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Drafted by and after recording return to:

Daniel J. Favero
Chapman and Cutler LLP
111 West Monroe Street
Chicago, IL 60603



Doc#: 0426534084
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 09/21/2004 12:33 PM Pg: 1 of 13

SUBORDINATION, RECOGNITION AND NON-DISTURBANCE AGREEMENT

THIS SUBORDINATION, RECOGNITION AND NON-DISTURBANCE AGREEMENT ("Agreement"), is made as of the 17th day of September, 2004, between **Caplease, LP**, a Delaware limited partnership, having an office at 110 Maiden Lane, 36th Floor, New York, New York 10005 (hereinafter called "Mortgagee"), **1650 Fullerton LLC**, an Illinois limited liability company, having an office c/o Baker Development Corporation, 2222 N. Elston Ave., Chicago, Illinois 60614 (hereinafter called "Landlord"), and **National City Bank of the Midwest** (f/k/a National City Bank of Michigan/Illinois), a national banking association, having an office at One National City Parkway, Locator K-A14-1K, Kalamazoo, MI 49009-8002, Attn: VP, Real Estate (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, Mortgagee has agreed to make a loan (the "Loan") of up to \$3,113,778.83 to Landlord;

WHEREAS, the Loan will be evidenced by a mortgage note (the "Note") of even date herewith made by Landlord to order of Mortgagee and will be secured by, among other things, a mortgage, assignment of leases and rents and security agreement (the "Mortgage") of even date herewith made by Landlord to or for the benefit of Mortgagee covering the land described on Exhibit A hereto, (the "Premises");

WHEREAS, by a ground lease dated as of January 14, 2004 (which lease, as the same may have been amended and supplemented, is hereinafter called the "Lease"), Landlord (or Landlord's predecessor-in-interest) leased to Tenant the Premises; and

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Subordination, Recognition
and Non-Disturbance Agreement

WHEREAS, a Memorandum of the Lease was recorded on June 9, 2004 as Document No. 0416135193 in the Official Records of Cook County, Illinois; and

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the lien of the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee as contemplated in the Lease.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Mortgagee hereby consents to and approves the Lease.
2. Tenant covenants and agrees with Mortgagee that the Lease is hereby made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage (as same may be modified and extended) without regard to the order of priority of recording the Mortgage or the Memorandum of the Lease, subject, however, to the provisions of this Agreement.
3. Landlord and Tenant certify that the Lease is presently in full force and effect.
4. Mortgagee agrees that so long as the Lease shall be in full force and effect:
 - (a) Tenant shall not be named or joined as a party defendant or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby; and
 - (b) Tenant's possession of the Premises, and all rights granted or reserved to Tenant under the Lease (including by way of example and not of limitation Tenant's right, title, and interest in and to all buildings and other improvements constructed or installed on the Premises), shall not be disturbed, hindered, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise affected by: (1) any suit, action or proceeding upon the Mortgage or the bond or note or other obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any

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1650 Fullerton, LLC

Subordination, Recognition
and Non-Disturbance Agreement

rights under the Mortgage or any other documents held by Mortgagee, or by any judicial sale or execution or other sale of the Premises or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to Mortgagee by any other documents or as a matter of law, or (2) any default under the Mortgage or the bond or note or other obligation secured thereby.

5. All condemnation awards and insurance proceeds paid or payable with respect to the Premises shall be applied and paid in the manner set forth in the Lease.

6. Mortgagee hereby acknowledges and agrees that all fixtures, trade fixtures, furniture, equipment, or any other personal property, whether or not affixed to the Premises and whether owned by Tenant or any subtenant or leased by Tenant from a lessor/owner (hereinafter called the "Equipment Lessor"), installed in or on the Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant or any such Equipment Lessor, and may be removed by Tenant or any such Equipment Lessor at any time, but in compliance with the terms of the Lease. In no event (including a default under the Lease or Mortgage) shall Mortgagee have any liens, rights or claims in Tenant's or Equipment Lessor's fixtures, equipment or other personal property, whether or not all or any part thereof shall be deemed fixtures; and Mortgagee expressly waives all rights of levy, distraint or execution with respect to said fixtures, equipment and personal property. Mortgagee agrees to execute and deliver to Tenant and Equipment Lessor, within ten (10) days after request therefor, any document required by Tenant or Equipment Lessor in order to evidence the foregoing. Permanent leasehold improvements such as HVAC systems, and other major building systems shall be deemed part of the Premises and may not be removed by Tenant or Equipment Lessor.

7. If the Mortgagee shall become the owner of the Premises by reason of foreclosure of the Mortgage or by a deed given in lieu of foreclosure or otherwise, or if the Premises shall be sold to any third party as a result of any action or proceeding to foreclose the Mortgage or otherwise, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant, as tenant thereunder, and the then owner of the Premises, as landlord thereunder, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

- (a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as landlord under the Lease; and

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1650 Fullerton, LLC

Subordination, Recognition
and Non-Disturbance Agreement

(b) Such new owner shall be bound to Tenant under all terms, covenants and provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant elects or has elected to exercise its options to extend the term) which terms, covenants and provisions such new owner hereby agrees to assume and perform: provided, however, that if Mortgagee shall become the owner of the Premises, Mortgagee shall not be bound by any material amendment, termination or modification of the Lease without its consent, which consent shall not be unreasonably withheld, conditioned or delayed. As used herein a "material amendment, termination or modification" of the Lease means any change in the Lease which would reduce the amount of rent payable under the Lease, shorten the primary term of the Lease, release Tenant from liability under the Lease, change the assignment/sublease provisions, alter the cure periods, impose more onerous obligations on Mortgagee, or otherwise materially adversely affect the creditworthiness of the Lease for lending purposes, except that nothing herein shall apply to, affect or diminish any of Tenant's existing rights and privileges under the Lease, or the exercise thereof.

(c) Notwithstanding the foregoing, Mortgagee shall not in any event have any liability or obligation under the Lease prior to the date on which Mortgagee shall have succeeded to the rights of Landlord under the Lease.

8. Notwithstanding anything in the Lease to the contrary, Tenant agrees that it shall notify Lender in writing of the occurrence of any default by Landlord under the Lease. Tenant further agrees that Lender shall have the same time to cure such default as provided Landlord in the Lease (including applicable grace periods).

9. Any option to purchase, right of first refusal, or other right that Tenant has to acquire the Demised Premises is set forth in the Lease. Foreclosure of the Mortgage or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Mortgage or deed given in lieu of foreclosure.

10. Tenant acknowledges that all of the interest of Landlord in and to the Lease has been or will be assigned to Mortgagee pursuant to a certain Assignment of Lease and Rents ("Assignment of Lease"), and that under the terms of such Assignment of Lease, all rent and other payments under the Lease shall be paid directly to Mortgagee in accordance with the provisions contained

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1650 Fullerton, LLC

Subordination, Recognition
and Non-Disturbance Agreement

therein. Tenant hereby agrees, without further notice, to so pay all such rent and other payments, if any, under the Lease directly to Mortgagee as and when same are due and payable under the Lease, subject to any set off or similar rights reserved to Tenant under the Lease. Such rent and other payments, if any, are to be paid directly to Mortgagee in one of the following manners: (i) by wire transfer to Wachovia Bank, National Association, Charlotte, North Carolina, ABA # 053-000-219, Account # 50775-94-01-1216, Reference: 1650 Fullerton LLC/National City Bank, (ii) by check via nationally recognized overnight courier delivery service to 1650 Fullerton LLC, c/o Wachovia Wholesale Lockbox, Building 2C2, Lockbox # 60253, 1525 West W.T. Harris Blvd., Charlotte, North Carolina 28262, , or (iii) by check via regular mail of the United States Postal Service, postage prepaid, 1650 Fullerton LLC, c/o Wachovia Wholesale Lockbox, P.O. Box 60253, Charlotte, North Carolina 28260-0253. By executing and delivering this Agreement, Tenant confirms that any notice requirements to be given by Mortgagee to Tenant under the Lease for purposes of granting rights to mortgagees under the Lease shall be deemed satisfied. By executing and delivering this Agreement, Landlord consents to Tenant's payment of rent to Mortgagee as provided above, agrees that Tenant may rely solely upon Mortgagee's written demand regardless of any dispute between Landlord and Tenant, and releases and discharges Tenant from all liability to Landlord for any payment of rent made as instructed by Mortgagee in writing.

11. Upon written request from Mortgagee made not more frequently than annually, Tenant will deliver proof of any insurance required to be maintained by Tenant under the terms of the Lease.

12. Any notices or communications given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, or overnight delivery service or personal delivery (a) if to Mortgagee, at the address of Mortgagee as hereinabove set forth or at such other address as Mortgagee may designate by notice, (b) if to Tenant, to Tenant at the address of Tenant as hereinabove set forth or at such other address as Tenant may designate by notice, with a copy to National City Law Dept., 211 S. Rose St., Locator K-A11-C1, Kalamazoo, MI 49007, or (c) if to Landlord, to Landlord at the address of Landlord as hereinabove set forth or at such other address as Landlord may designate by notice, with a copy to Jeffrey N. Owen, Esq., Piper Rudnick LLP, 203 N. LaSalle St., Suite 1800, Chicago, IL 60601. Notices shall be deemed given when received (at any time) or when delivery is first attempted (during normal office business hours), whichever first occurs.

13. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois.

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and Non-Disturbance Agreement

14. This Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

15. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and cannot be changed, modified, waiver or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

16. This Agreement and the covenants herein contained are intended to run with and bind all lands affected thereby.

17. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures are on the following pages]

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

CAPLEASE, LP, a Delaware limited partnership

By: CLF Holdings, Inc., a Delaware corporation, its managing member

By: 
Name: Robert C. BLANE
Title: SVP

NATIONAL CITY BANK OF THE MIDWEST,
a national banking association (f/k/a National City Bank of Michigan/Illinois)

By: _____
Name:
Title:

1650 FULLERTON LLC, an Illinois limited liability company

By: _____
Name: Warren Baker
Title: Manager

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By: _____
Name:
Title:

NATIONAL CITY BANK OF THE
MIDWEST,
a national banking association (f/k/a
National City Bank of Michigan/Illinois)

By: *H Lincoln Lewis*
Name: *H. Lincoln Lewis*
Title: *SVP*

1650 FULLERTON LLC, an Illinois limited liability company

By: _____
Name: Warren Baker
Title: Manager

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By: _____
Name:
Title:

NATIONAL CITY BANK OF THE MIDWEST,
a national banking association (f/k/a National City Bank of Michigan/Illinois)

By: *Harold Lewis*
Name: *H. Lincoln Lewis*
Title: *SVP*

1650 FULLERTON LLC, an Illinois limited liability company

By: _____
Name: *Warren Baker*
Title: *Manager*

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STATE OF MICHIGAN)
) SS
COUNTY OF KALAMAZOO)

Personally came before me this 13TH day of SEPTEMBER, 2004 the above-named H. LINCOLN LEWIS, to me known to be the SR. VICE PRES. of NATIONAL CITY BANK OF THE MIDWEST, a national banking association (f/k/a National City Bank of Michigan/Illinois), to me known to be the person who executed the foregoing instrument and acknowledged the same.

BARBARA A. ANTOSZ
NOTARY PUBLIC KALAMAZOO CO., MI
MY COMMISSION EXPIRES Mar 27, 2006

Barbara A. Antosz
Notary Public

My Commission Expires: 3-27-06

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and Non-Disturbance Agreement**EXHIBIT A****LEGAL DESCRIPTION**

LOTS 31 AND 35 TAKEN TOGETHER AS A TRACT OF LAND (EXCEPTING THEREFROM THE NORTHWESTERLY 4.0 FEET AS MEASURED AT RIGHT ANGLES TO THE NORTHWESTERLY LINE OF SAID TRACT) TOGETHER WITH LOTS 32, 33 AND 34 ALL IN BLOCK 7 IN FULLERTON'S SECOND ADDITION TO CHICAGO, SAID ADDITION BEING A SUBDIVISION OF THAT PART OF THE SOUTH ½ OF THE SOUTH EAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND NORTHWESTERN RAILROAD AND THAT PART LYING WEST OF SAID RAILROAD AND EAST OF CLYBOURN AVENUE, IN COOK COUNTY, ILLINOIS.

P&W. 14-30-400-061-0000

P.A: 1650 West Fullerton Ave.
Chicago, IL