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ASSIGNMENT OF LEASES AND RENTS

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STATE OF COLORADO  
LAND COUNTY, S.W.

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), dated as of this 19th day of February, 1993 is given by MILLER VILLAGE PROPERTIES CO., a Colorado general partnership ("Assignor"), whose address is P.O. Box 15182 Boulder, Colorado 80302, in favor of CITIBANK, N.A., a national banking association ("Lender"), whose address is 153 East 53rd Street, New York, New York 10043.

RECITALS

A. Each of the partners of Assignor are partners of CHW Co., a Colorado general partnership ("Borrower").

B. Borrower and Lender have entered into a Loan Agreement (the "Loan Agreement"), dated as of the date hereof, providing for a loan (the "Loan") from Lender to Borrower in the amount of \$3,000,000.

C. The Loan is (i) evidenced by a Promissory Note, dated the date hereof, from Borrower payable to Lender in the face amount of \$3,000,000 (the "Note") and (ii) secured by, among other things, a Mortgage and Security Agreement, dated the date hereof, from Assignor to Lender, encumbering the Property (as defined below). Capitalized terms used herein but not defined herein shall have the meaning given them in the Loan Agreement.

D. Assignor, as landlord, has entered into and will hereafter enter into written and/or oral lease(s) or occupancy arrangements affecting all or part of the improvements on the land described on Exhibit A attached hereto (the "Land") (the Land, together with all such improvements is referred to herein as the "Property").

E. The partners of Assignor will benefit from the Loan, and Lender will only make the Loan if Assignor executes and delivers this Assignment.

AGREEMENT

NOW, THEREFORE, in order to induce the Lender to make the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees with Lender as follows:

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1. Assignment. Assignor hereby absolutely and unconditionally grants, bargains, sells, transfers, assigns and conveys to Lender, its successors and assigns:

(a) all right, title and interest that Assignor has or may hereafter have in and to all leases, tenancies or other occupancy arrangements, whether oral or written, now or hereafter entered into in connection with or affecting the Property, or any part thereof (collectively, the "Leases");

(b) the right to the use and possession of the Property and all rents (the "Rents") from or in connection with the Property (the term Rents as used herein shall be construed as including without limitation any and all of the rents, income, issues, profits, avails and any other benefits now due and that may hereafter become due under or by virtue of any Leases, or letting of or any agreement for the use or occupancy of any part of the Property that may have heretofore been made or may hereafter be made or agreed to between Assignor or any other owner of the Property and any tenant or occupant of any part of the Property, or that may be made or agreed to by Lender under the power herein granted);

(c) the right to the use and possession of any or all of the furniture, furnishings, fittings, attachments, appliances, machinery, equipment, devices and appurtenances of every kind and description now or hereafter affixed to, attached to, located in or on the Property or available for the use of the tenants under the Leases or the operation of the Property and in or to which the Assignor has any right, title or interest; and

(d) all of Assignor's right, title and interest in and to all security deposits in connection with any Leases; on the condition that Lender shall have no obligation to a lessee with respect to such security deposit unless and until Lender comes into actual possession and control of said deposit.

2. Covenants of Assignor. Assignor hereby covenants and agrees as follows:

(a) faithfully to abide by, perform and discharge each and every obligation, covenant and agreement that is to be performed by the lessor under the Leases;

(b) at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by the lessees thereunder;

(c) promptly, but in no event more than ten days after entering into any termination, modification or amendment of any of the Leases or any of the terms thereof, or granting any concessions in connection therewith, either orally or in writing, or accepting a surrender thereof, provide Lender with a fully executed copy thereof;

(d) Simultaneously with receiving or giving of the same, to send to Lender copies of all notices, demands and other communications received or given by Assignor to or from the lessees under any of the Leases or any guarantor thereof;

(e) to use due diligence to attempt to rent the Property and keep the same leased and, upon demand, to confirm in writing the transfer and assignment to Lender of any and all subsequent leases upon all or any part of the Property, upon the terms and conditions herein contained, and to make, execute and deliver to Lender upon demand any and all instruments that may be necessary or desirable to evidence such assignment, but the terms and provisions of this Assignment shall apply to any such subsequent leases upon the Property, whether or not such confirmation is given;

(f) at Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any of the Leases hereby assigned, or the obligations, duties or liabilities of the lessor or lessee thereunder or any guarantor thereof, and to pay all reasonable costs and expenses of Lender, including, without limitation, legal fees and disbursements in a reasonable sum, in any such action or proceeding in which Lender may appear;

(g) not to request, consent to, agree to or accept subordination of the Leases to any mortgage, deed of trust or other encumbrance, or any other lease, now or hereafter affecting all or any part of the Property, other than (i) the Mortgage and (ii) that certain Mortgage and Security Agreement, dated November 19, 1991, from Assignor to Lender (the "First Mortgage");

(h) not to accept any payment of rent under any of the Leases for any part of the Property for any period in advance of the period for which such rent is due and payable;

(i) not to make or execute any other assignment of leases, rents, issues, income or profits from the Property or any part thereof during the term of this Assignment;

(j) promptly, but in no event more than ten days after entering into any Lease for all or any portion of the Property, provide Lender with a copy of such Lease; and

(k) not to enter into any Lease for all or any portion of the Property other than on a standard lease form approved by Lender (the "Standard Lease Form") and not to make, agree to or permit any material modifications with respect to the following provisions in the Standard Lease Form or in any existing lease for any portion of the Property: (i) prohibitions on and effect of liens threatened or filed against or otherwise affecting the Property; (ii) notices required to be provided to landlord and remedies for landlord's default; (iii) subordination, attornment and non-disturbance; (iv) eminent domain and loss by casualty; (v) hazardous materials indemnification; (vi) assignment and subletting; (vii) inurement and attornment to Lender in the event that Lender obtains title to the Property; (viii) waiver of right of setoff by tenant and absolute obligation of tenant to pay rent; (ix) remedies for tenant's default; (x) limitations on liability of landlord; and (xi) requirement that tenant provide estoppel certificates upon request of Lender.

3. Representations and Warranties of Assignor.

Assignor hereby represents and warrants to Lender that:

(a) Except for the assignment of leases granted to Lender in connection with the First Mortgage, Assignor has not executed any prior assignment of leases with respect to the Property or any of the Leases; Assignor is entitled to receive rents from the Property and to enjoy all other rights mentioned herein; and Assignor has free right to transfer to Lender such rights, interests, powers and authorities as are herein granted or conferred;

(b) Assignor has not performed any act or executed any instrument (other than the First Mortgage) that might prevent Lender from exercising or obtaining the benefit of any of the terms and conditions hereof;

(c) to the best of Assignor's knowledge, neither Assignor nor Assignor's predecessor has accepted rent under any of the Leases for any part of the Property for any period other than the current period for which rent has already become due and payable;

(d) to the best of Assignor's knowledge, there is no default now existing under any of the Leases;

(e) Assignor has provided Lender true and correct copies of each of the Leases and all modifications and amendments thereto;

(f) to the best of Assignor's knowledge, no lessee under the Leases has a defense, setoff or counterclaim against Assignor and as of the date hereof, there are no charges, liens, setoffs, rebates, concessions, abatements, credits or deductions under the Leases or otherwise, against rents or other charges due or to become due thereunder, or claims by the lessees thereunder against the enforcement of any of the agreements, terms, covenants or conditions of the Leases or against Assignor in respect of the Leases; and

(g) to the best of Assignor's knowledge, all rent due to date under the Leases has been collected and no concession has been granted to any lessee in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due.

4. Default and Remedies. Assignor further agrees with Lender as follows:

(a) Upon or at any time after the occurrence of any Event of Default under the Loan Documents, Lender shall at once become entitled to the possession, use and enjoyment of the Property and the rents, issues and profits thereof, from the date of such occurrence and continuing during the pendency of any foreclosure proceedings, and the period of redemption, if any. Lender shall be entitled to a receiver for the Property, and of the rents, issues and profits thereof, after any such default, including, without limitation, the time covered by any foreclosure proceedings and the period of redemption, if any. Lender shall be entitled to such receiver as a matter of right, without regard to the solvency or insolvency of Assignor, or of the then owner of the Property, and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application, and without notice, notice being hereby expressly waived, and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver to the payment of the Obligations (as defined in the Loan Agreement) according to the orders and directions of the court, or in the absence of such orders or directions, in the manner set forth in (d) below.

(b) Upon or at any time after the occurrence of any Event of Default, Lender may, at its option, without notice, and whether or not the indebtedness evidenced by the Note and secured hereby shall have been declared due and payable, either in person or by agent, with or without bringing any action or

proceeding, or by a receiver to be appointed by a court, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) make, cancel, enforce or modify Leases; (iii) obtain and evict tenants; (iv) fix or modify rents; (v) do any acts which Lender deems reasonably proper to protect the security hereof; and (vi) either with or without taking possession of the Property, in its own name sue for or otherwise take any and all actions Lender deems necessary or advisable to collect and receive such rents, issues and profits, including, without limitation, those past due and unpaid. In connection with the foregoing, Lender shall be entitled and empowered to employ attorneys and their staff, and management, rental or other agents in and about the Property and to effect the matters which the Lender is empowered to do, and if Lender shall itself effect such matters, Lender shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the fees, charges, costs and expenses of Lender or such persons shall be so much additional indebtedness evidenced by the Note secured hereby. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Note or invalidate any act done pursuant to said notice.

(c) Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender hereunder without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of any default under the Note, or under or by reason of this Assignment, or the application to be made by Lender of any amounts to be paid to Lender. The sole signature of Lender shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Lender for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Property. Checks for all or any part of the rentals collected under this Assignment shall be drawn to the exclusive order of Lender.

(d) Any monies received by Lender or receiver hereunder may be applied when received from time to time in payment of (i) any fees or expenses due Lender hereunder or under any of the Loan Documents, (ii) costs of collections and all costs of renting, maintaining, altering, renovating, operating, repairing or managing the Property, (iii) any taxes, assessments or other liens affecting the Property regardless of the delinquency or priority, and (iv) all amounts due under the

Note and Loan Documents, such application to be in such order as Lender may determine. The acceptance of this Assignment by Lender or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any tenancy or lease nor an assumption of any liability under any such tenancy or lease.

(e) Assignor hereby grants Lender a power of attorney and appoints Lender as Assignor's attorney-in-fact for the purpose of Lender carrying out the rights and remedies of Lender hereunder. The appointment of the Lender as Assignor's attorney-in-fact hereunder is coupled with an interest and is irrevocable, and Assignor expressly grants to Lender, among other things, the authority to sign the name of Assignor and to bind Assignor on all papers and documents relating to the operation, leasing and maintenance of the Property.

**This Document is the property of the Lake County Recorder**

5. Assignor's Right to Retain Rents. It is the parties' intention that this Assignment constitutes an absolute assignment. However, it is understood that so long as there shall exist no Event of Default, Assignor shall have the right to collect, but not in excess of one month prior to accrual under such Lease, all rents, issues and profits from the Property, but only as trustee for the benefit of Lender; and Assignor shall apply the amounts so collected first to the payment of interest and principal and all other sums due and payable under the Note, this Assignment and the other Loan Documents, and thereafter, so long as no Event of Default has occurred, the balance of such rents, issues and profits shall be retained by Assignor for its own account. Nothing contained in this paragraph 5 or elsewhere in this Assignment or any other Loan Document shall be construed to make Lender a "mortgagee-in-possession."

6. No Obligation of Lender/Indemnity by Assignor. Lender shall not be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under any of the Leases assigned hereunder or under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify Lender against and hold it harmless from any and all liability, loss, damage, cost or expense that Lender may or might incur under any of the Leases or under or by reason of this Assignment, and against and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Lender incur any such liability, loss, damage, cost or expense under any of the Leases or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount

thereof, including, without limitation, costs, expenses and reasonable legal fees and disbursements, together with interest at the Default Rate (as defined in the Note), shall be secured by this Assignment and the other Loan Documents, and Assignor shall reimburse Lender immediately upon demand.

7. Waiver/Further Cooperation. Assignor further agrees as follows:

(a) Assignor will execute upon request of Lender any and all instruments requested by Lender to carry out the terms and conditions of this Assignment or the assignments intended hereby;

(b) Lender's omission or failure to give any notice of or under this Assignment to Assignor or any lessee, tenant or other occupant of the Property or any part thereof, or to collect any such rents, issues, income or profits therefrom, or any part thereof, shall not constitute or be deemed a waiver of any of Lender's rights hereunder or under any other Loan Document; and

(c) on request of the Lender, Assignor will execute and deliver to the Lender or otherwise, such instruments or documents (including, without limitation, estoppel certificates) confirming the status of all or part of the Leases, including, without limitation, the assignment thereof to Lender.

8. Release. The recording of a full release of the Mortgage shall automatically constitute a full release of this Assignment.

9. Miscellaneous.

(a) All notices, demands or documents that are required or permitted to be given or served hereunder shall be given or served as provided in the Mortgage.

(b) This Assignment and all of the terms, covenants and conditions hereof shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

(c) Notwithstanding any future amendment to or modification of any Loan Document other than this Assignment,



this Assignment and the rights and benefits hereby assigned and granted shall continue in full force and effect in accordance with the terms of this Assignment.

(d) This Assignment may not be changed, amended, modified, abridged, cancelled or discharged other than by a written instrument signed by Lender and Assignor.

(e) Time is of the essence of this Assignment.

EXECUTED as of the day and year first set forth above.

ASSIGNOR:

**Document is NOT OFFICIAL!**

MILLER VILLAGE PROPERTIES, CO., a Colorado general partnership

This Document is the property of

By:

the Lake County Records!

E. CORSON  
General Partner

**STOP**

STATE OF

Colorado

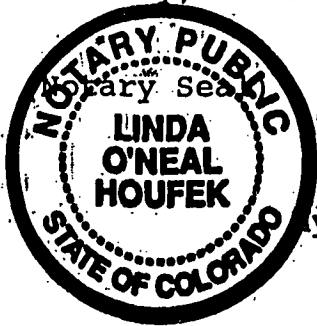
ss.

COUNTY OF

Denver

Before me, a Notary Public in and for said County and State, personally appeared Thomas E. Corson, a general partner of Miller Village Properties Co., who, having been duly sworn, acknowledged the execution of the foregoing for and on behalf of said partnership.

Witness my hand and Notarial Seal this 19 day of February, 1993.



Linda O'Neal Houfek  
Notary Public  
Residing in Arvada, Colorado

My commission expires: My Commission Expires Oct. 31, 1993

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND:

The Eastern 101.2 feet of Lots 30 to 35 inclusive, and all of Lots 36 to 59 inclusive, Block 23, in Lake Shore Addition to East Chicago in Gary, Lake County, Indiana, as is recorded in Deed Record Book 1346, page 128, and Lots 1 to 6 inclusive, Block 24, in Lake Shore Addition to East Chicago in Gary, Lake County, Indiana, as is recorded in Deed Book 873, page 52, and Lots 7 to 60 inclusive, Block 24, in Lake Shore Addition to East Chicago in Gary, Lake County, Indiana, as is recorded in Deed Book 648, page 441, in the Recorder's Office of Lake County, Indiana; together with vacated Wells Street lying East of Lots 30 and 59 both inclusive, Block 23 and West of Lots 1 to 30 both inclusive, Block 24, and also together with vacated Alley No. 95 East lying East of Lots 1 to 30 both inclusive and West of Lots 31 to 60 both inclusive, Block 24, in said Lake Shore Addition to East Chicago in Gary.

