

# UNOFFICIAL COPY

*call*

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Meltzer, Purtil & Stelle LLC  
1515 East Woodfield Road, Second Floor,  
Schaumburg, Illinois 60173  
Attn: Randall S. Kulat, Esq.



Doc#: 0416833000  
Eugene "Gene" Moore Fee: \$46.00  
Cook County Recorder of Deeds  
Date: 06/16/2004 06:59 AM Pg: 1 of 12

*This space reserved for Recorder's use only*

*Property of Cook County Deeds*

## SECOND MODIFICATION OF LOAN DOCUMENTS

**THIS SECOND MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 20<sup>th</sup> day of March, 2004, by and among **550 W. WELLINGTON, L.L.C.**, an Illinois limited liability company ("Borrower"), **JAMES P. STELLAS** and **DEAN STELLAS** (collectively, "Guarantor") and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of One Million Two Hundred Fifteen Thousand Dollars (\$1,215,000.00) pursuant to the terms and conditions of an Acquisition and Construction Loan Agreement dated as of July 8, 2003 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note (Facility A) dated July 8, 2003, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Facility A Note").

B. The Facility A Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated July 8, 2003 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on July 14, 2003, as Document No. 0319341068 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated July 8, 2003, from Borrower to Lender and recorded in the Recorder's Office on July 14, 2003, as Document No. 0319341069 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated July 8, 2003 from Borrower and Guarantor to Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

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**BOX 333-CP**

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C. The Loan is further secured by a Guaranty of Payment and Completion dated July 8, 2003 from Guarantor to Lender (the "Guaranty").

D. The Loan Agreement provides that the Lender shall make future advances to Borrower under the Facility B Loan (as defined in the Loan Agreement) upon satisfaction of certain conditions set forth in the Loan Agreement.

E. Pursuant to the Modification of Loan Documents ("First Modification") dated as of January 8, 2004, and recorded in the Recorder's Office on March 2, 2004, as Document No. 0406233239, Borrower, Guarantor and Lender amended the Loan Documents to, among other things, (i) extend the maturity date of the Loan, (ii) extend the commencement date of the Facility B Loan, (iii) increase the amount of the Facility B Loan by \$500,000.00, from \$5,805,000.00 to \$6,305,000.00, and (iv) revise the equity and presales requirements set forth in the Loan Agreement. The First Modification is included in the definition of "Loan Documents" herein.

F. Borrower now desires to again amend the Loan Documents in order to issue the Facility B Loan and increase the aggregate Loan amount to include the Facility B Loan and extend the Facility A Maturity Date to the Facility B Maturity Date.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Facility B Loan/Increase in Loan Amount.** Upon the satisfaction of the conditions set forth in Article VI of the Loan Agreement, proceeds under the Facility B Loan shall be made available to Borrower on the terms of and subject to the conditions of the Loan Agreement. Accordingly, the aggregate amount of the Loan is increased to include the Facility B Loan amount, to an increased aggregate Loan amount of Seven Million Five Hundred Twenty Thousand and 00/100 Dollars (\$7,520,000.00). The Facility B Loan shall be evidenced by the Facility B Note in form and substance acceptable to Lender and delivered to Lender by Borrower.

2. **Extension of Facility A Maturity Date.** The Facility A Maturity Date shall be extended to the same date as the Facility B Maturity Date (as defined in the Loan Agreement). Any reference in the Loan Agreement or any other Loan Document to the Facility A Maturity Date shall be deemed to mean the Facility A Maturity Date, as amended hereby. In order to evidence the extension of the Facility A Maturity Date, the Facility A Note shall be amended and restated by that certain Amended and Restated Promissory Note (Facility A) ("Amended A Note"). The Amended A Note shall be substituted for and replace the existing Facility A Note as evidence of the amounts due and owing to Lender under the Facility A Loan. Upon execution and delivery by the Borrower of the Amended A Note and satisfaction of all other conditions

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contained herein, Lender shall cancel the Facility A Note and return the executed original of the Facility A Note to the Borrower. Such cancellation shall not be deemed and/or construed as a novation of the obligations of the Borrower evidenced thereby, all of which shall remain in full force and effect as provided in the Amended A Note. From and after the date hereof and execution and delivery of the Amended A Note by the Borrower, all references in the Loan Agreement and the Loan Documents to the Facility A Note shall be deemed references to the Amended A Note, and all references in the Loan Agreement and in the Loan Documents to the Facility A Loan shall be deemed references to the Facility A Loan evidenced by the Amended A Note.

3. **Amendments to Section 7.3(a) of the Loan Agreement.** Section 7.3 of the Loan Agreement shall be amended to provide that the Request For Advance shall be in the form as attached hereto as **Exhibit B**.

4. **Amendment of Mortgage and Assignment of Rents.** Any references in the Mortgage or the Assignment of Rents and Leases to the words and/or numbers referencing the Loan amount shall be amended by this instrument to be the aggregate Loan amount of \$7,520,000.00. Any references in the Mortgage or the Assignment of Rents and Leases to the Maturity Date shall mean and refer to Facility A Maturity Date, as amended hereby, and the Facility B Maturity Date.

5. **Other Conforming Amendments.** The Guaranty, the Indemnity and the other Loan Documents are hereby amended to reflect the increase to the aggregate Loan amount and the extension of the Facility A Maturity Date, and shall secure the obligations of the Borrower and Guarantor, as the case may be, under such Loan Documents, as amended hereby

6. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Facility A Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Facility A Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

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(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

7. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401 008135611 (the "Title Policy"), as of the date this Agreement is recorded and in the full aggregate amount of the Facility A Loan and the Facility B Loan, reflecting the recording of this Agreement, reflecting the increase in the aggregate amount of the Loan secured by the Mortgage and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance, customary exceptions for pending disbursements of the Facility B Loan, and containing such other endorsements as Lender may require.

8. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and the Indemnity Agreement and agrees that the Guaranty and the Indemnity Agreement are in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty and the Indemnity Agreement are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty and the Indemnity Agreement continue to be the valid and binding obligations of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty or the Indemnity Agreement, as the case may be.

9. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

10. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by

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its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Facility A Note", the "Facility B Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the "Facility A Note", the "Facility B Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.


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


**LENDER:**

**LASALLE BANK NATIONAL ASSOCIATION**

By:   
Name: Alex P. Bliss  
Title: First VP

**BORROWER:**

**550 W. WELLINGTON, L.L.C**, an Illinois limited liability company

By:   
James P. Stellas, its Manager

**GUARANTOR:**

  
James P. Stellas

  
Dean Stellas

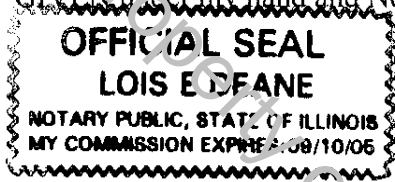
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STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I Lois Deane, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Alec Bliss, 1st Vice Pres. of LaSalle Bank National Association, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 2nd day of April, 2004.



Lois E. Deane  
Notary Public

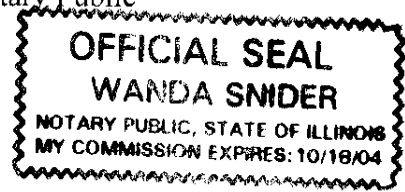
My Commission Expires: 9-10-06

STATE OF ILLINOIS     )  
  ).ss  
COUNTY OF COOK     )

I, Wanda Snider a Notary Public in and for said County, in the State aforesaid, do hereby certify that James P. Stellas, the Manager of 550 W. Wellington, L.L.C., an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24 day of March, 2004.

W. Snider  
Notary Public



My Commission Expires: 10/18/04

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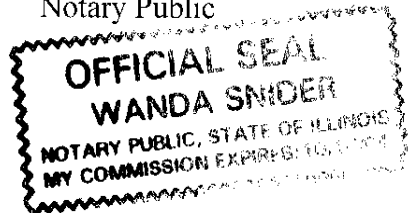
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

I Wanda Snider, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James P. Stellas is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of March, 2004.

W. Snider  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10/18/04



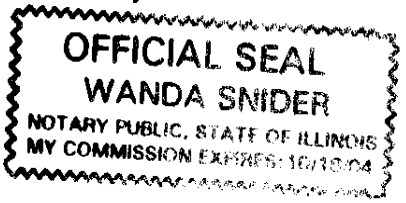
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

I Wanda Snider, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Dean Stellas is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of March, 2004.

W. Snider  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10/18/04





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## EXHIBIT A

### THE PROPERTY

LOT 52 IN CULVER'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE SOUTH 20 RODS OF THE NORTH 60 RODS AND THE SOUTH QUARTER OF THE NORTHEAST ¼ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 14-28-108-016-0000  
14-28-108-017-0000

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Address: 550-552 West Wellington, Chicago,  
Illinois

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## EXHIBIT B

### LOAN ADVANCE REQUISITION

LaSalle Bank National Association  
 135 South LaSalle Street, Suite 1225  
 Chicago, Illinois 60603  
 Attention: Construction Loan Administration

PROJECT NAME: 550-552 West Wellington (the "Project")  
 BORROWER: 550 W. Wellington, L.L.C. (the "Borrower")  
 DRAW NO: \_\_\_\_\_

Reference is hereby made to that certain Acquisition and Construction Loan Agreement dated as of July 8, 2003 (the "Loan Agreement"), executed by and between the Borrower and LaSalle Bank National Association (the "Bank"). Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Loan Agreement.

1. Pursuant to the Loan Agreement, the Borrower hereby requests a Construction Disbursement in the amount of ~~\$261,628.98~~. The Borrower acknowledges that the approval of this Construction Disbursement by the Bank is subject to all of the terms and conditions precedent for the disbursement of Loan proceeds, including, without limitation, inspection of the Project, verification of the matters set forth in this Loan Advance Requisition and the availability of Loan proceeds. The Borrower acknowledges that no funds shall be disbursed by the Bank in connection with any portion of the Project for which a payoff amount has been quoted by the Bank to a title company.

2. The Borrower agrees to provide or cause to be provided, if requested by the Bank, a Vendor Payee List (Sworn Owner's Statement), showing the name and the amount currently due each party to whom the Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Loan Advance Requisition.

3. The Borrower hereby represents, warrants and covenants with the Bank as follows:

(a) all conditions precedent to the disbursement have been satisfied, including, without limitation, performance of all of the then pending obligations of Borrower under the Loan Agreement and the other Loan Documents;

(b) all representations and warranties made by the Borrower to the Bank in the Loan Agreement and otherwise in connection with the Loan continue to be accurate;

(c) no Event of Default has occurred under the Loan Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute a Event of Default under the Loan Agreement or under the other Loan Documents;

(d) the Borrower has received no notice and has no knowledge of any litigation, proceedings (including proceedings under Title 11 of the United States Code), liens or claims of

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lien, either filed or threatened against the Borrower, any Guarantor, the Project or the Contractor, the Premises, except the liens of the Lender and those which are specifically identified in writing to the Bank;

(e) no event, circumstance or condition exists or has occurred which could delay or prevent the completion of the Project by the Completion Date;

(f) all Construction Disbursements advanced by the Bank to the Borrower for labor, materials and/or services furnished prior to this draw request have been paid to the parties entitled to such payment, and all Loan proceeds so disbursed have been used for the purposes set forth in the Loan Agreement;

(g) all work and materials furnished to date for the Project conform with the Plans and Specifications, and the Borrower has approved all work and materials for which a payment is now due and for which this Construction Disbursement is being requested;

(h) the total amount of the requested Construction Disbursement represents the actual amount payable to the Contractor and/or Subcontractors who have performed work on the Project, and all of the Construction Disbursement requested hereby will be used as payment for the work on the Project described on the attached documentation and for no other reason;

(i) all change orders or changes to the Plans and Specifications or the Schedule of Values have been submitted to and approved by Bank; and

(j) the Loan is In Balance (including, without limitation, any change orders approved by the Bank).

4. Disbursement of the Loan proceeds requested hereby may be subject to (a) the receipt by the Bank of a certificate from the issuing Title Company stating that no claims have been filed of record which adversely affects the title, and (b) approval from the Bank's inspecting Architect/Consultant.

5. The amount of change orders in dispute between the Borrower and the General Contractor (or any Subcontractor) is \$\_\_\_\_\_.

6. The Borrower hereby agrees and acknowledges that this affidavit is made for the purpose of inducing the Bank to make a Construction Disbursement to the Borrower and, the Bank is relying upon the accuracy of such matters in making such Construction Disbursement, and the Borrower certifies that the statements made herein and in any documents submitted herewith are true and correct.

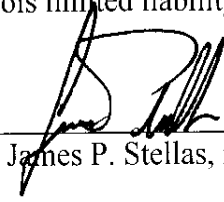
7. The Borrower requests that this draw be funded and that the funds be disbursed into the Construction Escrow No. \_\_\_\_\_ at \_\_\_\_\_ or deposited to the following account number \_\_\_\_\_ at \_\_\_\_\_.

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IN WITNESS WHEREOF, the Borrower has executed this Loan Advance Requisition as of \_\_\_\_\_, 200\_\_.

**550 W. WELLINGTON, L.L.C.,**  
an Illinois limited liability company

By: \_\_\_\_\_

  
James P. Stellas, its Manager

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