

## MORTGAGEE'S SALE OF REAL ESTATE

By virtue and in execution of the Power of Sale contained in a certain Real Estate Mortgage and Security Agreement given by Twelve Oaks, LLC to First Credit Commercial Capital Corp., dated April 4, 2002 and recorded with Berkshire County (Middle District) Registry of Deeds in Book 2195, Page 151, (the "Mortgage") of which mortgage the undersigned is the present holder, for breach of the conditions of such mortgage and for the purpose of foreclosing the same will be sold at Public Auction at 12:00 p.m. on the 5<sup>th</sup> day of March, 2004 A.D. on the mortgaged premises at 138 Pittsfield Road, Lenox, Berkshire County, Massachusetts, all and singular the premises described in such mortgage, except as partially released by Partial Release of Mortgage dated June 2, 2003 recorded with Berkshire County (Middle District) Registry of Deeds in Book 2582, Page 308, and Partial Release of Mortgage dated May 29, 2003 recorded with Berkshire County (Middle District) Registry of Deeds in Book 2582, Page 318, and Partial Release of Mortgage dated August 1, 2003 recorded with Berkshire County (Middle District) Registry of Deeds in Book 2657, Page 3, and Partial Release of Mortgage dated July 23, 2003 recorded with Berkshire County (Middle District) Registry of Deeds in Book 2657, Page 5.

To Wit:

Parcels "A", "B" and "C", the Parcel referred to as the Twelve Oaks, LLC parcel, the Parcel referred to as the Twelve Oaks Investment Parcel and the Parcel referred to as "Remaining Land of Anita I. Costantini", as shown on a "Plan of Land, Surveyed for Twelve Oaks, LLC, Lenox, Massachusetts, dated **November 20, 2001**, prepared by S K Design, Inc. and recorded with the Berkshire Middle District Registry of Deeds in Plat F #316 (the "Plan").

**The Twelve Oaks, LLC Parcel** is described on the Plan, as follows:

Beginning at an iron pipe along the easterly boundary of Routes 7 & 20 and the southwest corner this parcel;

thence S 67° 54' 50" E, a distance of 588.73' to an iron pipe to be set;

thence N16° 20' 58" E, a distance of 190.80' to an iron pin to be set;

thence N 67° 54' 20" W, a distance of 399.31' to a point;

thence N 22° 05' 40" E, a distance of 14.99' to a point;

thence N 67° 54' 20" W, a distance of 176.00' to a point on the easterly boundary of Routes 7 & 20;

thence S 20° 30' 29" W along Routes 7 & 20, a distance of 205.00' to the place of beginning. Said parcel consists of 2.596 acres.

Being a portion of the premises conveyed to the mortgagor herein by deed of Anita I. Costantini, dated November 19, 2001 and recorded in the Berkshire Middle District Registry of Deeds in Book 2062, Page 76.

**The Twelve Oaks Investment, Inc. Parcel** is described on the Plan, as follows:

Beginning at an iron pipe to be set at the easterly boundary of Routes 7 & 20 and the northwest corner of this parcel;

thence S 74° 59' 42" E, a distance of 199.94' to an iron pipe;

thence S 72° 12' 05" E, a distance of 151.46' to an iron pipe to be set;

thence N 17° 30' 32" E, a distance of 80.23' to a point;

thence S 72° 10' 06" E, a distance of 207.36' to an iron pipe;

thence S 16° 31' 43" W, a distance of 308.80' to an iron pipe;

thence N 67° 54' 20" W, a distance of 399.31' to a point;

thence N 22° 05' 40" E, a distance of 14.99' to a point;

thence N 67° 54' 20" W, a distance of 176.00' to a point on the easterly boundary of Routes 7 & 20;

thence N 20° 30' 29" E, a distance of 161.00' to the place of beginning.

Being a portion of the premises conveyed to Twelve Oaks Investments, Inc. by deed of Jasper and Julie L. Martino, dated March 12, 1997, and recorded in said Registry of Deeds in Book 1548, Page 958, and being the same premises conveyed to the mortgagor herein by Twelve Oaks Investment, Inc. by deed of even date, recorded simultaneously herewith in said Registry of Deeds in Book 2195, Page 141.

**PARCEL "D"** is described on the Plan, as follows:

Beginning at an iron pipe at the southwest corner of this parcel;

thence N 16° 25' 47" E, a distance of 427.40' to an iron pipe to be set;

thence N 16° 20' 58" E, a distance of 190.80' to an iron pipe;

thence N 16° 31' 43" E, a distance of 308.80' to an iron pipe;

thence N 16° 21' 00" E, a distance of 86.00' to a point;

thence N 67° 43' 06" W, a distance of 206.33' to a point;

thence N 17° 30' 32" E, a distance of 101.31' to an iron pipe to be set;

thence N 70° 41' 00" W, a distance of 60.53' to an iron pipe to be set;

thence N 19° 26' 16" E, a distance of 470.00' to an iron pipe to be set;

thence S 68° 56' 01" E, a distance of 239.12' to an iron pipe;

thence S 66° 57' 14" E, a distance of 507.40' to an iron pin to be set;

thence S 17° 08' 39" W, a distance of 107.07' to an iron pipe to be set;

thence along a chord bearing S 18° 29' 06" W, a chord distance of 190.19' R=4064.00' and L=190.21' to an iron pipe to be set;

thence S 19° 49' 33" W, a distance of 125.42' to an iron pipe to be set;

thence N 71° 59' 02" W, a distance of 213.83', to an iron pipe to be set;  
thence S 15° 39' 56" W, a distance of 424.63' to an iron pipe to be set;  
thence S 08° 56' 02" E, a distance of 188.13' to an iron pipe to be set;  
thence S 15° 39' 56" W, a distance of 403.32' to an iron pipe to be set;  
thence along a chord bearing S 79° 49' 46" W, a chord distance of 246.09'  
R=300.00' and L=253.57' to an iron pipe to be set;  
thence N 75° 57' 24" W, a distance of 122.47' to an iron pipe to be set;  
thence N 74° 25' 59" W, a distance of 23.26' to the place of beginning.

Parcel "D" contains 16.373 acres.

**Parcel "D"** is a portion of the premises described in the deed to Anita I. Costantini by Philip W. Zinke, dated December 28, 1993 and recorded on June 26, 1998 in the Berkshire Middle District Registry of Deeds in Book 1610, Page 644, and is a portion of the premises described in a deed of even date by Anita I. Costantini to the mortgagor herein and recorded simultaneously herewith in said Registry of Deeds in Book 2195, Page 144.

Parcel "C" is described on the Plan, as follows:

Beginning at an iron pin located at the southeast corner of Parcel "C";  
thence N 16° 21' 00" E, a distance of 86.00' to a point;  
thence N 67° 43' 06" W, a distance of 206.33' to a point;  
thence S 17° 30' 32" W, a distance of 101.98' to a point;  
thence S 72° 10' 06" E, a distance of 207.36' to the place of beginning.

Parcel "C" consists of 0.44 acres.

Parcel "C" is a portion of the premises conveyed to the mortgagor herein by deed of Joseph E. Eckstein, dated April 18, 2002 recorded with said Registry of Deeds in Book 2195, Page 138.

**The premises referred to as "Remaining Land of Anita I. Costantini"** is described on the Plan, as follows:

Beginning at an iron pipe to be set on the easterly boundary of Routes 7 & 20, which is the southwest corner of the premises;

thence N 20° 16' 06" E, a distance of 41.65' along said highway to a bound found;  
thence N 19° 27' 21" E, a distance of 18.36' along said highway to an iron pipe to be set;  
thence S 68° 22' 43" E, a distance of 612.47' to an iron pipe;

thence S 74° 25' 59" E, a distance of 23.26' to an iron pipe to be set;  
thence S 75° 57' 24" E, a distance of 122.47' to an iron pipe to be set;  
thence along a chord bearing N 79° 49' 46" E, a chord distance of 246.09';  
R=300.00' and L=253.57' to an iron pipe to be set;  
thence N 15° 39' 56" E, a distance of 403.32' to an iron pipe to be set;  
thence N 08° 56' 02" W, a distance of 188.13' to an iron pipe to be set;  
thence N 15° 39' 56", a distance of 424.63' to an iron pipe to be set;  
thence S 71° 59' 02" E, a distance of 213.83' to an iron pipe to be set;  
thence N 19° 49' 33" E, a distance of 125.42' to an iron pipe to be set;  
thence along a chord bearing N 18° 29' 06" E, a chord distance of 190.19' ;  
R=4064.00' and L = 190.21' to an iron pipe to be set;  
thence N 17° 08' 39" E, a distance of 107.07' to an iron pipe to be set;  
thence S 66° 57' 14" E, a distance of 692.02' to an iron pipe;  
thence S 66° 57' 14" E, a distance of 10.12' to a 14" Maple Tree;  
thence S 16° 30' 11" W a distance of 1555.44' to an iron pipe;  
thence N 69° 53' 09" W, a distance of 532.29' to a bound found;  
thence N 69° 47' 37" W, a distance of 352.80' to a bound found;  
thence N 75° 57' 24" W, a distance of 285.07' to a square rod found;  
thence N 74° 25' 59" W, a distance of 23.26' to an iron pipe;  
thence N 68° 22' 38" W, a distance of 613.71' to the place of beginning.

Being a portion of the premises conveyed to Anita I. Costantini by deed of Philip W. Zinke, dated December 28, 1993, and recorded in said Registry of Deeds in Book 1610, Page 644 and being the same premises conveyed to the mortgagor herein by deed of Anita I. Costantini of even date and recorded simultaneously herewith in said Registry of Deeds in Book 2195, Page 144.

The foregoing premises is subject to the following:

Easements (three) to the Town of Lenox to maintain an eight (8) inch water line in a ten (10) foot wide strip of land along Pittsfield Road (Route 7 and 20), as set forth in a Taking dated July 15, 1952 and recorded with said Registry of Deeds in Book 607, Page 541, Page 515 and Page 516.

Easement to Southern Berkshire Power & Electric Company to maintain poles for the transmission of electricity that was established upon installation, dated November 26, 1958 and recorded with said Registry of Deeds in Book 683, Page 2.

Easement to Southern Berkshire Power & Electric Company to maintain poles for the transmission of electricity that became established upon installation, dated November 30, 1960 and recorded with said Registry of Deeds in Book 717, Page 405..

An Easement and Right of Way over abutting land to the east for the purpose of erecting and maintaining poles for carrying electric and telephone wires to the

property, as set forth in a deed from Lee Lime Corporation to Dorothie S. D' Oench, dated October 20, 1946 and recorded with said Registry of Deeds in Book 492, Page 305.

Water rights and water easements appurtenant o the property located to the east of the premises as set forth in said D' Oench deed from Lee Lime Corporation to Dorothie S. D' Oench, dated October 20, 1946 and recorded with said Registry of Deeds in Book 492, Page 305.

Right of Way and easement for all usual purposes of a way over and land formerly owned by H. Lee Stern and Arlene J. Stern as reserved in a deed to Stern from Dorothie S. Briggs, dated June 15, 1955 and recorded with said Registry of Deeds in Book 626, Page 541.

Right to Enter and travel over and across the property formerly owned by Noski, now owned by Chmura, with or without vehicles for the purpose of making necessary repairs on or replacements of the water pipe passing through said property which serves this premises, all as set forth in a deed from Wilkes to Noski, dated October 20, 1946 and recorded with said Registry of Deeds in Book 506, Page 529.

Special Permit for the Town of Lenox for site plan approval to build up to thirty four (34) residential units in seventeen (17) duplex buildings with private clubhouse, pool and tennis courts on 21.5 acres of land, dated February 23, 2001 and recorded with said Registry of Deeds in Book 2062, Page 73.

Easement in favor of Massachusetts Electric Company by Twelve Oaks, LLC dated September 27, 2002 and recorded with said Registry of Deeds in Book 2337, Page 311, as affected by Subordination Agreement by First Credit Commercial Capital Corp. dated October 21, 2002 and recorded with said Registry of Deeds in Book 2431, Page 210.

Terms of Sale:

A deposit of \$150,000.00 paid by certified check or bank cashier's check will be required at the time and place of sale. The difference between the amount of the deposit so paid by the highest bidder at such sale and 10% of the bid accepted from such bidder for the premises shall be paid as an additional deposit within three business days of the foreclosure sale by certified check, bank cashier's check or federal wire transfer funds at the offices of Cain Hibbard Myers & Cook, PC, 66 West Street, Pittsfield, Massachusetts. The balance of the purchase price shall be paid by certified check, bank cashier's check or federal wire transfer funds at the offices of Cain Hibbard Myers & Cook, PC, 66 West Street, Pittsfield, Massachusetts, within 30 days from the date of the sale.

In the event that any successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and the terms of the Memorandum of Sale executed at the time of the foreclosure, the holder of such mortgage reserves the right to sell such within described property by Foreclosure Deed to the second highest bidder, provided that such second highest bidder shall deposit with such mortgage holder's attorneys, Cain Hibbard Myers & Cook, PC, the amount of the required deposit as set forth herein within three business days after written notice of default of the previous highest bidder, and title to such property shall be conveyed to such second highest bidder within 20 days of such notice of default.

The purchaser will be responsible for all closing costs, recording fees, and deed stamps and shall be required to sign a Memorandum of Sale containing the terms of this sale.

Such sale shall be subject to all taxes, tax liens, municipal betterments and assessments, if any, and subject to prior liens or other enforceable encumbrances of record entitled to precedence over this mortgage, and subject to, and with the benefit of, all easements, restrictions, reservations and conditions of record and subject to all tenancies and rights of parties in possession, including rights or claims in personal property installed by tenants or former tenants now located on the premises. It shall be the bidder's sole responsibility to ascertain all items described in this paragraph and no representations are made concerning compliance with applicable zoning, building, sanitary or other state or municipal laws, ordinances or regulations.

Note for Informational Purposes: The Twelve Oaks, LLC Parcel, The Twelve Oaks Investment, Inc. Parcel, PARCEL "D" and Parcel "C" as described above were declared subject to the provisions of M.G.L. c. 183A (the "Condominium Act") by Master Deed of Twelve Oaks Village dated May 27, 2003 and recorded with said Registry of Deeds in Book 2582, Page 59. See also Twelve Oaks Village Trust Declaration of Trust dated May 27, 2003 and recorded with said Registry of Deeds in Book 2582, Page 81.

This sale may be postponed or adjourned from time to time, if necessary, by the attorney for the mortgagee at the scheduled time and place of sale. The description of the premises contained in such Mortgage shall control in the event of a typographical error in this publication.

OTHER TERMS to be announced at sale.

FIRST CREDIT COMMERCIAL CAPITAL CORP.  
Present Holder of Such Mortgage

Cain Hibbard Myers & Cook, P.C.  
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February 11, 18, 25