

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 10003



0010038586

Attention: Rose Policastro
Legal Department

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into this the 2nd day of January, 2001 by and among Steak and Ale of Illinois, Inc., a Nevada corporation ("Tenant"), The Guardian Life Insurance Company of America, a New York corporation ("Lender") and TDC Niles L.L.C., an Illinois limited liability company ("Landlord").

RECITALS:

- A. Landlord and Tenant executed a Lease dated as of July 13, 2000 (the "Lease"), covering a certain premises therein described and being situated on a portion of the real property described in Exhibit "A", attached hereto and incorporated herein by this reference (the Property).
- B. Landlord and Lender intend to enter into a loan to be secured by a mortgage covering the Property (the "Mortgage").
- C. The parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained.

For and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto do hereby agree as follows:

- 1. The lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.
- 2. Provided the Tenant is not in default under the Lease beyond the applicable notice and cure period thereunder, should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and effect as a direct lease between the then owner of the Property covered

7860173, 655C, D2
1017

UNOFFICIAL COPY

by the Mortgage and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.

3. Notwithstanding any other provision of this Agreement, Lender or any other subsequent owner of the Property shall not be (a) liable for any default of any landlord under the Lease (including Landlord); (b) bound by any Rent that Tenant may have paid under the Lease more than one month in advance; (c) bound by any amendment or modification of the lease hereafter made without Lender's prior written consent; (d) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.

4. If Lender sends written notice to Tenant to direct its rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver Rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any Rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by certified or registered U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

Tenant: Steak and Ale of Illinois, Inc.
6500 International Parkway
Suite 1000
Plano, Texas 75093
Attn: Vice President-Real Estate

With a copy to: Steak and Ale of Illinois, Inc.
6500 International Parkway
Suite 1000
Plano, Texas 75093
Attn: General Counsel

Lender: The Guardian Life Insurance Company of
America
7 Hanover Square, 20th Floor - C
New York, New York 10004
Attn: Celeste P. Stinson

With a copy to: Vice President, Investment and Real Estate
Counsel
Law Department
At the address immediately above written
except to:
23rd Floor - B

10038586

UNOFFICIAL COPY

Landlord: TDC Niles L.L.C.
513 Central Avenue
Suite 400
Highland Park, Illinois 60635
Attn: Kenneth A. Fixler

With a copy to: Wildman Harold Allen & Dixon
225 West Wacker, 26th Floor
Chicago, IL 60606
Attn: Mr. Tom Duffy

All notices delivered as set forth above shall be deemed effective three (3) days from the date deposited in the U.S. mail.

6. Said Mortgage shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of Tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed in the Property. In the event the property or any part thereof shall be taken for public purposes by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds with respect to such fixtures, furniture, equipment and personal property shall be determined and controlled by the applicable provisions of the Lease.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

9. Unless required by applicable law even though the Lease is subordinate to the Mortgage, Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason or under any default by Landlord in the performance of the term, covenants, conditions and agreements set forth in the Mortgage.

10038586

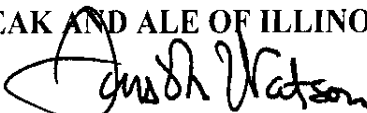
UNOFFICIAL COPY

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Property and succeed to the interest if Landlord under the Lease, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Property and Tenant shall look exclusively to such interest, if any, of Mortgagee in the Property for the payment and discharge of any obligation imposed upon Mortgagee hereunder, and Mortgagee is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

The parties hereto have caused this Subordination, Non-Disturbance Agreement to be executed as of the day and year first above written.

TENANT

STEAK AND ALE OF ILLINOIS, INC.

By: 
Name: TODD M. WATSON
Title: SR. VICE-PRESIDENT
SECRETARY/TREASURER

LENDER

 THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA

By: 
Name: CELESTE P. STINSON
Title: Second Vice President, Real Estate

LANDLORD

TDC NILES L.L.C.

By: _____
Name: _____
Title: _____

UNOFFICIAL COPY

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Mortgagee shall acquire title to the Property and succeed to the interest if Landlord under the Lease, Mortgagee shall have no obligation, nor incur any liability, beyond Mortgagee's then interest, if any, in the Property and Tenant shall look exclusively to such interest, if any, of Mortgagee in the Property for the payment and discharge of any obligation imposed upon Mortgagee hereunder, and Mortgagee is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Mortgagee, Tenant shall look solely to the estate or interest owned by Mortgagee in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Mortgagee.

The parties hereto have caused this Subordination, Non-Disturbance Agreement to be executed as of the day and year first above written.

TENANT

STEAK AND ALE OF ILLINOIS, INC.

By: _____

Name: _____

Title: _____

LENDER

**THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA**

By: _____

Name: _____

Title: _____

LANDLORD

TDC NILES L.L.C.

By: **Tucker Development Corporation, its sole
Manager**

By:  _____

Name: **Richard H. Tucker**

Title: **President**

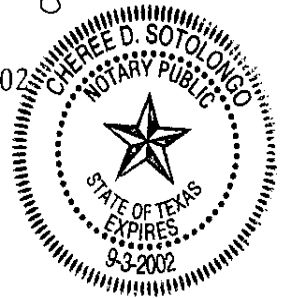
UNOFFICIAL COPY

STATE OF Texas)
) SS:
COUNTY OF Collin)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Todd M. Watson whose name as Senior Vice President of Steak and Ale of Illinois, Inc., a Nevada corporation, is signed to the foregoing instrument, who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 2nd day of January, 20 01

Cherie D. Sotolongo
Notary Public
State of TEXAS
My Commission expires: 9/3/2002



UNOFFICIAL COPY

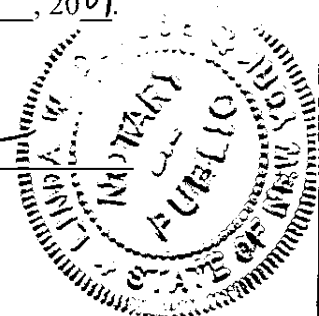
STATE OF New York)
) SS
COUNTY OF New York)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Celeste P. Stinson, whose name as Second Vice President of The Guardian Life Insurance Company of America, a _____, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 3rd day of January, 2001.

Linda W. Dubose
Notary Public
State of New York
My Commission expires:

LINDA W. DUBOSE
Notary Public, State of New York
No. 01DU6012297
Qualified in Queens County
Commission Expires August 24, 2002



UNOFFICIAL COPY

Property of Cook County Clerk's Office



LINDA W. DURSO
Notary Public, State of New York
No. 6100015527
Qualified in Queens County
Commission Expires August 24, 2015

UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

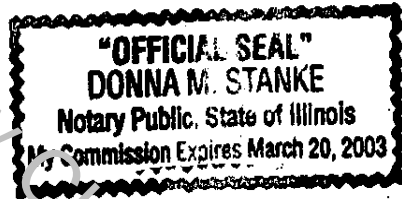
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that RICHARD H. TUCKER, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of Tucker Development Corporation, an Illinois corporation, the sole Manager of TDC Niles, L.L.C., an Illinois limited liability company, appeared before me and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation and limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of January, 2001.



Notary Public

My Commission Expires:



10038586

UNOFFICIAL COPY

Exhibit A

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.

211 #: 10-29-403-019-0000

10-29-403-021-0000

10-29-403-022-0000

Property of Cook County Clerk's Office

10038586