



Bk: 4994 Pg: 234 Doc: MTG&C
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**MORTGAGE, SECURITY AGREEMENT AND
COLLATERAL ASSIGNMENT OF LEASES AND RENTS**
(Elm Court)

FRONT YARD, LLC, a Delaware limited liability company, with a principal address of 1050 17th Street, Suite 2300, Denver, Colorado 80265 (hereinafter, the "Mortgagor"), hereby grants, mortgages, assigns, grants a security interest in, and transfers to ELM COURT REALTY LLC, a Delaware limited liability company with a principal address of 218 Center Street, Mount Pleasant, South Carolina 29464 (hereinafter, the "Mortgagee"), with mortgage covenants, the following items hereinafter designated as (a), (b), (c) and (d), whether now owned, or hereafter at any time in the future acquired, and all proceeds, products, substitutions and accessions of or to any of the following (hereinafter, singly and collectively, the "Collateral"), to secure the Mortgagor's prompt, punctual, and faithful payment and performance of (i) a certain Promissory Note of even date herewith in the original principal amount of EIGHT MILLION AND 00/100 DOLLARS (\$8,000,000.00) and any extensions, renewals, substitutions, modifications, or replacements thereof, (ii) any and all liabilities of the Mortgagor to the Mortgagee hereunder, and (iii) any and all other liabilities, debts, and obligations, now or hereafter, at any time owing by the Mortgagor to the Mortgagee in connection with such Note, each of every kind, nature and description, including, without limitation, all costs of collection, attorneys' fees, and all court and litigation costs and expenses (hereinafter, the "Liabilities" or "Indebtedness"):

- (a) the land with buildings and improvements whether now existing or hereafter constructed or located thereon, situated in Berkshire County, Massachusetts, as more particularly described on Exhibit A annexed hereto, known as and numbered 310 Old Stockbridge Road, in the Towns of Stockbridge and Lenox, Massachusetts (collectively hereinafter, the "Mortgaged Premises" or the "Improvements") including all easements, covenants, agreements and rights which are appurtenant to or benefit the Mortgaged Premises;
- (b) all furnaces, ranges, heaters, plumbing goods, gas and electric fixtures, screens, screen doors, mantels, shades, storm doors and windows, awnings, oil burners and tanks or other equipment, gas or electric refrigerators and refrigerating systems, ventilating and air conditioning apparatus and equipment, door bell and alarm systems, sprinkler and fire extinguishing systems, portable or sectional buildings, and all other fixtures of whatever kind or nature owned by the Mortgagor, now or in the future contained in or on the Mortgaged Premises, and any and all similar fixtures hereinafter installed in the Mortgaged Premises in any

manner which renders such articles usable in connection therewith;

- (c) all leases, tenancies, licenses and occupancies, whether written or not, regarding all or any portion of the foregoing Subparagraphs (a) and (b) (hereinafter, the "Leases"), all guarantees and security relating thereto, together with all income and profit arising therefrom and all payments due or to become due thereunder including, without limitation, all rent, additional rent, damages, insurance payments, taxes, insurance proceeds, or any payments with respect to options contained therein (including any purchase option), and all trademark licenses and intellectual property license agreements, and all permits including building permits, variances, special permits, and other governmental authorizations, with regard to the Mortgaged Premises;
- (d) all materials, appliances, equipment and other items used in connection with construction on the Mortgaged Premises, owned by Mortgagor and situated on the Mortgaged Premises.

Notwithstanding the foregoing, Mortgagor does not purport to grant or encumber any greater title to any of the Collateral in existence as of the date hereof than is being conveyed to Mortgagee by Mortgagee concurrently herewith.

ARTICLE 1 - REPRESENTATIONS, WARRANTIES AND COVENANTS

1-1. Insurance. Mortgagor covenants and agrees to comply with the insurance provisions of that certain Loan Agreement of even date herewith executed by Mortgagor and Mortgagee (the "Loan Agreement").

1-2. Intentionally Deleted.

1-3. Statutory Compliance. The Mortgagor shall comply with, and shall not use or allow any of the Collateral to be used in violation of, each and every statute, regulation, or ordinance of any federal, state, municipal, and other governmental authority which has jurisdiction over the Mortgagor or any of the Collateral; provided that Mortgagor shall not be obligated to improve the condition of the Collateral to better than its condition as of the date hereof.

1-4. Title to Collateral. The Mortgagor shall not convey any of the Collateral or any part thereof or interest therein except as permitted by this Mortgage, Security Agreement and Collateral Assignment of Leases and Rents (this "Mortgage") or the Loan Agreement or except in the ordinary course of Mortgagor's operation of the Collateral; provided that Mortgagor shall not be obligated to improve the condition of the Collateral to better than its condition as of the date hereof.

1-5. Condition of Collateral. The Mortgagor shall not cause or permit to be suffered any waste, destruction or loss (whether or not such loss is insured against) to the Collateral or any part thereof; provided that Mortgagor shall not be obligated to improve the condition of the Collateral to better than its condition as of the date hereof, and further provided that Mortgagor's performance of alterations to or expansions of the Collateral, including any demolition work in connection therewith shall not constitute waste, destruction or loss.

1-6. Taxes and other Costs. The Mortgagor shall pay when due all real property taxes, assessments, charges, condominium assessments, if any, and other taxes assessed against it, and all insurance premiums relative to the Collateral to the extent accruing from and after the date hereof. The Mortgagor agrees that, upon an Event of Default (as defined in the Loan Agreement), the Mortgagee may, at its option, and from time to time, pay any taxes, assessments, if any, or insurance premiums, the payment of which is then due, discharge any liens or encumbrances on any of the Collateral, or take any other action that the Mortgagee may deem proper to repair, insure, maintain, or preserve any of the Collateral or the Mortgagee's rights therein provided that Mortgagee makes reasonable efforts to notify Mortgagor of such payment or other action. The Mortgagor will pay to the Mortgagee on demand all amounts so paid or incurred by the Mortgagee.

1-7. Statutory Power of Sale. This Mortgage is upon the STATUTORY CONDITION and upon breach of which or upon an Event of Default, the Mortgagee shall have the STATUTORY POWER OF SALE, provided that provisions of the Statutory Condition which relate to insurance are superseded by the insurance provisions of the Loan Agreement, and further provided that Mortgagor shall be entitled to applicable notices of default and grace periods in accordance with the terms of this Mortgage, the Loan Agreement and the Note before Mortgagee shall be entitled to exercise the Statutory Power of Sale.

ARTICLE 2 - EVENTS OF DEFAULT

Upon occurrence of any one or more of the following (hereinafter, the "Events of Default"), any and all Liabilities of the Mortgagor to the Mortgagee shall become immediately due and payable, at the option of the Mortgagee exercisable by notice to Mortgagor, but without further demand.

2-1. The failure by the Mortgagor to pay, within three (3) business days following notice from Mortgagee to Mortgagor that such payment has become due, any amount then owing by the Mortgagor to the Mortgagee.

2-2. The failure by the Mortgagor to promptly, punctually, and faithfully perform, discharge, or comply with any of the Liabilities within thirty (30) days, or such longer time as may be reasonable under the circumstances but in no event greater than sixty (60) days, after written notice from Mortgagee to Mortgagor.

2-3. The occurrence of any Event of Default under the Promissory Note secured hereby of even date herewith made by Mortgagor (the "Note"), the Loan Agreement, or under any instrument or document given to the Mortgagee by the Mortgagor in order to evidence or secure the Liabilities, whether such agreement, instrument, or document now exists or hereafter arises (notwithstanding that the Mortgagee may not have exercised its rights upon default under any such other agreement, instrument or document).

2-5. The occurrence of any of the events described in this Article with respect to any guarantor, endorser, or surety to the Mortgagee of the Liabilities as if such person were the "Mortgagor" described therein.

2-6. Subject to Section 1-7, the breach of the Statutory Condition contained herein, upon which breach, the Mortgagee shall have the Statutory Power of Sale.

ARTICLE 3- RIGHTS AND REMEDIES UPON DEFAULT

3-1. Rights and Remedies Upon Default. Upon the occurrence of any Event of Default, or at any time thereafter, the Mortgagee shall have all the rights of a mortgagee and, to the extent applicable, a secured party under the Massachusetts General Laws, in addition to which the Mortgagee shall have all of the rights provided for herein, and in the Note and the Loan Agreement, and the following rights and remedies:

- (a) with or without taking possession, to collect any proceeds of the Collateral and to notify any debtors relating thereto to forward any payments directly to the Mortgagee;
- (b) with or without taking possession of the Collateral and with or without bringing any action or proceeding, either directly, by agent, or by the appointment of a receiver, manage, lease, sublease, or operate the Collateral on such terms as the Mortgagee, in its sole discretion, deems proper or appropriate;
- (c) to take possession of all or a portion of the Collateral; and
- (d) to exercise the Statutory Power of Sale.

3-2. Sale or other Disposition of Collateral. Any sale or other disposition of the Collateral may be at public or private sale, to the extent such private sale is authorized under the Massachusetts General Laws, upon such terms and in such manner as the Mortgagee deems advisable. The Mortgagee may conduct any such sale or other disposition of the Collateral upon the Mortgaged Premises, in which event the Mortgagee shall not be liable for any rent or charge for such use of the Mortgaged Premises. The Mortgagee may purchase the Collateral, or any portion of it, at any sale held under this

Article. The Mortgagee may sell any of Collateral as part of the Mortgaged Premises, or any portion or unit thereof, at the foreclosure sale or sales conducted pursuant hereto. The Mortgagor waives any right to require the marshaling of any of its assets in connection with any disposition conducted pursuant hereto. In the event all or part of the Collateral is included at any foreclosure sale conducted pursuant hereto, a single total price for the Collateral, or such part thereof as is sold, may be accepted by the Mortgagee with no obligation to distinguish between the application of such proceeds amongst the property comprising the Collateral.

3-3. Use and Occupation of Mortgaged Premises. In connection with the Mortgagee's exercise of the Mortgagee's rights under this Article, the Mortgagee may enter upon, occupy, and use all or any part of the Collateral.

3-4. Partial Sales. The Mortgagor agrees that, in case the Mortgagee, in the exercise of the Power of Sale contained herein or in the exercise of any other rights hereunder given, elects to sell in parcels, said sales may be held from time to time and that the power shall not be exhausted until all of the Collateral not previously released shall have been sold, notwithstanding that the proceeds of such sales exceed, or may exceed, the Liabilities then secured thereby.

3-5. Compliance. Upon the occurrence of any Event of Default, the Mortgagee may take any action with respect to the Collateral to preserve, protect, or realize upon the Mortgagee's interest therein, each at the sole risk, cost and expense of the Mortgagor but for the sole benefit of the Mortgagee. Such actions include, but are not limited to: (i) prosecuting, defending, compromising, settling, or releasing any action relating to the Collateral; (ii) endorsing the name of the Mortgagor in favor of the Mortgagee upon any and all checks or other items constituting remittances or proceeds of the Collateral; (iii) signing and endorsing the name of the Mortgagor on, and to receive as secured party, any of the Collateral; (iv) signing and filing or recording on behalf of the Mortgagor any financing or other statement in order to perfect or protect the Mortgagee's security interest; (v) entering into leases or subleases relative to all or a portion of the Mortgaged Premises; or (vi) managing, operating, maintaining, or repairing the Mortgaged Premises. The Mortgagee shall not be obligated to perform any of such acts.

3-6. Rights and Remedies. The rights, remedies, powers, privileges, and discretions of the Mortgagee hereunder (hereinafter, the "Mortgagee's Rights and Remedies"), shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No waiver by the Mortgagee of any default or any Right and Remedy hereunder or under any other agreement shall operate as a waiver of any other default or any Right and Remedy on any subsequent occasion hereunder or under any other agreement.

ARTICLE 4- MISCELLANEOUS

4-1. Successors and Assigns. In the event the ownership of the Collateral becomes vested in a person other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with any such successor in interest with reference to this Mortgage and the Liabilities in the same manner as with the Mortgagor, without in any way waiving the default occasioned by such transfer of ownership or in any way vitiating or discharging the Mortgagor's liability hereunder or upon the Liabilities.

4-2. Application of Proceeds. The proceeds of any collection, sale, or disposition of the Collateral, or of any other payments received hereunder, shall be applied toward the Liabilities in such order and manner as the Mortgagee determines in its sole discretion, any statute, custom, or usage to the contrary notwithstanding.

4-3. Responsibility of Mortgagee. The Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from any action, omission, or failure to act by the Mortgagee with respect to the exercise or enforcement of its rights under this Mortgage unless such loss is caused by the willful misconduct and actual bad faith of the Mortgagee. This Mortgage and the Mortgagee's exercise of its rights hereunder shall not operate to place any responsibility upon the Mortgagee for the control, care, management, or repair of the Collateral, nor shall it operate to place any responsibility upon the Mortgagee to perform the obligations of the Mortgagor under any Lease, or to make the Mortgagee responsible or liable for any waste committed on the Mortgaged Premises, any damages or defective condition of the Mortgaged Premises, or any negligence in the management, upkeep, repair, or control of the Mortgaged Premises.

4-4. Indemnification. The Mortgagor shall indemnify, defend, and hold the Mortgagee harmless of and from any claim brought or threatened against the Mortgagee by the Mortgagor, any guarantor or endorser of the Liabilities, or any other person (as well as from attorneys fees and expenses in connection therewith) on account of the Collateral, to the extent that such claim arises from and after the date hereof, or on account of the Mortgagee's lending relationship with the Mortgagor or any other guarantor or endorser of the Liabilities (each of which may be defended, compromised, settled, or pursued by the Mortgagee with counsel of the Mortgagee's selection, but at the expense of the Mortgagor). The within indemnification shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Mortgagee in favor of the Mortgagor.

4-5. Binding on Successors. This Mortgage shall be binding upon the Mortgagor and the Mortgagor's heirs, executors, administrators, representatives, successors, and assigns and shall inure to the benefit of the Mortgagee and the Mortgagee's successors and assigns.

4-6. Payment of Costs. In the event of any dispute arising out of this Mortgage or the Liabilities the prevailing party shall be entitled to reimbursement by the other party of all

costs related to such dispute, including without limitation, costs of collection, reasonable attorney's fees and disbursements and expenses which the Mortgagee may hereafter incur in connection with the collection of the Liabilities or which either party may incur in connection with the protection or enforcement of any of such party's rights against the other party, any Collateral, and any guarantor or endorser of the Liabilities.

4-7. Governing Law. This Mortgage and all rights and obligations hereunder including matters of construction, validity and performance, shall be governed by the laws of The Commonwealth of Massachusetts. The Mortgagor submits itself to the jurisdiction of the courts of Berkshire County in said Commonwealth for all purposes with respect to this Mortgage and the Mortgagor's relationship with the Mortgagee.

4-8. Notices. Any notice required or permitted to be given hereunder shall be provided in accordance with the terms of the Loan Agreement.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as a sealed instrument this 6th day of July, 2012.

MORTGAGOR:

FRONT YARD, LLC,
a Delaware limited liability company

By: Thomas M. Herzog
Name: Thomas M. Herzog
Title: Manager

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 6th day of July 2012, by Thomas M. Herzog as Manager of Front Yard, LLC, a Delaware limited liability company, on behalf of such limited liability company.

Witness my hand and official seal.

My commission expires: 12/17/15

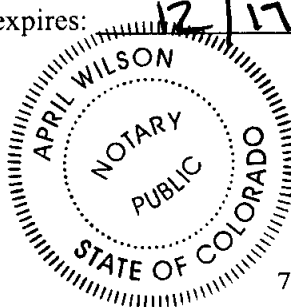
 Thomas M. Herzog
Notary Public

Exhibit "A"

Property Description

Real property in the Towns of Stockbridge and Lenox, County of Berkshire, Commonwealth of Massachusetts, described as follows:

Beginning at a point in the supposed westerly sideline of the county way known as Old Stockbridge Road at a marble bound found marking the southeast corner of land conveyed to Louis E. NeJame and Coreen G. NeJame by deed of Gertrude L. Nelson, dated December 22, 1959 and recorded in the Berkshire Middle District Registry of Deeds in Book 701, Page 335;

Thence running the following three courses along the supposed westerly sideline of Old Stockbridge Road:

South 14 degrees 23 minutes 50 seconds West distance of 521.64 feet to a point;

South 08 degrees 57 minutes 15 seconds West a distance of 929.01 feet to a point; and

South 12 degrees 39 minutes 27 seconds West a distance of 383.41 feet to a marble bound found with "D.W.B 27" marked on it, said point marking the northeasterly corner of a parcel of land formerly conveyed to William A. Mersereau et ux., by deed of Nathan George Horwitt, dated May 28, 1956, and recorded in said Registry of Deeds in Book 641, Page 271;

Thence running North 79 degrees 52 minutes 30 seconds West across the Town line of Stockbridge and Lenox along the northerly line of said formerly Mersereau's land and along the northerly line of the land conveyed to William E. Noonan by deed of Interlaken Properties, Inc., dated January 24, 1996 and recorded in said Registry of Deeds in Book 1503, Page 812 and along land conveyed to Interlaken Properties, Inc. by deed of Philip Wallach, dated January 6, 1996 and recorded in said Registry of Deeds in Book 1503, Page 777 a distance of 745.73 feet to a marble bound found;

Thence running North 11 degrees 15 minutes 57 seconds East along the easterly line of said Interlaken Properties, Inc. a distance of 419.28 feet to corner thereof marked by a marble bound found;

Thence running North 81 degrees 16 minutes 13 seconds West along the northerly line of said Interlaken Properties, Inc. a distance of 417.20 feet to a marble bound found;

Thence running North 81 degrees 23 minutes 13 seconds West along the northerly line of said Interlaken Properties, Inc. a distance of 397.18 feet to an iron pipe set;

Thence running North 81 degrees 26 minutes 13 seconds West along the northerly line of said

Interlaken Properties, Inc. and along land conveyed to Philip Wallach by deed of Florence Wallach, dated October 19, 1993, and recorded in said Registry of Deeds in Book 1421, Page 575, a distance of 742.59 feet to an iron pipe set in the easterly line of land conveyed to White Pines Associates by deed of North Palm Beach Building Corporation, dated March 9, 1984 and recorded in said Registry of Deeds in Book 1089, Page 326;

Thence running North 10 degrees 48 minutes 37 seconds East along the easterly line of land of said White Pines Associates a distance of 175.58 feet to an iron pipe set;

Thence running North 09 degrees 44 minutes 25 seconds East along the easterly line of land of said White Pines Associates and other lands of said White Pines Associates by deeds of Monument Inn, Inc. dated November 9, 1984, and recorded in said Registry of Deeds in Book 1105, Page 664 and dated August 7, 1985, and recorded in said Registry of Deeds in Book 1123, Page 497, a distance of 984.36 feet to an iron pipe found;

Thence running North 16 degrees 18 minutes 41 seconds East along the easterly line of land of said White Pines Associates a distance of 88.08 feet to an iron pipe found in the southeasterly corner of land conveyed to Dana E. Marcus, Trustee of Appletree Nominee Realty Trust, dated July 29, 1994 and recorded in said Registry of Deeds in Book 1452, Page 760;

Thence running North 13 degrees 59 minutes 00 seconds East along the easterly line of land of said Appletree Nominee Realty Trust a distance of 264.19 feet to an iron pipe found;

Thence continuing in the same direction along said Appletree Nominee Realty Trust approximately 19 feet to the edge of Lily Pond;

Thence running northeasterly along the edge of Lily Pond approximately 485 feet to the southwesterly corner of land conveyed to said NeJame;

Thence running South 41 degrees 36 minutes 56 seconds East along the southerly line of land of said NeJame a distance of approximately 15 feet to an iron pipe set;

Thence continuing in the same course along said NeJame a distance of 150.00 feet to a corner of said NeJame marked by a marble bound found;

Thence running South 72 degrees 56 minutes 56 seconds East along the southerly line of land of said NeJame and across the town line of Stockbridge and Lenox a distance of 1779.45 feet to the point of beginning.

The parcel above described is more particularly shown on a plan entitled "Plan of Land Prepared For Estate of H. George Wilde, Town of Stockbridge & Lenox" prepared by Hill Engineers, Architects & Planners, Inc. dated February 2, 1999 and recorded in the Berkshire Middle District Registry of Deeds in Plat File E, Plan No. 341.