

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program



Doc#: 1601912015 Fee: \$94.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/19/2016 02:17 PM Pg: 1 of 29

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 17-04-436-047-0000

Address:

Street: 830 N Orleans Street

Street line 2:

City: Chicago

State: IL

ZIP Code: 60610

Lender: DB Private Wealth Mortgage Ltd.

Borrower: 830, L.L.C. an Illinois limited liability company

Loan / Mortgage Amount: \$151,500,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: AF0ED4F1-8A7B-435E-B265-D7ED198B64C2

Execution date: 1/19/2016

NO1151246 16 OF 24 JK

Property of Cook County Clerk's Office

UNOFFICIAL COPY

This Document Prepared by and after Recording, Return To:

Loeb & Loeb LLP
 321 North Clark Street
 23rd Floor
 Chicago, Illinois 60654
 Attn: Jeffrey Fried

(Space Above For Recorder's Use)

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND SECURITY AGREEMENT

NOTICE TO BORROWER: THE LOAN SECURED BY THIS MORTGAGE PROVIDES FOR A VARIABLE INTEREST RATE AND BALLOON PAYMENT AT MATURITY

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING AND SECURITY AGREEMENT (as amended, restated, supplemented or modified from time to time, this "Mortgage"), dated as of January 19, 2016, is given by **830, L.L.C.**, an Illinois limited liability company ("Borrower"), whose address is c/o Spectrum Real Estate Properties, Inc., 414 N. Orleans, Suite 610, Chicago IL 60654; in favor of **DB PRIVATE WEALTH MORTGAGE LTD.** ("Lender"), whose address is 345 Park Avenue, 14th Floor, New York, New York 10154.

To secure the full and timely payment of the Indebtedness in the original principal amount of One Hundred Fifty One Million Five Hundred Thousand and 00/100 Dollars (\$151,500,000.00) and the full and timely performance and discharge of all other Obligations, Borrower **MORTGAGES, ASSIGNS, GRANTS, BARGAINS, SELLS, CONVEYS AND PLEDGES** to Lender and its successors and assigns the Mortgaged Premises, with power of sale and right of entry and possession, subject only to the Permitted Encumbrances, to have and to hold the Mortgaged Premises to Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Mortgaged Premises to Lender against anyone lawfully claiming it or any part of it; provided, however, that if the Indebtedness is paid in full and the Obligations are fully performed, then the liens, security interests, estates, and rights granted by this Mortgage shall terminate; otherwise, they shall remain in full force and effect. As additional security for the full and timely payment of the Indebtedness and the full and timely performance and discharge of the other Obligations, Borrower grants to Lender a security interest in the Personalty, Fixtures, Leases, and Rents under Article Nine of the Uniform Commercial Code in effect in the State of Illinois.

UNOFFICIAL COPY

All right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Premises, hereafter acquired by or released to Borrower or constructed, assembled or placed by Borrower on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Borrower, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Borrower and specifically described in the granting clauses hereof, but at any and all times Borrower will execute and deliver to Lender any and all such further assurances, mortgages, conveyances or assignments thereof as Lender may reasonably require for the purpose of expressing and specifically subjecting the same to the lien of this Mortgage.

All filing, registration and recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage and any other agreement executed in connection herewith and any instrument of further assurance, and all federal, state, county and municipal mortgage recording taxes, stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, the Note or any other agreement executed in connection herewith or therewith, any mortgage supplemental hereto or any instrument of further assurance shall be paid in accordance with the terms of the Agreement.

Upon request by Borrower, Lender, at Lender's sole option within twenty (20) years from the date of this Mortgage, may, but shall not be obligated to, make future advances to Borrower. Such future advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said promissory notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the collateral serving as security for the payment of the indebtedness evidenced by the Note, exceed two (2) times the aggregate original principal amount of the Note.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS MORTGAGE, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER AND EACH OTHER DEBTOR OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER AND EACH OTHER DEBTOR UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

UNOFFICIAL COPY

SECTION 1

DEFINITIONS

For purposes of this Mortgage, each of the following terms shall have the following respective meanings:

1.1 "Agreement" That certain Term Loan Agreement dated as of the date hereof between Debtors and Lender, as the same may be amended, restated, supplemented or modified from time to time.

1.2 "Attorney Fees." All reasonable attorney fees, paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, arbitration, and litigation at the pretrial, trial, and appellate levels, and in any bankruptcy proceedings, and attorney costs and expenses incurred or paid by Lender in protecting its interests in the Mortgaged Premises, including, but not limited to, any action for waste, and enforcing its rights under this Mortgage.

1.3 "Debtors." 311 W. SUPERIOR, LLC, an Illinois limited liability company, 350, LLC, an Illinois limited liability company, 95TH STREET VENTURE, L.L.C., an Illinois limited liability company, O.P., L.L.C., an Illinois limited liability company, 430 W. ERIE LLC, an Illinois limited liability company, 750, L.L.C., an Illinois limited liability company, 820 ORLEANS, L.L.C., a Delaware limited liability company, and 830, L.L.C., an Illinois limited liability company, and "Debtor" means each of them individually.

1.4 "Fixtures." All materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or the Improvements under the laws of the State of Illinois, including the Uniform Commercial Code. "Fixtures" includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under any Legal Requirement.

1.5 "Impositions." All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Premises, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Mortgage may be assessed, levied, or imposed on the Mortgaged Premises or on its ownership, use, occupancy, or enjoyment.

1.6 "Improvements." All buildings, structures, improvements, equipment, fixtures, and appurtenances now and later placed on the Land, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, which is used to provide or supply air cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal, or other services; and all elevators, escalators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, ovens, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains, curtain rods, mirrors, cabinets, paneling, rugs, attached floor

UNOFFICIAL COPY

coverings, furniture, pictures, antennas, pools, spas, pool and spa operation and maintenance equipment and apparatus, and trees and plants located on the Land, including replacements and additions.

1.7 “Indebtedness.” The principal of, interest on, and all fees, charges, expenses and other amounts and payments due under or evidenced by the following:

(a) The Note (including, without limitation, late payment and other charges payable under the Note).

(b) This Mortgage and all other Loan Documents;

(c) All funds, if any, later advanced by Lender to or for the benefit of any Debtor under any provision of any of the Loan Documents;

(d) Any future loans or amounts advanced by Lender to any Debtor when evidenced by a written instrument or document made by such Debtor or between such Debtor and Lender that specifically recites that such future loans or amounts are Obligations that are secured by the terms of this Mortgage, including, but not limited to, funds advanced to protect the security or priority of the Mortgage, and

(e) Any amendment, modification, extension, rearrangement, restatement, renewal, substitution, or replacement of any of the foregoing.

1.8 “Land.” The real estate or any interest in it described in Exhibit A attached to this Mortgage and made a part of it, together with all Improvements and Fixtures and all rights, titles, and interests appurtenant to it.

1.9 “Mortgaged Premises.” All rights, title, interest and estate of Borrower now owned or hereafter acquired by Borrower in the Land, Improvements, Fixtures, Personalty, Leases, and Rents, together with each of the following:

(a) All right, title and interest (including any claim or demand or demand in law or equity) that Borrower now has or may later acquire in or to the following: all easements, rights, privileges, tenements, hereditaments, and appurtenances belonging or in any way appertaining to the Mortgaged Premises; all of the estate, right, title, interest, claim, demand, reversion, or remainder of Borrower in or to the Mortgaged Premises, either at law or in equity, in possession or expectancy, now or later acquired; all crops growing or to be grown on the Mortgaged Premises; all development rights or credits and air rights; all water and water rights (whether or not appurtenant to the Mortgaged Premises) and shares of stock pertaining to such water or water rights, ownership of which affects the Mortgaged Premises; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Mortgaged Premises and all royalties and profits from any such rights or shares of stock; all right, title, and interest of Borrower in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part of it that Borrower now owns or at any time later acquires and all adjacent lands within enclosures or occupied by buildings partly situated on the Mortgaged Premises;

UNOFFICIAL COPY

(b) All right, title and interest of Borrower in and to any intangible property rights relating to the Mortgaged Premises or its operation or used in connection with it, including, without limitation, all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of the Mortgaged Premises including all permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services, installations, refunds due Borrower, environmental indemnity rights and all collateral related thereto, trade names, trademarks and service marks;

(c) All right, title and interest of in and to the land lying in the bed of any street, road, highway, or avenue in front of or adjoining the Mortgaged Premises;

(d) Any and all awards previously made or later to be made by any Governmental Authority to the present and all subsequent owners of the Mortgaged Premises that may be made with respect to the Mortgaged Premises as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, or any other injury to or decrease of value of the Mortgaged Premises, which award or awards are assigned to Lender and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of any such award or awards from the authorities making them and to give proper receipts and acquittances for them, and to apply them as provided in the Agreement;

(e) All certificates of deposit of Borrower in Lender's possession and all bank accounts of Borrower with Lender and their proceeds, and all deposits of Borrower with any Governmental Authority and/or public utility company that relate, in each case, to the ownership of the Mortgaged Premises;

(f) All Leases of the Mortgaged Premises or any part of it now or later entered into and all right, title, and interest of Borrower under such Leases, including cash or securities deposited by the tenants to secure performance of their obligations under such Leases (whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due immediately before the expiration of such terms (provided, however, that if Lender acquires possession or control of tenants' security deposits, Lender shall use the tenants' security deposits only for such purposes as the applicable Leases and Legal Requirements permit));

(g) All right, title and interest of Borrower in and to any and all unearned insurance premiums and all proceeds of any insurance policies covering the Mortgaged Premises, whether or not such insurance policies were required by Lender as a condition of making the loan secured by this Mortgage or are required to be maintained by Borrower as provided below in this Mortgage; which proceeds are assigned to Lender, and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of such insurance policies from the insurers issuing the same and to give proper receipts and acquittances for such policies, and to apply the same as provided below;

(h) All plans and specifications for Improvements; all contracts and subcontracts relating to the Improvements; all deposits (other than tenants security deposits described and accounted for in Section 1.9(f) above); funds, accounts, contract rights (including

UNOFFICIAL COPY

under any sale agreement), instruments, documents, general intangibles, claims against third parties and notes or chattel paper arising from or in connection with the Land or other Mortgaged Premises; all permits, licenses, certificates, and other rights and privileges obtained in connection with the Land or other Mortgaged Premises; all soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, letters of credit, bonds, surety bonds, any other intangible rights relating to the Land or other Mortgaged Premises, surveys, and other reports, exhibits, or plans used or to be used in connection with the construction, planning, operation, or maintenance of the Land or other Mortgaged Premises and all amendments and modifications; all proceeds arising from or by virtue of the sale, lease, grant of option, or other disposition of all or any part of the Land, Fixtures, Personalty or other Mortgaged Premises (consent to same is not granted or implied);

(i) All right, title and interest of Borrower in and to all tax refunds, bills, notes, inventories, accounts and charges receivable, credits, claims, securities, and documents of all kinds, and all instruments, contract rights, general intangibles, bonds and deposits, and all proceeds and products of the Mortgaged Premises;

(j) Any refunds and credits in connection with reduction in real estate taxes and assessments charged against the Mortgaged Premises, in each case paid or payable to Borrower (except to the extent any refunds, rebates or credits relate to taxes or assignments paid directly by any tenant under a Lease);

(k) All money or other personal property of Borrower including, without limitation, any instrument, deposit account, accounts receivable, general intangible, or chattel paper, as defined in Article 9 of Illinois Uniform Commercial Code), previously or later delivered to, deposited with, or that otherwise comes into Lender's possession, in each case solely in connection with the Mortgaged Premises, including, the operating of any business thereon by Borrower; and

(l) All proceeds of any of the foregoing.

As used in this Mortgage, "Mortgaged Premises" is expressly defined as meaning all or, when the context permits or requires, any portion of it and all or, when the context permits or requires, any interest in it.

1.10 "Personalty." All tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents, minerals, that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, Improvements or Fixtures, or on other goods located on the Land or the Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or the Improvements, extensions, renewals, and enlargements and proceeds of the Land or the Improvements, substitutions for, and income and profits from, the Land or the Improvements. The Personalty includes, but is not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems and all

UNOFFICIAL COPY

equipment utilized in the operation of its business; building materials, air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, maintenance, extermination of vermin or insects, dust removal, refuse and garbage equipment; vehicle maintenance and repair equipment; office furniture (including tables, chairs, planters, desks, sofas, shelves, lockers, and cabinets); safes, furnishings, appliances (including ice-making machines, refrigerators, fans, water heaters, and incinerators); rugs, carpets, other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, other window coverings; lamps, chandeliers, other lighting fixtures; office maintenance and other supplies; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants' security deposits, (subject to Section 19(f)), licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Mortgaged Premises that constitute personal property under the Illinois Uniform Commercial Code.

Any terms not otherwise defined in this Mortgage shall have the meaning given them in the Agreement.

SECTION 2

USE OF MORTGAGED PREMISES

2.1 Incorporation by Reference. All of the representations, warranties and covenants contained in the Agreement are hereby incorporated herein by reference. In the event of any conflict or inconsistency between the provisions of the Agreement and the provisions of this Mortgage, the provisions of the Agreement shall govern.

2.2 Use of Mortgaged Premises. Without limiting Section 2.1 hereof, unless otherwise required by Legal Requirement, otherwise permitted by the Agreement, or Lender otherwise consents in writing, Borrower shall not allow changes in the use of the Mortgaged Premises from that which is contemplated by Borrower and Lender at the time of execution of this Mortgage, as specified in the loan application and the Loan Documents.

Borrower shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Premises without Lender's prior written consent. Borrower shall maintain all easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Premises as used on the date hereof and will not, without the prior consent of Lender, unless otherwise permitted by the Agreement, consent to or enter into or acquiesce to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Premises that could result in the use of the Mortgaged Premises for its current commercial purpose becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation or that would change or limit the uses permitted of the Mortgaged Premises. Borrower shall comply with all restrictive covenants affecting the Mortgaged Premises, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Premises.

UNOFFICIAL COPY

Borrower shall not commit or suffer any waste of the Mortgaged Premises or make any change in the use of the Mortgaged Premises which will in any way materially increase the risk of any fire or other hazard arising out of the operation of the Mortgaged Premises, or do or permit to be done thereon anything that may in any way impair the security of this Mortgage. Borrower shall maintain the Mortgaged Premises in good repair and condition (ordinary wear and tear excepted) and, at its sole cost and expense, will make or cause to be made, as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary or extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end, and upon being apprised of any material defect in the repair or condition of the Mortgaged Premises, will repair or cure, or cause to be repaired or cured, such defect, in each case at its own expense and with due diligence. All such repairs, renewals and replacements shall be at least substantially equal in quality to the original Mortgaged Premises.

Borrower shall not, without the prior written consent of Lender, make any alterations to the Premises without the prior written consent of Lender other than as expressly permitted by the Agreement.

SECTION 3

3.1 Leases of Mortgaged Premises. Borrower shall only enter into, modify, amend, renew or terminate any Lease in accordance with the Agreement.

SECTION 4

ASSIGNMENT OF CAUSES OF ACTION, AWARDS AND DAMAGES

4.1 Assignment of Causes of Action, Awards, and Damages. All causes of action, and all sums due or payable to Borrower for injury or damage to the Mortgaged Premises, or as damages incurred in connection with the transactions in which the Loan secured by this Mortgage was made, including, without limitation, causes of action and damages for breach of contract, fraud, concealment, construction defects, or other torts, or compensation for any conveyance in lieu of condemnation, are assigned to Lender, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit against the Indebtedness secured by this Mortgage. Borrower shall notify Lender immediately on receipt by Borrower of notice that any such sums have become due or payable and immediately on receipt of any such sums, shall promptly remit such sums to Lender.

After deducting all expenses, including Attorney Fees, incurred by Lender in recovering or collecting any sums required to be paid to Lender under this Section 4, Lender may apply or release the balance of any funds received by it under this paragraph, or any part of such balance, as it elects. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it under this paragraph and may make any compromise or settlement in such action whatsoever. Borrower covenants that it shall execute and deliver to Lender such further assignments of any such compensation awards, damages, or causes of action as Lender may request from time to time. If Lender fails or does

UNOFFICIAL COPY

not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the action or proceeding at its own expense and risk.

Notwithstanding anything to the contrary contained in this Section 4.1, any rights of Lender to participate in any casualty claim or condemnation proceeding and the rights to apply any proceeds of the foregoing shall all be governed by the terms of Section 4.16 of the Agreement.

SECTION 5

SUMS ADVANCED

5.1 Sums Advanced to Bear Interest and to Be Secured by Mortgage. At Lender's request, Borrower shall promptly pay any sums advanced or paid by Lender under any provision of this Mortgage or the other Loan Documents. Until so repaid, all such sums and all other sums payable to Lender shall be added to, and become a part of, the Indebtedness secured by this Mortgage and bear interest from the date of advancement or payment by Lender at the same rate as provided in the Note, unless payment of interest at such rate would be contrary to Legal Requirement. All sums advanced by Lender under this Mortgage or the other Loan Documents, whether or not required to be advanced by Lender under the terms of this Mortgage or the other Loan Documents, including all amounts advanced by Lender in order to preserve the priority of the lien of this Mortgage or to maintain the Mortgaged Premises, both before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings (collectively "Protective Advances"), shall conclusively be deemed to be mandatory advances required to preserve and protect this Mortgage and Lender's security for the performance of the Obligations and payment of the Indebtedness, and shall be secured by this Mortgage to the same extent and with the same priority as the principal and interest payable under the Note.

5.2 Protective Advances. All Protective Advances shall have the benefit of all applicable provisions of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as in effect from time to time (the "Act"), including those provisions of the Act herein below referred to:

(a) all advances by Lender in accordance with the terms of this Mortgage to:

(i) preserve or maintain, repair, restore or rebuild the Mortgaged Premises; (ii) preserve the lien of this Mortgage or the priority thereof; and/or (iii) enforce this Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(b) payments by Lender of: (i) installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Premises or any part thereof; (iii) other obligations authorized by this Mortgage; and/or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

UNOFFICIAL COPY

(c) advances by Lender in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504 (d) (2) and 5/15-1510(b) of the Act; (ii) in connection with any action, suit or proceeding brought by or against Lender for the enforcement of this Mortgage or arising from the interest of Lender hereunder; and/or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Lender's reasonable fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Lender for any one or more of the following: (i) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Lender to be for the benefit of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with an adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Premises; and/or (v) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable with interest thereon from the date of the advance until paid at the Default Rate.

Until terminated in accordance with its terms, this Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(i) determination of the amount of indebtedness secured by this Mortgage at any time;

UNOFFICIAL COPY

- (ii) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or Lender in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

SECTION 6

SECURITY AGREEMENT; FIXTURE FILING

6.1 Uniform Commercial Code Security Agreement. THIS MORTGAGE IS INTENDED TO BE AND SHALL CONSTITUTE A SECURITY AGREEMENT UNDER THE ILLINOIS UNIFORM COMMERCIAL CODE FOR ANY OF THE PERSONALTY SPECIFIED AS PART OF THE MORTGAGED PREMISES THAT, UNDER LEGAL REQUIREMENT, MAY BE SUBJECT TO A SECURITY INTEREST UNDER THE ILLINOIS UNIFORM COMMERCIAL CODE, AND BORROWER GRANTS TO LENDER A SECURITY INTEREST IN THOSE ITEMS. BORROWER AUTHORIZES LENDER TO FILE FINANCING STATEMENTS IN ALL STATES, COUNTIES, AND OTHER JURISDICTIONS AS LENDER MAY ELECT, WITHOUT BORROWER'S SIGNATURE IF PERMITTED BY LAW. BORROWER AGREES THAT LENDER MAY FILE THIS MORTGAGE, OR A COPY OF IT, IN THE REAL ESTATE RECORDS OR OTHER APPROPRIATE INDEX OR IN THE OFFICE OF THE SECRETARY OF STATE OF THE STATE OF ILLINOIS AND SUCH OTHER STATES AS THE LENDER MAY ELECT, AS A FINANCING STATEMENT FOR ANY OF THE ITEMS SPECIFIED ABOVE AS PART OF THE MORTGAGED PREMISES. ANY REPRODUCTION OF THIS MORTGAGE OR EXECUTED DUPLICATE ORIGINAL OF THIS MORTGAGE, OR A COPY CERTIFIED BY A COUNTY RECORDER IN THE STATE OF ILLINOIS, OR OF ANY OTHER SECURITY AGREEMENT OR FINANCING STATEMENT, SHALL BE SUFFICIENT AS A FINANCING STATEMENT. IN ADDITION, BORROWER AGREES TO EXECUTE AND DELIVER TO LENDER, AT LENDER'S REQUEST, ANY UCC FINANCING STATEMENTS, AS WELL AS ANY EXTENSIONS, RENEWALS, AND AMENDMENTS, AND COPIES OF THIS MORTGAGE IN SUCH FORM AS LENDER MAY REQUIRE TO PERFECT A SECURITY INTEREST WITH RESPECT TO THE PERSONALTY. BORROWER SHALL PAY ALL COSTS OF FILING SUCH FINANCING STATEMENTS AND ANY EXTENSIONS, RENEWALS, AMENDMENTS, AND RELEASES OF SUCH STATEMENTS, AND SHALL PAY ALL REASONABLE COSTS AND EXPENSES OF ANY RECORD SEARCHES FOR FINANCING STATEMENTS THAT LENDER MAY REASONABLY REQUIRE. WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER, BORROWER SHALL NOT CREATE OR

UNOFFICIAL COPY

SUFFER TO BE CREATED ANY OTHER SECURITY INTEREST IN THE ITEMS, INCLUDING ANY REPLACEMENTS AND ADDITIONS.

After the occurrence of an Event of Default, Lender shall have the remedies of a secured party under the Illinois Uniform Commercial Code including, without limitation, the right and power to sell, at one or more public or private sales, or otherwise dispose of, lease, or utilize any part of the personal property (tangible or intangible) and fixtures included in the Mortgaged Premises and any part or parts thereof in any manner authorized or permitted under the Uniform Commercial Code after default by a debtor and, at Lender's option, may also invoke the remedies in Section 8 of this Mortgage as to such items. In exercising any of these remedies, Lender may proceed against the items of Mortgaged Premises and any items of Personalty separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Illinois Uniform Commercial Code or of the remedies in Section 8 of this Mortgage.

6.2 Fixture Filing. Borrower expressly agrees, intending that Lender rely thereon, that this Mortgage shall also constitute a financing statement filed as a fixture filing under the Illinois Uniform Commercial Code, covering any portion of the Mortgaged Premises that now is or later may become a fixture attached to the Land or to any Improvement. The filing is to be recorded with the Recorder of Deeds of Cook County, Illinois. In that regard, the following information is provided:

Name of Debtor:	830, L.L.C.
Type of Organizations:	Limited Liability Company
State of Organization:	Illinois
Organizational Number:	01430592
Address of Debtor:	414 N. Orleans Street, Suite 610 Chicago, IL 60654
Address of the Property:	830 N. Orleans Street Chicago, Illinois 60610
Name of Secured Party:	DB Private Wealth Mortgage Ltd.
Address of Secured Party:	345 Park Avenue, 14th Floor New York, New York 10154

SECTION 7

ACCELERATION ON TRANSFER OR ENCUMBRANCE

7.1 Acceleration on Transfer or Encumbrance of Mortgaged Premises. Except with respect to a Permitted Transfer or a Permitted Encumbrance, or with respect to a sale contemplated by Section 2.10 of the Agreement or with Lender's prior written consent, if Borrower (a) conveys, sells, leases with an option to purchase or grants any other option to purchase, encumbers, or alienates the Mortgaged Premises, or any interest in it, or suffers its title to, or any interest in, the Mortgaged Premises to be divested, whether voluntarily or involuntarily, or (b) transfers, pledges, assigns, sells, hypothecates or otherwise conveys any direct or indirect interests of or in Borrower, or (c) changes or permits to be changed the character or use of the Mortgaged Premises (except as otherwise permitted by the Loan

UNOFFICIAL COPY

Documents), or drills or extracts or enters into any lease for the drilling or extracting of oil, gas, or other hydrocarbon substances or any mineral of any kind or character on the Mortgaged Premises, or (d) permits title to such Mortgaged Premises to become subject to any lien or charge, voluntary or involuntary, contractual or statutory (other than Permitted Encumbrances), then Lender, at Lender's option, may, without prior notice, declare all sums secured by this Mortgage, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Mortgage, including those in Section 8 below.

SECTION 8

REMEDIES ON DEFAULT; NOTIFICATION OBLIGATION

8.1 Remedies. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Mortgaged Premises, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Indebtedness to be immediately due and payable without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law including, without limitation, the right to exercise any one or more of the remedies provided in the Act, in which case the Mortgaged Premises or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner and during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in Section 5/15-1703 of the Act with Borrower hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower or any other Debtor; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Indebtedness not then due, unimpaired and without loss of priority, it being agreed that several sales may be made hereunder without exhausting the rights of sale for any other breach by the Borrower of any of the obligations secured hereby, it being the purpose to provide for foreclosure and sale of the Mortgaged Premises, or any portion thereof, for any matured portion of any of the obligations secured hereby or otherwise provided for herein without exhausting the power to foreclose and sell the Mortgaged Premises, or any portion thereof, for any other part of the obligations secured hereby, whether matured at the time or subsequently maturing and during the pendency of legal proceedings to foreclose the lien hereof, to exercise the powers specified in Section 5/15-1703 of the Act, with Borrower hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Borrower or any other Debtor; (d) sell for cash or upon credit the Mortgaged Premises or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, which sales may be at public auction at such time and place

UNOFFICIAL COPY

and upon such terms and conditions as the Lender may deem appropriate or as may be required or permitted by applicable law or rule of court, having first given notice prior to the sale of such time, place and terms by advertisement in at least one newspaper published or having a general circulation in the county or counties in which the Mortgaged Premises are located or at such time or times as may be required by applicable law or rule of court, and at such other times and by such other methods, if any, as the Lender may deem appropriate, however, Lender may adjourn from time to time any sale to be made by it under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by an applicable provision of law or rule of court, Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned; (c) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Agreement or in the other Loan Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Mortgaged Premises, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Indebtedness and any of the foregoing parties may take any action permitted by law including, without limitation, the actions specified in Section 5/15-1704 of the Act; (h) subject to any applicable law, the license granted to Borrower under Section 19.1(d) shall automatically be revoked and Lender may enter into or upon the Mortgaged Premises, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Mortgaged Premises and of such books, records and accounts to Lender upon demand, and thereupon Lender may (1) (x) maintain, repair, and restore the Mortgaged Premises and (y) use, operate, manage, control, insure and otherwise deal with all and every part of the balance of the Mortgaged Premises and conduct the business thereat; (2) complete any construction on Land or in the Improvements in such manner and form as Lender deems advisable; (3) make alterations, additions, renewals, replacements and improvements to or on the Land or Improvements; (4) exercise all rights and powers of Borrower with respect to the Mortgaged Premises, whether in the name of Borrower or otherwise, including, without limitation, to the extent of Borrower's rights to the following: the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Mortgaged Premises and every part thereof; (5) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Premises as may be occupied by Borrower; (6) require Borrower to vacate and surrender possession of the Land or Improvements to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (7) apply the receipts from the Mortgaged Premises to the payment of the Indebtedness, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other expenses in connection with the Mortgaged Premises, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; and (i) exercise any and all rights and

UNOFFICIAL COPY

remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (1) the right to take possession of the Personalty or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personalty; (2) request Borrower at its expense to assemble the Personalty and make it available to Lender at a convenient place acceptable to Lender; and (3) sell the Personalty at public or private sale, and in connection with the foregoing, Borrower agrees that any notice of sale, disposition or other intended action by Lender with respect to the Personalty sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower; (j) apply any sums then held in escrow or otherwise by Lender in accordance with the terms of this Mortgage or any other Loan Document to the payment of the following items in any order in its discretion: (1) Taxes and other charges relating to the Mortgaged Premises; (2) insurance premiums; (3) interest on the unpaid principal balance of the Note; (4) amortization of the unpaid principal balance of the Note; and (5) all other sums payable pursuant to the Note, this Mortgage and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Mortgage; (k) surrender the insurance policies maintained pursuant to the Agreement, collect the unearned insurance premiums thereon and apply such sums as a credit on the Indebtedness in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney in fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums; (l) pursue such other remedies as Lender may have under applicable law or under the Loan Documents; (m) apply the un-disbursed balance of any deposit made by Borrower to finance a Restoration, together with interest thereon, to the payment of the Indebtedness in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or (n) under the power of sale hereby granted, Lender shall have the discretionary right to cause some or all of the Mortgaged Premises, including any Personalty, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law. In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Premises, this Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Premises unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Mortgaged Premises and in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Indebtedness the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

Notwithstanding any provisions of this Section 8.1 to the contrary, during the pendency of legal proceedings to foreclose the lien hereof, Lender's right to possession shall be subject to the provisions of Section 5/15-1701 of the Act.

8.2 Effect of Sale Upon Borrower. Any sale or sales made under or by virtue of this Article 8, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower. Upon the completion of any sale or sales made under or by virtue of this Article 8,

UNOFFICIAL COPY

whether made under the power of sale (if permitted by applicable law) herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Lender or an officer of the court empowered so to do, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument or instruments, conveying, assigning and transferring all estate, right, title and interest of Borrower in and to the Mortgaged Premises and rights sold, including the estate of Borrower as lessor under any Leases, but without any covenant or warranty, express or implied. The recitals in such instrument(s) of any matters of fact shall be conclusive proof of the truthfulness thereof. Lender is hereby appointed, which appointment is coupled with an interest and is irrevocable, and which appointment shall become effective upon the occurrence of an Event of Default, the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Premises and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more Persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, Borrower, if so requested by Lender, shall ratify and confirm any such sale or sales by executing and delivering to Lender or to such purchaser or purchasers, all such instruments as may be advisable, in the judgment of Lender, for that purpose, and as may be designated in any such request.

8.3 Purchase of Mortgaged Premises. Lender shall have the right to be a purchaser at any sale made under or by virtue of this Mortgage, whether made under the power of sale (if permitted by applicable law) herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, and on so purchasing shall have the right to be credited upon the amount of the bid made therefor with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind.

8.4 Waiver of Right of Redemption - Exemptions Waived. Borrower will not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of a stay or extension or moratorium law, any exemption from attachment, execution or sale of the Mortgaged Premises, or any part thereof, whether enacted now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the Mortgaged Premises so sold, or any part thereof, and Borrower hereby expressly waives all benefit and advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any right, power or remedy herein granted or delegated to Lender, but to suffer and permit the execution of every right, power or remedy as though no such law or laws had been made or enacted. Borrower, for itself and all who claim under it, waives, to the extent that it lawfully may, the benefit of any homestead exemption and any and all right to have the Mortgaged Premises marshaled upon any sale or foreclosure hereunder. Borrower waives any right of claim or right to cause a marshaling of Borrower's assets or to cause Lender to proceed against any of the other security for the Loan before proceeding under this Mortgage or against Borrower, or to proceed against Borrower in any particular order. Borrower acknowledges that the transaction of which this Mortgage is a

UNOFFICIAL COPY

part is a transaction which does not include either agricultural real estate (as defined in Section 5/15-1201 of the Act) or residential real estate (as defined in Section 5/15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 5/15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

8.5 No Merger. It is the intention of the parties hereto that if Lender shall at any time hereafter acquire title to all or any portion of the Mortgaged Premises, then, and until the Obligations have been satisfied in full, the interest of Lender hereunder and the lien of this Mortgage shall not merge or become merged in or with the estate and interest of Lender as the holder and owner of title to all or any portion of the Mortgaged Premises and that, until such payment, the estate of Lender in the Mortgaged Premises and the lien of this Mortgage and the interest of Lender hereunder shall continue in full force and effect to the same extent as if Lender had not acquired title to all or any portion of the Mortgaged Premises.

8.6 Application of Proceeds. The proceeds of any sale made under or by virtue of this Article 8, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, together with any other sums which may then be held by Lender pursuant to this Mortgage shall be applied as follows:

First, to the payment of the actual costs and expenses of such sale or sales, including reimbursement or Attorney Fees, and of any judicial or other proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Lender under this Mortgage, together with interest at the Default Rate on all advances made by Lender, and of taxes, assessments or other charges, except any taxes, assessments or other charges subject to which the Mortgaged Premises shall have been sold.

Second, to the payment of any actual expenses, charges, losses, indemnities, penalties, premiums and late payment premiums) and all other amounts due under the Agreement, the Note, this Mortgage or any other Loan Document, excluding interest and principal.

Third, to the payment of interest on the unpaid principal due under the Note.

Fourth, to the payment of principal due under the Note.

Fifth, to the payment of all other Obligations in such order or priority as may be provided under the Agreement, the Note, this Mortgage or any agreement executed in connection herewith or therewith.

Sixth, to the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

8.7 Remedies Cumulative. All rights and remedies of Lender under this Mortgage are cumulative and in addition to such other rights as Lender may have at law or in equity or

UNOFFICIAL COPY

pursuant to the Loan Documents. Lender may enforce any one or more remedies or rights hereunder successively or concurrently.

8.8 Compliance With Illinois Mortgage Foreclosure Law.

(a) In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Act.

(b) If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Section 5/15-1510 and Section 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 8.1 hereof shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

SECTION 9

WAIVER OF MARSHALING

9.1 Waiver of Marshaling. Despite the existence of interests in the Mortgaged Premises other than that created by this Mortgage, and despite any other provision of this Mortgage, if Borrower defaults in paying the Indebtedness or in performing any Obligations, Lender shall have the right, in Lender's sole and absolute discretion, to establish the order in which the Mortgaged Premises will be subjected to the remedies provided in this Mortgage and to establish the order in which all or any part of the Indebtedness secured by this Mortgage is satisfied from the proceeds realized on the exercise of the remedies provided in this Mortgage. Borrower and any Person who now has or later acquires any interest in the Mortgaged Premises with actual or constructive notice of this Mortgage waives any and all rights to require a marshaling of assets in connection with the exercise of any of the remedies provided in this Mortgage or otherwise provided by Legal Requirement.

SECTION 10

LENDER'S RIGHTS TO MODIFY LOAN

10.1 Consents and Modifications; Borrower and Lien Not Released. Whether or not an Event of Default has occurred and is continuing, at Lender's option, without notice to or consent from Borrower or any other Debtor (except as provided in clauses (b), (c), (g) and (h) below), any guarantor of the Indebtedness, or any holder or claimant of a lien or interest in the Mortgaged Premises that is junior to the lien of this Mortgage, and without incurring liability to Borrower or any other Person by so doing, Lender may, from time to time, (a) extend the time for payment of all or any portion of the Indebtedness under the Loan Documents; (b) accept from

UNOFFICIAL COPY

Borrower a renewal note or notes, or release any person from liability, for all or any portion of such Indebtedness; (c) agree with Borrower to modify the terms and conditions of payment under the Loan Documents; (d) reduce the amount of the monthly installments due under the Agreement; (e) reconvey or release other or additional security for the repayment of the Indebtedness under the Loan Documents; (f) approve the preparation or filing of any map or plat with respect to Mortgaged Premises; (g) enter into any extension agreement with Borrower or subordination agreement with Borrower affecting the Mortgaged Premises or the lien of this Mortgage; and (h) agree with Borrower to modify the term, the rate of interest, or the period of amortization of the Note or alter the amount of the monthly installments payable under the Note. No action taken by Lender under this paragraph shall be effective unless it is in writing, subscribed by Lender, and, except as expressly stated in such writing, no such action will impair or affect (i) Borrower's obligation to pay the Indebtedness secured by this Mortgage and to observe all Obligations of Borrower; (ii) the guaranty of any Person of the payment of the Indebtedness secured by this Mortgage; or (iii) the lien or priority of the lien of this Mortgage. At Lender's request, Borrower shall promptly pay Lender a reasonable service charge, together with all insurance premiums and Attorney Fees as Lender may have advanced, for any action taken by Lender under this paragraph. Whenever Lender's consent or approval is specified as a condition of any provision of this Mortgage, such consent or approval shall not be effective unless such consent or approval is in writing.

SECTION 11

BORROWER'S WAIVER OF RIGHT OF OFFSET

11.1 Waiver of Right of Offset. No portion of the Indebtedness secured by this Mortgage shall be or be deemed to be offset or compensated by all or any part of any claim, cause of action, counterclaim, or cross-claim, whether liquidated or unliquidated, that Borrower may have or claim to have against Lender.

SECTION 12

INTENTIONALLY OMITTED

SECTION 13

REQUEST FOR NOTICE OF DEFAULT

13.1 Request for Notice of Default. The undersigned Borrower requests that a copy of any notice of default and any notice of sale under this Mortgage be mailed to Borrower at its address specified in the Agreement.

SECTION 14

MECHANICS' LIENS

14.1 Mechanics' Liens. Subject to the terms of the rights to contest set forth in the definition of "Permitted Encumbrances" set forth in the Agreement, Borrower shall pay from

UNOFFICIAL COPY

time to time when due, all lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Premises that are not Permitted Encumbrances or any part of it, or on the Rents arising therefrom, and in general shall do or cause to be done everything necessary so that the lien and security interest of this Mortgage shall be fully preserved, at Borrower's expense, without expense to Lender; provided, however, that if Legal Requirements empower Borrower to discharge of record any mechanics', laborer's, materialman's, or other lien against the Mortgaged Premises by the posting of a bond or other security, Borrower shall not have to make such payment if Borrower posts such bond or other security or otherwise acts in accordance with the terms of the definition of "Permitted Encumbrances" set forth in the Agreement.

SECTION 15

LIABILITY FOR ACTS OR OMISSIONS

15.1 Liability for Acts or Omissions. Lender shall not be liable or responsible for its acts or omissions under this Mortgage, except for Lender's own gross negligence or willful misconduct, or be liable or responsible for any acts or omissions of any agent, attorney, or employee of Lender, if selected with reasonable care.

SECTION 16

STATEMENT OF OBLIGATIONS

16.1 Statement of Obligations. Except as otherwise provided by Legal Requirements, at Lender's request, Borrower shall promptly pay to Lender such fee as may then be provided by law as the maximum charge for each statement of obligations, Lender's statement, Lender's demand, payoff statement, or other statement on the condition of, or balance owed, under the Note or secured by this Mortgage.

SECTION 17

GENERAL PROVISIONS

17.1 Governing Law; Jurisdiction. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION, VALIDITY, ENFORCEABILITY AND PERFORMANCE, THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE AND THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BORROWER ARISING OUT OF OR RELATING TO THIS MORTGAGE SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN COOK COUNTY, ILLINOIS AND

UNOFFICIAL COPY

BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. NOTWITHSTANDING THE FOREGOING, LENDER SHALL HAVE THE RIGHT TO INSTITUTE ANY LEGAL SUIT, ACTION OR PROCEEDING FOR THE ENFORCEMENT OR FORECLOSURE OF ANY LIEN ON THE MORTGAGED PREMISES IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION(S) THAT LENDER MAY ELECT IN ITS SOLE AND ABSOLUTE DISCRETION, AND BORROWER WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

17.2 No Release. Borrower agrees that no other security, now existing or hereafter taken, for all Obligations shall be impaired or affected in any manner by the execution hereof; no security subsequently taken by any holder of all Obligations shall impair or affect in any manner the security given by this Mortgage; all security for the payment of all Obligations shall be taken, considered, and held as cumulative; and the taking of additional security shall at no time release or impair any security by endorsement or otherwise previously given. Borrower further agrees that any part of the security herein described may be released without in any way altering, varying, or diminishing the force, effect, or lien of this Mortgage, or of any renewal or extension of said lien, and that this Mortgage shall continue as a first lien, assignment, and security interest on all the Mortgaged Premises not expressly released until all Obligations are fully discharged and paid.

17.3 Estoppel Certificates. Borrower agrees at any time and from time to time, upon ten (10) Business Days' prior written notice from Lender, to execute and deliver to Lender, or to any Person designated by Lender, a statement in writing certifying (i) the outstanding principal balance of all Obligations, (ii) the last date to which interest has been paid by Borrower, (iii) that the Loan is in full force and effect, (iv) to the knowledge of Borrower, whether Borrower has any defenses or offsets thereto, and (v) whether any default on the part of Borrower has occurred.

17.4 No Joint Venture. Borrower acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Lender shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, the Agreement, the Note or any other agreement executed in connection herewith or therewith.

17.5 Waiver of Punitive or Consequential Damages. Neither Lender nor Borrower shall be responsible or liable to the other or to any other person for any punitive, exemplary or consequential damages which may be alleged as a result of the Loan or the transactions contemplated hereby, including any breach or other default by any party hereto.

17.6 Notices. All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Agreement.

UNOFFICIAL COPY

17.7 Remedies Are Cumulative. Each remedy in this Mortgage is separate and distinct and is cumulative to all other rights and remedies provided by this Mortgage or by Legal Requirement, and each may be exercised concurrently, independently, or successively, in any order whatsoever.

17.8 Delegation of Authority. Whenever this Mortgage provides that Borrower authorizes and appoints Lender as Borrower's attorney-in-fact to perform any act for or on behalf of Borrower or in the name, place, and stead of Borrower, Borrower expressly understands and agrees that this authority shall be deemed a power coupled with an interest and such power shall be irrevocable.

17.9 Obligations of Borrower Joint and Several. If more than one Person is named as Borrower, each obligation of Borrower under this Mortgage shall be the joint and several obligations of each such Person.

17.10 Severability. If any provision of the Loan Documents, or the application of them to the circumstances, is held void, invalid, or unenforceable by a court of competent jurisdiction, the Loan Documents, and the applications of such provision to other parties or circumstances, shall not be affected thereby, the provisions of the Loan Documents being severable in any such instance.

17.11 Waiver of Statute of Limitations. Borrower waives the right to assert any statute of limitations as a defense to the Loan Documents and the Obligations secured by this Mortgage, to the fullest extent permitted by Legal Requirement.

17.12 Successors and Assigns. Except as otherwise provided in the Agreement and otherwise subject to Sections 8 and 9 of this Mortgage, this Mortgage applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors, and assigns of each party to this Mortgage.

17.13 Meaning of Certain Terms. As used in this Mortgage and unless the context otherwise provides, the words "herein," "hereunder" and "hereof" mean and include this Mortgage as a whole, rather than any particular provision of it.

17.14 Authorized Agents. In exercising any right or remedy, or taking any action provided in this Mortgage, Lender may act through its employees, agents, or independent contractors, as Lender expressly authorizes.

17.15 Captions. Captions and paragraph headings used in this Mortgage are for convenience of reference only, are not a part of this Mortgage, and shall not be used in construing it.

17.16 Conflict with Agreement. In the event of a conflict between the terms of this Mortgage and the terms of the Agreement, the Agreement shall prevail.

UNOFFICIAL COPY

SECTION 18

WAIVER OF RIGHT TO JURY TRIAL

18.1 WAIVER OF RIGHT TO JURY TRIAL. TO THE EXTENT NOW OR HEREAFTER PERMITTED BY APPLICABLE LAW, BORROWER AND LENDER AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING FROM THIS MORTGAGE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND, BY ITS ACCEPTANCE OF THE BENEFITS OF THIS MORTGAGE, LENDER EACH (A) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR BORROWER AND LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER BY ENTERING INTO THIS MORTGAGE OR ACCEPTING ITS BENEFITS, AS THE CASE MAY BE, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (B) FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS MORTGAGE.

SECTION 19

ASSIGNMENT OF RENTS AND LEASES

19.1 Assignment of Rents and Leases.

(a) To further secure the payment of the Indebtedness and the full and timely performance and discharge of the Obligations, but subject to Borrower's rights and obligations under Section 4.14 of the Agreement, Borrower hereby grants, transfers and assigns to Lender: (i) any and all Leases, and (ii) all right, title and interest of Borrower in the Rents, together with all benefits and advantages to be derived from said Leases, to hold and receive them unto Lender, and together with all rights against guarantors, if any, of the obligations of the tenants, all subject, however, to the right and license granted to Borrower in Section 19.1(d) below. The foregoing assignment is intended to be specific, choate, and perfected upon the recording of this Mortgage, in accordance with applicable law.

(b) Borrower does hereby irrevocably appoint and empower Lender, its agents or attorneys as Borrower's true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Premises) upon the occurrence and during the continuance of an Event of Default, to rent, lease or let all or any portion of the Mortgaged Premises to any party or

UNOFFICIAL COPY

parties at such rental and upon such terms as Lender shall, in its discretion, determine and, to collect, sue for, settle, compromise and give acquittances for all of the Rents and all rights and claims of any kind which Borrower now has or may hereafter have against any tenant under any Lease or any subtenants or occupants of the Mortgaged Premises, and to avail itself of and pursue all remedies for the enforcement of the Leases and Borrower's rights in and under the Leases as Borrower might have pursued but for this assignment.

(c) Upon issuance of a certificate of title, deed or deeds pursuant to or in lieu of foreclosure of the Mortgage, all right, title and interest of Borrower in and to any Leases shall thereupon vest in and become the absolute property of the purchaser, grantee or grantees identified in such certificate of title, deed or deeds (as applicable) without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Lender and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such purchaser, grantee or grantees identified in such certificate of title, deed or deeds (as applicable), as may be necessary or desirable for such purpose.

(d) This assignment constitutes an absolute, unconditional and presently effective assignment; provided, however, that Lender hereby grants to Borrower the right and license to enter into and otherwise deal with any Leases, as applicable to each of them, including collecting and receiving the Rents and other amounts due under any Leases as they become due (not more than one month in advance), until the occurrence of any Event of Default, in which event the foregoing right and license shall be terminated and of no further force and effect during the continuance of such Event of Default, and Lender shall be entitled to all Rents and other amounts then due under any Leases and thereafter accruing without the institution of legal proceedings of any kind whatsoever, and this Mortgage shall constitute a direction to and full authority to the tenants to pay all such amounts to Lender upon notice to the tenants from Lender. Each of the tenants upon written notice from Lender, shall be and is hereby authorized by Borrower to pay to Lender any Rents, rental or other sums which may be or thereafter become due under any Leases and to perform each of such tenant's undertakings under any Leases without any obligations to determine whether or not such an Event of Default has in fact occurred. The requirement for notice to the tenants is intended solely for the benefit of such tenants and not for the benefit of Borrower or any other Person claiming through or under Borrower, and all payments made to Borrower or by tenants during the continuance of an Event of Default, whether before or after notice to the tenants that an Event of Default has occurred, shall be held in trust by Borrower for the benefit of Lender.

(e) Borrower hereby irrevocably appoints Lender as Borrower's true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Premises personally, by receiver or as provided herein, it being understood such power of attorney is coupled with an interest) to rent, lease or let all or any portion of the Mortgaged Premises to any party or parties at such rental and upon such terms as Lender shall, in its discretion, determine, and to collect all Rents arising or accruing at any time hereafter, and all now due or that may hereafter become due under each and every one of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the Mortgaged Premises hereunder. Lender agrees that it will not exercise such right and power except upon the occurrence and during the continuance of any Event of Default hereunder.

UNOFFICIAL COPY

(f) Borrower represents and agrees that no Rent has been or will be paid by any person in possession of the Mortgaged Premises for more than one (1) installment in advance and that, except as authorized in this Mortgage, the payment of none of the Rents to accrue for any portion of the Mortgaged Premises will be waived, released, reduced, discounted or otherwise discharged or compromised by Borrower except (x) in connection with a termination of a Lease or (y) in the ordinary course of business consistent with commercially reasonable practices for properties similar to the Mortgaged Premises. As between Borrower and Lender, Borrower waives any rights of set off against any person in possession of any portion of the Mortgaged Premises. Borrower agrees that it will not assign any of the Rents, except to a purchaser or grantee of the Mortgaged Premises permitted by Lender.

(g) Nothing herein contained shall be construed as constituting Lender as a Lender in possession in the absence of the taking of actual possession of the Mortgaged Premises by Lender. In the exercise of the powers herein granted to Lender, no liability shall be asserted or enforced against Lender, all such liability (except for the gross negligence or willful misconduct of Lender) being expressly waived and released by Borrower to the fullest extent permitted by law. Nothing contained herein, including without limitation the assignment provisions set forth above, shall impose upon Lender any duty to produce any rents, issues or profits or cause Lender to be (i) responsible for performing any of the obligations of lessor under any Lease, or (ii) responsible or liable for any waste or for any dangerous or defective conditions of the Mortgaged Premises, for negligence (other than gross negligence) in the management, upkeep, repair or control of the Mortgaged Premises, or for any other act or omission by any other Person.

(h) Borrower further agrees to assign and transfer to Lender all future Leases upon all or any part of the Mortgaged Premises and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Mortgaged Premises as Lender shall from time to time reasonably require.

(i) If Lender's consent or approval is required for any Lease under the terms of the Agreement, nothing contained in this Section 19.1 shall in any way or manner constitute, infer or imply Lender's consent to or approval of any Lease with respect to any portion of the Mortgaged Premises.

SECTION 20

RELEASE AND SATISFACTION OF MORTGAGE

20.1 Lender shall, promptly following Borrower's request and upon payment in full of the Indebtedness and performance by Borrower and/or Guarantor of all of their other obligations under this Mortgage and the other Loan Documents, execute and deliver to Borrower, at no cost to Lender, a release and satisfaction of this Mortgage, in form reasonably acceptable to Borrower and Lender. Borrower shall not be required to pay Lender a fee for delivering such release and satisfaction, but shall be required to pay Lender's reasonable costs and expenses in connection with delivering such release and satisfaction (including reasonable legal fees).

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage as of the date first written above.

BORROWER:

830, L.L.C., an Illinois limited liability company

By: SPECTRUM MANAGER, LLC, an Illinois limited liability company, its Manager

By: _____

Name: Jerald H. Lasky

Title: Manager

Property of Cook County Clerk's Office

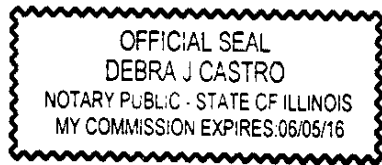
UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On the 14th day of January, 2016, before me, DEBRA J. CASTRO, a Notary Public in and for said state, personally appeared Jerald H. Lasky, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Debra J. Castro



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Lot 1 and the South ½ of Lot 2 in Block 29 in Johnston, Roberts and Storr's Addition to Chicago in Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Tax numbers:

17-04-436-047-0000

17-04-436-048-0000

17-04-436-059-0000

Common Address: 830 N. Orleans Street, Chicago, IL 60610