

UNOFFICIAL COPY

12/15/86
PEB-180-A

5 5 3 1 4 5 2 2

Exhibit E

MORTGAGE

86614622

THIS MORTGAGE, made the 22nd day of December, 1986, between FIRST CITY ROCHESTER ASSOCIATES, a Pennsylvania general partnership (whose sole partners are Richard A. Zappala and Ronald A. Rosenfeld, individuals), with its address at Suite 302, One Oliver Plaza, Pittsburgh, Pennsylvania 15222, the ("Mortgagor"), and MAY CENTERS, INC., a Missouri corporation, having its principal office at 611 Olive Street St. Louis, Missouri 63101, (the "Mortgagee").

64734

WITNESSETH, that to secure the payment of an indebtedness in the sum of Four Million Twenty Nine Thousand Ninety Hundred Thirty Three Dollars and nine Cents (\$ 4,029,933.09), or so much thereof as is disbursed from time to time, in lawful money of the United States, to be paid with interest thereon according to a certain note or obligation bearing even date herewith made by the Mortgagor to the Mortgagee (the "Note"), the Mortgagor has given, granted, bargained, sold, aliened, enfeoffed, warranted, conveyed, confirmed, mortgaged, assigned and pledged and by these presents does give, grant, bargain, sell, alienate, enfeoff, warrant, convey, confirm, mortgage, assign and pledge to the Mortgagee and to its successors and assigns all that certain parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Chicago, County of Cook and State of Illinois, bounded and described on Exhibit A attached hereto and made a part hereof (the "Real Estate");

86614622

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever of

UNOFFICIAL COPY

the Mortgagor, of, in and to the same and of, in and to every part and parcel thereof;

TOGETHER with all right, title and interest of the Mortgagor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Real Estate to the center line thereof;

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon said Real Estate or any part thereof and used or usable in connection with any present or future operation of said Real Estate (hereinafter called "equipment") and now owned or hereafter acquired by the Mortgagor, including, but without limiting the generality of the foregoing, all heating, 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, air cooling and air conditioning apparatus, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ducts and compressors and all of the right, title and interest of the Mortgagor in and to any equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Mortgage; the term "equipment" shall include all machinery, apparatus, equipment, fittings, fixtures, and articles of personal property used in the business of the Mortgagor whether or not the same are annexed to the Real Estate and whether or not the same are also used in the operation of any building located thereon, but shall not include trade inventory or consumable goods. It is understood and agreed that all equipment is part and parcel of the Real Estate and appropriated to the use of the Real Estate and, whether affixed or annexed or not, shall for the purpose of this be deemed conclusively to be Real Estate and conveyed hereby. The Mortgagor agrees to execute and deliver, from time

86614622

UNOFFICIAL COPY

to time, such further instruments as may be requested by the Mortgagee to confirm the lien of this Mortgage on any equipment;

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Real Estate 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 or decrease in the value of the Real Estate, 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 the Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment. The Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such award or payment;

TO HAVE AND TO HOLD the above granted and described Real Estate, with the appurtenances, unto the Mortgagee, its successors and assigns, forever;

PROVIDED ALWAYS, and these presents are upon this express condition, that if the Mortgagor, and the heirs, executors, administrators, successors or assigns of the Mortgagors shall well and truly pay unto the Mortgagee, its successors, or assigns, the sum of money mentioned in the Note and the interest thereon, at the time and in the manner mentioned in the Note, and shall well and truly abide by and comply with each and every covenant and condition set forth herein or in the Note, then these presents and these estate hereby granted shall cease, determine and be void;

AND the Mortgagor covenants with the Mortgagee as follows:

1. Payment of Note. The Mortgagor will pay the said sum of money mentioned in the Note and the interest thereon, at the time and in the manner mentioned in the Note.

86614622

UNOFFICIAL COPY

2. Insurance. (a) The Mortgagee will keep or cause to be kept comprehensive public liability insurance with respect to the Real Estate with combined single limits of \$5,000,000 per occurrence and \$5,000,000 aggregate for injury or death to persons or damage to property, naming Mortgagor and Mortgagee as insureds. Such insurance may be provided in whole or in part by means of "blanket insurance," and provided Mortgagee is May Centers, Inc., may be subject to a self-insured retention not to exceed \$50,000.

Mortgagor may, but shall not be obligated to, keep or cause to be kept policies of fire and extended coverage insurance with respect to the Real Estate and the improvements thereon, provided: that all such insurance shall be in form and companies approved by the Mortgagee; that, regardless of the types or amounts of insurance required and approved by the Mortgagee, the Mortgagor will assign and deliver to the Mortgagee all policies of insurance which insure against any loss or damage to the Real Estate, as collateral and further security for the payment of the money secured by this Mortgage, with loss payable to the Mortgagee pursuant to a standard Mortgagee clause, without contribution, satisfactory to the Mortgagee; and that if the Mortgagee by reason of such insurance receives any money for loss or damage, such amount may, at the option of the Mortgagee, be retained and applied by the Mortgagee toward payment of the moneys secured by this Mortgage, or for any other purpose or object satisfactory to the Mortgagee, but the Mortgagee shall not be obliged to see to the proper application of any amount paid over to the Mortgagor; and (b) that in the event of a foreclosure of this Mortgage the purchaser of the Real Estate shall succeed to all the rights of the Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Mortgagee pursuant to the provisions of this Article.

3. Waste Prohibited. No building or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged nor shall

86614622

any new building be constructed without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, except that the Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance, and by such removal and replacement the Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage, or (b) any net cash proceeds received from such disposition shall be paid over promptly to the Mortgagee to be applied to the last instalments due on the indebtedness secured, without any charge for prepayment.

4. Events of Default. (a) For the purposes of this Mortgage, an "Event of Default" shall be deemed to have occurred if: (a) the Mortgagor fails to pay any instalment of principal and/or of interest due under the Note; or (b) the Mortgagor fails to pay any tax, water rate or assessment when due; or (c) the Mortgagor fails upon request in furnishing a statement of the amount due on this Mortgage and whether any offsets or defenses exist against the Mortgage debt, as hereinafter provided; or (d) the Mortgagor fails to pay any instalment of any assessment for local improvements which may now or hereafter affect the Real Estate and may be or become payable in instalments prior to the date such instalment becomes delinquent; or (e) the Mortgagor permits the actual or threatened waste, removal or demolition of, or material alteration to or enlargement or construction of any building on any part of the Real Estate, except as permitted by Article 3; or (f) the Mortgagor assigns the whole or any part of the rents, income or profits arising from the Real Estate without the written consent of the Mortgagee; or (g) the Mortgagor fails to remove any Federal tax lien on the Real Estate; or (h) the Mortgagor fails to observe or perform any other covenants or

86614622

UNOFFICIAL COPY

agreements of the Mortgagor hereunder, including without limitation Section 20, below; or (i) upon the election by the Mortgagee to accelerate the maturity of said principal sum pursuant to the provisions of the Note; or (j) the Mortgagor defaults under the Note; or (k) a receiver, custodian, trustee or conservator is appointed for all or any part of the Real Estate or for the Mortgagor's business pertaining to the Real Estate; or (l) the Mortgagor fails to pay the debts of the Mortgagor or any affiliate of the Mortgagor as they become due; or (m) the Mortgagor or any affiliate of the Mortgagor makes a general assignment for the benefit of creditors; or (n) a petition is filed by or against the Mortgagor or any affiliate of Mortgagor under the Federal Bankruptcy Act or any similar federal or state law now or hereafter in force or an order is entered for relief in any such proceeding; provided, however, if any such petition is filed against the Mortgagor or an affiliate of the Mortgagor, the Mortgagor or its affiliate shall have sixty (60) days to have such petition dismissed.

(b) After issuance of written notice from the Mortgagee, the Mortgagor shall have five (5) days to cure monetary Events of Default and thirty (30) days to cure nonmonetary Events of Default.

5. Performance by Mortgagor. That in the event of any default in the performance of any of the Mortgagor's covenants or agreements herein, the Mortgagee may, at the option of the Mortgagee, perform the same and the cost thereof, with interest at the Default Rate specified in the Note from the time of payment of the same shall immediately be due from the Mortgagor to the Mortgagee and secured by this Mortgage.

6. Payment of Taxes. The Mortgagor shall pay or cause to be paid all taxes, assessments, water rates, sewer rents and other charges and any prior liens now or hereafter assessed or liens on or levied against the Real Estate or any part thereof, and in case of default in the payment thereof when the same shall be due and payable, it shall be lawful for the Mortgagee,

89914622

without notice or demand to the Mortgagor, to pay the same or any of them; that the moneys paid by the Mortgagee in discharge of such taxes, assessments, water rates, sewer rents and other charges and prior liens shall be a lien on the Real Estate added to the amount of said Note and secured by this Mortgage, payable on demand with interest at the Default Rate rate specified in the Note from the time of payment of the same; and that upon request of the Mortgagee, the Mortgagor will exhibit to the Mortgagee receipts for the payment of all items specified in this Article prior to the date when the same shall become delinquent. Notwithstanding anything contained herein to the contrary, Mortgagor shall at all times pay before delivering all special assessments or assessments for local improvements levied on or charged to the Real Estate.

7. Enforcement of Mortgage. Whenever the whole of the principal sum remaining unpaid shall become due and payable, as provided in Article 4, or elsewhere herein or in the Note, then the Mortgagee may forthwith issue a writ of scire facias on this Mortgage or institute other proceedings according to law for the foreclosure hereof, and may prosecute the same to judgment, execution and sale, for the collection of said sum, and interest thereon, together with all taxes advanced by the Mortgagee, and other sums payable by the Mortgagor hereunder, and all fees, costs and expenses of such proceedings, including attorneys' fees; and that all errors in said proceedings, together with stay of or exemption from execution, or extension of time of payment, which may be given by any Act of Assembly, now in force or enacted hereafter, are hereby forever waived and released.

8. Remedies

(a) Mortgagee's Right to Act. The Mortgagee may, after an Event of Default shall have occurred and be continuing, take such action as it deems advisable to protect and enforce its rights against the Mortgagor and in and to the Real Estate, including, but not limited to, the actions set forth in this Article 8, each of which may be pursued concurrently or other-

86614622

wise, at such time and such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee.

(b) Declaration of Indebtedness Due. After an Event of Default shall have occurred and be continuing, the Mortgagee, by written notice given to the Mortgagor, may declare the entire principal then outstanding (if not then due and payable), and all accrued and unpaid interest thereon, and all other indebtedness to be due and payable immediately, and upon any such declaration the principal and said accrued and unpaid interest and all other indebtedness shall become and be immediately due and payable, anything in the Mortgage or the Note to the contrary notwithstanding.

(c) Right to Enter Real Estate. After an Event of Default shall have occurred and be continuing, the Mortgagee personally, or by its agents or attorneys, to the extent permitted by law, may enter into and upon all or any part of the Real Estate, and each and every part thereof, and may exclude the Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Real Estate and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys, or receivers; and upon every such entry, the Mortgagee at the expense of the Real Estate, from time to time, either by purchase, repairs or construction, may maintain and restore the Real Estate, whereof it shall become possessed as aforesaid, may complete the construction of any improvements and in the course of such completion may make such changes in said contemplated improvements as it may deem desirable and may insure the same; and likewise, from time to time, at the expense of the Mortgagor, the Mortgagee may make all necessary or proper repairs, renewals and replacements and such alternations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and in every such case the Mortgagee shall have the right to manage and operate the Real Estate and to carry on the business thereof

86614622

and exercise all rights and powers of the Mortgagor with respect thereto either in the name of the Mortgagor or otherwise as it shall deem best; and the Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Real Estate and every part thereof, all of which shall for all purposes constitute property of the Mortgagee; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Real Estate or any part thereof, as well as just and reasonable compensation for the services of the Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by it properly engaged and employed, the Mortgagee shall apply the moneys arising as aforesaid, first, to the payment of the interest due on the Note, as provided in the Note, when and as the same shall become payable, and second, to the payment of any other indebtedness of the Mortgagor, and then to principal.

(d) Actions by the Mortgagee After An Event of Default. After an Event of Default shall have occurred and be continuing, the Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable, may take any or all of the following steps:

(i) institute proceedings for the complete or partial foreclosure of this Mortgage; or

(ii) apply to any court of competent jurisdiction for the appointment of a receiver or receivers for the Real Estate and of all the earnings, revenues, rents, issues, profits and income thereof. The Mortgagee shall, to the extent permitted by law, be entitled to such appointment as a matter of right, and such appointment may be made either before or after the institution of foreclosure proceedings or before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without

86614622

regard to the then value or occupancy of the Real Estate, and the Mortgagee may be appointed as such receiver. Such receiver shall, to the extent permitted by law, have the power to collect the earnings, revenues, income, rents, issues and profits of the Real Estate during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption (if any) whether there be redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such earnings, revenues, income, rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Real Estate during the whole of said period. The Mortgagee and such receiver shall be liable to account only for such earnings, revenues, income, rents, issues and profits actually received pursuant to this paragraph. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) the indebtedness secured hereby or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency; or

(iii) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in this Mortgage or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect.

(e) Foreclosure and Possession.

(i) When the entire indebtedness secured hereby shall become due and payable, either because of maturity or because of the occurrence of any Event of Default, or otherwise, then forthwith the Mortgagee may institute an action of Mortgage

88614622

UNOFFICIAL COPY

Foreclosure against the Real Estate or any part thereof, or take such other action at law or in equity for the enforcement of this Mortgage and the realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the indebtedness secured hereby, together with all other sums owing by the Mortgagor in accordance with the provisions of the Note and this Mortgage, including all sums which may have been loaned to the Mortgagor after the date of this Mortgage, and all sums which may have been advanced by the Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, repairs to the Real Estate or other advances made by the Mortgagee and all costs of suit, including reasonable attorneys fees, together with interest on any judgment obtained by the Mortgagee from and after the date of any Sheriff's Sale until actual payment is made by the Sheriff or the full amount due the Mortgagee.

(ii) When the entire indebtedness secured hereby shall become due and payable, either because of maturity or because of the occurrence of any Event of Default or otherwise, then forthwith the Mortgagee may enter into possession of the Real Estate or any part thereof, with or without legal action, and by force, if necessary, and collect therefrom all rentals, and after deducting all costs of collection and administration expense, apply the net rentals to any or all of the following in such order and amounts as the Mortgagee, in the Mortgagee's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, and to the maintenance, repair or restoration of the Real Estate, and on account and in reduction of the principal or interest, or both, hereby secured; in and for that purpose the Mortgagor hereby assigns to the Mortgagee all rentals due and to become due under any lease or leases or rights to use and occupation of the Real Estate now or hereafter created, as well as all rights and

UNOFFICIAL COPY

remedies provided in such lease or leases or at law or in equity for the collection of the rentals. For the purpose of obtaining possession of the Real Estate or any part thereof in the event of any Event of Default hereunder, which shall be continuing, or under the Note, the Mortgagor hereby authorizes and empowers the Mortgagee to appoint any attorney of any court of record in the State of Illinois or elsewhere, as attorney for the Mortgagor and all persons claiming under or through the Mortgagor, to sign an agreement for entering in any competent court an amicable action in ejectment for possession of the Real Estate or any part thereof and to appear for and confess judgment against the Mortgagor, and against all persons claiming under or through the Mortgagor, in favor of the Mortgagee, for recovery by the Mortgagee of possession thereof, for which this Mortgage, or a copy thereof verified by affidavit, shall be sufficient warrant; and thereupon a writ of possession may immediately issue for possession of the Real Estate, or any part thereof, without any prior writ or proceeding whatsoever and without any stay of execution. If for any reason after such action has been commenced it shall be discontinued, or possession of the Real Estate shall remain in or be restored to the Mortgagor, the Mortgagee shall have the right for the same default or any subsequent default to bring one or more further amicable actions as above provided to recover possession of the Real Estate or any part thereof. The Mortgagee may bring an amicable action in ejectment and confess judgment therein before or after the institution of proceedings to foreclose this Mortgage, or after entry of judgment therein, or after a Sheriff's Sale of the Real Estate or any part thereof in which the Mortgagee is the successful bidder, it being the understanding of the parties that the authorization to pursue such proceedings for obtaining possession and confession of judgment therein is an essential part of the remedies for enforcement

86614622

of this Mortgage and shall survive any execution sale to the Mortgagee.

(iii) The Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by the Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by this Mortgage shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by the Mortgagor existing at the time the earlier action was commenced.

(iv) Any real estate sold pursuant to any writ of execution issued on a judgment obtained by virtue of this Mortgage, or pursuant to any other judicial proceedings under this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as the Mortgagee, in its sole discretion, may elect.

(f) Sale by the Mortgagee. Any sale or sales made under or by virtue of this Article 8, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor. In the event of any sale made under or by virtue of this Article 8, the entire principal of, and interest on, the indebtedness secured by this Mortgage, if not previously due and payable, and all other sums required to be paid by the Mortgagor pursuant to this Mortgage, immediately thereupon shall, anything in this Mortgage to the contrary notwithstanding, become due and payable.

(g) Application of Proceeds of Sale. The purchase money, proceeds or avails of any sale made under or by virtue of this Article 8, together with any other sums which then may be held by the Mortgagee under this Mortgage whether under the pro-

86614622

visions of this Article 8 or otherwise, shall be applied first to the costs and expenses of the foreclosure proceeding, then to advances and any and all other obligations outstanding and all accrued and unpaid interest on the Note, and unpaid principal on the Note, in that order, unless the Mortgagee shall elect otherwise in a notice given to the Mortgagor and if the Mortgagee shall so elect, then in any order as Mortgagee may specify in such notice, and finally the balance (if any) to discharge junior liens if the court so directs, and otherwise to the Mortgagor.

(h) Mortgagee's Right to Acquire Real Estate. Upon any sale made under or by virtue of this Article 8, the Mortgagee may bid for and acquire the Real Estate or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage. The Mortgagee, upon so acquiring the Real Estate, or any part thereof, shall be entitled to hold, lease, rent, operate, manage and sell the same in any manner provided by applicable laws.

(i) Waiver of Appraisement, Valuation, Stay, Extension, Redemption and Moratorium Laws; Marshalling. The Mortgagor agrees to the full extent permitted by law that after an Event of Default shall have occurred and be continuing, neither the Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, notice of election to mature or declare due the whole of the indebtedness secured by this Mortgage, extension, redemption or moratorium laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Real Estate or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Mortgagor, for itself and all who may at any time claim through or under it, hereby

86611622

waives, to the full extent that it may lawfully so do, the benefit of all such laws and any and all right to have the assets comprising the Real Estate marshalled upon any foreclosure hereof and agrees that any court having jurisdiction to foreclose this Mortgage may sell the Real Estate in part or as an entirety. If any law now in force of which the Mortgagor might take advantage despite this paragraph shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Without limiting the generality of the foregoing, the Mortgagor hereby waives all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and on behalf of each and every person except decedent and judgment creditors of the Mortgagor, who may hereafter acquire any interest in or title to the Real Estate.

(j) Suits To Protect the Real Estate. The Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as the Mortgagee may deem advisable (a) to prevent any impairment to the Real Estate by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve and protect its interest in the Real Estate and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to the Mortgagee's interest herein.

(k) Delay or Omission No Waiver. No delay or omission of the Mortgagee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

86614622

(1) No Waiver of One Default To Affect Another. No waiver of any Event of Default shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If the Mortgagee (a) grants forbearance or an extension of time for the payment of any of the indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note or this Mortgage; (d) releases any part of the Real Estate from the lien of this Mortgage; (e) consents to the filing of any map, plat or replat of the Real Estate; (f) consents to the granting of any easement on the Real Estate; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability of the Mortgagor, or any subsequent purchaser of the Real Estate or any part thereof. No such act or omission shall preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee, shall the lien of this Mortgage be altered thereby.

(m) Remedies Cumulative. No right or remedy conferred upon or reserved to the Mortgagee by this Mortgage or any other instrument securing the indebtedness is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under any other instrument securing the indebtedness, or now or hereafter existing at law, in equity or by statute, provided, however, that in any action or proceeding brought on this Mortgage or the indebtedness secured thereby, no deficiency or money judgment shall be brought or obtained against the undersigned or any partner of the undersigned.

86614622

UNOFFICIAL COPY

(n) Order of Exercise. Should the Mortgagee hold any other or additional security for the payment of any indebtedness or performance of any obligation hereby secured, its sale or foreclosure upon any default in such payment or performance, in the sole discretion of the Mortgagee, may be prior to, subsequent to, or contemporaneous with, any sale or foreclosure hereunder, and any other property in which the Mortgagee holds a lien or security interest may, but need not, be sold as a unit with the Real Estate. In addition to the rights herein specifically provided, the Mortgagee, at any time and from time to time, may exercise any right or remedy now or hereafter given by law or equity to mortgagees under mortgages or to the holders of any obligation of the kind hereby secured.

(o) Mortgagee's Performance of Defaults. If the Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, or in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the indebtedness, the Mortgagee may perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by the Mortgagee in connection therewith shall become due and payable immediately. The amounts so incurred or paid by the Mortgagee, together with interest thereon at the Default Rate specified in the Note, from the date incurred until paid by the Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage to the extent permitted by law. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Real Estate or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any such person in possession holding under the Mortgagor.

86614622

UNOFFICIAL COPY

9. Certificates of Mortgage Debt. That the Mortgagor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the Mortgage debt within 6 days in case the request is made personally, or within 10 days after the mailing of such request in case the request is made by mail.

10. Notices. That every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the Real Estate, or on their heirs or successors, or mailed by depositing it in any post-office station or letter box, enclosed in a postpaid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address last known to the Mortgagee.

11. Warrant. The Mortgagor specially warrants the title to the Real Estate.

12. Payment of Taxes on Mortgage and Note. In the event of the passage after the date of this Mortgage of any law of the State of Illinois deducting from the value of real property for the purposes of taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the Note, the holder of this Mortgage and of the debt which it secures shall have the right to declare the principal sum and the interest due on a date to be specified by not less than 30 days' written notice to be given to the Mortgagor by the Mortgagee, provided, however, that such election shall be ineffective if the Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder and if the Mortgagor, prior to such specified date, does pay such a tax and agrees to pay any such

UNOFFICIAL COPY

tax when thereafter levied or assessed against the Real Estate, and such agreement shall constitute a modification of this Mortgage.

13. Recovery of Fees and Expenses. If the Mortgagee shall incur or expend any sums, including reasonable attorney's fees, whether in connection with any action or proceeding or not, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of its rights hereunder, or to recover any indebtedness hereby secured, or for any title examination or relating to the title to the Real Estate, all such sums shall on notice and demand be paid by the Mortgagor, together with the interest thereon at the Default Rate specified in the Note from the time of payment and shall be a lien on the Real Estate, prior to any right or title to, interest in, or claim upon, the Real Estate subordinate to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage and evidenced by the Note; and that in any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

14. Prohibition of Restrictions. The Mortgagor will not at any time 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 Real Estate or any part thereof.

15. Eminent Domain. In the event of any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Real Estate by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay interest on the entire principal sum secured until any such award or payment shall have been actually received by the Mortgagee and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt; that such award or payment may, at the

8661622

option of the Mortgagee, be retained and applied by the Mortgagee toward payment of the moneys secured by this Mortgage, or be paid over wholly or in part to the Mortgagor for the purpose of altering, restoring or rebuilding any part of the Real Estate which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Real Estate, or for any other purpose or object satisfactory to the Mortgagee, but the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor; and that if prior to the receipt by the Mortgagee of such award or payment the Real Estate shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment.

16. Right to Inspection. The Mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the Real Estate at all reasonable times; and that, if, at any time after default by the Mortgagor in the performance of any of the terms, covenant or provisions of this Mortgage or the Note, the management or maintenance of the Real Estate shall be determined by the Mortgagee to be unsatisfactory, the Mortgagor shall employ, for the duration of such default, as managing agent of the Real Estate, any person from time to time designated by the Mortgagee.

17. Limit on Assignment of Rents. The Mortgagor shall not assign the whole or any part of the rents, income or profits arising from the Real Estate without the prior written consent of the Mortgagee and any assignment thereof without such consent shall be null and void; that in the event of any default by the Mortgagor in the performance of any of the terms, covenants and provisions of this Mortgage or the Note, it shall be lawful for the Mortgagee to enter upon and take possession of the Real Estate with or without the appointment of a receiver, or an ap-

86614622

plication therefor, and to let the same, either in its own name, or in the name of the Mortgagor, and to receive the rents, issues and profits of the Real Estate and to apply the same, after the payment of all necessary charges and expenses, on account of the amount hereby secured; that said rents and profits are, in the event of any such default, hereby assigned to the Mortgagee; and that upon notice and demand, the Mortgagor will transfer and assign to the Mortgagee, in form satisfactory to the Mortgagee, the lessor's interest in any lease now or hereafter affecting the whole or any part of the Real Estate.

18. Credit for Payments Made. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, or by any subsequent owner of the Real Estate, or by any other person whose interest in the Real Estate might be prejudiced in the event of a failure to make such payment, or by any partner in a partnership or by any stockholder, officer or director of a corporation which at any time may be liable for such payment or may own or have such an interest in the Real Estate, shall be deemed, as between the Mortgagee and all persons who at any time may be liable as aforesaid or may own the Real Estate, to have been made on behalf of all such persons.

19. No Waiver. Neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Real Estate and the Mort-

86611622

gagagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of the Mortgagor or such other person, and in the latter event, the Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee. Irregardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Real Estate, the Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and may extend the time of payment or otherwise modify the terms of the Note and/or Mortgage without, as to the security or the remainder thereof, in anywise impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien; that the holder of any subordinate lien shall have no right to terminate any lease affecting the Real Estate whether or not such lease be subordinate to this Mortgage; and that the Mortgagee may resort for the payment of the indebtedness secured hereby to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect.

20. Mortgagee's Right to Accelerate if Ownership Transferred or Partnership Agreement Modified. In the event Mortgagor's interest in the Real Estate or any part thereof (whether legal or equitable if, with Mortgagor's written consent title is conveyed into a land trust) shall be sold, conveyed, leased or otherwise transferred (whether voluntarily or involuntarily and whether by operation of law or otherwise) to any third person for any reason without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance expressly subordinate to the lien of this Mortgage, or (b) upon the death of a partner, a transfer by devise, descent or operation of law, then at Mortgagee's election (but not otherwise) all unpaid prin-

86614622

principal and accrued interest under the Note and all other amounts secured by this Mortgage shall become immediately due and payable, and the Mortgagee shall have all rights granted to the Mortgagee in Article 8 including, but not limited to, the right to foreclosure of the lien created by this Mortgage.

In the event that (i) the partnership agreement for First City Rochester Associates is amended, modified, or otherwise altered without the prior written consent of the Mortgagee (except as permitted in subpart (ii), below); or (ii) Richard A. Zappala and/or Ronald A. Rosenfeld transfer all or any part of their partnership interest in or their respective interests in the profits and/or losses of First City Rochester Associates (except upon their death by devise, descent or operation of law), without the prior written consent of the Mortgagee, which transfers result in Richard A. Zappala and Ronald A. Rosenfeld holding in the aggregate in the aggregate less than fifty-one percent (51%) of the total partnership interest in or total interest in the profits and/or losses of First City Rochester Associates; or (iii) Mortgagor engages in any business other than the acquisition, ownership, operation, maintenance, and leasing of the Real Estate and/or that certain shopping center located at 111 Madison Street, Rochester, Pennsylvania, then if the Mortgagee shall elect (but not otherwise) all unpaid principal and accrued interest under the Note and all other amounts secured by this Mortgage shall become immediately due and payable, and the Mortgagee shall have all rights granted to it pursuant to this Mortgage and the Note.

21. Mortgagee's Additional Rights if Ownership Transferred. In the event any part of any Mortgagor's title to or interest (legal, equitable or beneficial) in any of the Real Estate shall pass to or vest in any third person or in the event any third person shall become liable for or shall assume any obligations secured by this Mortgage, with or without Mortgagee's consent, then, and in any such event, the Mortgagee, if it so elects (but not otherwise) may without notice to any Mortgagor deal with any such third person in any way in which the Mort-

86614622

UNOFFICIAL COPY

gagee may deem necessary or desirable in connection with any indebtedness or obligations secured by this Mortgage.

Without limiting the generality of the foregoing provision, the Mortgagee is hereby authorized: (a) to extend the time for payment of any indebtedness secured by this Mortgage or the Note; (b) to forebear to sue and to forebear to exercise any other right, power or remedy which may be available under law or under this Mortgage, (c) to settle or to compromise any claim against any such third person (which settlement or compromise may have the effect of releasing any or all third persons from any liability to the Mortgagee); and (d) to release any interest in the Real Estate and to release any other collateral securing any obligation of any third person.

No dealings or activities undertaken by the Mortgage pursuant to the provisions and authorizations contained in this Article 21 shall operate to terminate, limit, subordinate, or impair in any way the liability of any Mortgagor under this Mortgage or under the Note.

22. Stamps. In the event the United States of America or any state or commonwealth shall require internal revenue transfer or documentary stamps to be affixed to the Note or Mortgage, the Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

23. Severability. The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and that no act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

24. Definitions. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Real Estate", the word "Mortgagee" shall mean "Mortgagee or

86614622

UNOFFICIAL COPY

any subsequent holder or holders of this Mortgage", the word "Note" shall mean "Note or bond secured by this Mortgage", the word "person" shall mean "an individual, corporation, partnership or unincorporated association", the word "indebtedness" shall mean all sums due mortgagee under the terms of the Note and this Mortgage, and the word "Real Estate" shall include the Real Estate hereinbefore described, together with all equipment, condemnation awards and any rights or property interests at any time made subject to the lien of this Mortgage by the terms hereof.

25. Amendments. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

26. Applicable Law. This Mortgage is to be construed according to the laws of the State of Illinois.

27. Headings. The headings contained in this Mortgage are for reference only and are not to be used in construing the terms of this Mortgage.

28. Balloon Mortgage. This is a balloon mortgage with the final payment of the balance due upon maturity is Four Million Twenty-Nine Thousand ^{Nine Hundred Thirty-Three and five cents} Dollars (\$4,029,933.09), together with accrued interest, if any, and all advancements made by May under the terms of this Mortgage and the Note is due and payable on February 1, 1987.

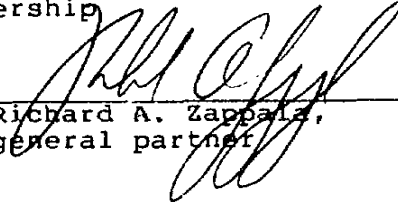
29. Partial Release. In the event Mortgagor makes a prepayment to Mortgagee in an amount in excess of \$900,000.00, Mortgagor and Mortgagee shall use their best efforts to reasonably agree upon the terms of a partial release of the lien of this Mortgage, in which case Mortgagee shall grant a partial release of this Mortgage with respect to that portion of the Real Estate which has a fair market value equivalent to the amount of Mortgagor's aforesaid prepayment.

86614622

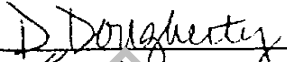

UNOFFICIAL COPY

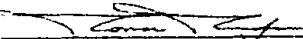
IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor the day and year first above written.

FIRST CITY ROCHESTER ASSOCIATES,
a Pennsylvania general
partnership



By: 
Richard A. Zappala,
general partner

WITNESSES:

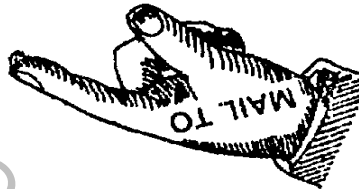



By: 
Ronald A. Rosenfeld,
general partner

WITNESSES:

This Instrument prepared by:
Mail to:
Patrick E. Brady
ROSS & HARDIES
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601



The Mortgagor hereby certifies that the Mortgagee's precise address is 611 Olive Street, St. Louis Missouri 63101.

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Real Estate

PARCEL 1:

The North 188.50 feet of Lots 5 and 6; Lots 7, 8, 9, 10 and 11 (except that portion of said lots taken for the widening of Peterson Avenue); Lots 12 and 13; the South 30.0 feet of the West 49.2 feet of Lot 14, all in Barbara Evert's addition to High Ridge, in the Northwest 1/4 of Section 6, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

The West 255.5 feet of the South 330 feet of the East 1083.5 feet of the Northwest 1/4 of Section 6, Township 40 North, Range 14, East of the Third Principal Meridian, except that part thereof lying South of a line 67 feet North of and parallel with the South line of the Northwest 1/4 of Section 6 aforesaid, as conveyed by John Thillens and Theresa Thillens, his wife, to the City of Chicago, a municipal corporation, by Quitclaim Deed, dated October 6, 1928, and recorded November 2, 1928 as Document No. 10195995, in Cook County, Illinois.

Commonly known as 2050 West
Peterson Avenue, Chicago, Illinois

14-06-116-021 "lot 13"
022 "lot 13"
024 "lot 13"
025 "lot 11"
027 "lot 8"
028 "lot 8"
029 "lot 8"
031 "lot 8"
032 "lot 8"
033 "lot 7"
034 "lot 7"
035 "lot 5 & 6"
032
053 > Lot 5 & 6
054 >
064 "lot 10"
065 "lot 8" w/ B

DBO

86614622

UNOFFICIAL COPY

STATE OF Pennsylvania
COUNTY OF Allegheny) SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Richard A. Zappala and Ronald A. Rosenfeld personally known to me to be the general partners of First City Rochester Associates, a Pennsylvania general partnership, and personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they have executed the foregoing instrument as their free and voluntary act, and in the case of First City Rochester Associates as its free and voluntary act and deed of said partnership for the uses and purposes therein set forth.

Given under my hand and official seal, this 22nd day of December, 1986.

KATHLEEN NUZZO, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JULY 16, 1990
Member, Pennsylvania Association of Notaries

Kathleen Nuzzo
Notary Public

My Commission expires July 16, 1990.

20070 03
-88 041002

COOK County Clerk's Office

86614622

DEPT-01 RECORDING \$37.40
1#03332 TRAN 2320 12/22/86 12:53:00
#3231 # A * B-6-414622
COOK COUNTY RECORDER

37
mail

UNOFFICIAL COPY

Property of Cook County Clerk's Office



11/11/11