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Doc#: 0525810101 Fee: \$50.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/15/2005 02:12 PM Pg: 1 of 14

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Property Address:

2100-2160 N. ELSTON AVENUE
CHICAGO, IL

14-31-211-001/002/003/004/005/006/011/012/013/014

Lawyers Unit # 11344 Case # 04-07343

PREPARED BY
Chapman and Cutler, LLP
111 West Monroe Street
Chicago, IL 60603

After recording RETURN TO:
LandAmerica National Comm. Svcs.
Christine Renner
10 S. LaSalle St., Ste. 2500
Chicago, IL 60603

17

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

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CHI-33709A

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("*Non-Disturbance Agreement*") made as of the 14th day of September, 2005, by and among CAPLEASE, LP, a Delaware limited partnership having an office at 110 Maiden Lane, 36th Floor, New York, New York 10005 ("*Lender*"), HARRIS N.A., a national banking association, having an office at Corporate Real Estate, 111 West Monroe Street, 7 West, Chicago, IL 60603, Attn: Hattie B. Ensign ("*Tenant*") and ELSTON DEVELOPMENT, LLC, an Illinois limited liability company having an office at c/o Baker Development Corporation, 2222 N. Elston Avenue, Chicago, IL 60614, Attn: Warren Baker ("*Landlord*").

WITNESSETH:

WHEREAS, Lender has agreed to make a loan (the "*Loan*") of up to \$4,467,058.00 to Landlord;

WHEREAS, the Loan will be evidenced by a mortgage note (the "*Note*") of even date herewith made by Landlord to order of Lender 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 Lender covering, among other things, the land (the "*Land*") described on Schedule A hereto and all improvements (the "*Improvements*") now or hereafter located on the Land (the Land and the Improvements hereinafter collectively referred to as the "*Premises*");

WHEREAS, by a ground lease dated as of September 1, 2005 (which ground 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 (as successor-in-interest to Harris Trust and Savings Bank) the Premises; an

WHEREAS, the parties hereto desire to make the Lease subject and subordinate to the Mortgage.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. The Lease, as the same may hereafter be modified, amended or extended, and all of Tenant's right, title and interest in and to the Premises, are and shall be subject and subordinate to the Mortgage and the lien thereof, to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, so that at all times the Mortgage shall be and remain a lien on the Premises prior and superior to the Lease for all purposes; *provided, however*, and Lender agrees, that so long as (A) no default by Tenant has occurred which has continued to exist for such period of time (after notice, if any,

Lawyers Unit #11344 Case# 04-07343

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required by the Lease) as would entitle Landlord to terminate the Lease, (B) neither the rent nor any other charges or expenses payable by Tenant under the Lease shall have been reduced in any way without Lender's prior written consent which shall not be unreasonably withheld or delayed, (C) the Lease shall not have been otherwise modified or supplemented in any way without Lender's prior written consent which shall not be unreasonably withheld or delayed, (D) Tenant shall pay to Lender or its successor or assign all rental and other payments payable to Landlord under the Lease in the amounts and at the times set forth in the Lease, (E) Tenant shall duly confirm its attornment to Lender or its successor or assign by written instrument as set forth in paragraph 3 hereof or enter into the New Lease (as such term is hereinafter defined) as set forth in such paragraph 3, (F) Tenant shall have performed all of its covenants contained herein, and (G) all representations and warranties made herein by Tenant shall be true and correct as of the date of such attornment or New Lease; then, and in such event (i) Lender shall not join Tenant as a party defendant in any foreclosure action or proceeding which may be instituted or taken by Lender under the Mortgage by reason of any default thereunder, unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease, (ii) Tenant's leasehold estate under the Lease shall not be terminated or disturbed and Lender will accept the attornment of Tenant or, if Lender so elects, the New Lease, pursuant to paragraph 3 hereof, and (iii) other than as set forth herein, none of Tenant's rights under the Lease shall be affected in any way by reason of any default under the Mortgage.

2. Tenant hereby agrees to give to Lender copies of all notices of default by Landlord under this Lease at the same time and in the same manner as and whenever Tenant shall give any such notice of default to Landlord. Lender shall have the right to remedy any default of Landlord under this Lease, or to cause any default of Landlord under this Lease to be remedied, and, for such purpose, Tenant hereby grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No default under this Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default and shall be prosecuting the same to completion with reasonable diligence, subject to Unavoidable Delays (as defined in the Lease), or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Fee Mortgage to acquire possession of the Premises, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. Neither Lender nor its designee or nominee shall become liable under this Lease unless and until Lender or its designee or nominee becomes, and then only for so long as Lender or its designee or nominee remains, the fee owner of the Premises. Lender shall have the right, without Tenant's consent, to foreclose the Fee Mortgage or to accept a deed in lieu of foreclosure of such Fee Mortgage, but no such action shall modify, alter or change Tenant's rights under any Nondisturbance Agreement.

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3. Without limitation of any of the provisions of the Lease, in the event that, by reason of any default under the Mortgage on the part of Landlord, Lender or its successors or assigns shall succeed to the interest of Landlord or any successor to Landlord (each, a "*Succession Event*"), then, subject to the provisions of this Non-Disturbance Agreement, including, without limitation, paragraph 1 above, the Lease shall nevertheless continue in full force and effect and Tenant shall and does hereby agree to attorn to and accept Lender or its successors or assigns and to recognize Lender or its successors or assigns as its Landlord under the Lease for the then remaining balance of the term thereof, and upon request of Lender or its successors or assigns, Tenant shall execute and deliver to Lender or its successors or assigns an agreement of attornment satisfactory to Lender or any such successor or assign. Alternatively, upon the written request of Lender or its successors or assigns given to Tenant within thirty (30) days after any Succession Event, Tenant shall, within fifteen days after receipt of such request, enter a new lease (the "*New Lease*") of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease, except as otherwise specifically provided in this Non-Disturbance Agreement.

4. Tenant agrees that neither Lender, as holder of the Mortgage and as Landlord under the Lease if it succeeds to that position, nor anyone claiming by, through or under such Lender, shall be:

(a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), except any act or omission of a continuing nature which is continued by such Lender, or party claiming by, through or under such Lender and which is capable of being cured;

(b) subject to any defenses or offsets that Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), except for offsets relating to damages occurring after such Lender has succeeded to the interest of Landlord under the Lease arising out of a continuing default under the Lease;

(c) bound by any payment of rent or additional rent which Tenant might have paid for more than the current month to any prior Landlord (including, without limitation, the then defaulting Landlord), except to the extent such payment was received by Lender;

(d) bound by any covenant to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest, except for payments relating to claims occurring after Lender has succeeded to the interest of Landlord under the Lease arising out of a continuing default under the Lease;

(e) bound by any obligation to perform any work or to make improvements to the Premises or any portion thereof;

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(f) accountable for any moneys deposited with any prior Landlord, except to the extent such moneys are actually received by such Lender; or

(g) bound by any amendment, modification, surrender or cancellation of the Lease by Landlord under the terms of the Lease unless consented to in writing by Lender, which consent shall not be unreasonably withheld or delayed, *provided, however*, Lender shall have the right in its sole discretion to withhold any consent related to "Rental" (as defined in the Lease) or the initial "Term" (as defined in the Lease) but not including any "Option to Extend".

Lender and its successors or assigns shall have no personal liability as successor to Landlord and Tenant shall look only to the estate and property of Lender or its successors or assigns in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender or its successors or assigns as Landlord under the Lease, and no other property or assets of Lender or its successors or assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, the relationship of Landlord and Tenant thereunder or Tenant's use or occupancy of the Premises. The foregoing shall not, however, (1) relieve Lender, or any other party succeeding to the interests of the Landlord as a result of any foreclosure, of the obligation to remedy or cure conditions at the Premises which: (A) constitute a Landlord default under the Lease, (B) continue at the time of such succession or acquisition, (C) are of a continuing nature which is continued by such Lender, or party claiming by, through or under such Lender, and (D) are capable of being cured, or (2) constitute a waiver by Tenant of any claims or causes of action it may have against Landlord as a result of conditions or events which occurred prior to the succession by the Lender to the interests of the Landlord.

5. Landlord represents and warrants that the Lease was duly executed by Landlord and all consents, resolutions or other approvals required for Landlord to execute the Lease were obtained. Tenant represents and warrants that the Lease was duly executed by Tenant and all consents, resolutions or other approvals required for Tenant to execute the Lease were obtained.

6. Tenant and Landlord shall provide a document similar to this to any lender making a loan secured by property including the Premises, the proceeds of which loan are used to repay the Loan in whole or part as may be agreed to by such lender and subject to such reasonable modifications as may be requested by such lender.

7. Any option, right of first refusal or other rights contained in the Lease, or otherwise existing, to acquire all or any portion of the Premises are hereby made subject, and subordinate to the rights of Lender under the Mortgage.

8. This Non-Disturbance Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

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9. All remedies which Lender may have against Landlord provided herein, if any, are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others. If any party consists of multiple individuals or entities, each of same shall be jointly and severally liable for the obligations of such party hereunder.

10. The reasonable cost of attorneys' fees and disbursements for any legal action or arbitration between or among the parties arising out of any dispute or litigation relating to enforcement of this Non-Disturbance Agreement shall be borne by the party or parties against whom a final decision is rendered.

11. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Non-Disturbance Agreement, 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 Lender:

Caplease, LP
110 Maiden Lane, 36th Floor
New York, New York 10005
Attention: Michael Heneghan

with a copy concurrently to:

Chapman and Cutler LLP
111 West Monroe Street
Chicago, IL 60603
Attention: Daniel Favero, Esq.

To Tenant:

Harris N.A.
Corporate Real Estate
111 West Monroe Street, 7 West
Chicago, IL 60603

With a copy to:

Bailey Borlack Nadelhoffer LLC
135 South LaSalle Street, Suite 3950
Chicago, IL 60603
Attention: Sarah Nadelhoffer, Esq.

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To Landlord:

Elston Development, LLC
c/o Baker Development Corporation
2222 N. Elston Avenue
Chicago, IL 60614
Attention: Warren Baker

With a copy to:

DLA Piper Rudnick Gray Cary USLLP
203 North LaSalle Street, Suite 1900
Chicago, IL 60601-1293
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 Lender, Landlord or Tenant.

14. This Non-Disturbance Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois.

15. This Non-Disturbance Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. As used herein "Lender" shall include any subsequent holder of the Mortgage.

[Remainder of Page Intentionally Left Blank]

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

CAPLEASE, LP, a Delaware limited partnership

By CLF OP GENERAL PARTNER LLC, its General Partner, a Delaware limited liability company

By CAPITAL LEASE FUNDING, INC, the sole member of CLF OP GENERAL PARTNER LLC, a Maryland Corporation

By: 
Name: **MICHAEL J. HENEGHAN**
Title: **SENIOR VICE PRESIDENT**

HARRIS N.A.

By: _____
Name:
Title:

ELSTON DEVELOPMENT, LLC

By: Baker Development Corporation,
Manager

By: _____
Name:
Title:

Property of Cook County Clerk's Office

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STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

On the 1 day of September, 2008, before me the undersigned, a Notary Public in and for said state personally appeared Michael J. Heneghan the SVP of CAPITAL LEASE FUNDING, INC., a Maryland Corporation, the sole member of CLF OP GENERAL PARTNER LLC, a Delaware limited liability company, the general partner of CAPLEASE, LP, a Delaware limited partnership, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Julianne Gaiser
Notary Public

My Commission expires: 6/20/09

JULIANNE GAISER
Notary Public, State of New York
No. 01GA6128919
Qualified in New York County
Commission Expires June 20, 2009

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

CAPLEASE, LP, a Delaware limited partnership

By CLF OP GENERAL PARTNER LLC, its General Partner, a Delaware limited liability company

By CAPITAL LEASE FUNDING, INC, the sole member of CLF OP GENERAL PARTNER LLC, a Maryland Corporation

By: _____
Name:
Title:

HARRIS N.A.

By: *Jo Freund*
Name: *Jo Freund*
Title: *Vice President*

ELSTON DEVELOPMENT, LLC

By: Baker Development Corporation,
Manager

By: _____
Name:
Title:

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STATE OF ILLINOIS

SS.:

COUNTY OF COOK

On the 7th day of September, 2005, before me personally came Jo Freund, to me known, who, being by me duly sworn, did depose and say that he/she is the Vice President of Harris, N.A., a national banking association, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the board of directors of said corporation.

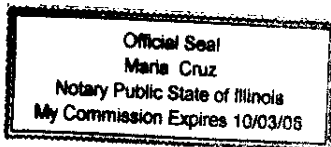
Maria Cruz
Notary Public, State of Illinois

Maria Cruz

Printed Name of Notary

My Commission Expires:

10/3/08



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

CAPLEASE, LP, a Delaware limited partnership

By CLF OP GENERAL PARTNER LLC, its General Partner, a Delaware limited liability company

By CAPITAL LEASE FUNDING, INC, the sole member of CLF OP GENERAL PARTNER LLC, a Maryland Corporation

By: _____
Name:
Title:

HARRIS N.A.

By: _____
Name:
Title:

ELSTON DEVELOPMENT, LLC

By: Baker Development Corporation,
Manager

By: _____
Name: *Darren Baker*
Title: *President*

Property of Cook County Clerk's Office

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STATE OF ILLINOIS

SS.:

COUNTY OF COOK

On the 31 day of August, 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

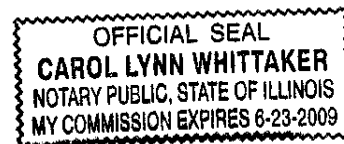
Notary Public, State of Illinois

Carol Lynn Whittaker

Printed Name of Notary

My Commission Expires:

6-23-2009



Property of Cook County Clerk's Office

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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 $89^{\circ} 05' 38''$ 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 $89^{\circ} 14' 50''$ 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

14-31-211-011

14-31-211-012

14-31-211-013

14-31-211-014

2100-2160 N. ELSTON
CHICAGO IL