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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2017 JUL 18 AM 10:32

MICHAEL B. BROWN  
RECORDER

Tax Parcel No.: 45-11-09-152-001.000-036

Common Address: 1133 Indianapolis Boulevard  
Scherverville, Indiana 46375

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ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

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

This Assignment of Rents and Lessor's Interest in Leases (this "Assignment") is executed and delivered as of July 13, 2017, by JJM Holdings, LLC, an Indiana limited liability company ("Borrower"), to Wheaton Bank & Trust Company, an Illinois state chartered bank ("Lender").

**I. BACKGROUND**

A. Contemporaneously herewith, Lender is providing certain loans, extensions of credit and other financial accommodations (the "Financial Accommodations") to Borrower which Financial Accommodations are evidenced and/or secured by, among other things, (i) that certain Mortgage and Security Agreement of even date herewith executed and delivered by Borrower to Lender (as amended, renewed or restated from time to time, the "Mortgage"), (ii) that certain Loan Agreement of even date herewith by and between Borrower and Lender (as amended, renewed, restated or replaced from time to time, collectively the "Loan Agreement"); (iii) that certain Promissory Note of even date herewith executed and delivered by Borrower to Lender in the principal amount of Three Hundred Fifty-Two Thousand and no/100 Dollars (\$352,000.00) (as amended, renewed, restated or replaced from time to time, collectively the "Promissory Note"); (iv) that certain Environmental Indemnity Agreement of even date herewith by and between Borrower, McCann Industries, Inc., an Illinois corporation, and Lender (as amended, renewed, restated or replaced from time to time, collectively the "Environmental Indemnity Agreement"), and (v) the other documents, agreements and instruments executed and delivered in connection with the foregoing. Capitalized terms used but not otherwise defined herein are used herein as defined in the Mortgage.

B. Pursuant to the Loan Agreement, Borrower is required to execute and deliver this Assignment to Lender.

C. In consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants unto and agrees with Lender as set forth in this Assignment.

**Heartland Title Services, Inc.** \$25,000  
101 E. 90th Drive Suite C  
Merrillville, IN 46410  
HT  
JB  
17-1332

**II. ASSIGNMENT**

A. To secure the full and timely payment and performance by Borrower of the Liabilities and the Covenants, including, without limitation, the Liabilities evidenced by or referenced in the Mortgage, the Loan Agreement, the Revolving Note and Term Note A, Borrower hereby grants, conveys, transfers and assigns to Lender:

1. all leases demising and leasing all or any part of the premises legally described on Exhibit "A" (the "Premises") attached hereto, any contract for the sale of all or any part of the Premises, or any other agreement for the use, sale or occupancy of all or any part of the Premises, whether heretofore, now or hereafter executed by Borrower and any renewals, extensions, modifications, amendments or substitutions thereto (collectively the "Leases"); and

2. all rents, issues, deposits, income and profits now due or which may hereafter become due under or by virtue of the Leases, or any letting or demise of, or any agreement for the use, sale or occupancy of the Premises or any part thereof and all the avails thereof, now existing or hereafter made or agreed to or which may be made or agreed to under the powers herein granted, together with all rights against guarantors, if any, of the obligations of the lessees under the Leases (collectively the "Income").

B. Borrower hereby irrevocably appoints Lender as its true and lawful attorney-in-fact to:

1. rent, lease, let or sell all or any part of the Premises to any party or parties at such price and upon such terms as Lender may determine; and

2. collect, sue for, settle and compromise all of the rents, issues, deposits, contracts for sale, income and profits now due or which may at any time hereafter become due, with the same rights and powers and subject to the same immunities, exoneration of liability, rights of recourse and indemnity as Lender would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

**III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Borrower represents, warrants and covenants unto Lender as follows:

A. The Leases and the Income are freely assignable by Borrower to Lender, and Borrower has full power and authority to make the assignment provided for herein;

B. All Income due under the Leases has been fully and timely paid, and, except for those security deposits listed on Exhibit "B", Borrower is currently not in possession of any pre-paid Income;

C. None of the Income for any part of the Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Borrower;

D. Borrower is the sole owner of the entire interest in any currently existing Leases, and the Leases are valid and enforceable in accordance with their terms and have not been altered, modified or amended in any manner whatsoever;

E. There are no claims or causes of action in connection with the Leases which Borrower may have or which any party may have against Borrower;

F. Borrower has not, and will not at any time hereafter, assign or pledge to any person or entity, other than Lender, any or all of the Leases or the Income;

G. The only Leases in effect with respect to the Premises are listed on Exhibit "C" attached hereto, full, correct and complete copies of which, including all amendments, have been delivered to Lender;

H. No defaults by Borrower or any lessee exist under the Leases and there exists no fact which, with the giving of notice or lapse of time or both, would constitute a default under the Leases. Borrower will promptly provide Lender with copies of any notices of default sent or received by Borrower in connection with the Leases; and

I. Borrower shall:

1. observe and perform all the obligations imposed upon Borrower, as lessor, under the Leases and not do or permit to be done anything to impair the security thereof;
2. not consent to the assignment or subletting of the Premises without the prior written consent of Lender;
3. not collect any of the Income more than 30 days in advance of the time when the same shall become due;
4. not alter, modify or change the terms of the Leases or any guarantees thereof, cancel or terminate the Leases or any guarantees thereof or accept a surrender thereof without the prior written consent of Lender; and
5. deliver to Lender upon Lender's request, all original Leases, including, but not limited to, all original Leases executed after the date hereof.

#### IV. WAIVERS

A. Borrower hereby waives any right of set-off against any person in possession of all or any part of the Premises. Nothing herein contained shall be construed as constituting Lender a "trustee in possession" or a "mortgagee in possession" in the absence of the taking of actual physical possession of the Premises by Lender pursuant to the provisions hereinafter contained.

B. Borrower hereby waives any claim, cause of action or right of setoff against Lender, its officers, directors, employees and agents for any loss sustained by Borrower resulting from Lender's failure to let the Premises after an "Event of Default" (hereinafter defined) or from any other act or omission of Lender in managing the Premises, nor shall Lender be obligated to perform or discharge, nor does Lender hereby undertake to perform or discharge, any obligation, duty, or liability under the Leases created or incurred by Borrower prior to the time Lender takes possession of the Premises (the "Pre-existing Obligations"). Borrower shall, and does hereby agree to indemnify Lender for, and hold Lender harmless from, any and all

liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, including, but not limited to, any Pre-existing Obligations. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon Lender, nor for the carrying out of any of the terms and conditions of the Leases prior to the time Lender may take possession, nor shall it operate to make Lender responsible or liable for any waste committed on the Premises by any lessee or any other persons or entities or for any dangerous or defective conditions of the Premises.

C. If Lender incurs any liability for any Pre-existing Obligations under the Leases or under or by reason of this Assignment or in the good faith defense of any claims or demands relative to any Pre-existing Obligations, the amount thereof, including, but not limited to, costs, expenses, and attorneys' fees, shall be secured hereby and by the Loan Documents, and shall be due and payable from Borrower to Lender on demand with interest thereon at the Default Rate.

**V. FUTURE LEASES**

A. Borrower shall cause each lessee, whether now existing or hereafter arising, to execute and deliver to Lender a Tenant Estoppel Certificate and Subordination Agreement, in form and substance acceptable to Lender.

B. Borrower shall assign and transfer to Lender all future Leases upon all or any part of the Premises and shall execute and deliver, immediately upon the request of Lender, all such further assurances and assignments in the Premises as Lender shall from time to time require.

**VI. EVENT OF DEFAULT**

An "Event of Default" means the occurrence of (a) a breach, default or event of default under this Assignment, or (b) an "Event of Default" as defined in the Mortgage.

**VII. ENFORCEMENT OF THIS ASSIGNMENT**

A. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that Lender shall not exercise any of the rights and powers conferred upon it under Section II hereunder until the occurrence of an Event of Default.

B. Lender, without in anyway waiving an Event of Default, and without the institution of legal proceedings of any kind whatsoever, may, at its option, either in person, by agent or by a receiver appointed by a court, take possession of the Premises and have, hold, manage, lease, sell and operate the same on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Premises in its own name, sue for or otherwise collect and receive the Income and enforce the Leases, including, but not limited to, Income past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof and to apply such Income as Lender may determine in its sole discretion, including, but not limited to, the payment of:

1. all expenses of managing the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens and premiums for all insurance which Lender may deem necessary or desirable, and the costs of all alterations, renovations, repairs, or replacements, and all expenses incident to taking and retaining possession of the Premises;

2. the principal sum, interest and any other indebtedness owed to Lender by Borrower, together with all costs and attorneys' fees in such order of priority as to any of the items mentioned in this paragraph as Lender, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding;

3. taxes and special assessments now due or which may hereafter become due on the Premises; and

4. all repairs, decorating, renewals, replacements, alterations, additions, betterments or improvements of the Premises, and of placing the Premises in such condition as will, in the judgment of Lender, make it readily rentable or saleable.

C. The exercise by Lender of its rights provided herein and the collection of the Income and the application thereof as herein provided shall not be considered a waiver of any breach, default or Event of Default by Borrower under the Loan Documents.

D. Borrower agrees that Lender shall have full power to use such measures, legal or equitable, in its sole discretion or in the discretion of its successors, divisions, parents, affiliates, parents or assigns, as may be deemed proper or necessary to enforce the payment of the Income in connection with the Premises, including, but not limited to, actions for the recovery of rent, actions in forcible detainer and actions in distress of rent. This Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. Borrower hereby grants to Lender full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Borrower, and with full power, to the extent permitted by law, to cancel or terminate any of the Leases for any cause or on any ground, to elect to disaffirm any of the hereafter executed Leases or the Leases subordinated to the lien of the Mortgage, to make all the necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises, to insure and reinsure the same for all risks incidental to Lender's possession, operation and management thereof, and to receive all Income.

E. Borrower agrees that Lender may take or release other security for the payment of the Liabilities, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such Liabilities without prejudice to any of its rights under this Assignment.

F. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Borrower. Borrower hereby irrevocably appoints Lender to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Borrower or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation,

modification or amendment of any of the Leases and any amounts received by Borrower as Income, shall be held in trust by Borrower and immediately remitted to Lender. Any person acquiring or receiving all or any part of such funds shall acquire or receive the same in trust for Lender as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

#### **VIII. DIRECTION TO LESSEES**

Borrower hereby authorizes and directs any and all lessees or occupants of the Premises to pay over to Lender all Income after the occurrence of an Event of Default and to continue to do so until otherwise notified by Lender.

#### **IX. OTHER**

A. This Assignment shall be binding upon Borrower and its successors, and permitted assigns, if any, and any party or parties holding title to the Premises by, through, or under Borrower. All of the rights, powers, privileges, and immunities herein granted and assigned to Lender shall also inure to its successors, divisions, nominees, parents, subsidiaries, affiliates and assigns.

B. It is expressly understood that no judgment which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all Liabilities and Covenants of Borrower now or hereafter owing to Lender. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale.

C. The relationship between Borrower and Lender is solely that of secured creditor and debtor, and nothing contained herein or in any of the Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than secured creditor and debtor.

D. If any provision of this Assignment is held to be invalid or unenforceable by a Court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Assignment, the balance of which shall remain in and have its intended full force and effect. However, if such invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

E. The Exhibits referred to herein are attached hereto, made a part hereof and incorporated herein by this reference thereto.

F. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original.

G. This Assignment shall be governed as to validity, interpretation, construction, effect, and in all other respects by and in accordance with the laws of the State of Indiana.

H. BORROWER AND LENDER EACH HEREBY ABSOLUTELY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR RELATED TO


THIS ASSIGNMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED AND DELIVERED BY BORROWER TO LENDER.



IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date first written above.

**JJM HOLDINGS, LLC,**  
an Indiana limited liability company

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

Name:  James J. McCann

Title: Managing Member



*[Signature page for Assignment of Rents]*



STATE OF IL )  
 ) S.S.  
COUNTY OF DeWitt )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that James J. McCann, personally known to me to be the Managing Member of JJM Holdings, LLC, an Indiana limited liability company, whose name is subscribed to the foregoing Assignment of Rents and Lessor's Interest in Leases, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 12 day of July, 2017.

*Lindsey Tanis*  
\_\_\_\_\_  
Notary Public

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**STOP**

OFFICIAL SEAL  
LINDSEY TANIS  
NOTARY PUBLIC - STATE OF ILLINOIS  
MY COMMISSION EXPIRES: 01/19/20

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING SHOULD BE  
RETURNED TO:

Victor A. Des Laurier, Esq.  
Thompson Coburn LLP  
55 East Monroe Street  
37<sup>th</sup> Floor  
Chicago, Illinois 60603



As required under Indiana Code 36-2-11-15:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Victor A. Des Laurier, Esq.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:** THE NORTH 160 FEET OF THE EAST 600 FEET OF THE WEST 655 FEET OF THE SOUTH SIX TWENTY-FIRSTS 6/21st OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 9; THENCE NORTH, ALONG THE WEST LINE THEREOF, 378.0 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SOUTH 6/21 PART; THENCE EAST, ALONG SAID NORTH LINE 55 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 41 AND THE PLACE OF BEGINNING; THENCE CONTINUING EAST, ALONG SAID NORTH LINE OF THE SOUTH 6/21 PART, A DISTANCE OF 600 FEET; THENCE SOUTH, PARALLEL TO THE EAST RIGHT OF WAY LINE OF U.S. HIGHWAY NO. 41, 160.0 FEET; THENCE WEST, PARALLEL WITH THE NORTH LINE OF SAID SOUTH 6/21 PART, A DISTANCE OF 600.00 FEET TO THE AFORESAID EAST RIGHT OF WAY LINE, THENCE NORTH, ALONG SAID EAST RIGHT OF WAY LINE, 160.0 FEET TO THE PLACE OF BEGINNING, ALL IN THE TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA.

**PARCEL 2:** PART OF THE SOUTH 6/21st PART OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 35 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT OF INTERSECTION OF THE NORTH LINE OF SAID SOUTH 6/21st PART WITH THE EAST 55 FOOT RIGHT OF WAY LINE OF U.S. HIGHWAY #41, WHICH POINT LIES 41.93 FEET EAST OF THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER; THENCE EAST, ALONG THE NORTH LINE OF CONTINUING EAST, ALONG SAID NORTH LINE OF THE SOUTH 6/21st PART A DISTANCE OF 42.0 FEET; THENCE SOUTH PARALLEL WITH SAID EAST 55 FOOT RIGHT OF WAY LINE OF U.S. #41, 160.0 FEET; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID SOUTH 6/21st PART, 42.0 FEET; THENCE NORTH, 160.00 FEET TO THE POINT OF BEGINNING, ALL IN THE TOWN OF SCHERERVILLE, LAKE COUNTY, INDIANA.

TAX PARCEL NUMBER: 45-11-09-152-001.000-036

COMMON ADDRESS: 1133 Indianapolis Boulevard  
Scherverville, Indiana 46375

**EXHIBIT "B"**  
**SECURITY DEPOSITS**

None.



**EXHIBIT "C"**  
**LEASES**

That certain lease agreement with McCann Industries, Inc., as amended or restated.

6587394.1

