

UNOFFICIAL COPY

0010038589

85470054 45 001 Page 1 of 11

2001-01-17 09:50:22

Cook County Recorder

41.00



0010038589

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

Attention: Rose Policastro
Legal Department

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Dated: November 17, 2000

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of this 17th day of November, 2000 by and between TDC Niles, LLC, a limited liability corporation ("Landlord"), having an address at Tucker Development Corporation, 513 Central Avenue, Highland Park, Illinois 60035, The Dress Barn, Inc. a Connecticut corporation ("Tenant"), having an address at 30 Dunnigan Drive, Suffern, New York 10901, and THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, a New York corporation having an address at 7 Hanover Square, New York, New York 10004 ("Lender") is made with reference to the following:

Lender intends to make a certain loan to Landlord (the "Loan") to be secured by a first lien on that certain real property (the "Land") described in Exhibit "A" annexed hereto together with the improvements thereon (collectively the "Property") which lien shall be perfected by the recordation of either a mortgage, deed of trust or consolidation, modification and extension agreement (such document being referred to hereinafter as the "Security Document"); and

Landlord and Tenant have executed (the "Lease"), pursuant to which Landlord leased a portion of the Property to Tenant (the "Leased Premises") for a term of seven (7) years commencing on the lease commencement date all as more fully described in the Lease; and

Lender is making the Loan to Landlord in reliance, among other things, upon the agreements set forth herein; and

plus an initial partial lease year and a partial lease year at the end of seven (7) years, Land expiring on June 30, 2008 unless sooner terminated in accordance with the terms and conditions of the Lease (with one (1) renewal option of eight (8) years),

7860173, 627, 22 467

BOX 333-CTI

UNOFFICIAL COPY

Landlord, Tenant and Lender are willing to agree and covenant that the Lease shall be subject and subordinate to the Security Document as more particularly hereinafter set forth.

NOW THEREFORE, the parties hereto agree as follows:

1. So long as Tenant is not in default under the Lease the right of possession of Tenant to the Leased Premises as provided in the Lease shall not be affected or disturbed by Lender in the exercise of any of its rights under the Security Document or any note secured thereby and any sale of the Property pursuant to the exercise of any rights and remedies under the Security Document or otherwise shall be made subject to Tenant's right of possession of the Leased Premises under the Lease.

2. If the Property is sold at a foreclosure sale under the Security Document or if the Property is conveyed by deed-in-lieu of foreclosure, Tenant shall attorn to Lender or any purchaser of the Property and, subject to the other provisions of this Agreement, the Lease shall continue, in accordance with its terms, between Tenant and Lender or such purchaser (Lender or such purchaser being hereinafter sometimes called "Successor Landlord") except that Paragraphs 10 and 11 hereof shall modify the Lease.

3. Successor Landlord shall not be (a) liable for any act or omission of any prior landlord (including Landlord), (b) liable for the return of any security deposit not actually received by Successor Landlord, (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), (d) bound by any advance payment of rent or additional rent made by Tenant to Landlord except for rent or additional rent applicable to the then current month, (e) bound by any amendment or modification of the Lease made without the written consent of Lender, or (f) bound to effect or pay for any construction for Tenant's occupancy of the Leased Premises.

4. The Lease shall be subject and subordinate to the lien of the Security Document and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, to the lien thereof and to any renewals, extensions, modifications or replacements thereof, including any increases therein or supplements thereto.

~~5. The foregoing provisions shall be self operative. Tenant, however, agrees to execute and deliver to Lender, or to any person to whom Tenant herein agrees to attorn, such other instrument as either shall request in order to further confirm the foregoing provisions.~~

6. Tenant certifies that there are no known defaults on the part of Landlord, that the Lease is a complete statement of the agreement of the parties thereto with respect to the letting of the Leased Premises, that the Lease is in full force and effect

except for an agreement dated effective October 18, 2000, 10038589

UNOFFICIAL COPY

and that all conditions to the effectiveness or continuing effectiveness thereof required to be satisfied at the date hereof have been satisfied.

7. Landlord and Tenant will each notify Lender of any default of Tenant or Landlord or any circumstance or other event arising under the Lease which would entitle or permit Landlord or Tenant to cancel the Lease or abate any rent payable thereunder. Tenant further agrees that notwithstanding any provision of the Lease, no notice, cancellation or termination thereof shall be effective unless Lender shall have received such notice and have failed within thirty (30) days after the expiration of the cure period provided to Landlord under the Lease, if any, to cure or commence to cure such default and thereafter diligently prosecute same to completion.

8. Any notice, request, demand, consent, approval or other communication required or desired to be given or delivered under this Agreement or other instrument contemplated hereby shall be in writing, signed by the party giving such notice and shall be given by ~~hand delivery to the other party or parties or addressed to the party or parties for whom it is intended at the address or addresses set forth below and sent by United States certified or registered mail, postage prepaid, return receipt requested or by a nationally recognized overnight courier (but not United Parcel Service) or by facsimile accompanied by (i) a contemporaneous telephone call to the addressee set forth below; and (ii) overnight delivery of such notice, by an approved means—described above.~~ Notices sent to Lender shall be handed or addressed to the following persons:

In accordance with the notice provisions set forth in the Lease.

The Guardian Life Insurance Company of America
7 Hanover Square
20th Floor - C
New York, New York 10004
Attention: Celeste P. Stinson
Investment Officer
Real Estate Investment
T: (212) 598-8216
F: (212) 919-2149

with a copy of said notice to:
Vice President, Investment and Real Estate Counsel
Law Department
at the address immediately above written except to:
23rd Floor - B
T: (212) 598-1985
F: (212) 919-2690

10038589

UNOFFICIAL COPY

and notices sent to Landlord, shall be addressed as follows:

TDC Niles, LLC, C/O Tucker Development Corporation
513 Central Avenue
Suite 400
Highland Park, Illinois 60035
With a copy to
Thomas P. Duffy, Wildman, Harrold, Allen & Dixon
225 W. Wacker Drive
Suite 3000
Chicago, Illinois 60606-1229

and if to be given to Tenant, shall be addressed as follows:

30 Dunnigan Drive
Suffern, New York 10901
Attention: Lease Administration

The addresses set forth above may be changed by notice given in accordance with the notice provisions *set forth in* ~~provisions of this Paragraph 8. If notice is given in accordance with the provision of this Paragraph 8, it shall be deemed given upon receipt thereof, upon refusal of the addressee to accept delivery thereof, or upon inability to effect delivery thereof.~~ *The Lease.*

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees that notice from Lender shall have the same effect under the Lease as notice to Tenant from the Landlord thereunder and Tenant agrees to be bound by such notice notwithstanding the existence or nonexistence of a default under the Security Document, provided that Landlord shall release Tenant from any liability under the Lease to the extent Tenant complies with Lender's notice. By executing this Agreement, Landlord agrees that Tenant shall be released from any liability under the Lease to the extent Tenant complies with Lender's notice.

if Lender has previously notified Tenant that it has assumed all obligations of Landlord under the Lease, then

10. Anything herein or in the Lease to the contrary notwithstanding, in the event that Lender or purchaser shall acquire title to the Property and become a Successor Landlord, such Successor Landlord shall have no obligation, nor incur any liability, beyond Successor Landlord's then interest, if any, in the Property and Tenant shall look exclusively to such interest, if any, of Successor Landlord in the Property for the payment and discharge of any obligation imposed upon Lender hereunder or upon Successor Landlord under the Lease, and Successor Landlord 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 Successor Landlord, Tenant shall look solely to the estate or interest owned by Successor Landlord in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

10038589

UNOFFICIAL COPY

11. The following provision shall be deemed inserted in the Lease, retroactively effective as of the commencement of the term of the Lease, and shall prevail in the event of any conflicts with other provisions of the Lease:

"Tenant represents, warrants, covenants and agrees that Tenant (A) will not (i) use, introduce or maintain any hazardous or toxic chemical, material, substance or waste (collectively, "Hazardous Material") in, on, under or about any portion of the Leased Premises or the Property or (ii) conduct any activity or activities in or on the Leased Premises or the Property involving, directly or indirectly, the use, generation, treatment, storage, disposal or release of any Hazardous Materials and (B) shall not be, nor permit the Leased Premises or the Property to be, in violation of any applicable local, state or federal environmental laws, statutes or ordinances (or the rules and regulations promulgated thereunder). Tenant indemnifies Landlord and its lenders and shall hold them harmless from and against any and all loss, cost, damage, liability and expense arising in connection with any breach by Tenant of any of the representations, warranties, covenants and agreements set forth herein. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease."

if such violation is caused by Tenant, its employees or agents

"Tenant hereby certifies and further represents and warrants to Landlord and its Lenders that Tenant uses, stores and disposes of no Hazardous Materials except those customarily and currently used in Tenant's normal business operations as set forth herein and will use no others without Landlord's and such lender's prior written consent. In any event, Tenant further covenants and agrees that all Hazardous Materials will only be used in the Leased Premises (a) in non-reportable quantities and (b) in compliance with all applicable environmental laws. ~~Furthermore, Tenant shall submit Material Safety Data Sheets (MSDS's) to Landlord or its lender upon request."~~

12. This Agreement shall inure to the benefit of and be binding upon Tenant and any successor or assignee of Tenant which pursuant to the provisions of the Lease is entitled to succeed to Tenant's interest therein without consent of Landlord, ~~but not to any other successor or assignee unless such successor or assignee has been previously approved by Lender.~~ This Agreement shall inure to the benefit of and be binding upon Lender and its successors and assigns, including any person or entity which

10038589

UNOFFICIAL COPY

shall become the owner of the Property by reason of a foreclosure of the Security Document or acceptance of a deed in lieu of foreclosure or otherwise.

13. This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.

14. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the state in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

"LANDLORD"

TDC Niles, LLC, an Illinois limited liability company

By: Tucker Development Corporation, its Manager

By: 

Name: Richard H. Tucker

Title: President

"TENANT"

The Dress Barn Inc., a Connecticut corporation

By: 

Name: Christopher J. McDonald

Title: Vice President, Corporate Counsel

"LENDER"

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, a New York corporation

By: 

Name: CELESTE P. STINSON

Title: Second Vice President, Real Estate

10038589

UNOFFICIAL COPY

STATE OF)
) SS:
COUNTY OF)

On _____, ____, before me, _____, a Notary Public of the State of _____, personally appeared _____, 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.

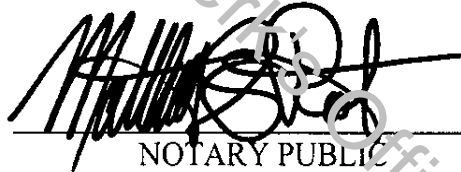
NOTARY PUBLIC

SEAL

STATE OF)
) SS:
COUNTY OF)

On 11/17/00, before me, _____ a Notary Public of the State of NY, personally appeared Christopher J. McDevitt, 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

SEAL

MATTHEW S. ROOT
Notary Public, State of New York
No. 02R06009938
Qualified in Rockland County
Commission Expires July 6, 2002

10038589

UNOFFICIAL COPY

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

On this 2 January, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared **Celeste P. Stinson**, who resides at 10 Hedges Avenue, Chatham, NJ 07928, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Second Vice President of **THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA**, the corporation that executed the within instrument and acknowledged to me that such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.



Maria Isabel Machado

MARIA ISABEL MACHADO
Notary Public, State of New York
No. 4806179
Qualified in Kings County
Commission Expires July 31, 2002

10038589

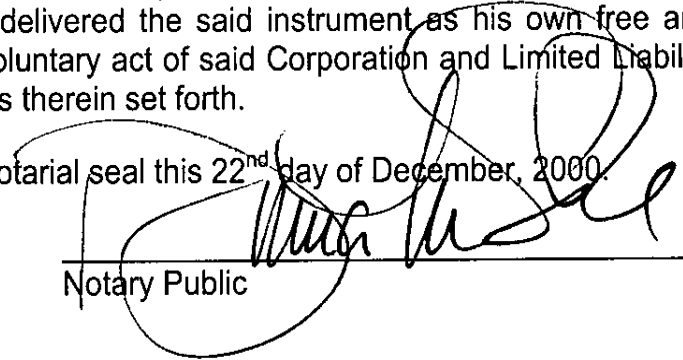
UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK

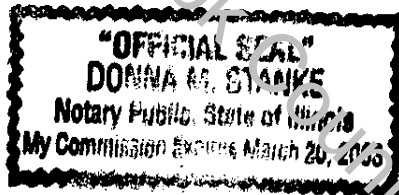
I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that RICHARD H. TUCKER, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of Tucker Development Corporation, an Illinois corporation, being 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 22nd day of December, 2000.



Notary Public

My Commission Expires:



10038589

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

ALL THAT CERTAIN REAL PROPERTY LOCATED IN THE COUNTY OF _____, STATE OF _____, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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.

#; 10-29-403-019-0000

10-29-403-021-0000

10-29-403-022-0000

Property of Cook County Clerk's Office

10038589