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THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

BUILDERS BANK
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
Attn: Francis Nzeribe



Doc#: 0330419305
Eugene "Gene" Moore Fee: \$54.50
Cook County Recorder of Deeds
Date: 10/31/2003 01:38 PM Pg: 1 of 16

This space reserved for Recorder's use only

SECOND MODIFICATION OF LOAN DOCUMENTS

THIS SECOND MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 28th day of September, 2003, by and among DIVERSEY PAULINA, L.L.C., an Illinois limited liability company ("Borrower"), S & S HOMEBUILDERS, LLC, an Illinois limited liability company ("S & S"), MICHAEL N. SCHWARTZ, an individual ("Schwartz") and SCOTT Y. SCHILLER, an individual ("Schiller"; S & S, Schwartz and Schiller are sometimes hereinafter referred to, collectively, as "Guarantor") and BUILDERS BANK, an Illinois banking corporation, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Three Million Five Hundred Twenty Five Thousand and 00/100 Dollars (\$3,525,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of March 28, 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 Mortgage Note dated March 28, 2003, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Mortgage (Construction Lots) dated March 28, 2003, from Borrower to Lender recorded in the Recorder's Office of Cook County, in the State of Illinois, (the "Recorder's Office"), on April 4, 2002, as document No. 0020386258 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Construction Property");

(ii) that certain Mortgage (Additional Lots) dated March 28, 2003, from Borrower to Lender recorded in the Recorder's Office, on April 4, 2002, as document No. 0020386260 ("Additional Lots Mortgage"), which Additional Lots Mortgage encumbers the real property and all improvements thereon legally described on Exhibit B hereto ("Additional Property");

(iii) that certain Mortgage (Guarantor) dated March 28, 2003, from S & S to Lender recorded in the Recorder's Office, on April 4, 2002, as document No. 0020386255 ("Guarantor

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Mortgage"), which Guarantor Mortgage encumbers the real property and all improvements thereon legally described on Exhibit C hereto ("**Guarantor Property**");

(iv) that certain Assignment of Rents and Leases dated March 28, 2002, from Borrower to Lender and recorded in the Recorder's Office, on April 4, 2002, as Document No. 0020386259, regarding the Construction Property (the "**Assignment of Leases No. 1**");

(v) that certain Assignment of Rents and Leases dated March 28, 2002, from Borrower to Lender and recorded in the Recorder's Office, on April 4, 2002, as Document No. 0020386261, regarding the Additional Property (the "**Assignment of Leases No. 2**");

(vi) that certain Assignment of Rents and Leases dated March 28, 2002, from S & S to Lender and recorded in the Recorder's Office, on April 4, 2002, as Document No. 0020386256, regarding the Guarantor Property (the "**Assignment of Leases No. 3**");

(vii) that certain Environmental Indemnity Agreement dated March 28, 2003, from Borrower and Guarantor to Lender (the "**Indemnity Agreement**");

(viii) that certain Continuing Guaranty dated March 28, 2002, from Schwartz and Schiller to Lender ("**Personal Guaranty**");

(ix) that certain Continuing Guaranty dated March 28, 2002, from S & S to Lender ("**S & S Guaranty**") (Personal Guaranty and S & S Guaranty are sometimes hereinafter referred to, collectively, as "**Guaranty**");

(x) that certain First Modification Agreement dated March 12, 2003, from Borrower and Guarantor to Lender and recorded in the Recorder's Office, on April 3, 2003, as Document No. 0030449955 (the "**First Modification**");

and (xi) certain other loan documents (the Note, the Mortgage, the Additional Lots Mortgage, the Guarantor Mortgage, the Assignment of Leases No. 1, the Assignment of Leases No. 2, the Assignment of Leases No. 3, the Indemnity Agreement, the Personal Guaranty, The S & S Guaranty, the First Modification and 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**").

C. Borrower, Guarantor and Lender hereby acknowledge that as September 23, 2003, the outstanding principal balance of the Loan (the "**Principal Balance**") is Two Million Two Hundred Thirty Six Thousand Five Hundred Ninety and 79/100 Dollars (\$2,236,590.79).

D. Borrower wishes, and Lender is willing, to amend the Loan Documents, subject to the terms and conditions set forth below.

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. **Maturity Date.** The Maturity Date of the Note is extended to January 3, 2004. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean January 3, 2004.

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2. **Loan Extension Fee.** Concurrent with the execution of this Agreement, Borrower shall pay Lender a fee equal to approximately Six Thousand Two Hundred Eighty Eight and 00/100 Dollars (\$6,288.00) and such fee has been fully earned and shall not be refundable regardless of whether any funds are disbursed hereunder.

3. **Option to Extend the Term of the Loan.** Provided that there is no Event of Default hereunder or under any other Loan Document, Borrower shall have the right to extend the Maturity Date for an additional three (3) month period to April 3, 2004, provided Borrower complies with the following conditions:

(i) Borrower shall provide written notice to Lender of Borrower's intention to so extend the Maturity Date ("Extension Request"), along with the payment to Lender of the amount of Six Thousand Two Hundred Eighty Eight and 00/100 Dollars (\$6,288.00) ("Extension Fee") as consideration for such extension. The Extension Request and the Extension Fee shall be provided to Lender no later than thirty- (30) days prior to the Maturity Date. If both the Extension Request and the Extension Fee are not provided within the time specified herein, Borrower's right to extend the Maturity Date shall terminate;

(ii) The Borrower must consummate the sale of the six-flat lot located on the Additional Property and simultaneously make a payment of principal on the Loan in an amount equal to the greater of (a) the contract sales price of the six-flat lot less ten percent (10%) or (b) the amount of Eight Hundred Seventy Seven Thousand Five Hundred and 00/100 Dollars (\$877,500.00);

(iii) The Borrower must consummate the sale of one of the two single-family homes located on the Construction Property and simultaneously make a payment of principal on the Loan in accordance with the Mandatory Prepayment Upon Sale of Units provision set forth in the Loan Agreement;

(iv) The Borrower must re-balance the Loan by replenishing the interest reserve with an amount deemed sufficient by Lender, at its sole discretion, to pay interest on the Loan through the term of the extension of the Maturity Date.

4. **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, the Additional Lots Mortgage, the Guarantor 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, the Additional Lots Mortgage, the Guarantor Mortgage) under the Note, the Mortgage, the Additional Lots Mortgage, the Guarantor 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 Note, the Mortgage, the Additional Lots Mortgage, the Guarantor Mortgage or the other Loan Documents.

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(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.

(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.

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation 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.

6. **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.

7. **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 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

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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 "Note", the "Mortgage", the "Additional Lots Mortgage", the "Guarantor Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage, the Additional Lots Mortgage, the Guarantor 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.

[Signature pages follow]

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

BORROWER:

DIVERSEY PAULINA, L.L.C., an Illinois limited liability company

By: [Signature]
Name: Michael Schwartz
Title: Member

GUARANTORS:

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

By: [Signature]
Name: _____
Title: _____

[Signature]
MICHAEL N. SCHWARTZ, individually

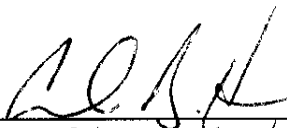
[Signature]
SCOTT Y. SCHILLER, individually

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LENDER:

BUILDERS BANK, an Illinois banking corporation

By: 
Name: Charles H. Hove
Title: President

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STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Gina Graham, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Charles B. Hall, President of Builders Bank, 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 28 day of October, 2003.

Gina Graham

Notary Public

My Commission Expires: 6/19/07



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STATE OF Illinois)
COUNTY OF Cook) .ss

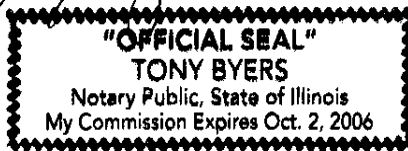
I Tony Byers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Schwartz, the Member of Diversey Paulina, L.L.C., an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared 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 1st day of October, 2003.

Tony Byers

Notary Public

My Commission Expires: 10/2/06



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STATE OF Illinois)
) .ss
COUNTY OF Cook)

I Tony Byers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Schwartz, the President of S & S Homebuilders, LLC, an Illinois limited liability company, 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 1st day of October, 2003

Tony Byers

Notary Public
"OFFICIAL SEAL"
TONY BYERS
Notary Public, State of Illinois
My Commission Expires Oct. 2, 2006

My Commission Expires: 10/2/06

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STATE OF Illinois)
) .ss
COUNTY OF Cook)

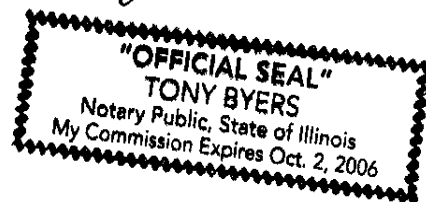
I Tony Byers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael N. Schwartz, an individual, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he 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 1st day of October, 2003.

Tony Byers

Notary Public

My Commission Expires: 10/2/03



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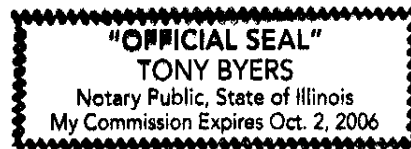
STATE OF Illinois)
) .SS
COUNTY OF Cook)

I Tony Byers, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott Y. Schiller, an individual, 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 1st day of October, 2003.

Tony Byers
Notary Public

My Commission Expires: 10/2/06



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EXHIBIT A

CONSTRUCTION PROPERTY

PARCEL 2707: THE SOUTH 24.16 FEET OF THE NORTH 449.16 FEET OF LOT 1 IN NORTHWESTERN TERRA COTTA RESUBDIVISION OF PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2709: THE SOUTH 24.17 FEET OF THE NORTH 473.33 FEET OF LOT 1 IN NORTHWESTERN TERRA COTTA RESUBDIVISION OF PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-30-404-074-0000
14-30-404-075-0000

COMMON STREET ADDRESS: 2707 AND 2709 N. PAULINA, CHICAGO, ILLINOIS.

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EXHIBIT B

ADDITIONAL PROPERTY

PARCEL 2717: THE SOUTH 24.17 FEET OF THE NORTH 545.83 FEET OF LOT 1 IN NORTHWESTERN TERRA COTTA RESUBDIVISION OF PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2719: THE SOUTH 24.17 FEET OF THE NORTH 570.00 FEET OF LOT 1 IN NORTHWESTERN TERRA COTTA RESUBDIVISION OF PART OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 14-30-404-074-0000
14-30-404-075-0000

COMMON STREET ADDRESS: 2717 AND 2719 N. PAULINA, CHICAGO, ILLINOIS.

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EXHIBIT C

GUARANTOR PROPERTY

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.

P.I.N.: 14-31-430-036-0000
14-31-430-037-0000
14-31-430-044-0000
14-31-430-045-0000

COMMON STREET ADDRESS: 1654 WEST NORTH AVENUE, CHICAGO, ILLINOIS.

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Debtor: DIVERSEY PAULINA, L.L.C.
(FM N) - ("CHI")
Recorder of Deeds, Cook County, IL

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