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Cook County Recorder 41.50



0010734540

This Instrument Prepared By
and After Recording Mail To:

C. Grant McCorkhill
McBride Baker & Coles
500 West Madison, Suite 4000
Chicago, Illinois 60661

* LaSalle Bank National Association formerly
known as LaSalle National Bank

**CONSENT TO EQUAL PRIORITY OF LIEN RIGHTS
PARI PASSU TREATMENT OF SECOND MORTGAGES
AND COVENANT REGARDING SUBORDINATION**

This CONSENT TO EQUAL PRIORITY OF LIEN RIGHTS (this "Consent") is made and entered into this 2nd day of August, 2001, between **LaSalle Bank National Association** as Trustee under Trust Agreement dated August 26, 1979 and known as Trust No. 121170 ("Mortgagor") **Niki Development, L.L.C.**, an Illinois limited liability company, as beneficiary of Mortgage, ("Beneficiary"), **Becker Ventures, LLC**, a Michigan limited liability company, whose address is 6600 East Fifteen Mile Road Sterling Heights, Michigan 48312 ("Becker") **Hard Rock Café International (USA), Inc.**, a Florida corporation, whose address is 6100 Old Park Lane, Orlando, Florida 32835 ("Hard Rock"), and **ASM Investments, LLC**, an Illinois limited liability company ("ASM") whose address is 500 West Madison, 40th Floor, Chicago, Illinois 60661.

RECITALS

1. On April 16, 2001, Mortgagor and Becker entered into a Second Mortgage ("Becker Mortgage") encumbering the property described in Exhibit A ("Mortgaged Property") to secure payment of a Promissory Note ("Becker Note") in the amount of one million five hundred thousand and no/100 dollars (\$1,500,000). The Becker Mortgage was recorded with the Cook County Recorder of Deeds as Document No. 0010306760.

2. On August 1, 2001, Mortgagor and Hard Rock entered into a Second Mortgage ("Hard Rock Mortgage") encumbering the Mortgage Property to secure payment of a Promissory Note ("Hard Rock Note") in the amount of one million five hundred thousand and no/100 dollars (\$1,500,000). The Hard Rock Mortgage was recorded with the Cook County Recorder of Deeds as Document No. _____.

3. Section 27 of both the Becker Mortgage and the Hard Rock Mortgage contemplate that Mortgagor would borrow one million five hundred and no/100 dollars (\$1,500,000) from the other and that each will cooperate with the Beneficiary and any other

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lender or investor to execute any credit agreements, co-lender agreements or any other necessary documents to establish equal priority in the Mortgaged Property.

4. ASM is the holder of a First Mortgage encumbering the Mortgaged Property and will be benefited by the loans secured by the Becker Mortgage and the Hard Rock Mortgage.

NOW, THEREFORE, the parties agree as follows:

1. **Equal Priority of Lien Rights.** Mortgagor, Beneficiary, Becker and Hard Rock agree that the rights created by the Becker Mortgage and the Hard Rock Mortgage shall have equal priority in the Mortgaged Property and that the Becker Mortgage and Hard Rock Mortgage shall be treated *pari passu* with respect to any distributions or realizations from a foreclosure, bankruptcy or any other recovery on the Mortgaged Property under such mortgages to the extent mortgages are each pursuing their rights under their mortgages. The holders of the Becker Mortgage and the Hard Rock Mortgage shall each provide notice to the other (and Mortgagor under each such mortgage shall provide notice) of any Event of Default and commencement of Foreclosure proceedings. This Agreement shall not limit or restrict the rights of any party hereto to commence, pursue or participate in any foreclosure proceeding with respect to the Mortgaged Property or any collateral.

2. **Subordination.** ASM consents to, and confirms and agrees to the Subordination provisions of Section 28 of both the Becker Mortgage and the Hard Rock Mortgage. ASM covenants and agrees that to the extent it is entitled to any distributions or realizations from or with respect to any foreclosure, bankruptcy or other recovery from or with respect to the Prior Note and the First Mortgage on the Mortgaged Property that exceed the Subordination Limit in Section 28 of the Hard Rock Mortgage ("Excess Proceeds") that such Excess Proceeds are subject to the terms of this Consent and shall be distributable to Becker and Hard Rock in accordance with Section 1 of this Consent until the obligations secured by the Becker Mortgage and the Hard Rock Mortgage have been satisfied in full. ASM shall receive, hold and distribute any Excess Proceeds to Becker and Hard Rock, to the extent they are received. This Consent does not create a partnership or joint venture between the parties hereto. This Consent shall in no way constitute a novation of the ASM loan or any amendment or modification thereof that could adversely affect ASM's rights thereunder with respect to Mortgagor or any other parties now or hereafter claiming any rights or interests in the Mortgaged Property. ASM shall provide copies to Becker and Hard Rock of any notices of default under or documents modifying or amending ASM's loan or security documents; and Becker and Hard Rock shall provide similar documents to ASM with respect to their respective Mortgages. ASM, Becker and Hard Rock shall, upon the request of any one of such parties, execute a further, mutually acceptable, intercreditor agreement to implement the terms hereof with respect to their respective rights and obligations hereunder.

3. **Security Interest.** Beneficiary hereby grants to Hard Rock a security interest in the Collateral described in Section 23 of the Hard Rock Mortgage and Hard Rock and Beneficiary incorporate the provisions of such Section 23 herein by reference thereto and

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Beneficiary agrees to be bound by and act in accordance with such provisions as if it were the "Mortgagor" under such provision.

4. **Letter of Intent.** Beneficiary and Hard Rock are parties to a letter of intent ("Letter of Intent") with respect to the development of a Hard Rock Hotel on the Mortgaged Property. Such Letter of Intent shall survive the execution and delivery hereof and any breach of or termination of that Letter of Intent by Beneficiary or occurrence of an event that would prevent development of the Mortgaged Property upon terms that are substantially in accordance with that Letter of Intent shall entitle Hard Rock to accelerate the Maturity Date under the Note after ten (10) days prior written notice to Beneficiary.

5. **Trustee Exculpation.** It is expressly understood and agreed that nothing in this Consent to Equal Lien Rights shall be construed as creating any personal liability on the Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage. Notwithstanding the foregoing, the Mortgagee shall not be precluded from: (a) foreclosing this Mortgage, (b) recovering any condemnation awards or insurance proceeds attributable to the Mortgaged Property; (c) recovering any tenant security deposits, advance or prepaid rents, if any, or (d) enforcing the personal liability of Beneficiary as co-maker of the Note, of the payment of the Note and performance of all obligations under the Note.

6. **Execution in Counterpart.** The parties acknowledge and agree that this Consent can be executed in counterpart and any document so executed shall be deemed an original hereof.

7. **Governing Law.** This Consent shall be governed by and construed under the laws of the State of Illinois.

[Signature Page Follows]

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UNOFFICIAL COPY* LaSalle Bank National Association formerly
known as LaSalle National Bank

IN WITNESS WHEREOF, the undersigned have each executed this Consent to Equal Lien
Rights as of the date first written above.

MORTGAGOR:**10734540**

* **LASALLE BANK NATIONAL
ASSOCIATION**, as Trustee aforesaid
and not personally

By: *Spring Alexander*
Its: **TRUST OFFICER**

This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations covenants and/or statements contained in this instrument.

BENEFICIARY:

NIKI DEVELOPMENT, L.L.C., an Illinois
limited liability company

By: *Jim (Mark)*
Its: *Managing Director*

BECKER VENTURES, LLC
a Michigan limited liability company

By: _____
Its: _____

HARD ROCK CAFÉ INTERNATIONAL (USA), INC.
a Florida corporation

By: _____
Its: _____

ASM INVESTMENTS, LLC
an Illinois limited liability company

By: *ASM*
Its: *Arturo B. Sosa*

1980-1981

ON 20/07/1

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the investigation. The investigator must identify the problem and the scope of the investigation. This is done by the investigator who is responsible for the investigation. The investigator must identify the problem and the scope of the investigation.

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1954-55

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IN WITNESS WHEREOF, the undersigned have each executed this Consent to Equal Lien Rights as of the date first written above.

10734540

MORTGAGOR:

**LASALLE BANK NATIONAL
ASSOCIATION**, as Trustee aforesaid

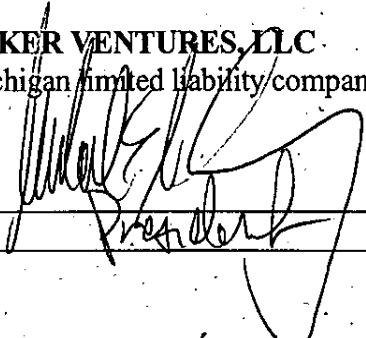
By: _____
Its: _____

BENEFICIARY:

NIKI DEVELOPMENT, L.L.C., an Illinois
limited liability company

By: _____
Its: _____

BECKER VENTURES, LLC
a Michigan limited liability company

By:  _____
Its: _____

HARD ROCK CAFÉ INTERNATIONAL (USA), INC.
a Florida corporation

By: _____
Its: _____

ASM INVESTMENTS, LLC
an Illinois limited liability company

By: _____
Its: _____

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IN WITNESS WHEREOF, the undersigned have each executed this Consent to Equal Lien Rights as of the date first written above.

MORTGAGOR:

**LASALLE BANK NATIONAL
ASSOCIATION**, as Trustee aforesaid

By: _____
Its: _____

10734540

BENEFICIARY:

NIKI DEVELOPMENT, L.L.C., an Illinois
limited liability company

By: _____
Its: _____

BECKER VENTURES, LLC
a Michigan limited liability company

By: _____
Its: _____

HARD ROCK CAFÉ INTERNATIONAL (USA), INC.
a Florida corporation

By: 
Its: President

ASM INVESTMENTS, LLC
an Illinois limited liability company

By: _____
Its: _____

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02/28/2021

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ACKNOWLEDGEMENT

STATE OF ILLINOIS)

) SS.

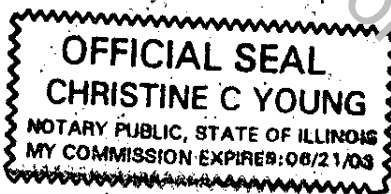
COUNTY OF COOK)

10734540

On August 2nd, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared SPRING ALEXANDER personally known to me (or proved to me on the basis of satisfactory evidence) to be the TRUST OFFICER of the Trustee and the person who executed this Consent as an officer of the Trustee and acknowledged to me that the execution thereof was the free and voluntary act and deed of the Trustee for the uses and purposes there mentioned.

WITNESS my hand and official seal.

(SEAL)



Christine C Young
Notary Public in and for the
State of Illinois

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

On August 1st, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared John Marks personally known to me (or proved to me on the basis of satisfactory evidence) to be the Managing Member of Niki Development, LLC, an Illinois limited liability company and the person who executed this Consent as an officer of Niki Development, LLC, and acknowledged to me that the execution thereof was the free and voluntary act and deed of Niki Development, LLC, for the uses and purposes there mentioned.

WITNESS my hand and official seal.

(SEAL)



Mary Bianco
Notary Public in and for the
State of Illinois

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UP-20-001

ADJUTANT GENERAL

RECEIVED

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OFFICIAL SEAL
JAN 18 1941
CLERK OF THE COURT
JAMES H. HARRIS
JAN 18 1941

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10734540

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND

On August 7, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Michael E. McInerney personally known to me (or proved to me on the basis of satisfactory evidence) to be the President of Becker Ventures, LLC, a Michigan limited liability company and the person who executed this Consent as an officer of Becker Ventures, LLC, and acknowledged to me that the execution thereof was the free and voluntary act and deed of Becker Ventures, LLC, for the uses and purposes there mentioned.

WITNESS my hand and official seal.



Joseph P. Scalici
Notary Public in and for the
State of MICHIGAN

JOSEPH P. SCALICI
Notary Public, Macomb County, MI
My Commission Expires Feb 12, 2004

STATE OF MICH)
) SS.
COUNTY OF _____)

On August __, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of Hard Rock Café, International (USA), Inc., a Florida corporation and the person who executed this Consent as an officer of Hard Rock Café, International (USA), Inc., and acknowledged to me that the execution thereof was the free and voluntary act and deed of Hard Rock Café, International (USA), Inc., for the uses and purposes there mentioned.

WITNESS my hand and official seal.

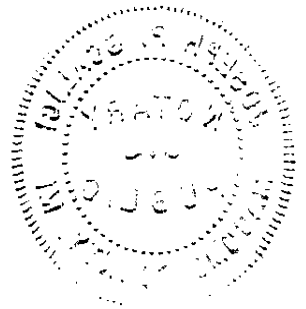
(SEAL)

Notary Public in and for the
State of _____

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Property of Cook County Clerk's Office



03240311
03240311
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UNOFFICIAL COPY

STATE OF _____)
) SS.
COUNTY OF _____)

10734540

On June __, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of Becker Ventures, LLC, a Michigan limited liability company and the person who executed this Consent as an officer of Becker Ventures, LLC, and acknowledged to me that the execution thereof was the free and voluntary act and deed of Becker Ventures, LLC, for the uses and purposes there mentioned.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for the
State of _____

STATE OF FLORIDA)
) SS.
COUNTY OF ORANGE)

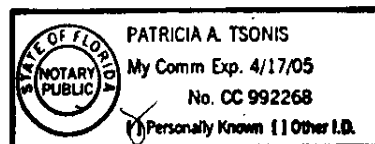
On August 1, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Pete Beaudrault personally known to me to be the President of Hard Rock Café, International (USA), Inc., a Florida corporation and the person who executed this Consent as an officer of Hard Rock Café, International (USA), Inc., and acknowledged to me that the execution thereof was the free and voluntary act and deed of Hard Rock Café, International (USA), Inc., for the uses and purposes there mentioned.

WITNESS my hand and official seal.

(SEAL)

Patricia A. Tsonis

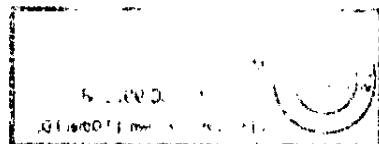
Notary Public in and for the
State of Florida



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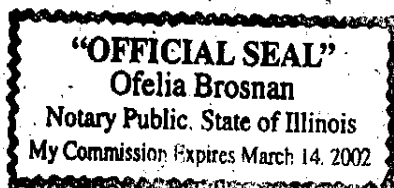
10734540

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On August 3, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared Elias N Matsushita personally known to me (or proved to me on the basis of satisfactory evidence) to be the authorized signatory of ASM Investments, LLC, an Illinois limited liability company and the person who executed this Consent as an officer of ASM Investments, LLC, and acknowledged to me that the execution thereof was the free and voluntary act and deed of ASM Investments, LLC, for the uses and purposes there mentioned.

WITNESS my hand and official seal:

(SEAL)



Ofelia Brosnan
Notary Public in and for the
State of Illinois

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EXHIBIT A

10734540

Legal Description

LOTS 10, 11, 12, 13, 14 AND 15 IN BLOCK 7 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NO.: 17-10-303-024-0000

COMMON ADDRESS: 220 and 230 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS

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