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2001-01-08 13:22:19  
Cook County Recorder 43.00

Recording Requested By  
And When Recorded Mail To:

The Guardian Life Insurance  
Company of America  
7 Hanover Square  
23rd Floor - B  
New York, New York 10004



0010016692

Attention: Rose Policastro  
Law Department

(Space above this line for Recorder's use)

ASSIGNMENT OF LEASES AND RENTS

12  
[Signature]

7860173, 6JC, Da 20f3

TDC NILES L.L.C., an Illinois limited liability company, having an address at c/o 513 Central Avenue, Suite 400, Highland Park, Illinois 60035 (the "Assignor"), on this 4th day of January, 2001 for value received, hereby presently, absolutely and unconditionally grants, conveys, transfers, assigns and sets over unto THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, a New York corporation having an address at 7 Hanover Square, New York, New York 10004 (the "Assignee"), its successors and assigns from and after the date hereof (including any period allowed by law for redemption after any foreclosure or other sale), all the rights, interest and privileges which Assignor as lessor has and may have in all leases, agreements, subleases, licenses, concessions and other instruments now existing or hereafter made, whether oral or written, relating to the occupancy or use of the real property located in the City of Niles, County of Cook and State of Illinois, and more particularly described in Exhibit A attached hereto (the "Land"), or any part thereof or the improvements or real property located thereon (the Land, improvements and real property located thereon are referred to hereinafter collectively as the "Property"), including without limitation the leases described in Schedule I attached hereto, as said leases may have been, or from time to time may be hereafter, modified, extended and renewed, including any future lease or leases of all or part of the Property (individually, a "Lease" and collectively the "Leases") with all rents, issues, income and profits due and becoming due therefrom together with any award made hereafter to Assignor in any court procedure involving any of the lessees (individually a "Lessee" and collectively, the "Lessees") in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by Lessees in lieu of rent, including without limitation any lease termination fees or payments, and any and all guarantees of the obligations of Lessees, whether now existing or hereafter executed, and all extensions and renewals of said guarantees. Assignor hereby appoints Assignee as Assignor's irrevocable attorney-in-fact to appear in any action and/or to collect any such award or payment. This Assignment of Leases and Rents (this "Assignment") is intended to be an absolute, present and unconditional assignment from Assignor to Assignee and not merely the passing of a security interest. Nothing contained herein, nor any collection of rents or payments under the Leases whether by Assignee or by a receiver, shall be construed to make Assignee a mortgagee-in-possession of the Property so long

BOX 333-CT1

as Assignee has not itself entered into actual possession of the Property. Assignee shall be entitled to the appointment of a receiver for the Property, without notice to Assignor. All capitalized terms used herein and not defined herein shall have the meaning given to such terms in the Security Document (as hereinafter defined).

1. The Loan This Assignment is being given by Assignor to Assignee in connection with a certain loan in the original principal amount of Twenty Four Million and 00/100 (\$24,000,000.00) Dollars (the "Loan"), with interest, as evidenced by a certain note of even date herewith (the "Note"), which Loan is secured by either a mortgage, consolidation, modification and extension agreement or deed of trust covering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, all of which shall be executed by Assignor in favor of Assignee (the "Security Document"); and all other documents entered into, from time to time, securing the Loan (the Note, Security Document and all such other documents between Assignor and Assignee or given by or on behalf of Assignor to Assignee in connection with the Loan are hereinafter collectively referred to as the "Loan Documents"). This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents contained in the Security Document.

2. Revocable License It is expressly understood and agreed by the parties hereto that before an Event of Default occurs, Assignor shall have a license to collect said rents, issues, income and profits from the Leases or from the Property and to retain, use and enjoy the same. If an Event of Default shall occur, Assignor, at its option, without regard to the adequacy of the security for the Loan, interest and indebtedness secured hereby and by the Security Document, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, may from the date of such Event of Default, and with or without taking possession of the Property, and without notice to or consent of Assignor, revoke the license granted to Assignor, and Assignee shall have the right to give written notice to any or all Lessees that Assignee has a Loan secured by the Property, and an Event of Default has occurred and until otherwise notified by Assignee, such Lessee shall pay over to Assignee all rents, issues, income and profits due Assignor under its Lease; and if Assignee so elects, then Assignee shall have the right to have, hold, manage and operate the same, let or re-let the Property or any part thereof, terminate and modify any such Leases, evict Lessees, bring or defend any suits in connection with the possession of the Property in its own name or in Assignor's name, and further, may demand, sue for or otherwise collect and receive all rents, issues, income and profits of said Property, including those past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee and to apply such rents, issues, income and profits to the payment of: (a) all expenses of managing the Property, including without limitation the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Property, including without limitation all taxes, charges, claims, assessments, water, rents, sewer rents, and any other liens, and premiums for all insurance which Assignee may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and/or (b) the principal sum or interest due under the Loan Documents and any other indebtedness secured hereby or by any other Security Document, together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this Paragraph 2 as Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary

notwithstanding. From and after any Event of Default all rents, issues, income and profits of said Property received by Assignor shall be held by Assignor in trust for the benefit of Assignee. All such amounts shall be turned over to Assignee with or without demand immediately upon receipt. In addition, Assignee shall have the right (but not the obligation) to (i) use and possess, without rental or charge, the furniture, appliances and all other personal property of Assignor located in, on, or about the Property that is used in the operation or occupancy of the Property; (ii) apply any of the rents, issues, income and profits to pay installments due for personal property rented or purchased on credit, insurance premiums on personal property, or other charges relating to personal property on the Property; and (iii) take possession of and use all books of account and financial records of Assignor and its property managers or representatives relating to the Property.

3. Rights and Remedies Cumulative All of the rights and remedies of Assignee in this Assignment are cumulative, and Assignee also shall have, upon the occurrence of any Event of Default, all other rights and remedies provided under the Loan Documents, or otherwise available at law or in equity or by statute. Assignee may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness, without prejudice to any of its rights hereunder.

4. Responsibility of the Parties Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Property or any portion thereof after an Event of Default or from any other act or omission of Assignee either in collecting the rents, issues, income and profits hereunder or, if Assignee shall have taken possession of the Property or any portion thereof described in the Leases, in managing the Property or any portion thereof after an Event of Default, unless such loss is caused by the gross negligence or willful misconduct of Assignee. This Assignment shall not place the responsibility for the control, care, management or repair of the Property or any part thereof or for carrying out any of the terms and conditions of any Lease upon Assignee, nor shall it make Assignee responsible or liable for any waste committed on the Property by the Lessees or other parties or make Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any Lessee, licensee, employee or other person, unless the same is caused by the gross negligence or willful misconduct of Assignee. Further, Assignee shall not be obligated to perform or discharge nor shall acceptance of this Assignment obligate Assignee to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of the Leases or under or by reason of this Assignment, and Assignor shall and hereby agrees to defend, protect and indemnify Assignee for, and to save Assignee harmless from, any and all claims, suits, cost and liability arising from any of the Leases or from this Assignment, by reason of any action taken hereunder (other than Assignee's gross negligence or willful misconduct) and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should Assignee incur any such liability under any said Lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, with interest thereon from the date such amount was suffered or incurred by Assignee until the same is paid by Assignor to Assignee, at a rate equal to the Default Rate (as defined in the Note), plus costs and expenses and attorneys' fees, shall be payable by Assignor to Assignee immediately upon demand, or at the

option of Assignee, Assignee may reimburse itself therefor out of any rents collected by Assignee.

5. Representations and Warranties of Assignor Except as previously disclosed to Assignee by Assignor in writing, Assignor represents and warrants as to each Lease now in existence that: (i) each has been duly executed and unconditionally delivered by Assignor, to the best of Assignor's knowledge, each has been duly executed and unconditionally delivered by the lessee under such Lease and each is valid and in full force and effect; (ii) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing; (iii) there are no defaults now existing under any Lease except for a default on the part of the tenant under that certain Lease between Borrower, as landlord and Senequier Holdings, LP, as tenant dated January 21, 2001, as disclosed in that certain Estoppel Certificate dated January 4, 2001; no Lessee under any such Lease has any defense, setoff or counterclaim against Assignor; (iv) all rent and security due to date under each such Lease has been collected; provided, however, Assignor has not collected rent under any Lease for more than one (1) month in advance of the time the same shall become due; (v) Assignor has not executed an assignment of any of the Leases or of its right, title and interest therein or the rentals to accrue thereunder; and (vi) Assignor has granted no concession to any Lessee in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due.

6. Covenants of Assignor Assignor hereby covenants and agrees that with respect to each Lease:

(a) This Assignment transfers to Assignee all of the Assignor's right, title and interest in and to any security deposit paid by any Lessee, subject to the rights of such Lessee therein; provided, that Assignor shall have the right to retain all security deposits so long as no Event of Default has occurred; and provided, further, that Assignee shall have no obligation to any Lessee with respect to its security deposit unless and until Assignee comes into actual possession and control of said security deposit.

(b) Assignor shall not transfer or convey title to the Property or any portion thereof to any Lessee without the prior written consent of Assignee, and where such consent is given or where under applicable law the requirement for such consent is not enforceable, Assignor shall require said Lessee, in writing, to assume and agree to pay Assignor's obligation under the Loan Documents in accordance with the terms, covenants and conditions contained therein. In no event shall any such transfer or conveyance operate to release or relieve Assignor from any liability to Assignee unless Assignee specifically so agrees in writing.

(c) Assignor shall not collect any rent, issues, income or profits arising or accruing under the Leases or from the Property more than one (1) month in advance of time when same shall become due nor discount any future accruing rents and profits.

(d) Assignor shall not execute any further assignment of its interest in the Leases or assignment of rents, issues, income or profits or any other interest accruing from the Leases or the Property or suffer or permit any such assignment to occur by operation of law.

(e) Assignor shall not request, consent to, agree to or accept a subordination of any Lease to any mortgage, deed of trust or other encumbrance, or any other Lease, now or hereafter affecting the Property, or except as permitted by the terms of such Lease, suffer or permit conversion of any Lease to a sublease.

(f) Assignor shall faithfully perform and discharge all obligations of the lessor under the Leases, shall not do anything to impair the security thereof and shall give prompt written notice to Assignee of any notice of Assignor's breach or default received from any Lessee or any other person and furnish Assignee with a complete copy of said notice. Assignor shall appear in and defend, at no cost to Assignee, any action or proceeding arising under or in any manner connected with any Lease. If requested by Assignee, Assignor shall enforce each Lease and all remedies available to Assignor against the Lessee in the case of default by the Lessee under the Lease.

(g) Assignor shall not enter into any new Lease without Assignee's prior written consent. The request for such approval of each proposed new Lease shall be made to Assignee in writing and Assignor shall furnish to Assignee: (A) such financial and other information about the proposed Lessee as Assignee shall require in conjunction with its review; (B) a copy of the proposed form of Lease; and (C) a summary of the material terms of such proposed Lease. All Leases entered into which affect all or any portion of the Property shall be in substantially the same form as the standard form of lease approved by Assignee and each such Lease shall: (i) be with a bona fide arm's-length lessee; (ii) not contain any rental or other concessions which have not been approved by Assignee; and (iii) provide that the lessee pays for its pro rata share of utilities, taxes, insurance premiums and other operating expenses. Assignor will exercise its best efforts to obtain from each Lessee an indemnity indemnifying Assignee from any claims, actions or violations involving Hazardous Materials. If requested by Assignee, Assignor shall prepare, execute and record, at Assignor's sole cost and expense, a specific assignment of its interest in any Lease executed after the date hereof, which assignment shall be in substantially the form of this Assignment or as otherwise consented to in writing by Assignee. Assignee, at Assignee's option, may require such agreements, as Assignee deems necessary or desirable to make any Lease superior or subordinate to the Security Document. Assignor shall, from time to time upon demand by Assignee, deliver to Assignee an executed counterpart of each and every Lease and amendments thereto then affecting all or any part of the Property. Notwithstanding anything to the contrary contained herein, Assignee's prior written consent shall not be required for any new Lease provided: (1) such new Lease shall be in substantially the same form as the standard form of Lease approved by Assignee; and (2) such new Lease encompasses not more than 5,000 square feet.

(h) Assignor shall manage the Property through its own personnel or through such third party property management service which possesses skill and experience in the management of this type of property and is reasonably satisfactory to Assignee.

(i) If any Lease provides for the abatement of rent during repair of the leased premises by reason of fire or other casualty, Assignor shall furnish rental insurance to Assignee, the policies to be in such amount and forms and written by such companies as shall be satisfactory to Assignee.

(j) Assignor shall deliver to Assignee, promptly upon request, duly executed estoppel certificates from any or all of the Lessees attesting that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of any party, that no rental has been paid more than one (1) month in advance, that the Lessee claims no defense or offset against the full and timely performance of its obligations under the Lease and attesting to such other facts regarding the Leases as Assignee may reasonably require.

(k) Assignor, without the prior written consent of Assignee, shall not cause or permit the leasehold estate under any of the Leases to merge with Assignor's interest as landlord.

(l) Assignor shall not waive, condone or in any manner discharge Lessees from their obligations under the Leases.

(m) Assignor shall not consent to the cancellation, surrender or termination of any Lease or any part thereof, now existing or hereafter made, or consent to the release of any party thereto, except by reason of the Lessee's uncured default.

(n) Assignor shall not alter, modify or change any Lease including without limitation shortening the unexpired term thereof, or decreasing the amount of the rent payable thereunder.

(o) Assignor shall not give any consent or excuse any option required or permitted by the terms and conditions of any Lease or consent to the assignment of or subletting under the Leases, without, in each instance, the prior written consent of Assignee.

(p) At Assignee's request, Assignor shall execute and deliver such further documents required by Assignee confirming that all Leases are subject and subordinate to the Loan Documents and any further assurances and assignments of any or all subsequent Leases upon all or any part of the Property described in the Leases or in the Loan Documents.

7. Default Any breach or violation of any of the covenants, representations or provisions contained herein by Assignor shall be deemed an Event of Default under the terms of the Loan Documents. Default by Assignor under any of the terms of the Leases beyond the applicable notice and periods, if any, set forth therein assigned herein shall be deemed an Event of Default under the Loan Documents. Any expenditures made by Assignee in curing such an Event of Default on Assignor's behalf, with interest thereon at the Default Rate, shall become part of the debt secured by the Security Document.

8. No Waiver Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to: (i) prejudice any rights which Assignee shall have by virtue of an Event of Default; or (ii) be a waiver by Assignee of any of its rights and remedies hereunder or under the Loan Documents, including without limitation the right to institute, prosecute and compromise any action which Assignee would deem advisable to protect its interest in the Property, including an action in foreclosure, and contained within such action, a motion for the appointment of a receiver. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by Assignee to collect the principal sum, interest and all other indebtedness secured hereby or by the Security Document and to enforce any other security therefor held by it, and said rights and

remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The receipt by Assignee of any rents, issues, income or profits pursuant to this Assignment after the institution of a foreclosure action under the Security Document shall not cure such default nor affect such proceedings or any sale pursuant thereto, it being agreed that this Assignment shall survive the commencement of any such action and shall continue in full force and effect until the sale of the Property pursuant thereto.

9. Termination of Assignment Upon payment to Assignee of the full amount of all indebtedness and performance of all obligations secured hereby and by the Security Document, as evidenced by a duly recorded release or reconveyance of the Security Document, this Assignment shall be of no further force or effect.

10. Binding Effect The terms, provisions, covenants and conditions hereof shall be binding upon Assignor and the heirs, devisees, representatives, successors and permitted assigns of Assignor including all successors in interest of Assignor in and to all or any part of the Property, and shall inure to the benefit of Assignee and its successors and assigns and shall constitute covenants running with the land. Nothing in this Assignment shall be construed to limit Assignee's right to assign its interests hereunder, and Assignee may assign, in whole or in part, its interests hereunder without the consent of Assignor.

11. Continuing Effect Notwithstanding any future modification of the terms of the Loan Documents, this Assignment and the rights and benefits hereby assigned and granted shall continue in favor of Assignee, its successors and assigns, in accordance with the terms of this Assignment.

12. No Amendment Without Consent Any change, amendment, modification, abridgment, cancellation, or discharge of this Assignment or any term or provision hereof shall be invalid without the written consent of Assignee.

13. Notices Any notice, request, demand, consent, approval or other communication required or desired to be given or delivered under this Assignment shall be made in accordance with the notice provisions of the Security Document.

14. Severability If any term, covenant or provision hereof is determined to be illegal, unenforceable or void for any reason, then, the validity of the remaining terms, covenants and provisions hereof shall not be affected thereby.

15. Governing Law This Assignment shall be governed by and construed and interpreted in accordance with the laws of the State in which the Property is located.

16. Counterparts This Assignment may be executed by Assignor in any number of counterparts, and each such counterpart shall be deemed to be an original and all of which together shall constitute one and the same agreement.

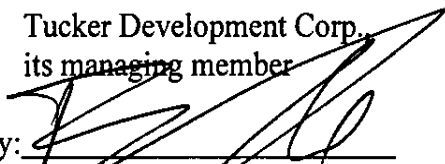
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IN WITNESS WHEREOF, Assignor has duly executed this Assignment on the day and year first above written.

ASSIGNOR:

TDC NILES L.L.C.,  
an Illinois limited liability company

By: Tucker Development Corp.  
its managing member

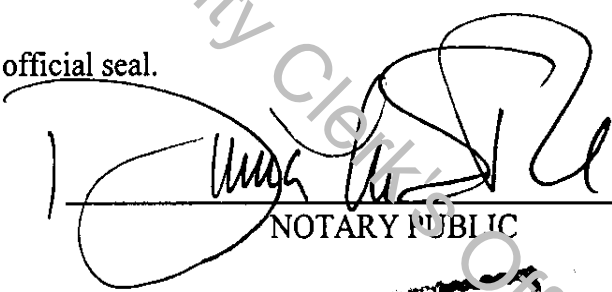
By:   
Name: Richard H. Tucker  
Title: President

Property of Cook County Clerk's Office

STATE OF Illinois )  
  )SS:  
COUNTY OF Cook )

On January 24, 2001, before me, Donna M. Stanke, a Notary Public of the State of Illinois, personally appeared Richard H. Tucker 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.

  
\_\_\_\_\_  
NOTARY PUBLIC





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EXHIBIT A  
(Description of Land)

10016692

~~Property of Cook County Clerk's Office~~

## LEGAL DESCRIPTION

LOTS 2, 3, 4, 5, 6, 7, 9 AND 10 IN POINTE PLAZA SUBDIVISION, BEING A SUBDIVISION OF LOT 2 IN ANNIE MULLEN SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 22, 1999 AS DOCUMENT NUMBER 09188471, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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SCHEDULE I

LEASE SCHEDULE

10016692

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## Schedule of Leases

10016692

1. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Touhy & Central Currency Exchange, Inc., as Tenant, dated May 15, 2000.
2. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and The Dress Barn, Inc., as Tenant, dated June 12, 2000.
3. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Chicago 20 MHz, LLC, as Tenant, dated September 6, 2000, as amended by that certain letter dated September 15, 2000.
4. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Office Depot, Inc., as Tenant, dated August 2, 1999, as amended by that certain Acknowledgment of Landlord dated April 7, 2000.
5. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Supervalu Holdings, Inc., as Tenant, dated February 11, 1999.
6. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Baby Superstore, Inc., as Tenant, dated July 27, 1999.
7. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Steak and Ale of Illinois, Inc., as Tenant, dated July 13, 1999, as amended by that certain Amendment No. 1 to Ground Lease dated October 19, 1999 and that certain letter agreement dated September 21, 2000.
8. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Bond Drug Company of Illinois, as Tenant, dated June 10, 1999.
9. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Blockbuster, Inc., as Tenant, dated February 14, 2000.
10. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Bedding Experts, Inc., as Tenant, dated April 6, 2000.
11. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Wolf Camera, Inc., as Tenant, dated December 3, 1999.
12. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Starbucks Corporation, as Tenant, dated December 10, 1999.
13. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and Senequier Holdings LP d/b/a SuperStand Entertainment, as Tenant, dated January 21, 2000.
14. Lease Agreement by and between TDC Niles, L.L.C., as Landlord, and New China Buffet of Niles, Inc., as Tenant, dated November 29, 1999.