

## NOTICE OF MORTGAGEE'S SALE OF REAL ESTATE in PALMER

By virtue and in execution of the Power of Sale contained in a certain Mortgage, Security Agreement, Financing Statement and Assignment of Rents and Leases dated December 18, 2002 from XCL Enterprises, LLC, a Massachusetts limited liability company to Fleet Business Credit, LLC dated December 27, 2000, recorded in the Hampden County Registry of Deeds at Book 12826, Page 413 (the "Mortgage"), which Mortgage was assigned to GEC PAC Investment II, Inc. by Assignment dated August 30, 2004, recorded in said Registry at Book 14944, Page 524, and reassigned to Wendy's International, Inc. by Assignment recorded in said Registry at Book 17100, Page 364

for breach of the conditions of said Mortgage and for the purpose of foreclosing the same, the premises described in said Mortgage, all and singular, will be sold at Public Auction on Tuesday, February 26, 2008 at 2:00 p.m. at the mortgaged premises known as 1213 Thorndike Street, Palmer, MA, more particularly described as follows:

### Parcel 1:

Certain real estate situated in Palmer, Hampden County, Massachusetts on the Southeasterly side of Thorndike Street (1926 County Relocation of the 1889 Layout) being known and designated as Lot No. 8 as shown on a Plan of Lots recorded in Hampden County Registry of Deeds in Book of Plans 86, Page 74, bounded and described as follows:

Beginning at an iron pin on the Southeasterly side of Thorndike Street at the northwesterly corner of Lot No. 7 shown on said plan, conveyed to Leonard Roy et ux, by deed dated May 1, 1961 and recorded in said Registry of Deeds, Book 2820, Page 70, said iron pin being also S. 69° 59' W., 131.36 feet from a concrete bound opposite Stations 43+86.26 in the aforesaid 1926 County Relocation of said Street thence running S. 20° 01' E., 200 feet along the Southwesterly side of said Lot .No. 7 as shown on said plan, conveyed to said Roy, et ux to an iron pin; thence turning and running S. 69° 59' W., 100 feet along land now or formerly of Emile G. Tetreault et ux to a point, thence turning and running N. 20° 01' W., 200 feet along said last-named land to a point on the southeasterly side of Thorndike Street, thence turning and running N. 69° 59' E., 100 feet along the south-easterly side of Thorndike street to the point of beginning.

### Parcel 2:

A certain lot or parcel of land on the southerly side of Thorndike Street in Palmer, Hampden County, Massachusetts, said lot or parcel being known and designated as Parcel 2 as shown on a plan entitled "Plan of Land in Depot Village Palmer, Ma., surveyed for and owned by John Lizak", said plan being recorded in Hampden County Registry of Deeds in Plan Book 299, Page 82, said lot or parcel being more particularly bounded and described as follows:

Northwesterly by Thorndike Street as shown on said plan, 100.00 feet;

Northeasterly by land of Mark T. Baldyga as shown on said plan, 161.32 feet;  
 Southerly by other land of John Lizak, Inc. and John Lizak as shown on said plan, 74.78 feet;  
 Southwesterly by other land of John Lizak as shown on said plan, 41.73 feet;  
 Westerly by last-named land 113.70 feet.  
 Containing 14,703 square feet of land according to said plan.

Parcel 1 and Parcel 2 are also defined as Lot shown on a plan, dated December 19, 2002, recorded with said Deeds, Plan Book 327, Plan 105.

There is also included in the sale all equipment and fixtures situated on the premises to the extent they are part of the realty.

Said mortgaged premises will be sold and conveyed subject to and with the benefit of the following, if any there be, insofar as in force and applicable and having priority over the Mortgage: any and all restrictions, easements, improvements, covenants, unpaid taxes, tax titles, municipal liens, assessments, other liens or claims in the nature of liens, attachments and encumbrances, boundary line disputes, overlaps, encroachments and any matters which would be disclosed by an accurate survey and inspection of the premises.

Said mortgaged premises will also be sold subject to and with the benefit of the following, to the extent the same are in force and applicable: Deed restrictions described in a deed from Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's") recorded in said Registry at Book 12826, Page 400; Right of First Refusal granted to Wendy's recorded in said Registry at Book 12826, Page 405; Aqueduct rights recorded at Book 503, Page 412; Railway Rights recorded at Book 644, Page 26; utility easements recorded respectively at Book 739, Page 32, Book 853, Page 502 and Book 873, Page 49; Well rights as recorded at Book 1620, Page 103; Restriction recorded at Book 9323, Page 102; Notice of Decision recorded at Book 10324, Page 326; Special Permit recorded at Book 10324, Page 330; Notice of Decision recorded at Book 12488, Page 392; and Order of Conditions recorded in said Registry at Book 12488, Page 398.

**TERMS OF SALE.** The successful bidder will be required to make a deposit at the sale in the amount of \$50,000 and, within three (3) business days after the sale an additional deposit shall be paid by the successful bidder sufficient to bring the aggregate deposit up to an amount equal to ten (10%) per cent of the auction price. The deposit shall be paid to and held by Shatz, Schwartz and Fentin, P.C. ("Escrow Agent") at the time and place of sale as earnest money, by certified or bank cashier's check, unless otherwise announced at the sale. The balance of the purchase price is to be paid at closing as described below. The high bidder shall be responsible for paying a 3.5% commission payment to the auctioneer in addition to the bid price. **TIME WILL BE OF THE ESSENCE.**

The sale is subject to the Right of First Refusal granted by the mortgagor to Wendy's described above. At the conclusion of the auction and the execution of the

Memorandum of Sale, the Mortgage Holder will notify Wendy's of the terms of the foreclosure sale. If Wendy's notifies Mortgage Holder within forty-five days of Wendy's intention to exercise its rights under the Right of First Refusal, the successful bidder's deposit shall be returned, the successful bidder's rights under the Memorandum of Sale shall terminate and the premises will be sold to Wendy's for the highest bid price. If Wendy's notifies the Mortgage Holder that it does not intend to exercise the Right of First Refusal, or does not timely notify the Mortgage Holder of its intent to do so, then the successful bidder shall be obligated to complete the sale in accordance with the terms of the Memorandum of Sale on or before the first to occur of (i) thirty days after receipt of notice from Mortgage Holder that Wendy's elected not to exercise its Right of First Refusal, or (ii) May 12, 2008.

In the event that the successful bidder at the public auction shall default in purchasing the within described property according to the terms of this Notice of Mortgagee's Sale and/or the terms of the Memorandum of Sale executed at the public auction, the Mortgage Holder reserves all of its rights against such successful bidder and in addition, Mortgage Holder may, at its election, purchase the mortgaged property for the amount bid by the successful bidder or sell the property to the second highest bidder at the public auction, provided that Mortgage Holder in its discretion may require, (i) said second highest bidder to deposit with the Escrow Agent the amount of the required deposit as set forth herein within three (3) business days after written notice to the second highest bidder of the default of the previous highest bidder, (ii) the second highest bidder to execute a Memorandum of Sale and (iii) the closing to occur within twenty (20) days of said written notice, time being of the essence unless the Mortgage Holder agrees otherwise.

The Mortgage Holder reserves the right to sell any parcel or any portion thereof separately, or in any order that Mortgage Holder may choose and/or to postpone this sale to a later time or date by public proclamation at the time and date appointed for the sale and to further postpone any adjourned sale date by public proclamation at the time and date appointed for the adjourned sale date. The description for the premises contained in said Mortgage shall control in the event of a typographical error in this publication.

The successful bidder shall pay all recording fees and documentary stamps in connection with the transfer of the premises, any costs of obtaining smoke and carbon monoxide detector certificates and the transfer or issuance of any licenses, all real estate taxes, tax titles, and municipal charges due as of the date of sale and those due thereafter through the date of Closing, as well as all of its costs in connection with the transaction, including but not limited to title examinations and title premiums. No adjustments whatsoever will be made, whether for taxes, municipal charges, utilities or otherwise.

Other terms, if any, will be announced at the sale. The successful bidder will be required to sign at the auction sale a Memorandum of Sale containing the terms of sale.

Date: February 4, 2008

Wendy's International, Inc.

Present holder of said Mortgage

By Shatz, Schwartz and Fentin, P.C.

Its attorneys

Gary S. Fentin, Esquire

1441 Main Street

Springfield, MA 01103

(413) 737-1131

U\A03\00 New files\Wendy's\0Mortgagee Notice-Palmer.0301