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PREPARED BY and WHEN:
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Merrill Lynch Business Financial
Services Inc.
222 N. LaSalle Street
17th Floor
Chicago, Illinois 60601

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Cook County Recorder 79.00



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ASSIGNMENT OF RENTS AND LEASES

This **ASSIGNMENT OF RENTS AND LEASES** ("Assignment") is made as of August 11, 2000, by **B&J REAL ESTATE, L.L.C.**, an Illinois limited liability company ("**Customer**") whose address is 2125 Gardner Road, Broadview, IL 60153, in favor of Merrill Lynch Business Financial Services Inc. a Delaware corporation ("**MLBFS**"), whose address is 222 N. LaSalle Street, Chicago, Illinois 60601.

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1. **Definitions.** In addition to terms defined elsewhere in this Assignment, when used herein the following terms shall have the following meanings:

(a) "**Business Day**" shall mean any day other than a Saturday, Sunday, federal holiday or other day on which the New York Stock Exchange is regularly closed.

(b) "**Lease**" shall mean individually, and "**Leases**" shall mean collectively, any and all agreements, entered into in writing or verbally, by the Customer or any person or entity and any other legal person (individually, a "**Lessee**" and collectively, the "**Lessees**") for the use or occupancy of the Premises or any portion thereof; whether now existing or hereafter existing, including but not limited to all leases and subleases; together with any and all future amendments thereto and renewals and extensions of any of the foregoing.

(c) "**Loan Agreement**" shall mean that certain **WCMA REDUCING REVOLVER LOAN AGREEMENT NO. 661-07G97** between MLBFS and Customer, together with all exhibits, riders and supplements thereto, and all present and future amendments thereto and renewals and extensions thereof.

(d) "**Obligations**" shall mean all obligations, liabilities and indebtedness of every kind and nature now or hereafter owing, arising, due or payable from Customer to MLBFS, howsoever created, arising, or evidenced, whether direct or indirect, absolute or contingent, or due or to become due, including, without limitation, interest accruing after the filing of any petition in bankruptcy, and all present and future obligations, liabilities and

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indebtedness of Customer to MLBFS under the Loan Agreement, and the agreements, instruments and documents executed pursuant thereto, without this Assignment.

(e) "Premises" shall mean the real property and improvements thereon commonly known as 2101-2125 Gardner Road, Broadview, IL, and more fully described on Exhibit A attached hereto and hereby made a part hereof.

(f) "Rents" shall mean any and all rents, issues, deposits, income and profits, of and from the Premises, including, without limitation of the foregoing, all amounts due and payable to Customer under the Leases, whether now due and owing or due and owing in the future, including, but not limited to, rent, additional rent, percentage rent, taxes, insurance and reimbursable costs and expenses, whether due in one payment or amortized over a period of time.

2. **Collateral.** As an additional inducement to MLBFS to enter into or modify the Loan Agreement and/or advance moneys or extend or continue to extend credit to Customer thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure payment and performance of the Obligations, all other indebtedness owed by Customer to MLBFS, Customer hereby irrevocably, absolutely and unconditionally, bargains, pledges, grants, sells, assigns, transfers, sets over and conveys and assigns to MLBFS all of Customer's right, title and interest in, to and under (a) the Leases, (b) the Rents, and (c) does hereby further sell, assign, transfer and set over unto MLBFS all of the rents, income, security deposits, deposits, guarantees and other security held by Customer in connection with the Leases, (d) issues and profits of the Premises, all guaranties, amendments, extensions, and receivables of the Leases which may now or hereafter be or become due and owing under the Leases or on account of the use of the subject property, all credits, rights, options, claims and causes of action in connection with the Leases and Rents; (e) all proceeds from the sale or other disposition of the Leases; (f) the right to receive and apply the Rents to the payment of the Obligation; (g) any award or other payment which Customer may hereafter become entitled to receive with the respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any present or future tenant or lessee under any Lease for any portion of the Premises (individually, a "Tenant" and collectively, the "Tenants"); (h) any and all payments made by or on behalf of any Tenant in lieu of Rent and (i) all rights to insurance proceeds, condemnation awards and similar payments under Leases together with all rights, powers, privileges, options and other benefits of Customer appurtenant thereto and all proceeds thereof; but, except as expressly set forth herein, none of Customer's obligations thereunder (the "Collateral").

3. **Rights and Obligations of Customer.** This instrument is an absolute, unconditional and present Assignment of the Rents and the Leases and grant of the powers of MLBFS set forth herein, and not as assignment for security. As long as there is no Event of Default, Customer is hereby granted a revocable license by MLBFS to collect the Rents and to take all actions with the respect to all Leases, subject to the terms of the Loan Documents (the "License"). Upon the occurrence of an Event of Default, the License shall

be revoked with written notice to Customer. MLBFS may thereafter, without taking possession of the Premises, collect the Rents. From and after such revocation of the License, Customer for the sole and exclusive benefit of MLBFS; and Customer shall, within one (1) business day after receipt of any Rents, pay the same to MLBFS to be applied as hereinafter set forth. The existence or exercise of the License to collect Rent shall not operate to subordinate this Assignment to any subsequent assignment. This Assignment shall be fully operative without further action on the part of any Person. Customer shall at its sole expense promptly enforce all of Lessee's covenants under the Leases and timely perform all of Customer's obligations thereunder. Except upon the prior written consent of MLBFS, Customer shall not: (a) cancel or terminate any Lease; or (b) materially amend, modify, extend or renew (except upon substantially the same terms as currently in effect, but with any rental increase) any Lease; or (c) collect or accept payment of any rentals due or reserved to be due under any Lease more than 30 days in advance of the scheduled due date.

In no event will the assignment of Rents pursuant hereto reduce the indebtedness evidenced by the note contained in the Loan Agreement or any of the other Obligations, except to the extent, if any, that Rents are actually received by MLBFS and applied upon or after receipt to such indebtedness or other Obligations in accordance with the foregoing; and the foregoing superseded any provision to the contrary which may be contained elsewhere in this Assignment, even though it may alter the characterization of this Assignment as an "absolute" assignment.

Upon revocation of the License, MLBFS shall have the right and authority, without any notice to or demand on Customer and without releasing Customer from any obligation hereof, to: (a) manage and operate the Premises, with full power to employ agents to manage the Premises; (b) enter into Leases, service contracts and other agreements; obtain insurance; provide utility service; pay all taxes, brokerage commissions and other expenses in connection with the Premises, including the Obligations; make repairs and improvements to the Premises and do all other acts relating to the management of the Premises; (c) demand, collect, receive and sue for the Rents, including those past due and unpaid (d) dispose by the usual summary proceedings any Tenant in default; (e) at its option, and to the extent not prohibited by law, require Customer to (i) pay monthly in advance to MLBFS, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Premises as may be in the possession of Customer, and (ii) vacate and surrender possession of the Premises to MLBFS or to such receiver, or if Customer is in default hereof, evict Customer by summary proceedings or otherwise; and (f) irrevocably be Customer's attorney-in-fact, coupled with an interest by virtue of this Assignment and appear in any proceeding and collect any award or payment to Customer, in connection with the Premises so long as any sums are outstanding under the Loan Agreement.

MLBFS may apply the Rents received by MLBFS, after deducting the costs of collection therefrom, including, without limitation, reasonable attorneys' fees and management fees, in such order or priority as MLBFS may determine in its sole discretion, to (a) amounts expended for repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments,

insurance premiums and such other expenses as MLBFS incurs in connection with the operation and management of the Premises and (b) the Obligations.

Any sum advanced by MLBFS for any purpose pursuant to the terms hereof and the Mortgage, together with interest thereon at the Default Rate from the date advanced by MLBFS until repaid by Customer on written demand and shall constitute part of the Obligations. The execution of this Assignment constitutes and evidences the irrevocable consent of Customer to the entry upon and taking possession of the Premises and the Equipment by MLBFS. The exercise by MLBFS of the rights granted hereunder and the collection and application of the Rents as provided herein shall not (a) be considered a waiver by MLBFS of any default under the Loan Documents, (b) prevent foreclosure of any liens on the Premises or (c) make MLBFS liable under any of the Leases. All of MLBFS's rights and privileges under the Loan Documents are expressly reserved as though this Assignment had not been entered into.

4. Warranties. Customer covenants, represents and warrants to MLBFS as follows:

- a) Customer has the full right, power and authority to make, execute, deliver and perform its obligations under this Assignment;
- b) except as may have been given or obtained, no notice to or consent or approval of any governmental body or authority or other third party whatsoever (including, without limitation, Lessee or any other creditor of Customer) is required in connection with the execution, delivery or performance by Customer of this Assignment;
- c) Customer has good and marketable title to the Collateral, and none of the Collateral is, or will at any time hereafter during the term hereof be, subject to any lien, encumbrance or security interest other than the liens and security interests of MLBFS.
- d) Except as disclosed in writing by Customer to MLBFS prior to the execution and delivery of this Assignment, there are no Leases.
- e) Customer shall give prompt notice to MLBFS of any notice received by Customer claiming that a default has occurred under any Lease on the part of the Customer, together with a complete copy of any such notice.
- f) Any and all Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.
- g) Customer will not permit any Lease to come before the interests of MLBFS under this Assignment and shall subordinate or cause to be subordinated all Leases to the lien or security interests of the MLBFS.
- h) Customer agrees not to collect the rents of the Premises in advance other than as required to be paid in advance by the terms of any rental agreement and further agrees not to do any other act which would materially destroy or impair the benefits to MLBFS of this Assignment.
- i) Customer shall not transfer or convey title to said Premises to any lessee without requiring such lessee in writing to assume and agree to pay the Obligations in accordance with the terms, covenants, and conditions of the Obligations and the Loan Documents, and the payment to MLBFS by such lessee of so much of the

purchase price as shall be deemed necessary by MLBFS in reduction of the outstanding principal of the Obligations, in the inverse order of maturity, which payment, if made during the period that said Obligations permits prepayment, shall include applicable prepayment charges as set forth in said Obligations.

- j) In the event any Lease permits cancellation thereof on payment of consideration and said privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to MLBFS to be applied, at the election of MLBFS, to reduce the amount of the principal of said Obligations in the inverse order of maturity or to be held in trust by the MLBFS as further security without interest for the payment of the principal and interest provided to be paid by the Obligations.

All of the foregoing warranties are continuing and shall be deemed remade concurrently with each advance by MLBFS to Customer under the Loan Agreement.

5. Indemnity. Customer shall indemnify and hold MLBFS harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including reasonable attorneys fees and expenses, asserted against or incurred or suffered by MLBFS as a result of or in any manner connected with this Assignment, any Lease or any failure of Customer to perform any of its obligations under any Lease or this Assignment and of and from any and all claims and demands whatsoever which may be asserted against MLBFS by reason of any alleged obligation or undertaking to be performed or discharged by MLBFS under any Lease or this Assignment, excluding, however, from said indemnity any such claims, liabilities, etc. arising directly out of the willful wrongful act or active gross negligence of MLBFS. Customer shall appear in and defend at its sole cost and expense any action or proceeding arising under or in any manner connected with any Lease or the obligations, duties or liabilities of Customer thereunder, and pay all reasonable costs and expenses of MLBFS in any action or proceeding in any matter connected with any Lease in which MLBFS must appear through no fault of MLBFS, including reasonable attorneys' fees and expenses.

6. Right to Perform Obligations. If Customer shall fail to do any act or thing which it has covenanted to do under this Assignment or any Lease, MLBFS may, in its sole discretion, after 5 Business Days written notice is sent to Customer, do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose; and any and all amounts so expended by MLBFS shall be repayable to MLBFS by Customer immediately upon MLBFS' demand therefor, with interest at the highest "Interest Rate" (as that term is defined in the Loan Agreement or any note incorporated therein) during the period from and including the date funds are so expended by MLBFS to the date of repayment, and any such amounts due and owing MLBFS shall be additional Obligations secured hereunder.

7. Events of Default. An Event of Default shall be deemed to have occurred hereunder if: (i) an Event of Default shall occur under the terms of the Loan Agreement or any of the Loan Documents; or (ii) Customer shall fail to perform any of its obligations hereunder, and such failure shall continue for more than 10 Business Days after written notice thereof from

MLBFS; or (iii) any representation or warranty of Customer herein shall at any time prove to have been incorrect in any material respect when made.

8. Remedies Upon Default. This Assignment is absolute and is effective immediately. **Notwithstanding the foregoing, until notice is sent to the Customer in writing that a default has occurred, and has not been cured, under the terms and conditions of the Loan Agreement or any other instrument constituting additional security for the Loan Agreement, Customer may receive, collect and enjoy the rents, income and profits accruing from the subject property.** Upon or at any time after an Event of Default is continuing:

- a) MLBFS may directly collect rentals and other sums payable by Lessee under any Lease. MLBFS shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period. Customer hereby irrevocably authorizes and directs lessee, upon receipt of any notice of MLBFS stating that a default exists to pay to MLBFS the rents, income, and profits due and to become due under any or all Leases. Customer agrees that lessee shall have the right to rely upon any such notices of MLBFS that lessee shall pay such rents, income, and profits to MLBFS without any obligation or without any right to inquire as to whether such default actually exists and notwithstanding any claim of Customer to the contrary. Customer shall have no claim against lessee for any rents paid by lessee to MLBFS. Upon the curing of all defaults in the payments due under or in the performance of any of the terms, covenants, or conditions of the said Obligations or Security Interest, MLBFS shall use its best efforts to give written notice thereof to lessee; and thereafter, upon receipt of such subsequent notice and until further notice from MLBFS, lessee shall pay the rents, income, and profits to Customer.
- b) MLBFS may cancel, amend, modify, extend, renew, terminate or in any way alter any Lease, for any cause or on any ground which would entitle Customer to do the same; and obtain or evict one or more new Tenants, collect, sue for, fix or modify the rents under any Lease and enforce all rights of the Customer under any Lease; and
- c) MLBFS may perform any and all other acts that may be necessary or proper to protect the security of this Assignment and/or realize the benefits hereof.

9. Power of Attorney. Customer hereby irrevocably grants to MLBFS, effective upon the occurrence and continuance of an Event of Default, the full right, power and authority to exercise, in the name of Customer or in its own name, each and all of the rights, privileges and powers granted to Customer under any Lease, including but not limited to the demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the subject property, and at MLBFS' discretion to file any claim to take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which MLBFS may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits.

10. Limitation of Liability. This Assignment shall not operate to place responsibility upon MLBFS (a) for the management, upkeep, care, repair or control of the Premises, (b) for the performance of any of the terms and conditions of any of the Leases, (c) for any waste committed on the Premises by the Tenants or any other party, (d) for any dangerous or defective condition of the Premises, (e) for any negligence in the management, upkeep, care, repair or control of the Premises or (f) to account for Rents other than Rents that are actually received by MLBFS. Nothing herein contained shall be construed to bind MLBFS to the performance of any of the terms and provisions contained in any Lease, or otherwise to impose any obligation on MLBFS including, without limitation, any liability under the covenant of quiet enjoyment contained in any Lease in the event that the lessee shall have been joined as party defendant in any action to foreclose upon the Collateral, and shall have been barred and foreclosed thereby of all right, title, interest, and equity of redemption in said Premises. MLBFS shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the Customer under any Lease and does not assume any of the liabilities in connection with or growing out of the covenants and agreements of Customer in any Lease. Except for MLBFS's gross negligence or willful misconduct, MLBFS shall not be liable for any loss sustained by Customer resulting from MLBFS's failure to let the Premises or from any other act or omission of MLBFS in the management, upkeep, care, repair or control of the Premises.

11. Authorization to Lessee. Customer hereby irrevocably authorizes and directs Lessee to rely upon any notice, directions and instructions that Lessee may receive from MLBFS requesting payment of rentals directly to MLBFS or otherwise regarding or affecting any Lease, notwithstanding any dispute that Customer may then have as to whether an Event of Default has then occurred or is then continuing. Lessee shall not be obligated to make any inquiry to or provide any notice to Customer as a condition of honoring any such directions and/or instructions by MLBFS.

12. No Mortgagee in possession. This Assignment shall not be construed as: (a) making MLBFS a mortgagee-in-possession; (b) subordinating the Loan Documents to any Lease; provided, however, that any action or proceeding by MLBFS to foreclose its liens encumbering the Premises, enforce any other remedy contained in the Loan Documents or take any action by way of entry into possession after an Event of Default shall not operate to terminate any Lease unless MLBFS so elects in writing or (c) constituting or evidencing any payment on account of the Obligations. The Obligations shall be reduced only to the extent of cash payments applied by MLBFS in reduction of the Obligations.

13. Unconditional Assignment. As between MLBFS and Customer, and any person claiming by, through or under Customer, other than a Tenant who has not received notice that the license granted herein has been revoked pursuant to this Assignment, the assignment contained herein is intended to be absolute, unconditional, and presently effective, and the provisions of this Assignment regarding notice to Tenants are intended solely for the benefit of each Tenant and shall never inure to the benefit of Customer or any person claiming by, through or under Customer other than a Tenant who has not received such notice. It shall never be obligatory or mandatory for MLBFS to claim

possession of the Premises or to institute legal proceeding of any kind whatsoever to enforce the provisions of this Assignment.

14. Limitation on Assignment. Notwithstanding any provision in this Assignment to the contrary, Customer does not assign to MLBFS, and MLBFS does not accept the assignment of, any right to contract for, charge or receive any payment or penalty for late rental under the Leases in excess of an amount equal to the highest rate permitted by applicable law on the amount of the past due rent. No Lease entered into by Customer affecting any portion of the Premises shall provide for any payment or penalty for late rental in excess of the maximum rate of interest permitted by application law on the amount of the past due rent. Customer does not intend to and shall not collect any payment or penalty for late rental under any Leases in excess of the maximum rate of interest permitted by applicable law on the amount of the past due rent. The provisions of the Loan Agreement (and any note incorporated therein) limiting the amount of interest which may be charged by MLBFS are hereby incorporated by reference for all purposes as if fully set forth herein.

15. Business Experience Representations. Customer represents and acknowledges that (i) it has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of transactions, (ii) it is not in a significantly disparate bargaining position with respect to MLBFS, and (iii) it has been represented by counsel of its selection in connection with the transaction contemplated under the Loan Agreement.

16. Remedies Cumulative. All rights and remedies provided herein shall be cumulative and in addition to all other rights and remedies available at law or in equity; and any one or more of such rights and remedies may be exercised simultaneously or successively.

17. Notices. Customer shall forthwith furnish to MLBFS a copy of each notice, demand and other document or instrument received by Customer from Lessee, or from any other party which affects or may affect the Premises, any Lease, this Assignment or MLBFS' rights hereunder.

18. Non-Waiver. No failure or delay on the part of MLBFS in exercising any right, power or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. Any waiver of any provision of this Assignment and any consent to any departure by Customer from the terms hereof shall be effective only in the specific instance and for the specific purpose for which given.

19. Further Assurances. Customer agrees to do such further acts and things and to execute and deliver to MLBFS such additional agreements, instruments and documents as MLBFS may reasonably require or deem advisable to carry into effect the purposes of this Assignment, or to confirm unto MLBFS its rights, powers and remedies hereunder. MLBFS may at its option, file and/or record this Assignment and/or any such other agreements, instruments and documents.

20. **Binding Effect.** This Assignment shall be binding upon Customer and Customer's heirs and personal representatives, and shall inure to the benefit of MLBFS and its successors and assigns. If there is more than one "Customer", their obligations hereunder are joint and several.

21. **Term.** This Assignment shall become effective when signed by Customer, and shall continue in effect so long thereafter as the Loan Agreement shall be in effect or there shall be any Obligations outstanding.

22. Miscellaneous.

(a) Customer waives notice of the acceptance hereof by MLBFS.

(b) The invalidity or unenforceability of all or any part of any one or more provisions of this Assignment shall not affect the validity and enforceability of the remaining provisions, and this Assignment shall be construed as if such invalid provisions were omitted.

(c) This written Assignment constitutes the entire agreement between the parties with respect to the subject matter hereof, may be modified only by a written instrument executed by both MLBFS and Customer, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the parties. There are no unwritten oral agreements between the parties.

(d) This Assignment shall be governed in all respects by the laws of the State of Illinois, and may be enforced by MLBFS in any jurisdiction and venue in which the Loan Agreement may be enforced. Customer agrees that any claim by Customer against MLBFS hereunder or with respect to any of the transactions contemplated hereby shall be brought against MLBFS only in an action or proceeding in a Federal or state court in the County of Cook and State of Illinois, and Customer waives the right to bring any such action or proceeding or assert any counterclaim against MLBFS in any other jurisdiction or before any other forum.

(e) Customer and MLBFS hereby each expressly waive any and all rights to a trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other party in any way related to or arising out of this Assignment, the Loan Agreement or any of the transactions contemplated hereby or thereby.

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EXHIBIT A ATTACHED TO AND HEREBY MADE A PART OF
ASSIGNMENT OF RENTS AND LEASES
BETWEEN B&J REAL ESTATE, L.L.C. AND
MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.

COMMON ADDRESS OF REAL PROPERTY: 2101-2125 Gardner Road
Broadview, Illinois 60153

PIN NUMBER: 15-16-420-004-0000
15-16-420-005-0000

LEGAL DESCRIPTION:

THAT PART OF LOT 16 LYING WEST OF THE WEST RIGHT OF WAY OF INDIANA HARBOR BELT RAILROAD COMPANY (EXCEPT THAT PART TAKEN FOR ROOSEVELT ROAD) IN SCHOOL TRUSTEES' SUBDIVISION OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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