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This Instrument was  
Prepared by:



Doc#: 0435739091  
Eugene "Gene" Moore Fee: \$44.50  
Cook County Recorder of Deeds  
Date: 12/22/2004 03:03 PM Pg: 1 of 1  
10/8/11

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

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RECORDER'S USE ONLY

ELSTON DEVELOPMENT L.L.C.,  
a Delaware limited liability company  
(Mortgagor)

to

CAPLEASE, LP,  
a Delaware limited partnership  
(Mortgagee)

FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

And

OMNIBUS AMENDMENT

Dated as of: December 17, 2004

Location: 2100 North Elston Avenue  
Chicago, IL 60614  
Cook County

RECORD AND RETURN TO:

Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603-4080  
Attention: Daniel J. Favero, Esquire

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## FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING AND OMNIBUS AMENDMENT

This First Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment (this "*Amendment*") is dated as of December 17, 2004, from ELSTON DEVELOPMENT L.L.C., a Delaware limited liability company, whose address is 2222 North Elston Avenue, Chicago, Illinois 60614 (hereinafter referred to as the "*Mortgagor*"), to CAPLEASE, L.P., a Delaware limited partnership ("*Mortgagee*");

### WITNESSETH THAT:

WHEREAS, the Mortgagor for the benefit of Mortgagee has entered into that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of August 4, 2004, recorded with the Recorder of Cook County, Illinois as Document No. 0423310118 (as may be amended and supplemented from time to time, the "*Mortgage*");

WHEREAS, the Mortgagor executed a promissory note payable to Mortgagee in the original principal sum of THIRTEEN MILLION AND ONE DOLLARS AND 28/100 (\$13,000,001.28), dated August 4, 2004 (such note is herein called the "*Original Note*"), in and by which said Original Note Mortgagor promised to pay at the place designated in said Original Note, the said principal sum and interest at the rate and in installments as provided in the Original Note, with a final payment of the balance due on March 15, 2025.

WHEREAS, the Mortgagor has requested the Second Disbursement (as defined in the Mortgage) in the amount of \$4,609,443.15 and has executed an amended and restated promissory note in the aggregate amount of \$17,609,444.53 (the "*Replacement Note*");

WHEREAS, the Mortgagor and the Mortgagee desire to amend the Mortgage and the other Security Documents to, among other things, bring them into conformity with the aforementioned Second Disbursement;

WHEREAS, unless otherwise indicated, all capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Mortgage;

NOW, THEREFORE, in consideration of the above premises, the mutual covenants hereinafter expressed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Mortgage is hereby amended by:

(a) deleting the first full paragraph on page 1 of the Mortgage in its entirety and substituting the following therefor:

“To secure the payment of an indebtedness in the principal sum of up to SEVENTEEN MILLION SIX HUNDRED NINE THOUSAND FOUR HUNDRED FORTY-FOUR and 53/100 Dollars (\$17,609,444.53), which amount includes the maximum amount that may be disbursed pursuant to the Second Disbursement (hereinafter defined) (the “Loan”), lawful money of the United States of America, to be paid with interest according to a certain Mortgage Note dated as of August 4, 2004 and amended and restated on December 17, 2004 (the “Replacement Note” and made by Mortgagor to Mortgagee due March 15, 2025 (the note together with all replacements, including without limitation the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the “Note”) and all other sums due hereunder, under the Note and any Other Security Documents (hereinafter defined) (said indebtedness and interest due under the Note and the Other Notes (hereinafter defined) and all other sums due hereunder and under the Note, the Other Mortgages (hereinafter defined) and the Other Security Documents being hereinafter collectively called the “Debt”), Mortgagor has mortgaged, given, granted, bargained, sold, aliened, enfeoffed, conveyed, confirmed, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the “Premises”) and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the “Improvements”);”

(b) deleting paragraph (h) on page 4 of the Mortgage in its entirety and substituting the following therefor:

“(h) all accounts receivable, contract rights, interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Mortgaged Property or any part thereof, and all reserve accounts, accounts for the deposit, collection and/or disbursement of Rents and other accounts now or hereafter in existence with respect to the Loan, including, without limitation, that

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Elston Development L.L.C.

First Amendment to Mortgage and  
Omnibus Amendment

certain account for the payment of Rents to Mortgagee described in Paragraph 14(a) of the Assignment of Lease and Rents delivered to Mortgagee by Mortgagor on the date hereof and all interest reserve accounts, borrower reserve accounts and replacement reserve accounts provided for under any documentation entered into or delivered by Mortgagor in connection with the Loan and in connection with the Replacement Note; and”

(c) deleting the first sentence of Paragraph 62 of the Mortgage in its entirety and substituting the following therefor:

“Upon satisfaction of the conditions precedent set forth below of this Section 62, Mortgagee shall fund such additional amount of Loan proceeds (the “Second Disbursement”) up to \$4,609,443.15 that is able to be Fully Amortized by the cash flow generated by the Tenant’s share of Common Area Construction Costs (as defined in the Lease) and is otherwise in accordance with the terms of the Application.”

2. Each of the Other Security Documents is hereby amended by: (a) replacing each reference to “THIRTEEN MILLION ONE AND 28/100 DOLLARS” with “SEVENTEEN MILLION SIX HUNDRED NINE THOUSAND FOUR HUNDRED FORTY-FOUR AND 53/100 DOLLARS”, (b) replacing each reference to “13,000,001.28” with “\$17,609,444.53”, (c) replacing each reference to “SIXTEEN MILLION AND 00/100 DOLLARS” with “SEVENTEEN MILLION SIX HUNDRED NINE THOUSAND FOUR HUNDRED FORTY-FOUR AND 53/100 DOLLARS”, (d) replacing each reference to “16,000,000.00” with “\$17,609,444.53”, (e) replacing each reference to “6.30%” with “prior to December 17, 2004, 6.30%, and on and after December 17, 2004, 6.43% through and included the Maturity Date”, (f) making all references to “the Note” mean “the Replacement Note,” (g) making all references to “the Mortgage” mean “the Mortgage as amended by the First Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of December 17, 2004” and (h) making all references to “the Borrower Reserve Agreement” mean “the Borrower Reserve Agreement and Addendum A to the Borrower Reserve Agreement dated as of December 17, 2004.”

3. Mortgagor hereby represents and warrants to Mortgagee that as of the date hereof each of the representations and warranties set forth in the Mortgage as amended hereby are true and correct and that no Event of Default (as such term is defined in the Mortgage), or any other event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, has occurred and is continuing or shall result after giving effect to this Amendment. Mortgagor hereby repeats and reaffirms all covenants and agreements contained in the Mortgage, each and all of which shall be applicable to all of the indebtedness secured by the Mortgage as amended hereby and to all the properties, rights, interest and privileges subject to the Mortgage as amended hereby. The Mortgagor repeats and reaffirms its covenant that all the indebtedness secured by the Mortgage as amended hereby will be promptly paid as and when the same becomes due and payable.

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4. All of the provisions, stipulations, powers and covenants contained in the Mortgage shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as amended hereby.

5. Mortgagor acknowledges and agrees that the Mortgage as amended hereby is and shall remain in full force and effect, and that the Mortgaged Premises are and shall remain subject to the lien and security interest granted and provided for by the Mortgage for the benefit and security of all the indebtedness hereby secured. Without limiting the foregoing, Mortgagor hereby agrees that, notwithstanding the execution and delivery hereof, (i) all rights and remedies of Mortgagee under the Mortgage, (ii) all obligations of Mortgagor thereunder and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the benefit and security of all the indebtedness hereby secured, it being specifically understood and agreed that this Amendment shall constitute and be, among other things, an acknowledgment and continuation of the rights, remedies, lien and security interest in favor of Mortgagee, and of the obligations of Mortgagor to Mortgagee, which exist under the Mortgage as amended hereby.

6. Except as modified herein, the Other Security Documents and all of the terms and provisions thereof shall remain unmodified and in full force and effect as originally written.

7. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of Mortgagor, or by or on behalf of Mortgagee, or by or on behalf of the holder or holders of the indebtedness hereby secured contained in the Mortgage as amended hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

8. This Amendment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, which counterparts taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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Elston Development L.L.C.

First Amendment to Mortgage and  
Omnibus Amendment

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of  
the day and year first above written.

**MORTGAGOR:**

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

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Elston Development L.L.C.

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First Amendment to Mortgage and  
Omnibus Amendment

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the day and year first above written.

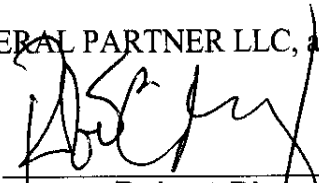
MORTGAGEE:

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: Robert Blanz  
Title: Senior Vice President

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STATE OF ILLINOIS

ss.:

COUNTY OF COOK

On the 6<sup>th</sup> day of December, 2004, 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

My Commission expires: 6-23-2005

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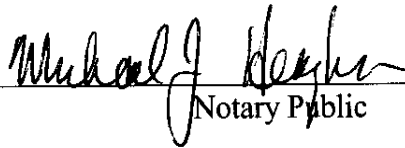
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STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

On the 17 day of December, 2004, before me personally came Robert C. Blanz, to me known, who, being by me duly sworn, did depose and say that he is the SVP of CLF OP General Partner LLC, the general partner of Caplease, LP, a Delaware limited partnership, the limited partnership described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the members of said limited liability company.

  
\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**MICHAEL J. HENEGHAN**  
Notary Public, State of New York  
No. 02HE5083631  
Qualified in Nassau County  
Commission Expires November 13, 2005

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## SCHEDULE I

### LEGAL DESCRIPTION

#### Legal Description

##### 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: Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; Thence South 44° 59' 59" East along said Southwesterly line 919.25 feet to the point of beginning; Thence continue South 44° 59' 59" East along said Southwesterly line 280.89 feet to the Westerly line of the Chicago and Northwestern Railway Company right of way; Thence South 16° 30' 34" East along said Westerly line of said right of way 439.44 feet to the North line of West Armitage Avenue; Thence North 89° 20' 44" West along said North line 144.37 feet to the Northeasterly line of Chicago and Northwestern Railway Company right of way; Thence Northwesterly along said Northeasterly right of way line being an arc of a circle convex Northeasterly and having a radius of 3538.26 feet for a distance of 139.30 feet (the chord of said arc having a bearing of North 43° 17' 15" West and a distance of 339.17 feet) Thence North 48° 38' 53" West along said right of way line 183.40 feet; Thence North 50° 25' 39" West along said right of way line 42.30 feet to a point on said Northeasterly line 695.54 feet (as measured on said Northeasterly line) Southeasterly of the East line of North Wood Street; Thence North 45° 03' 01" East 316.20 feet to the point of beginning (except therefrom Lots 14 and 34 in Hurford's Subdivision of Original Lot 1 in Block 21 in Sheffield's Addition to Chicago in said Section 31) in Cook County, Illinois.

Excepting therefrom:

That part of Lot "A" in the consolidation of parts of Original Block 21 in Sheffield's Addition to Chicago in Section 31, Township 40 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the South line of West Webster Avenue with the Southwesterly line of North Elston Avenue; thence South 44° 59' 59" East, along the Southwesterly line of North Elston Avenue 941.33 feet to the point of beginning; thence South 44° 59' 59" East, along the Southwesterly line of North Elston Avenue, 20.02 feet to the Northwesterly line of vacated North Hobson Avenue; thence South 45° 03' 01" West, along the Northwesterly line of vacated North Hobson Avenue, 20.00 feet; thence North 44° 59' 59" West 20.00 feet; thence North 45° 00' 01" East 20.00 feet to the point of beginning, in Cook County, Illinois.

##### Parcel 2

Together with non-exclusive easements for ingress, egress and parking as contained in Declaration of Covenants, Conditions, Reciprocal Rights and Easements dated August 4, 2004 and recorded on August 20, 2004 as document No. 0423310116.

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## ENDORSEMENT CONTINUED

### Permanent Index Number:

14-31-211-028 (affects part & other ppty)  
14-31-211-029 (affects part & other ppty)  
14-31-219-001 (affects part)  
14-31-219-002 (affects part)  
14-31-219-003 (affects part)  
14-31-219-004 (affects part)  
14-31-219-005 (affects part)  
14-31-219-012 (affects part)  
14-31-219-013 (affects part)  
14-31-219-014 (affects part)  
14-31-219-015 (affects part)  
14-31-219-016 (affects part)  
14-31-219-017 (affects part)  
14-31-219-018 (affects part)  
14-31-219-019 (affects part)  
14-31-219-020 (affects part and other ppty)  
14-31-219-029 (affects part)  
14-31-219-031 (affects part)  
14-31-219-032 (affects part)  
14-31-219-034 (affects part)  
14-31-219-035 (affects part)  
14-31-219-039 (affects part)  
14-31-219-040 (affects part)  
14-31-219-041 (affects part)  
14-31-219-042 (affects part)  
14-31-219-043 (affects part)  
14-31-219-045 (affects part)  
14-31-219-046 (affects part)  
14-31-219-047 (affects part)

Case Number: 04-07343D