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Doc#: 0513032137
Eugene "Gene" Moore Fee: \$48.50
Cook County Recorder of Deeds
Date: 05/10/2005 10:56 AM Pg: 1 of 13

This Instrument was
Prepared by:

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

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

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

to

CAPLEASE LP,
a Delaware limited partnership
(Mortgagee)

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

And

OMNIBUS AMENDMENT

Dated as of: May 9, 2005

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

RECORD AND RETURN TO:

AFTER RECORDING RETURN TO:
Attn: Christine A. Renner *CR*
LandAmerica Nat'l Comm. Svcs.
10 S. LaSalle Street, Suite 2500
Chicago, IL 60603 *CHI-33709D*

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

This Second Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment (this "*Amendment*") is dated as of May 9, 2005, 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 LP, 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 and amended by that certain First Amendment To Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of December 17, 2005, recorded with the Recorder of Cook County, Illinois as Document No. 0435739091 (as may be further 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 "*Initial Replacement Note*") and in connection with the Third Disbursement (described below) has executed a Second Amended and Restated Promissory note in the aggregate amount of \$17,609,444.53 (the "*Replacement Note*") (the Original Note together with all replacements, including without limitation the Initial Replacement Note and the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the "*First Note*");

WHEREAS, the Mortgagor has requested an additional disbursement in the amount of \$912,149.17 (the "*Third Disbursement*") and has executed an additional Mortgage Note in the aggregate amount of \$912,149.17 (the "*Second 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 Third Disbursement and the issuance of the Second Note;

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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 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 aggregate principal sum of up to EIGHTEEN MILLION FIVE HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED NINETY-THREE and 70/100 Dollars (\$18,521,593.70), 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 (i) a certain Mortgage Note dated as of August 4, 2004 (the "Original Note") and Amended and Restated on December 17, 2004 (the "Initial Replacement Note") and further amended and restated by that certain Second Amended and Restated Mortgage Note dated May 9, 2005 (the "Replacement Note") in the aggregate principal amount of \$17,609,444.53 (the Original Note together with all replacements, including without limitation the Initial Replacement Note and the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the "First Note") and (ii) a certain Mortgage Note (B) dated as of May 9, 2005 in the aggregate principal amount of \$912,149.17 (together with all replacements, extensions, renewals or modifications thereof being hereinafter called the "Second Note") (the First Note and the Second Note being hereinafter referred to as collectively, 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");

2. The Mortgage is hereby amended by making all references to making all references to “the Note” mean collectively, the “First Note and the Second Note”.

3. Each of the Other Security Documents is hereby amended by: (a) replacing each reference to the aggregate principal amount secured by the Mortgage as “SEVENTEEN MILLION SIX HUNDRED NINE THOUSAND FOUR HUNDRED FORTY-FOUR AND 53/100 DOLLARS” with “EIGHTEEN MILLION FIVE HUNDRED TWENTY-ONE THOUSAND FIVE HUNDRED NINETY-THREE and 70/100 DOLLARS”, (b) replacing each reference to the aggregate principal amount secured by the Mortgage as “\$17,609,444.53” with “\$18,521,593.70”, (c) making all references to “the Note” mean collectively, the “First Note and the Second Note”, (d) replacing all references to “the Mortgage” with “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 Second Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of May 9, 2005”, and (e) replacing all references to “the Borrower Reserve Agreement” with “the Borrower Reserve Agreement and Addendum A to the Borrower Reserve Agreement dated as of December 17, 2004”.

4. The Guaranty is hereby amended by deleting the first full paragraph on page 1 of the Guaranty in its entirety and substituting the following therefor:

WHEREAS, pursuant to that certain (i) Mortgage Note dated as of August 4, 2004 (the “Original Note”) and Amended and Restated on December 17, 2004 (the “Initial Replacement Note”) and further amended and restated by that certain Second Amended and Restated Mortgage Note dated May 9, 2005 (the “Replacement Note”) in the aggregate principal amount of \$17,609,444.53 (the Original Note together with all replacements, including without limitation the Initial Replacement Note and the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the “First Note”) and (ii) a certain Mortgage Note (B) dated as of May 9, 2005 in the aggregate principal amount of \$912,149.17 (together with all replacements, extensions, renewals or modifications thereof being hereinafter called the “Second Note”) (the First Note and the Second Note being hereinafter referred to as collectively, the “Note”) Borrower has become indebted to Lender with respect to a loan (“Loan”) which is secured by the lien and security interest of a 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 and amended by that certain First Amendment To Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of December 17, 2005, recorded with the Recorder of Cook County, Illinois as Document No. 0435739091 (as may be further amended and supplemented from time to time, the

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“Mortgage”) placed on that certain real property, the improvements located thereon and all other property set forth in the Mortgage securing the obligations under the Note (the “Property”). All and any of the documents, including the Note, the Mortgage and this Guaranty, executed and/or delivered at the closing of the Loan by Borrower and/or others and by or in favor of Lender, which evidences, secures or guarantees all or any portion of the Loan or otherwise is executed and/or delivered by Borrower in connection with the Loan are referred to collectively as the “Loan Documents”; and

5. The Borrower Reserve Agreement is hereby amended by deleting the first two full paragraphs on page 1 of the Borrower Reserve Agreement in their entirety and substituting the following therefor:

This Agreement contemplates Lender’s making of two mortgage loans to Borrower in the aggregate principal amount of \$18,521,593.70 (the “**Loan**”), with respect to certain real property known as Best Buy Store #814 and located at 2100 North Elston Avenue, Chicago, Illinois (the “**Project**”), which Project is located in the shopping center at the same address (the “**Shopping Center**”).

The Loan is evidenced and secured by, among other things, (i) a Mortgage Note dated as of August 4, 2004 (the “**Original Note**”) and Amended and Restated on December 17, 2004 (the “**Initial Replacement Note**”) and further amended and restated by that certain Second Amended and Restated Mortgage Note dated May 9, 2005 (the “**Replacement Note**”) in the aggregate principal amount of \$17,609,444.53 (the Original Note together with all replacements, including without limitation the Initial Replacement Note and the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the “**First Note**”) and (ii) a certain Mortgage Note dated as of May 9, 2005 in the aggregate principal amount of \$912,149.17 (together with all replacements, extensions, renewals or modifications thereof being hereinafter called the “**Second Note**”) (the First Note and the Second Note being hereinafter referred to as collectively, the “**Note**”) and secured by the lien and security interest of a 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 and amended by that certain First Amendment To Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of December 17, 2005, recorded with the Recorder of Cook County, Illinois as Document No. 0435739091 (as may be further amended and supplemented from time to time, the “**Mortgage**”), granting a first lien on the Project (the Note, Mortgage

and other documents executed or delivered in connection with the Loan, including this Agreement, are collectively referred to as the “**Loan Documents**”).

6. The Environmental Indemnification Agreement is hereby amended by deleting the second full paragraph on page 1 of the Environmental Indemnification Agreement in its entirety and substituting the following therefor:

B. This Agreement contemplates Lender’s making of two mortgage loans to Borrower in the aggregate principal amount of \$18,521,593.70 (the “**Loan**”), with respect to certain real property known as Best Buy Store #814 and located at 2100 North Elston Avenue, Chicago, Illinois (the “**Project**”), which Project is located in the shopping center at the same address (the “**Shopping Center**”). The Loan is evidenced and secured by, among other things, (i) a Mortgage Note dated as of August 4, 2004 (the “**Original Note**”) and Amended and Restated on December 17, 2004 (the “**Initial Replacement Note**”) and further amended and restated by that certain Second Amended and Restated Mortgage Note dated May 9, 2005 (the “**Replacement Note**”) in the aggregate principal amount of \$17,609,444.53 (the Original Note together with all replacements, including without limitation the Initial Replacement Note and the Replacement Note, extensions, renewals or modifications thereof being hereinafter collectively called the “**First Note**”) and (ii) a certain Mortgage Note (B) dated as of May 9, 2005 in the aggregate principal amount of \$912,149.17 (together with all replacements, extensions, renewals or modifications thereof being hereinafter called the “**Second Note**”) (the First Note and the Second Note being hereinafter referred to as collectively, the “**Note**”) and a 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 and amended by that certain First Amendment To Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and Omnibus Amendment dated as of December 17, 2005, recorded with the Recorder of Cook County, Illinois as Document No. 0435739091 (as may be further amended and supplemented from time to time, the “**Mortgage**”), granting a first lien on the Project (the Note, Mortgage and other documents executed or delivered in connection with the Loan, including this Agreement, are collectively referred to as the “**Loan Documents**”).

7. The obligations of the Mortgagor under the First Note and the Second Note rank *pari passu* in all respects.

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8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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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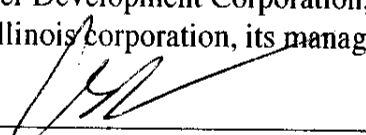
Second Amendment to Mortgage and
Omnibus Amendment

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.

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

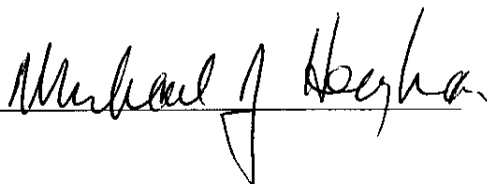
MORTGAGEE:

CAPLEASE LP, A DELAWARE LIMITED
PARTNERSHIP

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

By Capital Lease Funding, Inc., a Maryland
corporation, the sole member of CLF OP
General Partner LLC

By:
Name:
Title:



**MICHAEL J. HENEGHAN
SENIOR VICE PRESIDENT**

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STATE OF ILLINOIS

ss.:

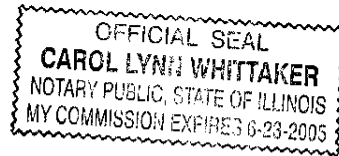
COUNTY OF COOK

On the 6th day of May, 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

My Commission expires: 6-23-2005



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STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

On the 6th day of May, 2005, 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.

Heidi Kristensen
Notary Public

HEIDI KRISTENSEN
Notary Public, State Of New York
My Commission No. 01KP4824483
Qualified in New York County
Commission Expires Feb. 28, 2007

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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 $44^{\circ} 59' 59''$ East along said Southwesterly line 919.25 feet to the point of beginning; Thence continue South $44^{\circ} 59' 59''$ East along said Southwesterly line 280.89 feet to the Westerly line of the Chicago and Northwestern Railway Company right of way; Thence South $16^{\circ} 30' 34''$ East along said Westerly line of said right of way 439.44 feet to the North line of West Armitage Avenue; Thence North $89^{\circ} 20' 44''$ 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 339.30 feet (the chord of said arc having a bearing of North $43^{\circ} 17' 15''$ West and a distance of 339.17 feet) Thence North $48^{\circ} 38' 53''$ West along said right of way line 183.40 feet; Thence North $50^{\circ} 33' 39''$ 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 $45^{\circ} 03' 01''$ East 316.20 feet to the point of beginning (except therefrom Lots 17 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 $44^{\circ} 59' 59''$ East, along the Southwesterly line of North Elston Avenue 941.33 feet to the point of beginning; thence South $44^{\circ} 59' 59''$ East, along the Southwesterly line of North Elston Avenue, 20.02 feet to the Northwesterly line of vacated North Hobson Avenue; thence South $45^{\circ} 03' 01''$ West, along the Northwesterly line of vacated North Hobson Avenue, 20.00 feet; thence North $44^{\circ} 59' 59''$ West 20.00 feet; thence North $45^{\circ} 00' 01''$ 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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PERM TAX#

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)

County Clerk's Office