

UNOFFICIAL COPY



Doc#: 0525810100 Fee: \$46.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/15/2005 02:12 PM Pg: 1 of 12

This Instrument was
Prepared by:

Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE ONLY

ELSTON DEVELOPMENT L.L.C.,
a Delaware limited liability company
as Assignor

to
CAPLEASE LP
as Assignee

ASSIGNMENT OF LEASE AND RENTS

Dated as of September 14, 2005

RECORD AND RETURN TO:

Chapman and Cutler LLP
111 W. Monroe Street
Chicago, Illinois 60603
Attn: Daniel J. Favero

AFTER RECORDING, RETURN TO:

Attn: Christine A. Renner
LandAmerica National Comm. Svcs.
10 South LaSalle Street, Ste. 2500
Chicago, IL 60603

435

CHI-33709A

Lawyers Unit # 11344 Case # 04-07343

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ASSIGNMENT OF LEASE AND RENTS (herein, together with all modifications, supplements and amendments hereto, called this "Assignment"), dated as of September 14, 2005 made by Elston Development L.L.C., a Delaware limited liability company having an address at 2222 North Elston Avenue, Chicago, Illinois 60614 ("Assignor") to CAPLEASE, LP, a Delaware limited partnership having an address at 110 Maiden Lane, 36th Floor, New York, New York 10005 ("Assignee").

WITNESSETH:

WHEREAS, Assignor and Harris N.A. (as successor-in-interest to Harris Trust and Savings Bank) ("Lessee") have heretofore entered into that certain Ground Lease, dated as of September 1, 2005 (herein, as it may from time to time be modified, supplemented or amended and together with all guarantees thereof called the "Lease") covering the lands and premises more particularly described in Exhibit A and all buildings and other improvements now or hereafter located thereon (collectively, the "Premises"); and

WHEREAS, simultaneously with the execution and delivery of this Assignment, Assignee is making a mortgage loan to Assignor in the principal amount of \$4,467,058.00 which amount includes the maximum amount that may be disbursed pursuant to the Second Disbursement (as defined in the Mortgage) (the "Loan") as evidenced by a Mortgage Note dated as of the date hereof by Assignor to Assignee (the "Note") and secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith by Assignor to Assignee, covering the Premises (the "Mortgage"); and

WHEREAS, Assignor has agreed to execute and deliver this Assignment for the purpose of securing the following (collectively, the "Obligations"): (i) the payment of the principal of, interest on, premium (if any) and all other amounts (including, without limitation, servicing fees and reserves) payable in respect of the Note, the Mortgage and any Other Security Document (as defined in the Mortgage) and (ii) the performance of the covenants and agreements contained herein and in the Note, the Mortgage and any Other Security Document;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor, as security for the Obligations, has assigned, transferred, conveyed and set over, and by these presents does hereby presently, absolutely, unconditionally and irrevocably, assign, transfer, convey and set over to Assignee, all of Assignor's estate, right, title and interest in, to and under the Lease and the Lease Enhancement Policies (as defined in the Mortgage) (including, without limitation, all proceeds of such Lease Enhancement Policies and any unearned premiums on such policies), together with all rights, powers, privileges, options and other benefits of Assignor, as the lessor under the Lease, including, without limitation, the immediate and continuing right:

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

(a) to make claim for, receive and collect (and to apply the same to the payment of the Obligations) all rents (including, all basic rent and additional rent), income, revenues, issues, profits, insurance proceeds, condemnation proceeds, moneys, security deposits, and damages payable or receivable under the Lease or pursuant to any of the provisions thereof, including, without limitation, all proceeds from the sale, cancellation, surrender or other disposition of the Lease;

(b) to accept any offer by Lessee pursuant to the Lease to purchase the Premises or any part thereof, or any condemnation proceeds or insurance proceeds payable in connection with a loss or destruction thereof in accordance with the provisions of the Lease;

(c) to make all waivers and agreements of any kind; and

(d) to give all notices, consents, approvals, releases and other instruments.

2. This Assignment and the execution and delivery hereof shall not in any way impair or diminish the obligations of Assignor under the Lease, nor shall any of the obligations contained in the Lease be imposed upon Assignee. Upon the payment of the Obligations, this Assignment and all rights herein assigned to Assignee shall cease and terminate and all estate, right, title and interest of Assignor in and to the Lease shall revert to Assignor, and Assignee shall, at the request and at the expense of Assignor, deliver to Assignor an instrument in recordable form cancelling this Assignment and reassigning the Lease without recourse, representation or warranty, to Assignor.

3. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs Lessee to pay to Assignee, all payments, payable to or receivable by Assignor under the Lease (all payments of basic rent, additional rent and other sums payable to the lessor under the Lease) and Assignor agrees to cause Lessee under the Lease to make such payments directly to Assignee as required hereunder in lieu of making such payments to Assignor. Assignee shall have the right to apply such payments to the payment of the Obligations (including, without limitation, the amounts required to be reserved with Assignee under the Borrower Reserve Agreement entered into by Assignor for the benefit of Assignee on the date hereof (the "Reserve Agreement")) as and when same shall become due, subject to the terms of the Reserve Agreement. Such payments may be held by Assignee in an interest-bearing account and any interest or other investment income accruing on such payments shall be the property of Assignee as specified in the Reserve Agreement. Provided no default shall have occurred and then be continuing under the Note, the Mortgage or any Other Security Document, and all Obligations then owing shall have been paid in full, then, on a monthly basis, any portion of any payment of Fixed Rent (as defined in the Lease) actually received by Assignee which exceeds the amount of the Obligations which were owing shall be promptly remitted to Assignor. Assignor hereby designates Assignee to receive duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments and communications which Lessee is or may be required or permitted to give, make, deliver to or serve upon Assignor under the Lease. Assignor hereby directs Lessee to deliver to Assignee, at its address set forth below or at such other address as Assignee shall designate, duplicate original copies of all such notices, undertakings, demands, statements, documents and other

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

communications and no delivery thereof by Lessee shall be of any force or effect unless made to Assignee and Assignor.

4. Assignor represents and warrants to Assignee that (a) the Lease is in full force and effect and no default exists thereunder; (b) Assignor is the sole owner of the entire lessor's interest in the Lease; (c) Assignor has delivered to Assignee a true, correct and complete copy of the Lease as amended to the date hereof; (d) Assignor has full power and authority to execute and deliver this Assignment; (e) Assignor has not executed any other assignment of the subject matter of this Assignment that remains effective; (f) none of the Rents reserved in the Lease have been assigned or otherwise pledged or hypothecated; (g) none of the Rents have been collected for more than one (1) month in advance; and (h) there exist no offsets or defenses to the payment of any portion of the Rents.

5. Assignor shall not take any action as the lessor under the Lease or otherwise which is inconsistent with this Assignment, or make any other assignment, designation or direction inconsistent therewith, and any assignment, designation or direction inconsistent therewith shall be void. Assignor shall, from time to time upon the reasonable request of Assignee, execute all instruments of further assurance and all such supplemental instruments with respect to the transactions contemplated hereby as Assignee may specify.

6. Assignor further agrees with Assignee that Assignor (a) shall observe and perform all the obligations imposed upon the lessor under the Lease and shall not do or permit to be done anything to impair the value of the Lease as security for the Obligations; (b) shall promptly send copies to Assignee of all notices of default which Assignor shall send or receive thereunder; (c) shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the Lessee thereunder to be observed or performed, short of termination thereof; (d) shall not execute any other assignment of lessor's interest in the Lease (e) shall not alter, modify or change the terms of the Lease without the prior consent of Assignee, or cancel or terminate the Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Premises or of any interest therein so as to effect a merger of the estates and rights of, or termination or diminution of the obligations of Lessee thereunder; (f) shall not alter, modify or change the terms of any guaranty of the Lease or cancel or terminate any such guaranty without the prior consent of Assignee; and (g) shall not consent to any assignment of or subletting under the Lease not in accordance with the Lease terms, without the prior consent of Assignee.

7. Upon or at any time after an Event of Default (as defined in the Mortgage) has occurred and is continuing, Assignee may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent or servicer, with or without bringing any action or proceeding, or by a receiver appointed by a court, enforce its interest in the Lease and Rents and take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Assignee may deem proper 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 may apply the Rents to the payment of the following in such order and proportion as Assignee in its sole discretion may determine, any law, custom or use to the

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

contrary notwithstanding: (a) all expenses of managing and securing the Mortgaged Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Assignee may deem necessary or desirable and all expenses of operating and maintaining the Mortgaged Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, 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 including reasonable attorneys' fees incident to taking and retaining possession of the Mortgaged Property; and (b) payment of the Obligations. In addition to the rights which Assignee may have herein, upon the occurrence and during the continuance of an Event of Default, Assignee, at its option, may either require Assignor to pay monthly in advance to Assignee or the designee of Assignee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Assignor or may require Assignor to vacate and surrender possession of the Mortgaged Property to Assignee or to such receiver and, in default thereof, Assignor may be evicted by summary proceedings or otherwise. For purposes of this paragraph, Assignor grants to Assignee and the designee of Assignee its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Assignee for the proper management and preservation of the Mortgaged Property. The exercise by Assignee of the option granted it in this paragraph and the collection of the Rents and the application thereof as herein provided shall not be considered a waiver of any default by Assignor under the Note, the Mortgage, the Lease, this Assignment or the Other Security Documents (as defined in the Mortgage).

8. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Property after an Event of Default or from any other act or omission of Assignee in managing the Mortgaged Property after default unless such loss is caused by the gross negligence or willful misconduct and bad faith of Assignee. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease or under or by reason of this Assignment and Assignor shall, and hereby agrees, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Lease or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Assignee by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease. Should Assignee incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby and by the Mortgage and the Other Security Documents and Assignor shall reimburse Assignee therefor immediately upon demand and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby, the Note, and the Mortgage and the Other Security Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Assignee responsible or liable for any waste committed on the Mortgaged Property by the Lessee or any other parties, or for any dangerous or defective condition of the Mortgaged Property, including without limitation the presence of any Hazardous Substances (as defined in the Mortgage), or for any negligence in

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

9. Assignee may take or release other security for the payment of the Debt, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

10. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Mortgage, or the Other Security Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Debt and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

11. Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Assignee. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

12. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeable in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Mortgage," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Mortgage and all other sums due pursuant to the Note, the Mortgage, this Assignment and the Other Security Documents; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

13. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (i) failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Mortgage, the Note or the Other Security Documents, (ii) the release regardless of consideration, of the whole or any part of the Mortgaged Property, or (iii) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Mortgage or the Other Security Documents. Assignee may resort for the payment of the Debt to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Debt, or any

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

portion thereof or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

14. Assignor hereby consents to, covenants, represents and warrants to Assignee as follows:

(a) Lessee has consented to this Assignment or such consent is not required under the Lease, and Assignor shall cause Lessee to pay and deliver to Assignee all rentals and other sums assigned to Assignee pursuant to this Assignment in accordance with the terms and provisions of the Lease, without offset, deduction, defense, deferment or abatement. Assignor shall cause Lessee not to seek to recover from Assignee for any reason whatsoever any moneys paid to Assignee by virtue of this Assignment. All sums payable to Assignee pursuant to this Assignment shall be paid to Assignee in immediately available funds on the due date thereof 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: Elston Development (Harris) Loan Number 38-6000177, with a description of what funds represent (i.e., base rent, additional rent, taxes, insurance, CAM, etc.), (ii) by check via nationally recognized overnight courier delivery service to Elston Development L.L.C., c/o Wachovia Wholesale Lockbox, Building 2C2, Lockbox # 60253, 1525 West W.T. Harris Blvd., Charlotte, North Carolina 28262 with a description of what funds represent (i.e., base rent, additional rent, taxes, insurance, CAM, etc.), or (iii) by check via regular mail of the United States Postal Service, postage prepaid, to Borrower's Name, Wachovia Wholesale Lockbox, P.O. Box 60253, Charlotte, North Carolina 28260-0253 with a description of what funds represent (i.e., base rent, additional rent, taxes, insurance, CAM, etc.) (Assignee's preference being either (i) or (ii) above); or at such other address and/or account as shall be designated by Assignee by written notice to Lessee. Assignor shall, simultaneously with receipt or delivery thereof, deliver to Assignee duplicate original copies of all notices, undertakings, demands, statements, offers, documents and other instruments or communications which it is or may be required or permitted to give, make, serve or deliver pursuant to the Lease or which it receives from Lessee under the Lease.

(b) Assignor shall cause Lessee not to enter into any agreement amending, modifying, waiving any provision of, or terminating (except as provided in the Lease) the Lease, nor shall Assignor permit Lessee to sublease all or any part of the Premises (except as permitted in the Lease), without the prior consent of Assignee and any such attempted assignment, amendment, modification, waiver, termination or subleasing without such consent shall be void. If the Lease shall be amended as herein permitted, the Lease as so amended shall continue to be subject to this Assignment without the necessity of any further act by any of the

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

parties hereto or Lessee. Assignor shall cause Lessee to remain obligated under the Lease in accordance with its terms, and shall cause Lessee to not take any action to terminate (except as expressly permitted by the Lease), rescind or avoid the Lease, notwithstanding any action with respect to the Lessee which may be taken by any trustee or receiver of Assignor or of any assignee of Assignor or by any court in any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or other proceeding affecting Assignor or any assignee of Assignor. Assignor shall cause Lessee to acknowledge and agree to be bound by the easement granted to Assignee and Servicer (as defined in the Mortgage) pursuant to Paragraph 23(c) of the Mortgage.

15. If any term or provision of this Assignment or any application hereof shall be invalid or unenforceable, the remainder of this Assignment and any other application of such term or provision shall not be affected thereby.

16. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Assignment, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Assignee:

Caplease, LP
110 Maiden Lane, 36th Floor
New York, New York 10005
Attention: Michael J. Heneghan
with a copy concurrently to:

Chapman and Cutler LLP
111 W. Monroe Street
Chicago, Illinois 60603
Attn: Daniel J. Favero

and with a copy concurrently to:

Wachovia Bank, National Association
8739 Research Drive – URP4
Charlotte, North Carolina 28288-1075
Attention: Michael Schepis, Esq.
Telephone: (704) 593-7137
Fax: (704) 715-0036

UNOFFICIAL COPY

Elston Development L.L.C. (Harris)

Assignment of Lease and Rents

To Assignor:

Elston Development L.L.C.
2222 North Elston Avenue
Chicago, Illinois 60614

and with a copy concurrently to:

DLA Piper Rudnick Gray Cary US LLP
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601
Attention: Jeffrey Owen

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such material is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent by Assignor or Assignee.

17. This Assignment cannot be modified, changed or discharged except by an agreement in writing, duly acknowledged in form for recording, signed by the party against whom enforcement of such modification, change or discharge is sought.

18. This Assignment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the Premises.

19. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

20. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

21. The terms and provisions set forth in Section 12 of the Note are incorporated herein in their entirety.

UNOFFICIAL COPY

Elston Development L.L.C.

Assignment of Lease and Rents

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered as of the date first above written.

ELSTON DEVELOPMENT L.L.C., a Delaware
limited liability company

by Baker Development Corporation, an Illinois
corporation, its manager

By:  _____

Name: Warren Baker

Title: President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Elston Development L.L.C.

Assignment of Lease and Rents

STATE OF ILLINOIS

ss.:

COUNTY OF COOK

On the 3 (day of April, 2005, before me personally came Warren Baker, to me known, who, being by me duly sworn, did depose and say that he is the President of Baker Development Corporation, the manager of Elston Development L.L.C., an Illinois limited liability company, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

Carol Lynn Whittaker

Notary Public, State of Illinois

Carol Lynn Whittaker

Printed Name of Notary

My Commission Expires:

6-23-2009



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

DESCRIPTION OF PREMISES

Parcel 1:

That part of various lots: vacated streets and alleys; in various subdivisions in the East Half of the Northeast Quarter of Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Beginning at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; Thence South $44^{\circ} 59' 59''$ East along said Southwesterly line 118.0 feet; Thence South $45^{\circ} 00' 01''$ West 148.52 feet; Thence North $89^{\circ} 03' 38''$ West 85.75 feet to the East line of North Wood Street; Thence North $00^{\circ} 54' 22''$ East along said East line 188.50 feet to the South line of North Webster Avenue; Thence South $89^{\circ} 14' 30''$ East along said South line 104.53 feet to the point of beginning, in Cook County, Illinois.

Parcel 2:

Easement for the benefit of Parcel 1, for ingress, egress and parking within the land described in, and set forth in the Reciprocal Easement Agreement by and among Elston Development L.L.C., Elston Development Signs LLC and Harris N.A.

14-31-211 - 001

14-31-211-002

14-31-211-003

14-31-211-004

14-31-211-005

14-31-211-006

14-31-211-~~007~~01114-31-211-~~008~~012

14-31-211-013

14-31-211-014

2100-2140
N. ELSTON AVE
CHICAGO IL
60614