

CTA 798732134
Woods

Prepared by and after
Recording return to:

Marc Joseph
Levenfeld Pearlstein, LLC
33 West Monroe Street
21st Floor
Chicago, Illinois 60603



Address of Property

1654 West North Avenue
Chicago, Illinois

PINS: (See Exhibit A)

**ASSIGNMENT OF RENTS AND
LESSOR'S INTEREST IN LEASES**
(Guarantor)

10
0

THIS AGREEMENT is made as of the 28th day of March, 2002 by and between S & S HOMEBUILDERS, LLC, an Illinois limited liability company ("Assignor") and BUILDERS BANK ("Lender").

WITNESSETH:

Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers, sets over and assigns to Lender, the entire interest in and to any and all leases and subleases (including all extensions and renewals thereof), now or hereafter existing (the "Leases"), and any and all rents, issues, income and profits, of and from that certain real estate located in Cook County, Illinois, commonly known as 1654 West North Avenue,, Chicago, Illinois and legally described in Exhibit A attached hereto and made a part hereof, and all buildings, structures and improvements now or hereafter constructed thereon (the "Premises").

THIS ASSIGNMENT OF RENTS IS GIVEN TO SECURE:

- (a) Payment by Assignor of the indebtedness evidenced by, and observance and performance by Assignor of each and every one of the covenants, terms, conditions and agreements contained in a certain Continuing Guarantee (the "Guarantee") made by Assignor in favor of Lender relating to that certain Mortgage Note of even date herewith made by Diversey Paulina, L.L.C., an Illinois limited liability company ("Borrower") in

UNOFFICIAL COPY

favor of Lender in the principal sum of \$3,320,000.00 (the "Note"), delivered to Lender simultaneously with the execution and delivery of this Assignment; and

(b) Observance and performance by Assignor and/or Borrower (as applicable) of the covenants, terms, conditions and agreements contained in this Assignment, the Guarantee, the Construction Loan Agreement, the Note, the Mortgage (the "Mortgage") of even date herewith made by Assignor to Lender and creating a mortgage lien on the Assignor's interest in the Premises, the Security Agreement of even date herewith made by Assignor to Lender, the Continuing Guarantee of even date herewith made by Michael N. Schwartz and Scott Y. Schiller to Lender, the Environmental Indemnity Agreement of even date herewith made by Assignor among others, and such other documents executed in connection with the Note (collectively, the "Loan Documents").

AND ASSIGNOR HEREBY COVENANTS, AGREES, REPRESENTS AND WARRANTS AS FOLLOWS:

1. Representations of Assignor. Assignor represents and warrants to Lender that:

(a) This Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor has not heretofore made any other assignment of its entire or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Assignor's right to receive any of the rents, issues, income or profits assigned hereunder; and

(c) Assignor has not heretofore executed any instrument or performed any act which may or might prevent Lender from operating under any of the terms and provisions hereof or which would limit Lender in such operation.

2. Covenants of Assignor. Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Assignor shall not enter into any Lease or approve, consent or acquiesce to any sublease, written or oral, for all or any portion of the Premises without the prior written consent of Lender;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and shall not do or suffer to be done anything to impair the security thereof, or, without the express written consent of Lender, (i) release the liability of any tenant thereunder, or (ii) permit any tenants thereunder to withhold the payment of rent or to make monetary advances and offset the same against future rentals, or (iii) permit any tenant thereunder to claim a total or partial eviction, or (iv) permit any tenant thereunder to terminate or cancel any Lease;

UNOFFICIAL COPY

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all of the Leases, or any or all rents, issues, income or profits assigned hereunder without the prior written consent of Lender;

(e) Assignor shall not alter, modify or change the terms and provisions of any Lease or give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease) or approval, required or permitted by such terms and provisions, or cancel or terminate any Lease without the prior written consent of Lender;

(f) Assignor shall not accept a surrender of any Lease, or convey or transfer, or suffer or permit a conveyance or transfer of, the Premises demised under any Lease or any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or suffer to be done anything which would terminate any such guaranty as a matter of law, without the prior written consent of Lender;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease, except for the free rent given to existing tenants of the Premises;

(i) Assignor shall enforce the Leases and all rights and remedies of the lessor thereunder in case of default thereunder by any tenant;

(j) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or of any tenant or guarantor thereunder, and shall pay all costs and expenses of Lender, including attorneys' fees, in any such action or proceeding in which Lender may appear;

(k) Assignor shall give prompt notice to Lender of any notice of any default on the part of the lessor with respect to any Lease received from any tenant or guarantor thereunder; and

(l) Assignor shall enforce the observance and performance of each and every covenant, term, condition and agreement contained in each and every Lease to be observed and performed by the tenant(s) thereunder.

3. Rights Prior to Default. So long as Assignor is not in default hereunder, Assignor shall have the right to collect at the time, but not more than thirty (30) days in advance, of the date provided for the payment thereof, all rents, issues, income or profits assigned hereunder

UNOFFICIAL COPY

(other than security or similar deposits), and to retain, use and enjoy the same. Lender shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

4. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Assignment:

- (a) Failure by Assignor to pay any amount due under the Guarantee;
- (b) Breach of any material representation, warranty, covenant or agreement made by Assignor in this Assignment;
- (c) Any material misrepresentation made by Assignor in any of the Loan Documents; and
- (d) Any other event of default under the Guarantee, the Note or any of the Loan Documents, subject to any applicable cure period contained therein.

5. Rights and Remedies Upon Default. At any time upon or following the occurrence of any one or more Events of Default, Lender may, at its option and without any obligation to do so, without in any way waiving such Event or Events of Default, without notice to or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor from any obligation hereunder, and with or without bringing any action or proceeding:

- (a) Declare a default under the Guarantee, the Note and Loan Agreement and enforce all rights and remedies available to Assignor and/or Borrower (as applicable) under the Guarantee, the Note and Loan Documents secured thereby;
- (b) Enter upon and take possession of the Premises, either in person or by an agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Lender, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act or acts which Lender deems necessary or proper;
- (c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittances for all rents, issues, income or profits of or from the Premises, and pursue all remedies for enforcement of the Leases and all of the lessor's rights therein or thereunder, provided that, for such purpose, this Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Lender, without proof of default hereunder, upon receipt from Lender of written notice thereafter to pay all such rents and other amounts to Lender and to comply with any notice or demand by Lender for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Assignor will facilitate in all reasonable ways Lender's collection

UNOFFICIAL COPY

of such rents, issues, income or profits, and upon request will execute written notices to the tenants under the Leases thereafter to pay all such rents and other amounts to Lender; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Lender may deem necessary or proper, and any amount so paid by Lender shall become immediately due and payable by Assignor with interest thereon until paid at an annual rate equal to the Default Rate (as defined in the Note) and shall be secured by this Assignment.

6. Application of Proceeds. All sums collected and received by Lender out of the rents, issues, income or profits of the Premises following the occurrence of any one or more Events of Default shall be applied as follows:

(a) First, to reimbursement of Lender for and of all expenses of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income or profits thereof or therefrom, including, without limitation, salaries, fees or wages of a managing agent and such other employees as Lender may deem necessary or proper, and attorneys' fees; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for any insurance provided for in the Mortgage; and the cost of all alterations, renovations, repairs or replacements of or to the Premises which Lender may deem necessary or proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Lender for and of all sums expended by Lender pursuant to Paragraph 5(d) hereof to make any payment or do any act required herein of Assignor, together with interest thereon at the Default Rate;

(c) Third, to reimbursement of Lender for and of all other sums with respect to which Lender is indemnified pursuant to Paragraph 7 hereof, together with interest thereon at the Default Rate;

(d) Fourth, to reimbursement of Lender for and of all other sums expended or advanced by Lender pursuant to the terms and provisions of, or constituting additional indebtedness under, any of the Loan Documents, with interest thereon at the Default Rate;

(e) Fifth, to the payment of all accrued and unpaid interest on the principal sum of the Note;

(f) Sixth, to the payment of the unpaid balance of the principal sum of the Note; and

(g) Seventh, any balance remaining to Assignor, its successors and assigns.

UNOFFICIAL COPY

7. Limitation of Lender's Liability. Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Premises following the occurrence of any one or more Events of Default or from any other act or omission of Lender in managing, operating or maintaining the Premises following the occurrence of any one or more Events of Default, except for Lender's gross negligence or willful misconduct. Lender shall not be obligated to observe, perform or discharge, nor does Lender hereby undertake to observe, perform or discharge any covenants, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify Lender for, and to hold Lender harmless of or from, any and all liability, loss or damage which Lender may or might incur under any Lease or under or by reason of this Assignment and of or from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions or agreements contained in any Lease, except for Lender's gross negligence or willful misconduct. Should Lender incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions or agreements contained in any Lease upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

8. Non-Waiver. Nothing contained in this Assignment and no act done or omitted to be done by Lender pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Guarantee, the Note, the guaranties thereof or any of the Loan Documents; this Assignment is made and accepted without prejudice to any of the rights and remedies of Lender under the terms and provisions of such instruments; and Lender may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Lender may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

9. Further Assurances. Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, such general or specific assignments of such Leases as Lender may designate), and shall do or cause to be done such further acts, as Lender may request, in order to permit Lender to perfect, protect, preserve and maintain the assignment made to Lender by this Assignment.

UNOFFICIAL COPY

10. Severability. The invalidity or unenforceability of any particular provision of this Assignment shall not affect the other provisions, and this Assignment shall be construed in all respects as if such invalid or unenforceable provision were not contained herein.

11. Benefit. This Assignment is binding upon Assignor, its successors and assigns, and the rights, powers and remedies of Lender under this Assignment shall inure to the benefit of Lender and its successors and assigns.

12. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Lender at the time of such amendment, modification or supplement.

13. Notice. All notices permitted or required pursuant to this Assignment shall be in writing and shall be deemed to have been properly given: (i) upon delivery, if served in person or sent by facsimile with receipt acknowledged; (ii) on the third (3rd) business day following the day such notice is deposited in any post office station or letter-box if mailed by certified mail, return receipt requested, postage prepaid; or (iii) on the first (1st) business day following the day such notice is delivered to the carrier if sent via Federal Express or Airborne overnight delivery and addressed to the party to whom such notice is intended as set forth below:

To Lender: Euclid Bank
77 W. Wacker Drive
Suite 3100
Chicago, Illinois 60601-1439
Attn: Matthew Wilk
Fax: 312-977-1007

With a copy to: Levenfeld Pearlstein, LLC
33 W. Monroe Street
21st Floor
Chicago, Illinois 60603
Attn: Marc S. Joseph
Fax #: (312) 346-8434

To Assignor: S & S Homebuilders, LLC
999 ½ W. Wolfram Street
Chicago, Illinois 60657
Attn: Scott Y. Schiller
Fax #: (773) 665-1910

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this paragraph; provided, however, that such notice shall not be deemed given until actually received by the addressee.

14. Duration. This Assignment shall become null and void at such time as Assignor shall have satisfied all of its obligations under the Guarantee, and shall have fully paid and

UNOFFICIAL COPY

performed all of the other obligations evidenced or secured hereby and by the other Loan Documents.

15. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

[signatures on the following page]

Property of Cook County Clerk's Office

20386256

UNOFFICIAL COPY

IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment as of the day and year first above written.

S & S HOMEBUILDERS, LLC, an Illinois limited liability company

By: [Signature]
Name: SCOTT SCHILLER
Title: Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

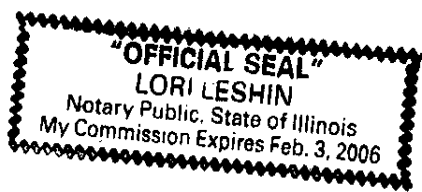
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Scott Schiller, a Manager of S & S HOMEBUILDERS, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that s/he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 15 day of March, 2002.

[Signature]
NOTARY PUBLIC

(SEAL)

My commission expires: _____



20386256

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

UNIT NUMBER 1A IN THE BUCKTOWN CORNER CONDOMINIUMS, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED TRACT OF LAND: LOTS 15, 16 AND 17 IN FITCH'S SUBDIVISION OF THE SOUTHWEST ¼ OF BLOCK 25 IN SHEFFIELD'S ADDITION TO CHICAGO IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 00342193, AND AS AMENDED, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS IN COOK COUNTY, ILLINOIS

PIN: 14-31-430-036-0000
14-31-430-037-0000
14-31-430-044-0000
14-31-430-045-0000

COMMON ADDRESS: 1654 WEST NORTH AVENUE
CHICAGO, ILLINOIS

20386256