

Return to:

2015 027438

2015 MAY -7 AM 9:09

Fidelity National Title
4215 Edison Lakes Parkway
Suite 115
Mishawaka, IN 46545

MICHAEL B. BROWN
RECORDER



ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made and entered into on April 27, 2015 by and between **C. Andrew Momper and Ann R. Momper** whose address is 22167 Riverpoint Trail, Carrollton, Virginia 23314 ("Grantor") and **Union Bank & Trust** whose address is 4505 Columbus Street, Suite 100, Virginia Beach, Virginia 23462 ("Lender").

RECITALS

A. As an inducement to Lender to make a refinancing loan to 4018 Seaboard, LLC ("Debtor"), in the original principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) under Loan No. 7400955268 (the "Refinancing Loan"), Grantor has provided a Guaranty of Payment to Lender which is secured by a Real Estate Mortgage Grantor has granted to Lender against the real estate legally described on **Exhibit A** attached hereto, together with all tenements, appurtenances, improvements, replacements, additions and fixtures (collectively referred to as the "Property").

B. As a further inducement for the Refinancing Loan, Grantor has agreed to provide this Assignment to the Lender to secure the obligations Grantor owes to Lender under the Guaranty of Payment Grantor has provided to Lender with the understanding that Lender shall not be entitled to take any action to enforce its rights under this Assignment until and unless Debtor becomes in default on the Refinancing Loan:

TERMS AND CONDITIONS FOR ASSIGNMENT

1. Assignment of Leases and Rents.

(a) Grantor hereby absolutely and irrevocably assigns, transfers and conveys to Lender, all the right, title and interest of Grantor in and to all rents, issues, profits, revenues, products, proceeds, earnings, royalties, security deposits, damage claims, awards, rights and benefits now due or hereafter to become due, or arising (collectively the "Rents") from the Property and the Leases. To that end Grantor also irrevocably assigns, transfers and sets over to Lender all the right, title and interest of Grantor in all existing and future leases, licenses and other agreements between Grantor and any other party relating to the use of the Property, or any part thereof, whether written or verbal (the "Leases"). The term "Leases" shall include all amendments, renewals and extensions



26-
ck-1820206577
DM
-E

thereof and all guaranties of the lessee's performance thereunder. Grantor hereby irrevocably appoints Lender as its attorney-in-fact to do all things which Grantor might otherwise do with respect to the Rents, Leases and the Property.

(b) Grantor further assigns, transfers and sets over to Lender all of Grantor's right, title and interest in and to all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365, including, without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by such lessee or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of such lessee, and all rentals and other charges outstanding under the Leases as of the date of entry of such order for relief.

(c) If Grantor shall receive on account of any claim, demand, action, suit or proceeding, including, without limitation, any claim, contested matter, or adversary proceeding under the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, any sums relating to the breach or rejection of any of the Leases by any lessee thereunder or trustee of any such lessee under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365, including, without limitation, all damages arising out of such breach or rejection, all rights to charges payable by such lessee or trustee in respect of the premises demised under such Lease(s) following the entry of an order for relief under the Bankruptcy Code in respect of such lessee and all rentals and other charges outstanding under the Lease(s) as of the date of entry of such order for relief, the Grantor shall promptly deposit such sums in a segregated account (the "Account") maintained with Lender, and shall cause the Account to be designated on the records of the Lender as collateral for the payment and performance of the Renewal Loan. Grantor hereby assigns, transfers and sets over to Lender, and grants to Lender a security interest in, all sums in the Account as further security for the payment and performance of the Renewal Loan. Grantor shall not withdraw any sums or further encumber the Account without the Lender's prior written consent so long as the Renewal Loan shall remain outstanding; provided, however, that if there shall not have occurred and be continuing any Event of Default or event, which with the giving of notice or lapse of time, or both, would constitute an Event of Default, the Account shall be released to the Grantor free of the lien and security interest granted hereby on the earlier of (a) full and final payment of the Renewal Loan, or (b) the date on which Grantor shall have entered into a new Lease on terms and conditions approved by Lender and the new lessee thereunder has taken possession of the demised premises and commenced the payment of rent thereunder.

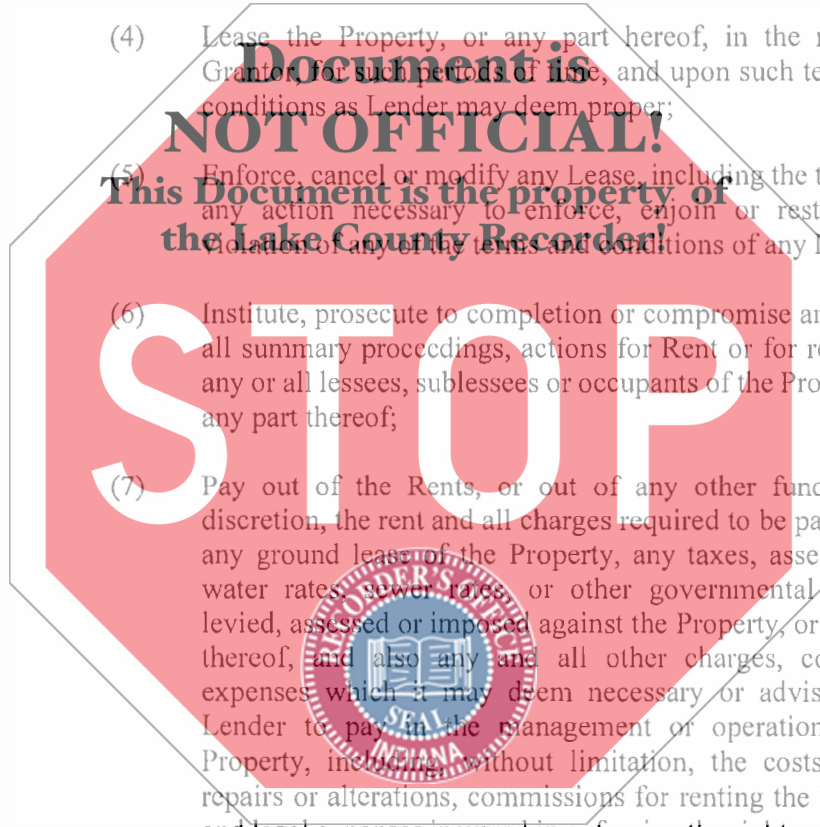
2. **Grantor's License.** So long as no default shall exist in the timely payment or performance of the Renewal Loan, Grantor shall have a license to manage and operate the Property and collect, receive and apply, for its own account, all Rents arising from the Property as they become due, but not more than thirty (30) days in advance.

3. **Remedies on Default.**

(a) In the event of any default in the timely payment or performance of the Renewal Loan (subject to any applicable cure period), the license granted in paragraph 2 above shall automatically, without further act by Lender, cease and terminate. In any such event Lender is hereby expressly and irrevocably authorized, at its option, to enter and take possession of the

Property by actual physical possession or by written notice served personally upon or sent by registered or certified mail to Grantor, as Lender may elect, and no further authorization shall be required. Prior to, or upon such entry and taking possession, Lender, in its sole and absolute discretion, may:

- (1) Manage and operate the Property or any part thereof including the making of such repairs and alterations to the Property as Lender may deem necessary;
- (2) Manage and operate the Property or any part thereof including the making of such repairs and alterations to the Property as Lender may deem necessary;
- (3) Demand, collect, receive, sue for, attach, levy, recover, compromise and adjust, and to give proper receipts and releases for all Rents that may then be due or may thereafter become due with respect to the Property, or any part thereof, from any present or future lessees, sublessees or occupants thereof;
- (4) Lease the Property, or any part hereof, in the name of Grantor, for such periods of time, and upon such terms and conditions as Lender may deem proper;
- (5) Enforce, cancel or modify any Lease, including the taking of any action necessary to enforce, enjoin or restrain the violator of any of the terms and conditions of any Lease;
- (6) Institute, prosecute to completion or compromise and settle, all summary proceedings, actions for Rent or for removing any or all lessees, sublessees or occupants of the Property, or any part thereof;
- (7) Pay out of the Rents, or out of any other funds in its discretion, the rent and all charges required to be paid under any ground lease of the Property, any taxes, assessments, water rates, sewer rates, or other governmental charges levied, assessed or imposed against the Property, or any part thereof, and also any and all other charges, costs and expenses which it may deem necessary or advisable for Lender to pay in the management or operation of the Property, including, without limitation, the costs of any repairs or alterations, commissions for renting the Property and legal expenses incurred in enforcing the rights of Lender under the Renewal Loan;



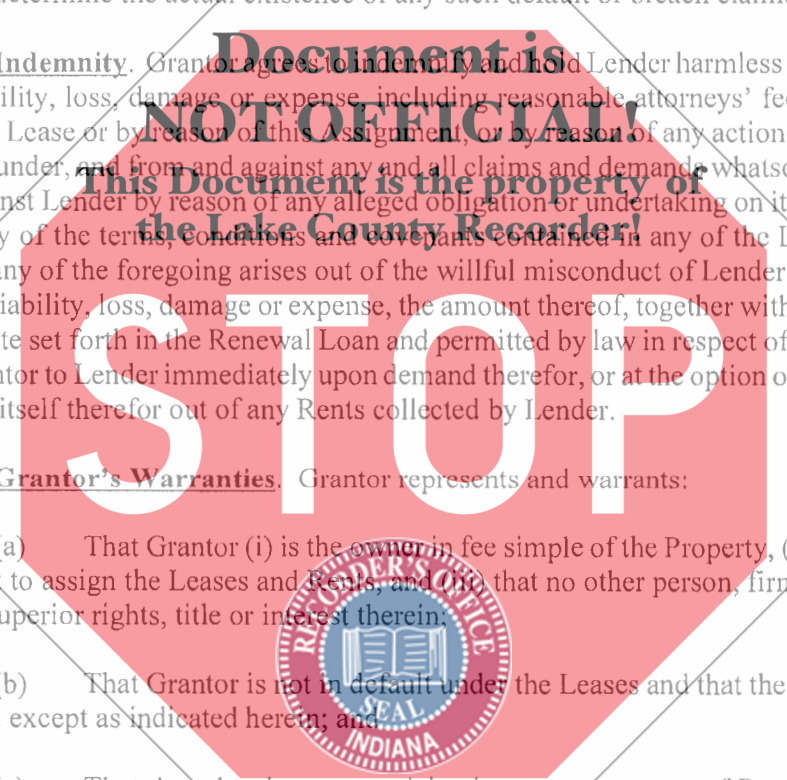
- (8) Generally do, execute and perform any other acts which, in Lender's sole discretion, are necessary or advisable in and about or with respect to the Property as fully as Grantor might do; and
- (9) Employ agents to perform any of the foregoing and to pay such agents reasonable compensation for their services.

(b) Lender shall apply the net amount of any Rents received by it from the Property, after payment of all costs and charges, including, without limitation, any sums due under the Renewal Loan, to the payment of its fees and expenses incurred, the accrued interest and other charges due on the Renewal Loan, and the balance, if any, to the principal of the Renewal Loan. Lender shall account to Grantor only for Rents actually received by Lender pursuant to this Assignment.

4. Notice to Lessees. Grantor hereby irrevocably directs any lessee under any Lease, upon demand and notice from Lender of default of Debtor in the payment or performance of the Renewal Loan, to pay to Lender all Rents accruing or due under any Lease from and after the receipt of such demand and notice. In making such payments, such lessees shall be under no obligation to inquire into or determine the actual existence of any such default or breach claimed by Lender.

5. Indemnity. Grantor agrees to indemnify and hold Lender harmless from and against any and all liability, loss, damage or expense, including reasonable attorneys' fees, which it may incur under any Lease or by reason of this Assignment, or by reason of any action taken by Lender or Grantor hereunder, and from and against any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, conditions and covenants contained in any of the Leases, except to the extent that any of the foregoing arises out of the willful misconduct of Lender. Should Lender incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the highest rate set forth in the Renewal Loan and permitted by law in respect of default, shall be payable by Grantor to Lender immediately upon demand therefor, or at the option of Lender, Lender may reimburse itself therefor out of any Rents collected by Lender.

- 6. Grantor's Warranties.** Grantor represents and warrants:
- (a) That Grantor (i) is the owner in fee simple of the Property, (ii) has good title to, and the right to assign the Leases and Rents, and (iii) that no other person, firm, corporation or entity has any superior rights, title or interest therein.
 - (b) That Grantor is not in default under the Leases and that the Leases are valid and unmodified except as indicated herein; and
 - (c) That there has been no anticipation or prepayment of Rents for more than 31 days under any of the Leases, and that Grantor has not waived, released, discounted or otherwise discharged or compromised any Rents due after the date here.



7. **Grantor's Covenants.** Grantor covenants and agrees:

- (a) To duly and punctually perform all the terms, conditions and covenants of any Leases on Grantor's part to be kept, observed and performed;
- (b) To enforce or secure the performance of all terms, conditions and covenants of the Leases to be kept, observed and performed by lessees thereunder;
- (c) To execute and deliver to Lender such further instruments as Lender may deem necessary, from time to time, to make effective the Assignment and covenants contained herein;
- (d) Not to sell, assign, transfer or pledge any of the Rents or Leases arising from the Property, whether now due or hereafter to become due;
- (e) Not to receive or collect any Rents from any present or future lessee under any Lease for a period of more than one month in advance;
- (f) Not to waive, set-off, compromise, or in any manner release or discharge any lessee under any Lease of and from any terms, conditions and covenants to be kept, observed and performed by said lessee, including the obligation to pay Rent;
- (g) Except in the ordinary course of business, not to cancel, terminate or consent to any surrender of any Lease, nor modify or amend any of the terms thereof, nor consent to the subletting of the Property, or any part thereof, or to the assignment of any Lease by the lessee thereunder without the prior written consent of Lender;
- (h) To serve such written notice upon the lessee(s) under the Leases or occupants of the Property as shall be requested by Lender, and to execute and deliver to Lender such other instruments or documents reasonably requested by Lender for the purpose of securing, perfecting or exercising Lender's rights herein; and
- (i) Upon request, surrender and deliver to Lender the originals of the Leases and all records or pertinent correspondence relating thereto.

8. **No Renewal Loan on Lender.** Nothing contained herein shall operate or be construed to obligate Lender to perform any of the terms, covenants and conditions contained in any lease of or relating to the Property or otherwise to impose any obligation upon Lender with respect to any lease of the Property, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose the Mortgage and the estate of such lessee shall have been thereby terminated. Prior to actual entry onto and taking possession of the Property by Lender, this Assignment shall not operate to place upon Lender any responsibility for the operation, control, care, management or repair of the Property, and the execution of this Assignment by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care,



management and repair of the Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

9. **No Merger.** As against Lender, at all times during which this Assignment shall be in effect, there shall be no merger of any Lease of the Property with the fee estate in the Property by reason of the fact that any such Leases or any interest therein may be held by or for the account of any person, firm or corporation which may be or become the owner of such fee estate, unless Lender shall consent in writing to such merger.

10. **Cumulative Rights and No Waiver.** The rights granted Lender under this Assignment, the Renewal Loan, the Mortgage, or any document relating thereto or arising therefrom, or any other collateral security documents, or permitted at law or in equity, shall be cumulative and may be exercised at any time and from time to time. No failure or delay on the part of Lender to exercise any rights hereunder shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by Lender of any right preclude any other future exercise thereof or the exercise of any other right.

11. **Assignment.** Lender shall have the right to assign to any subsequent holder of the Renewal Loan, the right, title and interest of Grantor hereby assigned, subject, however, to the terms of this Assignment. In the event all right, title and interest of Grantor in the Property are barred or foreclosed, no assignee of Grantor's interest shall be liable to account to Grantor for any Rents thereafter accruing.

12. **Miscellaneous.** (a) No amendment, modification, cancellation or discharge hereof shall be valid unless Lender consents thereto in writing.

(b) This Assignment and all the terms, covenants and conditions contained herein shall be binding upon Grantor, its successors, assigns, heirs and personal and legal representatives, as the case may be, and every term, covenant and condition herein reserved or secured to Lender shall inure to the benefit of Lender's successors and assigns.

(c) The titles to each paragraph hereof are for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana.



WITNESS the following signature and seal, thereunto duly authorized:

GRANTOR:

C Andrew Momper

C. Andrew Momper

Ann R. Momper

Ann R. Momper

STATE OF Virginia)
) SS:
COUNTY OF VA Beach)

The foregoing instrument was acknowledged before me in VA Beach City County, State of VA, on April 27, 2015, by C. Andrew Momper and Ann R. Momper. *TR*

My Commission Expires:

9/30/16

Murphy

, Notary Public

(Residing in VA Beach City County, VA)

TR

Document is NOT OFFICIAL!

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.

This Document is the property of the Lake County Recorder!

Scott M. Keller

STOP



Drafted by and when recorded return to:

Scott M. Keller (IA #14272-46)
ANDERSON • AGOSTINO & KELLER, P.C.
131 South Taylor Street
South Bend, Indiana 46601

Tax Parcels #45-16-04-401-014,000-042
and #45-16-04-401-015,000-042

EXHIBIT "A"

LOTS 4 AND 5, IN AAA INDUSTRIAL PARK, TO THE CITY OF CROWN POINT, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 82, PAGE 56, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

Property Address: 849 Madison St., Crown Point, IN 46307

Property Address: 797 Madison St., Crown Point, IN 46307

