NON-DISBURSED AMOUNTS.

It is the intent hereof to secure payment of the aforesaid Note and obligations whether the entire amount shall have been advanced to the Mortgagor at the date hereof, or at a later date, and to secure any other amount or amounts that may be added to the mortgage indebtedness under the terms of this instrument (all of which are collectively referred to herein as the "Secured Indebtedness"), the entire Secured Indebtedness being equally secured with and having the same priority as any amounts advanced at the date hereof.

AND the Mortgagor covenants, warrants and represents with Mortgagee as follows:

1. PAYMENT. That the Mortgagor shall pay all and singular the principal and interest and other sums of money payable according to the tenor of the Note and this Mortgage; and of any other Secured Indebtedness according to its terms.

2. TAXES: That the Mortgagor shall pay, before they become delinquent, all taxes and assessments of every nature affecting the Mortgaged Property, and all other charges and encumbrances which now are, or hereafter shall be, or appear to be a lien upon the Mortgaged Property or any part thereof. In default thereof, Mortgagee may (but shall not be obligated to) pay and discharge said taxes, assessments, charges and encumbrances, and pay such sums of money as it may deem necessary therefore; and shall be the sole judge of the validity, legality or priority thereof; and every payment so made shall bear interest at the maximum legal rate and be secured by the lien of this Mortgage.

3. WASTE: That the Mortgagor will permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Property and will keep and maintain all improvements now or hereafter on the land in sound condition and good repair. Land excavation, clearing and improvement related to subdividing the real property shall not be considered waste as provided herein. Should Mortgagor fail to make such necessary repairs, then Mortgagee may, at its option, make such repairs or remedy any waste, and any such sums expended by the Mortgagee shall be immediately due and payable and shall bear interest at the maximum legal rate and shall be secured by the lien hereof. Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Property at all reasonable times and access thereto shall be permitted for that purpose.

4. INSURANCE. That the Mortgagor shall keep the buildings and improvements now or hereafter on the said land and articles of personal property covered by this Mortgage insured against loss by fire and other losses normally covered by an extended coverage endorsement, and against flood loss.

and loss by such other hazards as may be from time to time required by the Mortgagee; in such form and amounts and with such companies approved by the Mortgagee. All such policies shall be deposited with the Mortgagee with premiums fully prepaid. All policies of insurance which insure against any loss or damage to the Mortgaged Property shall provide for loss payable to Mortgagee, without contribution by Mortgagee, pursuant to mortgage clause satisfactory to Mortgagee. In the absence of specific directions from Mortgagee, insurance required herein for fire and extended coverage and other loss shall not be less than such amount as may be required to prevent Mortgagor from becoming a coinsurer under the terms of the applicable policy, or the amount of the Note, whichever is greater. Mortgagor agrees in the event of any loss under any policy of insurance, that the proceeds shall be paid direct to Mortgagee and Mortgagee may, in its sole discretion, apply the amount so collected, or any part thereof, on the Secured Indebtedness in whatever manner Mortgagee may deem advisable, or toward the repair or restoration of the damaged premises, or any portion thereof. In case Mortgagor fails so to insure as herein agreed, the Mortgagee is hereby authorized to (but is not obliged to) procure and pay for such fire or other insurance, and every payment shall bear interest from the date thereof at the maximum legal rate and shall be secured by the lien hereof.

5: **DEFAULT.** That the whole of the Secured Indebtedness shall become due and payable, at the option of the Mortgagee, without notice or demand, after default in the payment of any installment of principal or interest on the Note, or after default in the payment of any tax, assessment or insurance premium, or upon default in the performance of any other covenant herein or in any Loan Document (as defined herein below in this paragraph) delivered to the Mortgagee in connection with the Note or other Secured Indebtedness and failure to correct such default within a fifteen (15) day period of notice from Mortgagee. Upon such default, at the option of the Mortgagee, this Mortgage may be foreclosed, and all costs and expenses of collection of said monies by foreclosure, and all costs and expenses of collection of said monies by foreclosure or otherwise, including, without limitation, attorney's fees for negotiations, trial, appellate proceedings, including fees incurred for collection and proof of attorneys' fees, and other legal services, and costs of abstract of title, title insurance policy, or other title expense, shall be paid by the Mortgagor and secured hereby. For purposes hereof, "Loan Document" shall mean the Note, this Mortgage, and if applicable to this loan transaction, the Loan Agreement, and any other security documents executed in connection with this loan. Attorney's fees shall also include hourly charges for paralegals and other staff members operating under the supervision of an attorney. Mortgagor shall pay all attorneys' fees incurred by Mortgagee in connection with the negotiation, review, or preparation of any documentation relating to any aspect of this Mortgage or any other Loan Document, including,

without limitation, partial releases, modifications, lease, easements, restrictions, condominium documents, and joinders by Mortgagee affecting any portion of the Mortgaged Property.

6. **RECEIVER.** That in the event a suit is instituted to foreclose this Mortgage or to enforce payment of any Secured Indebtedness, or the performance of any covenant or obligation hereunder, the Mortgagee shall be entitled to the appointment of a Receiver to take charge of the Mortgaged Property, to collect the rents, issues and profits therefrom, and to complete any construction and care for the Mortgaged Property, without proving insolvency, or any other grounds for extraordinary relief, and the Mortgagor hereby consents to such appointment ex parte without notice, and such appointment shall be made by the court having jurisdiction thereof as a matter of right to the Mortgagee and without reference to the adequacy of the security, or to the solvency or insolvency of the Mortgagor; and all rents, profits, incomes, issues and revenues of the Mortgaged Property are hereby assigned and pledged as further security for payment of the Secured Indebtedness with the right on the part of the Mortgagee at any time after default hereunder to demand and receive the same and apply the same on the Secured Indebtedness.

7. **CONDEMNATION.** That in the event the Mortgaged Property subject to this Mortgage, or any part thereof, shall be condemned or taken for public use under the powers of eminent domain, the Mortgagee shall have the right to demand that all money awarded for the appropriation thereof, or damage to said lands and Mortgaged Property, shall be paid to the Mortgagee up to the amount of the outstanding Secured Indebtedness and may be applied upon the payment last payable under this Mortgage and the obligation secured hereby. Such condemnation or application shall not otherwise affect or vary the obligation of the Mortgagor to pay the Secured Indebtedness.

8. **MORTGAGOR AS LESSOR.** That the Mortgagor shall faithfully perform the covenants of Mortgagor as lessor under any and all present and future leases, affecting all or any portion of the Mortgaged Property, and neither do nor neglect to do, nor permit to be done, anything which may cause the termination of said leases, or which may diminish or impair their value; or the rents provided for therein, or the interest of Mortgagor or Mortgagee therein or thereunder. Mortgagor, without first obtaining the written consent of Mortgagee thereto, shall not (a) assign the rents, or any part thereof, from the Mortgaged Property, (b) consent of the cancellation or surrender of any lease of the Mortgaged Property, or any part thereof, now existing or hereafter to be made, (c) modify any such lease so as to shorten the unexpired term thereof, or so as to decrease the amount of the rent payable thereunder, or (d) collect rents from the Mortgaged Property for more than two months in advance.

9. **MORTGAGEE'S RIGHTS AT ANY TIME, WITH OR WITHOUT CONSENT.** Without affecting the liability the Mortgagor or any other person (except any person expressly released in writing)

for payment of any indebtedness secured hereby or for performance of any obligation contained herein; and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note and without notice or consent: (a) release any person liable for payment of all or any part of the Secured Indebtedness or the performance of any obligation; (b) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Secured Indebtedness or modifying or waiving any obligation or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; or, (e) release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the Mortgaged Property.

10. SUBROGATION: Mortgagee shall be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of the Note hereby secured, and even though such prior liens have been released of record, the repayment of the Note shall be secured by such liens on the portions of the Mortgaged Property affected thereby to the extent of such payments, respectively.

11. DUE ON SALE: That if this paragraph be deemed a restraint in alienation, it is a reasonable one; and if all or any part of the Mortgaged Property or any interest therein is sold or transferred by Mortgagor (or any subsequent owner of the Mortgaged Property) by any means whatsoever, direct or indirect, without Mortgagee's prior written consent, Mortgagee may, at Mortgagee's option, and without notice to Mortgagor, declare all sums secured by this Mortgage to be immediately due and payable.

In addition to the limitation set forth above, Mortgagor agrees that the following events shall not occur on or after the date first above written without the prior written consent of Mortgagee: (a) transfer of beneficial interests in Mortgagor or any subsequent owner of the Mortgaged Property (if Mortgagor, or such subsequent owner, is not a natural person or persons but is a corporation, partnership, trust or other legal entity); by Mortgagor (or any subsequent owner of the Mortgaged Property); (b) encumbering of all or any part of the Mortgaged Property except in favor of Mortgagee; (c) conversion of the Mortgaged Property into a congregate form of ownership; (d) sales or leases of interval ownership or time sharing of all or any part of the Mortgaged Property; (e) conversion of the Mortgaged Property into condominium form of ownership; (f) the Mortgagor is disqualified to do business in the State of Indiana; or (g) the use or operation of the Mortgaged Property in existence on the date of this Mortgage, or the business engaged in by Mortgagor on the Mortgaged Property on the date of this Mortgage, is changed, discontinued or terminated.

If any of such events do occur, such shall be deemed a default under this Mortgage, and the Mortgagee or holder shall have the right to accelerate the maturity of this Mortgage as though it were due and payable on the day of such default and to demand payment in full of the Note or any unpaid balance thereof, and to exercise all rights and remedies herein or by law reserved to the Mortgagee the same as in any event of default hereunder, anything contained in the Note secured hereby or herein to the contrary notwithstanding. If Mortgagee exercises such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration in accordance with paragraph 18 hereof. Such notice shall provide a period of not less than fifteen (15) days from the effective date of the notice within which Mortgagor may pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Mortgagee may, without further notice or demand on Mortgagor, invoke any remedies permitted by this Mortgage. If Mortgagee shall not be allowed to enforce the provisions of this paragraph 11 under applicable law, then notwithstanding that the fact that the events of default listed herein may not be considered events of default, Mortgagor expressly covenants and agrees with Mortgagee that upon occurrence of any such events, that the interest rate set forth in the Note secured hereby shall automatically change and increase to the applicable rate of interest set forth in the Note to be charged in the event of a default thereunder.

12. **WAIVER.** That to the extent permitted by law, the Mortgagor hereby waives all right of homestead and exemption granted by the Constitution and laws of Indiana. It is specifically agreed that time is of the essence of this Agreement. Mortgagee and Mortgagor hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Mortgage and/or the Note contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of either party. This provision is a material inducement for the Mortgagee making the loan to Mortgagor.

13. **MORTGAGEE'S EXERCISE OF RIGHTS.** That any indulgence or departure at any time by the Mortgagor, its successors or assigns from any of the provisions hereof, or of any obligation hereby secured, shall not modify the same or relate to the future or waive compliance therewith by the Mortgagor. No act of omission or commission of Mortgagee, including, without limitation, any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver, release or modification of the same, such waiver, release or modification to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein.

14. **OTHER EVENTS OF DEFAULT.** That in the event the Mortgagor (or the then fee owner of the Mortgaged Property) should be adjudicated bankrupt, either voluntary or involuntary, or should

a receiver be appointed for the Mortgagor or should the borrower become subject to a plan or arrangement under the Bankruptcy Act, or should the Mortgagor commit an act of bankruptcy, then and in any one of such events this Mortgage and the Note for which the same is given to secure and all other Secured Indebtedness shall become immediately due and payable and the Mortgagee shall have the right at its option to immediately foreclose this Mortgage without notice. That if foreclosure proceedings of any other mortgage, security agreement, or any other lien of any kind shall be instituted in regard to the Mortgaged Property, or should Mortgagor default in any other loan from Mortgagee to Mortgagor, the Mortgagee may, at its option, immediately or thereafter declare this Mortgage and the Secured Indebtedness due and payable.

15. DUTY TO DEFEND. That Mortgagor will defend, at its own cost and expense, and indemnify and hold Mortgagee harmless from any actions, proceeding or claim affecting the Mortgaged Property, the Note, Mortgage or any other Loan Document. Costs and expenses will include, but not be limited to, all reasonable attorneys fees for negotiations, trial, appellate proceedings and other legal services. If Mortgagor neglects or refuses to act pursuant to this numbered paragraph, Mortgagee, at its option (whether electing to declare the entire Secured Indebtedness due and collectible or not, or to pursue other remedies for a default by Mortgagor) may pay for all reasonable attorney's fees for negotiations, trial, appellate proceedings and other services, costs and expenses incurred in any such action. All such payments, bearing interest thereon from the time of payment at the maximum rate of interest permitted by law, shall be immediately due and payable by Mortgagor to Mortgagee.

16. COMPLIANCE WITH LAWS. That (a) the Mortgagor has complied, and shall hereafter comply, with all valid laws, rules, ordinances and regulations of the federal, state and local government, and all agencies and subdivisions thereof which laws, rules, ordinances, and regulations apply or relate to the Mortgaged Property, the development, construction and improvements existing or contemplated thereon or as a part thereof, and the use, lease, sale or other disposition of the Mortgaged Property or parts thereof, or the improvements now or hereafter located thereon or a part thereof, including, without limitation, all such laws, rules, ordinances, and regulations regarding land use, zoning, building, subdivision, environment, OSHA, pollution and sales practices; (b) no notice has been served on Mortgagor, from any entity, governmental body, or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources (copies of any such notices received after the date of this instrument shall be forwarded to Mortgagee within three (3) days of their receipt); (c) no pollutants or other toxic or hazardous substances, including any solid;

liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (hereinafter sometimes the foregoing are collectively referred to as "Substances") have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape on the Mortgaged Property; (d) no asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on the Mortgaged Property; (e) no polychlorinated biphenyls ("PCBs") are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form; (f) no underground storage tanks are located on the Mortgaged Property or were located on the Mortgaged Property and subsequently removed or filled; or (g) no investigation, administrative order, consent and agreement, litigation, or settlement with respect to the Substances is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property.

Failure to comply with any provision set forth above, shall be deemed to be an occurrence of default under this Mortgage.

Notwithstanding anything to the contrary contained herein or in any other document executed in connection herewith, including, without limitation, any provision that otherwise limits Mortgagor's liability with respect to the Secured Indebtedness, Mortgagor hereby covenants and agrees to indemnify and hold and Mortgagee harmless from, and shall remain liable to the Mortgagee for, any and all of the Mortgagee's costs, expenses, damages and liabilities, including, without limitation, all reasonable attorneys' fees, directly or indirectly arising from or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Mortgaged Property of any materials, wastes, or substances now or hereafter defined or classified as hazardous or toxic under federal, state or local laws or regulations. This indemnification obligation shall survive the payment, cancellation or other satisfaction of the indebtedness secured hereby and the discharge or other termination of this Mortgage.

17. SEPARATE, DISTINCT AND CUMULATIVE RIGHTS OF MORTGAGEE. That the rights of the Mortgagee, granted and arising under the clauses and covenants contained in this Mortgage, the Note, or any other Loan Documents, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Mortgagee may have in law or equity; and none of them shall be in exclusion of the others; and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages, and preservation of security as provided at law. No act of Mortgagee shall be construed as an election to proceed under any one provision herein or under the Note to the exclusion of any other provision, or an election of remedies to the bar of any other

remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

18. **NOTICE.** Except for any notice required under applicable law to be given in another manner, any notice, report, demand or other instrument required or permitted to be given by this Mortgage shall be given or made in writing, including telex and telegraphic communication, and shall be, as elected by the person giving such notice, served personally by messenger or courier service, telecommunicated, telexed or, other than during a period of general interruption of postal service due to strike, lockout or other cause, mailed in Canada or the United States by prepaid, registered or certified mail, return receipt requested!

A. In the case of the Mortgagee, addressed to:

Continental Offices Ltd.
1701 West Golf Road
Tower Two, Suite 100
Rolling Meadows, IL 60008

B. In the case of the Mortgagor, addressed to:

Wagner Construction Corp.
1751 Lincolnway, Suite H
Valparaiso, IN 46383

Any notice given in accordance with the provisions of this paragraph shall be deemed to be effective if personally delivered on the date of such transmission with confirmed, answer back if by telex or, mailed, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to the other party of a change of its address for the purposes of giving notice under this section which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Mortgage.

19. **MISCELLANEOUS.** The word "Mortgagor", if it appears hereby that there is more than one, shall, wherever herein used be construed in the plural, and all the covenants, agreements and undertakings herein set forth, shall be joint and several. If any provision of this Mortgage or any other Loan Document, or the application thereof shall for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of the provision to other persons, entities or circumstances, nor any other instrument referred to hereinabove shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law. That all covenants and stipulations in these presents contained shall bind the heirs, executors and

administrators, successors and assigns of the Mortgagor and shall inure to the benefit of and be available to the successors and assigns of the Mortgagee.

IN WITNESS WHEREOF, Mortgagor, has duly signed, sealed and executed this instrument in the presence of the subscribing witnesses the day and year first aforesaid.

WAGNER CONSTRUCTION CORP.
an Indiana Corporation

V. Jake Wagner
V. Jake Wagner
President

STATE OF

Indiana

COUNTY OF

Porter

**Document is
NOT OFFICIAL!**

This Document is the property of
the Lake County Recorder!

The foregoing instrument was acknowledged before me this 27 day of November, 1993, by V. Jake Wagner, as President of WAGNER CONSTRUCTION CORP. an Indiana Corporation on behalf of the corporation.

STOP



Lisa Hamann
Notary Public
My commission expires: *Sept. 22, 1997*



EXHIBIT A

Lot 44 in Whitethorne Woods, as shown on plat in plat file 20-A-3 in the Office of the Recorder of Porter County, Indiana:



EXHIBIT B



PROMISSORY NOTE

\$50,400

November 10, 1993
Valparaiso, Indiana

FOR VALUE RECEIVED, the undersigned, WAGNER CONSTRUCTION CORP. (hereinafter referred to as "Borrower"), an Indiana corporation, promises to pay to the order of CONTINENTAL OFFICES LTD., An Illinois corporation (hereinafter referred to as the "Lender"), the sum of FIFTY THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (50,400.00) together with interest on the unpaid principal balance remaining from time to time, from the date hereof at the fixed rate Three and 9/10 percent (3.9%) on or before December 15, 1993 (hereinafter referred to as the "Due Date"); Interest shall be computed on the basis of a three hundred and sixty (360) day year and shall be charged for the actual number of days within the period for which interest is being charged;

This Note may be prepaid in whole or in part at any time, without premium penalty, provided that this Note, or Mortgage, as hereinafter defined, is not then in default.

All payments on this Note shall be applied first to payment of interest and then to payment of principal.

If the payment under this Note is not made within ten (10) days of the Due Date in accordance with the terms hereof, then, in addition to the payment of the amount so due, a late charge of five cents (5¢) per dollar of such delinquent payments shall be made. This default charge shall not be construed as interest, but represents reimbursement of reasonable expenses for collection said payment. Failure by the Lender to exercise the options hereunder shall not constitute a waiver of the subsequent right to exercise same.

If the payment under this Note is not made within ten (10) days of the Due Date in accordance with the terms hereof, then, in addition to the payment of the amount so due, including the late fee above, commencing on such Due Date and until all amounts due and owing under this Note shall be paid interest shall be charged to the Borrower on the outstanding principal balance at the highest interest rate allowed by law, or if no maximum rate is prescribed by law, at eighteen (18%) per annum. Interest shall be computed on the basis of a three hundred and sixty (360) day year and shall be charged for the actual number of days within a period for which interest is being charged.

All persons or entities now or at any time liable, whether primarily or secondarily, for the payment of the indebtedness hereby evidenced, for themselves, their heirs, legal representatives, successors and assigns, respectively, hereby (1) expressly waive presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, and diligence in collection; (2) consent that the time of all payments or any part thereof may be extended, rearranged, renewed or postponed by



the holder hereof and further consent that any real or personal property securing this Note or any part of such security may be released, exchanged, added to or substituted by the holder of this Note, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any instrument securing this indebtedness; (3) agree that the holder of this Note shall not be required first to institute any suit, or to exhaust any of its remedies against Borrower or any other person or party to become liable hereunder, in order to force payment of this Note; (4) agree that Borrower may be released by the holder hereof from any or all liability under this instrument, and such release shall not in any way affect or modify the liabilities of the remaining parties hereto; and (5) agree that if this Note becomes in default and is placed in the hands of an attorney for collection, to pay all costs and expenses of collection of said monies by legal action, foreclosure or otherwise, including, but not limited to, attorney's fees for negotiations, trial, appellate proceedings, including fees incurred for collection and proof of attorneys' fees; and other legal services, shall be paid by Borrower;

This Note and any extensions and renewals hereof are secured by a Real Estate Mortgage dated November 10, 1993, (referred herein as the "Mortgage") executed by Borrower in favor of Lender, which encumbers certain real property described therein. Reference is hereby made to the Mortgage (which is incorporated herein by reference as fully and with the same effect as if set forth herein) for a legal description of said real property, a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

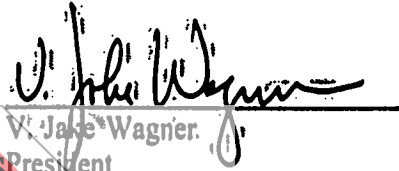
It is specifically agreed that time is of the essence of this Agreement. Lender, by its acceptance hereof, and Borrower hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Note, the Mortgage securing this Note, and any other agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of either party. This provision is a material inducement for the Lender making the loan to Borrower.

Any obligor to this Note shall be in default hereunder upon: (a) nonpayment of any interest or principal hereunder within ten (10) days of the Due Date; (b) the dissolution, termination of existence, insolvency, or business failure of any obligor to this Note, appointment of a receiver of any part of the property of any such party, assignment for the benefit of creditors by or the commencement of any proceedings in bankruptcy or insolvency by or against any obligor; (c) the entry of a judgment against any obligor; (d) the issuing of any attachment or garnishment, or the filing of any lien against any property of any obligor; (e) the taking of possession of any substantial part of the property of any obligor at the instance of any governmental authority; (f) the merger, consolidation or reorganization of any obligor; (g) falsity in any material respect of, or any material omission in, any representation or

statement made to holder by or on behalf of obligor in connection with this Note; (h) the pledge, assignment, transfer or granting of a security interest by any obligor of any equity in any collateral securing this Note without the written consent of holder.

This Note shall be governed by and construed in all respects in accordance with the laws of the State of Indiana.

WAGNER CONSTRUCTION CORP.
an Indiana Corporation


V. Jake Wagner
President



STATE OF Indiana)
COUNTY OF Porter) ss.

The foregoing instrument was acknowledged before me this 24 day of November, 1993, by U. John Wagner, as President of WAGNER CONSTRUCTION CORP., a Delaware Corporation, on behalf of the corporation: Indiana

Lisa Hansen

Notary Public
My commission expires: Sept. 22, 1993

