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Cook County Recorder 49.50

This Instrument Prepared By
and After Recording Mail To:

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



0010734541

* LaSalle Bank National Association formerly
known as LaSalle National Bank

SECOND MORTGAGE

THIS SECOND MORTGAGE is made this 1st day of August, 2001, between *LaSalle Bank National Association as Trustee under Trust Agreement dated August 26, 1979 and known as Trust Number 121170 ("Mortgagor") and Hard Rock Café International (USA), Inc., a Florida corporation, whose address is 6100 Old Park Lane, Orlando, Florida 32835 (the "Mortgagee").

Agreement:

TO SECURE to Mortgagee the repayment of the indebtedness evidenced by the following note: Promissory Note of even date herewith made by the Mortgagor and Niki Development, L.L.C., an Illinois limited liability company ("Beneficiary") in favor of the Mortgagee in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) ("Note") and the payment of all other sums, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Mortgagor herein contained of even date herewith, Mortgagor does hereby mortgage, warrant, grant and convey to Mortgagee the property located in the County of Cook, State of Illinois described in Exhibit A attached hereto.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property are hereinafter referred to as the "Mortgaged Property."

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for encumbrances of record on the date hereof described on Exhibit B attached hereto ("Permitted Encumbrances"). Mortgagor covenants that Mortgagor warrants and will defend generally the title to the Mortgaged Property against all claims and demands, subject to the Permitted Encumbrances and that the above Recitals are true and accurate.

UNIFORM COVENANTS. Mortgagor covenants and agrees as follows:

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1. **Payment of Principal.** Mortgagor shall promptly pay when due the principal of the indebtedness evidenced by the Note and all interest and other charges under the Note and this Mortgage.

2. **Funds for Taxes, Insurance and Mechanics Liens.** Mortgagor shall provide Mortgagee with evidence reasonably satisfactory to Mortgagee that Mortgagor has paid (i) all real estate taxes when due with respect to the Mortgaged Property; (ii) all insurance premiums with respect to insurance required hereunder; and (iii) all claims for mechanics liens (provided, however, Mortgagor shall be permitted to bond over mechanic's liens in a manner reasonably acceptable to Mortgagee).

3. **Prior Mortgages and Deed of Trust; Charges; Liens.** Mortgagor shall not permit an event of default to occur under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Mortgagor's covenants to make payments when due. Mortgagor shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Mortgaged Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any, including but not limited to any mechanics lien or judgment lien claims.

4. **Hazard Insurance.** Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Mortgagee may require and in such amounts and for such periods as Mortgagee may require.

The insurance carrier providing the insurance shall be chosen by Mortgagor. All insurance policies and renewals thereof shall be in a form acceptable to ASM Investments, LLC ("ASM") and Mortgagor and shall include a standard mortgage clause in favor of and in a form acceptable to ASM and Mortgagor.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor.

If the Mortgaged Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Mortgagee within thirty (30) days from the date notice is mailed by Mortgagee to Mortgagor that the insurance carrier offers to settle a claim for insurance benefits, Mortgagee is authorized to collect and apply the insurance proceeds at Mortgagee's option either to restoration or repair of the Mortgaged Property or to the sums secured by this Mortgage. Mortgagor shall carry liability insurance in an amount, with a carrier and in a form reasonably acceptable to Mortgagee.

5. **Preservation and Maintenance of Mortgaged Property.** Mortgagor shall keep the Mortgaged Property in good repair and shall not commit waste or permit impairment or deterioration of the Mortgaged Property. Mortgagor shall use the Mortgage Loan Proceeds to enhance the value of the Property.

6. **Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which

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materially affects Mortgagee's interest in the Mortgaged Property, then Mortgagee, at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Mortgagee's interest. If Mortgagee required mortgage insurance as a condition of making the loan secured by this Mortgage, Mortgagor shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Mortgagor's and Mortgagee's written agreement or applicable law.

Any amounts disbursed by Mortgagee pursuant to this paragraph 6, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to incur any expense or take any action hereunder, and shall bear interest at the Default Rate provided in the Note.

7. Inspection. Mortgagee may make or cause to be made reasonable entries upon and inspections of the Mortgaged Property, provided that Mortgagee shall give Mortgagor notice prior to any such inspection specifying reasonable cause therefor related to Mortgagee's interest in the Mortgaged Property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Mortgaged Property, or part thereof, or for conveyance in lieu of condemnation after payment of all amounts due ASM, are hereby assigned and shall be paid to Mortgagee, subject to the terms of any Permitted Encumbrance.

9. Mortgagor Not Released; Forbearance By Mortgagee Not a Waiver.

Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend the time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Mortgagor provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to the Mortgagor at the Mortgaged Property address or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail to Mortgagee's address stated herein or to such other address as Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

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12. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Mortgaged Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. **Mortgagor's Copy.** Mortgagor shall be furnished a copy of the Note and of this Mortgage at the time of execution or after recordation thereof.

14. **Transfer of the Mortgaged Property or a Beneficial Interest in Mortgagor.** If all or any part of the Mortgaged Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred) without Mortgagee's prior written consent, Mortgagee may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Mortgagee if exercise is prohibited by federal law as of the date of this Mortgage.

15. **Events of Default.** If one or more of the following events (herein called "Events of Default") shall occur:

- a. Any payment required under the terms of the Note is not paid when due;
- b. If, without the prior written consent of Mortgagee, Mortgagor or any beneficiary of the Mortgagor shall create, effect or consent to or shall suffer or permit (or shall contract for or agree to) any conveyance, sale, assignment, transfer, or alienation of the Mortgaged Property or any part thereof or interest therein, (including without limitation of any beneficial interest), excluding any leases entered into during the ordinary course of business in each case whether any such conveyance, sale, transfer, lien or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; or
- c. If (and for the purpose of this subsection (c) of this paragraph 15 only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a trustee Mortgagor),
 - (i) Mortgagor shall file a petition for voluntary bankruptcy under any chapter of the federal bankruptcy code, or any similar law for the relief of debtors, state or federal, now or hereafter in effect, or
 - (ii) Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

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- (iii) Within sixty (60) days after filing against Mortgagor of any involuntary proceeding under the federal bankruptcy code or similar law for the relief of debtors, such proceedings shall not have been vacated or stayed, or
 - (iv) Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Mortgagor for all or a material part of Mortgagor's property or the Mortgaged Property, in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharge or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within sixty (60) days, or
 - (v) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all a material part of its property, or the Mortgaged Property, or
- d. If default shall continue for fifteen (15) days after notice thereof by Mortgagee to Mortgagor (Mortgagor shall include any beneficiary of a trustee Mortgagor) in the due and punctual performance or observance of any other agreement contained herein or in the Note.
- e. Default beyond any applicable cure period under any obligation for borrowed money; the commencement of any proceeding to foreclose any mechanics lien against Mortgaged Property claiming in excess of \$100,000; or the commencement of litigation against Borrower for an amount in excess of \$250,000 relating to the Mortgaged Property.
- f. Any change in control of Niki Development, L.L.C. or ASM Investments, LLC either by a change of the managers or members thereof or contractually excluding however, a change of control which transfers control or management to an affiliate or related party of John Marks or a related party or entity under common ownership with Niki Development, L.L.C. or ASM Investments, LLC.

then Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder to declare, without further notice, the Note to be immediately due and payable, whether or not such default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Note or by law or in equity conferred.

16. Possession by Mortgagee. When the Note shall become due, whether by acceleration or otherwise subject to the rights of ASM, Mortgagee shall have the right to enter into and upon the Mortgaged Property and take possession thereof or to appoint an agent or trustee for the collection of rents, issues and profits of the Mortgaged Property. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, may

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be applied to the payment of the Note as Mortgagee may elect; the rents, issues and profits of and from the Mortgaged Property are hereby specifically pledged to the payment of the Note.

17. Foreclosure. When the Note, or any part, thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien, all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurance with respect to title, as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of attorneys employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional debt and shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate in the Note per annum until paid.

18. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: First, to ASM in payment of all amounts due under the Third Amendment (as defined in and subject to the limits of paragraph 28 below); Second, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in paragraphs 16 and 17 hereof; Third, all other items which, under the terms hereof, constitute debt secured hereby additional to that evidenced by the Note, with interest on such items as herein provided; Fourth, to the principal and interest remaining unpaid upon the Note; and Fifth, any remaining amounts to Mortgagor and its successors or assigns, as their rights may appear.

19. Hazardous Waste. From the date of this Mortgage, Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste or underground storage tanks or any other pollutants which could be detrimental to the premises, human health, or the environment or that would violate any local, state, or federal laws or regulations (collectively "Environmental Conditions") to be present on or affect the Mortgaged Property. If Mortgagee determines that Environmental Conditions either do or may exist at the Mortgaged Property, or if Mortgagor causes or permits Environmental Conditions to be present on or affect the Mortgaged Property, Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns harmless from and against the following: (a) any liability, loss, cost, damage, or expense including without limitation attorneys' fees and expenses, arising from the imposition or recording of the lien, the occurrence of any clean up and removal costs under any hazardous waste, environmental protection, spill compensation, clean air and water, or other local, state, or federal law (collectively "Environmental Laws") with respect to the Mortgaged Property, or to any other real or personal property owned by Mortgagor in the State of Illinois or liability to any third party in connection with any violation of the Environmental Laws or other action by Mortgagor or its agents, and (b) any loss of value in the

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Mortgaged Property as a result of any such lien, such clean up and removal costs, or such other liability incurred pursuant to (a) above, and (c) any liability, loss, cost, damage or expense arising from any failure or defect in title occasioned by any of the applicable Environmental Laws.

20. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, subject to the rights of ASM, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditor. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all such insurance policies to the purchaser at the sale, or to take such larger steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

21. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or limited, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall impair any such right, power or remedy, or be construed to be a waiver of any type.

22. Release. Upon payment of all sums secured by this Mortgage, Mortgagee shall release this Mortgage without charge to Mortgagor provided Mortgagor shall pay all costs of recordation, if any.

23. Uniform Commercial Code. By execution of this Mortgage, Mortgagor (and for the purpose of this paragraph 23 only; the term Mortgagor shall mean and include not only Mortgagor but any and all beneficiaries of a trustee Mortgagor, holding title to any of the Collateral defined below, and any and all such beneficiaries acknowledge the trustee Mortgagor's authority to convey the security interest in their personal property, if any, by directing the trustee to execute this Mortgage) grants Mortgagee a security interest, under the Illinois Uniform Commercial Code (the "Code"), in the following property: All fixtures and personal property located on, related to or used in connection with the maintenance and operation of the Mortgaged Property and all of Mortgagor's accounts with Mortgagee all plans, permits, contracts, licenses, commitments, general intangibles and other personal property rights relating to the Mortgaged Property (all for the purposes of this paragraph 23 hereinafter referred to as "Collateral"). All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property. In addition thereto:

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- a. Mortgagor represents that it (being the debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral.
- b. The Collateral will be kept at the real property comprised within the Mortgaged Property, and will not be removed therefrom without the prior written consent of Mortgagee (being the Secured Party as that term is used in the Code) and the Collateral may be affixed to such real property but will not be affixed to any other real property.
- c. Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time request to establish and maintain a perfected security interest in the Collateral as security for the Note, subject to no prior liens or encumbrances and Mortgagor will pay the cost of filing the same or recording such financing statements or other documents and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.
- d. Upon an Event of Default hereunder and at any time thereafter, Mortgagee at its option may declare the Note immediately due and payable, all as more fully set forth in paragraph 15 hereof, and thereupon Mortgagee shall have the remedies of the secured party under the Code. Any foreclosure sale may be held as part of and in conjunction with any foreclosure sale of the real property comprised within the Mortgaged Property, the Collateral and real property to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling the like and the attorney's fees and legal expenses incurred by Mortgagee shall be applied against the Note. Mortgagee will account to Mortgagor for any surplus realized on such disposition.
- e. The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Note remains unsatisfied.

25. Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor or ASM provides the Mortgagee with evidence of the insurance coverage required by this Mortgage, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness or

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Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

26. **Advances.** This Mortgage is given to secure all existing indebtedness under the Note, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total principal balance of indebtedness secured hereby (including disbursements that the Mortgagee may, but shall not be obligated to, make under this Mortgage, the Note, or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5) (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely real estate taxes and assessments levied on the Mortgaged Property given priority by law.

27. **Mortgagee's Agreement to Cooperate with Future Lenders.** Mortgagee acknowledges that Beneficiary has borrowed an additional \$1,500,000.00 from additional lenders or investors with the understanding that the interest of such additional lenders or investors shall be of equal priority to and not subordinate to Mortgagee's interest in the Mortgaged Property. Mortgagee covenants that it will cooperate with Beneficiary and any additional lender or investor to execute any intercreditor agreements, co-lender agreements or any other necessary documents to document such additional lender's or investor's equal priority in the Mortgaged Property.

28. **Subordination.** Anything in this Second Mortgage notwithstanding, the indebtedness secured hereby, as well as all rights and remedies of Mortgagee set forth herein, are subordinated to the prior payment in full of the indebtedness, including, but not limited to, all interest, future advances, penalties, costs and fees evidenced by the Note dated May 31, 2000 in the principal amount of \$7,000,000.00 by and between Borrower and ASM ("Prior Note") which Prior Note is secured by a Mortgage and Security Agreement with Assignment of Rents, as amended ("First Mortgage") made by the Trustee in favor of LaSalle National Bank ("LaSalle") to secure certain indebtedness, as defined in the First Mortgage, which First Mortgage is dated

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September 2, 1997 and was recorded in the Office of the Cook County, Illinois Recorder of Deeds on September 8, 1997 as document number 97659694 and which First Mortgage was assigned to ASM by LaSalle pursuant to an Assignment of Mortgage dated May 31, 2000 and recorded as Document Number 0399048 in the Office of the Cook County, Illinois Recorder of Deeds and which First Mortgage was further amended by a Third Amendment to Mortgage and Security Agreement with Assignment of Rents, and Security Agreement ("Third Amendment") by Mortgagor and Beneficiary in favor of ASM dated May 31, 2000 and recorded as Document Number 0399049 in the Office of the Cook County, Illinois Recorder of Deeds. Notwithstanding anything else to the contrary, this subordination shall be limited to a maximum of ten million dollars (\$10,000,000) plus the following which accrue after June 1, 2003: (i) any and all accrued interest, fees and charges due and owing under the Prior Note and the First Mortgage and (ii) the costs of collection (including attorneys fees and costs) thereof ("Subordination Limit"). The sums that are due with respect to or in connection with the First Mortgage in excess of the Subordination Limit shall not benefit from this subordination provision. Mortgagor and Beneficiary represent and warrant that they have each disclosed to Lender all material facts regarding the Project, the Prior Note and the status of the negotiations for financing of the Project, including but not limited to TIF and tax credit matters and that they shall from time to time at the Mortgagee's request provide Mortgagee with full access to any and all information regarding the Mortgaged Property, the collateral and the proposed development of the Mortgaged Property.

29. **Trustee Exculpation.** It is expressly understood and agreed that nothing in this Mortgage 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.

[Signature Page Follows]

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* LaSalle Bank National Association formerly known as LaSalle National Bank

IN WITNESS WHEREOF, Mortgagor has executed this Second Mortgage as of the date first written above.

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

By: *Spina Alexander*

Its: TRUST OFFICER

BENEFICIARY:

Niki Development, L.L.C., an Illinois limited liability company

By: *John C. Marshall*

Its: *Managing Member*

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Common Pleas Court
Clerk of Court

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ACKNOWLEDGEMENT

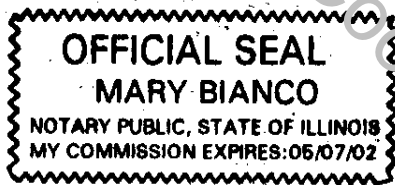
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

10734541

On August 1, 2001, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared John M. M... personally known to me (or proved to me on the basis of satisfactory evidence) to be the Managing Member of the Trustee and the person who executed this Mortgage 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)



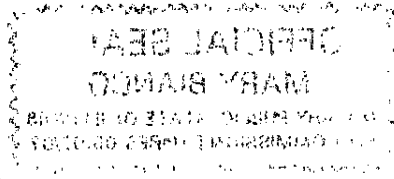
Mary Bianco
Notary Public in and for the
State of Illinois

My commission expires:

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EXHIBIT A

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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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AT 120701

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EXHIBIT B PERMITTED ENCUMBRANCES

1. 2000 AND 2001 REAL ESTATE TAXES NOT YET DUE AND OWING.
PIN 17-10-303-024-0000.
2. TERMS, PROVISIONS AND CONDITIONS OF THE ORDINANCE DESIGNATING THE LAND AS A CHICAGO LANDMARK, A COPY OF WHICH WAS RECORDED JUNE 27, 1996 AS DOCUMENT 96497813.
3. PARTY WALL RIGHTS ALONG THE SOUTH LINE OF THE LAND.
4. THE PLAT OF SURVEY BY CHICAGO GUARANTEE SURVEY COMPANY DATED FEBRUARY 15, 1999 NUMBER 9902001 WHICH SHOWS THE FOLLOWING:
 - A) ENCROACHMENT OF BRICK BUILDING LOCATED MAINLY ON THE LAND ONTO PROPERTY NORTH AND ADJOINING THE NORTHEAST CORNER BY .03 FEET.
 - B) ENCROACHMENT OF CONCRETE LOADING DOCKS ONTO PUBLIC PROPERTY EAST AND ADJOINING BY 7.31 FEET.
 - C) ENCROACHMENT OF GATES, GUARD POSTS, STEEL COLUMNS, AND FENCE ONTO PUB PROPERTY EAST AND ADJOINING BY UP TO 38.41 FEET.
5. MUTUAL RELEASE MADE BY PAUL A. ROSENBLUM AND HIS WIFE AND FANNIE E. ABELL WITH MORRIS M. GOLDMAN AND DAVID C. TRAGER, RECORDED OCTOBER 14, 1960 AS DOCUMENT 17990667, OF ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, CAUSES OF ACTION OF EVERY NATURE WHATSOEVER ARISING OR GROWING OUT OF EITHER OF THE ENCROACHMENTS NOTED ABOVE.
6. MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS DATED SEPTEMBER 2, 1997 AND RECORDED SEPTEMBER 8, 1997 AS DOCUMENT 97659694 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1997 AND KNOWN AS TRUST NO. 121170 TO LASALLE BANK NI.

SECOND MORTGAGE AND MORTGAGE MODIFICATION DATED DECEMBER 31, 1998 AND RECORDED APRIL 21, 1999 AS DOCUMENT 99381896 BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1997 AND KNOWN AS TRUST NO. 121170 TO LASALLE BANK.

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7. ASSIGNMENT OF LEASES AND RENTS MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1997 AND KNOWN AS TRUST NO. 121170 TO LASALLE BANK NI RECORDED SEPTEMBER 8, 1997 AS DOCUMENT 97659695.
8. SECURITY INTEREST OF LASALLE BANK NI, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1997 AND KNOWN AS TRUST NO. 121170, DEBTOR, AND FILED SEPTEMBER 8, 1997 AS DOCUMENT 97U10794.
9. SECURITY INTEREST OF LASALLE BANK NI, SECURED PARTY, IN CERTAIN DESCRIBED CHATTELS ON THE LAND, AS DISCLOSED BY FINANCING STATEMENT EXECUTED BY NIKI DEVELOPMENT, L.L.C., AN ILLINOIS LIMITED LIABILITY COMPANY, DEBTOR, AND FILED SEPTEMBER 8, 1997 AS DOCUMENT 97U10795.
10. ASSIGNMENT OF MORTGAGE FROM LASALLE BANK NI TO ASM INVESTMENTS, LLC DATED MAY 31, 2000 AND RECORDED AS DOCUMENT NUMBER 0399048 IN THE OFFICE OF THE COOK COUNTY, ILLINOIS RECORDER OF DEEDS AND WHICH FIRST MORTGAGE WAS FURTHER AMENDED BY A THIRD AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT BY MORTGAGOR AND BENEFICIARY IN FAVOR OF ASM INVESTMENTS, LLC DATED MAY 31, 2000 AND RECORDED AS DOCUMENT NUMBER 0399049 IN THE OFFICE OF THE COOK COUNTY, ILLINOIS RECORDER OF DEEDS.
11. SECOND MORTGAGE DATE APRIL 16, 2001 MADE BY LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 26, 1997 AND KNOWN AS TRUST NO. 121170 IN FAVOR OF BECKER VENTURES, LLC WHICH WAS RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS AS DOCUMENT NO. 0010366760.

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AT 12/15/01

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