

UNOFFICIAL COPY 3

89167403

(Willowmere Subdivision)

ASSIGNMENT OF PURCHASE CONTRACTS AND SALES PROCEEDS

THIS ASSIGNMENT OF PURCHASE CONTRACTS AND SALES PROCEEDS made as of the 12 day of April, 1989, by LA SALLE NATIONAL BANK, as Trustee under Trust Number 113218, dated May 10, 1988 (hereinafter called "Trustee"), whose address is 135 South LaSalle Street, Chicago, Illinois 60602, to WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation (hereinafter called "Assignee"), whose mailing address is One Oxford Centre, 301 Grant Street, Pittsburgh, Pennsylvania 15219.

WITNESSETH:

\$25.00

WHEREAS, LANDMARK HOMES, INC., an Illinois corporation, whose mailing address is 201 West Main Street, Barrington, Illinois 60010, (hereinafter called "Assignor") represents that it is the sole beneficiary under Trust No. 113218; and

WHEREAS, Assignor represents and warrants that Trustee is lawfully seized and possessed and is the owner in fee simple of that certain real estate, more particularly described in Exhibit "A" heresof; and

WHEREAS, pursuant to a Construction Loan Agreement (the "Agreement") of even date herewith by Assignor, as borrower, and Assignee, as lender, Assignor has issued and delivered to Assignee a promissory note of Assignor of even date herewith in the principal amount of Nineteen Million Nine Hundred Thousand Dollars (\$19,900,000.00), bearing interest as specified therein (said note together with any and all renewals, modifications and extensions thereof being hereinafter collectively called the "Note"), evidencing that certain loan (hereinafter called the "Loan") to be made in several advances up to a maximum principal amount of \$19,900,000.00; and

WHEREAS, Trustee has executed and delivered to Assignee a Real Estate Mortgage with Security Agreement and Assignment of Leases and Parts of even date herewith (hereinafter called the "Mortgage"), as additional security for the Loan, which Mortgage conveys that tract of land described in Exhibit "A" attached hereto and incorporated herein by this reference (herein called the "Property"), and upon which Property Assignor is developing Willowmere Subdivision, a single-family residential subdivision project containing fifty-four (54) lots (the "Lots") upon which Assignor is to construct forty-two (42) single-family dwelling units (the "Dwelling Units"); and

WHEREAS, in order to induce Assignee to make the Loan, Assignor is desirous of assigning to Assignee, as additional security for the Loan: (1) all of

71-85-510-DJ

89167403

UNOFFICIAL COPY

-2-

Assignor's right, title and interest under any and all Reservation Agreements, Purchase Contracts and Agreements of Sale for the Lots or Dwelling Units (all such Contracts or Agreements, whether now made or hereafter entered into, together with any and all renewals, modifications, supplements or extensions thereof and substitutions or replacements therefor, being hereinafter collectively called the "Contracts"); and (ii) all of the Assignor's rights to "Proceeds" which shall refer to all payments, down payments, escrow deposits, receipts, revenues, interest and income of any kind which is made or to be made by the purchasers under the Contracts; and

WHEREAS the Contracts shall include, but not be limited to, those Contracts identified and described on Exhibit "B" attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Assignor, Assignor, intending to be legally bound, hereby covenants and agrees as follows:

1. Assignor hereby sells, assigns, transfers and sets over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in, to and under the Contracts, including but not limited to (a) any and all rights of Assignor to receive or collect the Proceeds; (b) any and all rights and remedies which Assignor may have against any other party to any of the Contracts, whether related to the payment of any portion of the Proceeds or otherwise; (c) any and all guarantees of the purchasers under any and all of the Contracts; and (d) any and all other powers, privileges, options and benefits of Assignor under any of the Contracts including, but not limited to, the continuing right to receive and collect all payments, down payments, escrow deposits, income, revenues, profits, monies and security payable or receivable under any Contract. The assignment set forth in this Paragraph shall include, without limitation, a security interest for purposes of the Uniform Commercial Code and Assignor agrees to execute such financing statements as Assignee may require.

2. These presents are given to secure (a) payment of the Loan as evidenced by the Note and all accrued interest and principal from time to time outstanding thereon; (b) the payment of all other sums which Assignor is or may from time to time be obligated to pay or cause to be paid to Assignee under the Note, the Mortgage, the Agreement and any other instrument evidencing or securing the Loan and all renewals, extensions, substitutions or modifications thereof; and (c) performance of all obligations under the Note, the Agreement, the Mortgage and any other instrument evidencing or securing the Loan, and all renewals, extensions, substitutions or modifications thereto.

3. Assignor hereby represents and warrants, and Trustee hereby represents that:

89167403

(a) Assignor has the right, power and capacity to make this Assignment and no person, firm or corporation other than Assignor has or will have (i) any right, title or interest in, to or under the Contracts, as seller thereunder, or (ii) any right to receive the Proceeds or any part thereof.

(b) All existing Contracts are set forth on Exhibit B and all existing Contracts are in full force and effect.

(c) There are no existing defaults under any of the Contracts and Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and provisions hereof of which would limit Assignee in such operation.

(d) Assignor has not accepted or collected any payments under any existing Contract and Assignor has not previously assigned, sold, transferred, mortgaged or pledged the Contracts.

4. Assignor and Trustee hereby covenants and agrees:

(a) Assignor will, at Assignor's sole cost and expense, perform and discharge all of Assignor's obligations and undertakings as seller under the Contracts. Assignor will use all reasonable efforts to enforce or secure the performance of each and every obligation and undertaking of the purchasers under the Contracts and will appear in and prosecute or defend any action or proceeding arising under, or in any manner connected with, the Contracts or the obligations and undertakings of the purchasers thereunder.

(b) Assignor will not without the prior written consent of Assignee (i) further pledge, transfer, mortgage or otherwise encumber or assign any portion of the Proceeds or any of Assignor's rights under any of the Contracts; (ii) waive, excuse, condone or in any manner release or discharge any purchaser under any of the Contracts; (iii) disaffirm, cancel, terminate or consent to any surrender of any of the Contracts; or (iv) modify, extend or in any way alter the terms of any of the Contracts so as to reduce or diminish or postpone Assignor's receipt of any portion of the Proceeds.

(c) Any default by Assignor in the performance of any obligation or undertaking hereunder shall constitute and be deemed, without further notice from Assignee, an Event of Default under the Agreement, the Mortgage and under any other instrument securing the Loan so as to entitle Assignee to exercise any and all of the rights and remedies thereunder, including the right to declare all sums payable under the Note immediately due and payable without notice or demand.

(d) Without further notice or demand from Assignee, Assignor will deliver to Assignee copies of each of the Contracts within ten (10) business days of the execution of each of the Contracts and shall, upon demand of Assignee, execute further assignments in respect thereto.

UNOFFICIAL COPY

1 9 1 1 1 1 3

-4-

(e) Assignor will give written notice to Assignee of any default under any Contract.

(f) In the event any purchaser under (or guarantor of) the Contracts should be the subject of any bankruptcy proceeding or any other federal, state or local statute which provides for the possible termination or rejection of any of the Contracts so assigned (or any guarantee thereof), and in the event such Contracts are so rejected (or guarantee terminated), Assignor shall make no damages settlement without the prior written consent of the Assignee; and further Assignor shall require that any check in payment of damages for rejection of the Contracts (or termination of the guarantee) be made payable both to the Assignor and Assignee, and upon Assignee's request, Assignor shall endorse to the order of Assignee any such check, the proceeds of which will be applied to any portion of the indebtedness secured by this Assignment or Assignee may elect, and Assignor hereby assigns any such payment to Assignee.

5. These presents shall not be deemed or construed to constitute Assignee as mortgagee in possession of the Lots or Dwelling Units or to obligate Assignee to take any action hereunder, to incur expenses or to perform or discharge any obligation, duty or liability hereunder or under the Contracts. Until the Loan and all indebtedness evidenced by the Note shall have been paid in full, Assignor will from time to time execute and deliver unto Assignee upon demand any and all writings that Assignee may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Assignee to enforce any right or rights hereunder.

6. The term "Event of Default" as used herein shall mean the occurrence of any one of the following:

(a) If Assignor shall fail to comply with any of the covenants, duties or obligations of Assignor herein;

(b) If an Event of Default shall occur under the Agreement, the Note, the Mortgage or any other instrument evidencing or securing the Loan; or

(c) If at any time any representation or warranty made by Assignor herein shall be materially incorrect.

7. Upon the occurrence of an Event of Default, or upon occurrence and during the continuance of an event which, with the giving of notice or the lapse of time, or both, would be an Event of Default, Assignee, at its option, shall have the complete right, power and authority to exercise and enforce any or all of the following rights and remedies:

89167403

UNOFFICIAL COPY

89167403

-5-

(a) Without further notice and without taking possession of the Property, to demand, collect, receive, sue for, attach and levy the Proceeds in Assignee's own name, to give proper receipts, releases and acquittances, and after deducting all necessary and proper costs and expenses of collection, as determined by Assignee, including reasonable attorneys' fees, to apply the net Proceeds upon any indebtedness so secured and in such order as Assignee may determine; and

(b) To declare all sums secured hereby immediately due and payable and, at its option, exercise all of the right, and remedies contained in the Mortgage, Note and Agreement.

8. Assignor constitutes and appoints Assignee the true and lawful attorney, coupled with an interest, of the Assignor and upon the occurrence of an Event of Default in the name, place and stead of Assignor:

(a) To demand, sue for, attach, levy, recover and receive any Proceeds payable by any purchaser under any Contract; and

(b) To consummate transactions contemplated by the Contracts and to give proper receipts, releases and acquittances and, after deducting expenses of collection, to apply the net Proceeds as a credit upon any portion, as selected by Assignee, of the indebtedness secured hereby, notwithstanding the fact that the amount owing may not then be due and payable or that the indebtedness is otherwise adequately secured; Assignor authorizes and directs the purchasers under the Contracts and any successor to the interest of such purchasers, upon demand and notice from Assignee of Assignee's right to receive the Proceeds and any other amounts under such contracts, to pay to Assignee the Proceeds and other amounts due or to become due under the Contracts, and such purchasers shall have the right to rely upon such demand and notice from Assignee and shall pay such payment, and other amount, to Assignee without any obligation or right to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such Proceeds and other amounts (notwithstanding any notice from or claim of Assignor to the contrary). Assignor shall have no right or claim against any such purchasers for any such Proceeds and other amounts so paid by purchasers to Assignee.

9. The rights of Assignee to collect and receive the Proceeds due under the Contracts assigned or to take possession of the Property, or to exercise any of the rights or powers so granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien of the Mortgage, including any period allowed by law for the redemption of the Property after any foreclosure sale; provided, however, that nothing herein shall be deemed to modify or affect in any way any waiver of the right of redemption contained in the Mortgage or any other Loan Document.

89167403

UNOFFICIAL COPY

-6-

10. Each of the Contracts will cover one or more Lots or Dwelling Units and will be in a form satisfactory to Assignee. Upon the closing of each Lot or Dwelling Unit sale, the Unit Release Price and Unit Release Fee (as defined under the Construction Loan Agreement) shall be immediately delivered by Assignor to Assignee as called for under the Agreement.

11. Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of the Contracts; and Assignor hereby agrees to indemnify Assignee for, and to save Assignee harmless from, any and all liability arising from any of the Contracts or from this Assignment. This Assignment shall not place responsibility for the control, care, management or repair of the Lots or Dwelling Units upon Assignee, or make Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Lots or Dwelling Units resulting in loss or damage or injury or death to any party; provided, however, the aforesaid indemnity and save harmless of Assignor shall not apply to any liability caused by Assignee's negligence or willful misconduct occurring while Assignee has actual possession of the Lots and/or Dwelling Units and is operating same pursuant hereto, upon foreclosure or otherwise.

12. The failure of Assignee to enforce any of the terms, covenants or conditions hereof shall not be construed or deemed to be a waiver of any rights or remedies hereunder. Assignee shall have the full right, power and authority to enforce this Assignment, or any of the terms, covenants or conditions hereof, at any time or times that Assignee shall deem fit.

13. All notices required or permitted to be given hereunder shall be deemed to have been duly given if deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed, if to Assignor, at the mailing address set forth above for Assignor, and if to Assignee, at the mailing address set forth above for Assignee, or to such other place or places as a party hereto may by ten (10) days' prior written notice to the other party hereto from time to time designate for the purpose of receiving notices hereunder.

14. This Assignment applies to and binds the parties hereto and their respective heirs, legal representatives, successors and assigns. Any provisions in any other agreement creating rights in Assignee other than those created herein shall be deemed incorporated herein by reference and made a part hereof for all purposes.

15. Upon payment, performance and discharge in full of all of the indebtedness and obligations secured by the Mortgage and hereby and upon payment of all sums payable under this Agreement, this Assignment shall be void and of no effect, but, the affidavit, certificate, letter or statement of any

89167403

authorized signatory of Assignee showing any part of the indebtedness and obligations to remain unsatisfied shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person, firm or corporation, may and is hereby authorized to rely thereon. A demand made by Assignee on any purchaser under any Contract for payment of Proceeds by reason of any default claimed by Assignee shall be sufficient notice and demand to said purchaser to make future payments of the Proceeds to Assignee without the necessity for further consent by the said Assignor.

16. This statement is based solely upon information and belief, upon information furnished by the beneficiary or beneficiaries of the aforesaid trust. La Salle National Bank has no personal knowledge of any of the facts or statements herein contained.

17. This instrument is executed by LA SALLE NATIONAL BANK, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenant and conditions to be performed by LA SALLE NATIONAL BANK are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LA SALLE NATIONAL BANK by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

LA SALLE NATIONAL BANK as trustee as aforesaid, and not personally, has executed the foregoing document at the direction of authorized parties for the sole purpose of binding the trust estate under said trust. No personal liability is assumed by or may be asserted hereunder against said Bank personally.

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed as of the date first above written.

ATTEST:

By:

Cecil W. Walker

ASSISTANT SECRETARY

(SEAL)

LA SALLE NATIONAL BANK, Not personally but as Trustee under Trust Agreement dated May 10, 1989, and known as Trust No. 113218.

By:

[Signature]

VICE PRESIDENT

(SIGNATURES CONTINUED ON PAGE EIGHT)

89167403

UNOFFICIAL COPY

89167403

-8-

LANDMARK HOMES, INC.,
an Illinois corporation, as Beneficiary
under Trust No. 113218 dated
May 10, 1989, executes this
Assignment for the purpose of
obligating itself under the necessary
provisions of this Assignment

ATTEST:

By: *[Signature]*

By: *[Signature]*

Name: Peter J. Bianchini, Jr.

Its: *[Signature]*

Its: *[Signature]*

(SEAL)

STATE OF ILLINOIS)
) SS:
COUNTY OF Cook)

This instrument was executed and acknowledged before me on this 12th day
of April, 1989, by Peter J. Bianchini, Jr., the President of LANDMARK HOMES,
INC. under Trust No. 113218, as a duly authorized officer in order to bind said
bank for the purposes set forth herein.

[Signature]
Notary Public's signature

~~My Commission Expires~~
"OFFICIAL SEAL"
JULIE LOCKNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2-23-90
(SEAL)

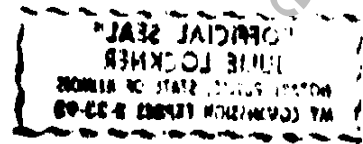
COOK COUNTY, ILLINOIS
APR 17 1989 12:59

89167403

89167403

UNOFFICIAL COPY

Property of Cook County Clerk's Office



UNOFFICIAL COPY

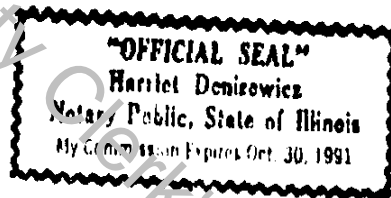
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, HARRIET DENISIEWICZ a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT JOSEPH W. LAMB, VICE PRESIDENT of LA SALLE NATIONAL BANK, and WILLIAM J. ... of said Bank personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and ... respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said ... did also then and there acknowledge that he, as custodian of the Corporate Seal of said Bank, did affix said corporate seal of said Bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of April, A.D. 1989.

Harriet Denisiewicz
Notary Public

My Commission Expires: _____



Prepared By: & return to

Ronald S. Krasnow, Esquire
Westinghouse Credit Corporation
One Oxford Centre, 9th Floor
301 Grant Street
Pittsburgh, PA 15219

Box 333
89167403

UNOFFICIAL COPY

EXHIBIT A

All those five (5) certain parcels of property located in Cook County, Illinois, and more particularly described as follows:

PARCEL 1:

The South Half of the Southwest Quarter and the South 60 acres of the North Half of the Southwest Quarter (except therefrom the North 990.0 feet of the West 660.0 feet of the South 140 acres in said Southwest Quarter) and also (except therefrom that part thereof lying southwesterly of the northerly line of Algonquin Road) of Section 24, Township 42 North, Range 9 East of the Third Principal Meridian, Cook County, Illinois.

PARCEL 2:

That parcel of land in the Northeast corner of the East Half of the Northwest Quarter of Section 25, Township 42 North, Range 9 East of the Third Principal Meridian lying North of Chicago Road, all Township 42 North, Range 9 East of the Third Principal Meridian, in Cook County, Illinois.

Plat 132 known as NE 1/4 Barrington Rd, Algonquin Rd Cook Co, Ill

PARCEL 3:

That part of the South 330 feet of the North 990 feet of the West 660 feet of the South 140 acres of the Southwest Quarter of Section 24, Township 42 North, Range 9 East of the Third Principal Meridian, bounded and described as follows:

Beginning at the intersection of the East line of Barrington Road, as Dedicated per Document 11172684 recorded December 7, 1932 and the South line of the aforesaid South 330 feet of the North 990 feet; thence easterly along said South line a distance of 10.0 feet to a point; thence northwesterly along a straight line a distance of 330.15 feet more or less to the point of intersection of the said East line of Barrington Road and the North line of said South 330 feet of the North 990 feet; thence South along the said East line of Barrington Road a distance of 330.0 feet to the point of beginning all in Cook County, Illinois.

East side Barrington Rd, 906 ft South of Algonquin Rd, Cook Co, Ill

PARCEL 4:

The North 330 feet of the West 660 feet of the South 140 acres of the Southwest Quarter of Section 24, Township 42 North, Range 9 East of the Third Principal Meridian as shown by the plat Recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document 14959960 on the 27th day of November 1950 on Page 6 in Book 387 of plats.

315 S. Barrington Rd, Barrington, Ill.

PARCEL 5:

The South 330 feet of the North 660 feet of the West 660 feet of the South 140 acres of the Southwest Quarter of Section 24, Township 42 North, Range 9 East of the Third Principal Meridian, in Cook County, Illinois.

315 S. Barrington Rd, Barrington, Ill.

P.I.N. 01-24-300-005, 01-24-300-003, 01-24-300-009, 01-25-100-022

89167403

UNOFFICIAL COPY 3

EXHIBIT B

All Reservation Agreements, Purchase Contracts and Agreements of Sale now made or hereafter entered into in relation to the Property.

Property of Cook County Clerk's Office

89167403