



102657662

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): 1-28-04 ORLIMAR GOLF COMPANY
Individual(s) Association
General Partnership Limited Partnership
[X] Corporation-State
Other
Additional name(s) of conveying party(ies) attached? [X] Yes [] No

2. Name and address of receiving party(ies)
Name: KING PAR CORPORATION
Internal Address:
Street Address: G-5140 Flushing Road
City: Flushing State: MI Zip: 48433
Individual(s) citizenship
Association
General Partnership
Limited Partnership
[X] Corporation-State Michigan
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? [] Yes [X] No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
[X] Other Foreclosure & Sale Agreement
Execution Date: August 15, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) NONE
Additional number(s) attached [X] Yes [] No

B. Trademark Registration No.(s) SEE ATTACHMENT

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Marshall G. MacFarlane
Internal Address:
Street Address: 3001 W. Big Beaver Suite 624
City: Troy State: MI Zip: 48084

6. Total number of applications and registrations involved: 30
7. Total fee (37 CFR 3.41): \$ 765.00
[X] Enclosed
[] Authorized to be charged to deposit account
8. Deposit account number: 25-0115
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
Marshall G. MacFarlane Name of Person Signing
Signature Date 1-26-04
Total number of pages including cover sheet, attachments, and document: 14

01/29/2004 LMUELLER 00000190 1511898

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01 FC:8521 02 FC:8522

40.00 DP 725.00 DP

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

Continuation Sheet

1. Additional Name of Conveying Party(ies):

LaSalle Bank National Association, a Delaware Corporation

4.B. Trademark Registration No.(s):

1,511,898
1,514,729
1,514,730
1,534,464
1,556,973
1,558,172
2,087,314
2,091,352
2,196,718
2,257,243
2,298,148
2,300,636
2,301,855
2,319,580
2,332,872
2,349,115
2,383,623
2,416,297
2,416,610
2,419,644
2,420,012
2,427,594
2,457,395
2,481,867
2,499,139
2,557,492
2,557,493
2,573,260
2,573,345
2,686,863

FORECLOSURE AND SALE AGREEMENT

This Foreclosure and Sale Agreement (this "Agreement"), dated as of August 15, 2003, is entered into by and among King Par Corporation, a Michigan corporation (the "Buyer"), LaSalle Bank National Association, as the sole Lender and as Agent for the Lenders under the Loan Agreement described below ("LaSalle"), and Orlimar Golf Company, a Delaware corporation ("Borrower").

RECITALS

A. Pursuant to (i) that certain Amended and Restated Loan and Security Agreement, dated as of July 23, 1999 (as amended, the "Loan Agreement") by and among Orlimar Golf Equipment Company LLC, predecessor to Borrower, LaSalle, as Agent and a Lender, FINOVA Capital Corporation, as a Lender, and First Bank, N.A., as a Lender; and (ii) other documents, instruments and agreements executed pursuant thereto or in connection therewith (collectively, the "Related Agreements"; and together with the Loan Agreement, the "Loan Documents"), LaSalle has made advances to, and other financial accommodations to or for the benefit or account of, the Borrower (all such advances and other financial accommodations being herein referred to collectively as the "Loans"). The Loans and all other obligations of the Borrower and other obligors with respect thereto to LaSalle, howsoever created, arising or evidenced (collectively, the "Obligations") are secured by substantially all of the Borrower's assets.

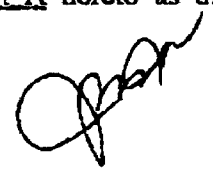
B. As a result of continuing defaults in respect of the Obligations and other liabilities under the Loan Agreement and other Loan Documents, LaSalle has determined, and the Borrower agrees, that LaSalle is entitled under Sections 9-610 et seq. of the applicable Uniform Commercial Code (the "UCC") and under other applicable law and Loan Documents, to sell and transfer to any person or entity for value in a private sale all of the Borrower's right, title and interest in and to the Subject Assets (as defined in Section 2 below).

C. LaSalle desires to sell and transfer to the Buyer, and the Buyer desires to acquire from LaSalle, pursuant to the UCC and on the terms and conditions hereinafter set forth, all of the Borrower's right, title and interest in and to the Subject Assets.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated into and form an integral part of the agreement between the parties contained in this Agreement.
2. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, in consideration of the Purchase Price (as defined in Section 5 below), at the Closing referred to in Section 7 hereof, pursuant to Sections 9-610 et seq. of the UCC, other applicable law and Loan Documents, LaSalle shall sell, assign and transfer to the Buyer, and the Buyer shall purchase, acquire and take assignment of, all of the Borrower's right, title and interest in and to all of the assets more particularly described and defined on Exhibit A hereto as the



"Subject Assets", whereupon LaSalle's lien and security interest in the Subject Assets, and all other liens and security interests therein, will be discharged.

3. Compliance with UCC. It is the express intent of the parties hereto that the sale of the Subject Assets contemplated hereby be consummated pursuant to Sections 9-610 et seq. of the UCC. To the extent not waived in writing to the sole satisfaction of LaSalle, LaSalle has sent or will send notices of the foreclosure sale contemplated hereby in advance of such sale to the Borrower and to any secured party from whom LaSalle has received (before sending its notices to the Borrower) written notice of a claim or an interest in the Subject Assets that might be adversely affected hereby.

4. No Assumption of Obligations or Liabilities. The Buyer shall not assume or be deemed to have assumed any liability or obligation of the Borrower whatsoever. LaSalle shall not assume, and LaSalle shall not be deemed to have assumed any liability or obligation of the Borrower whatsoever.

4.1 Sale As Is; Where Is. LaSalle specifically disclaims (and the Buyer expressly agrees that LaSalle is not making or giving) any covenant, undertaking, representation or warranty, express or implied, in connection with this Agreement, the Subject Assets, or any other matter relating hereto or thereto as to the following matters:

- (a) non-infringement of any of the copyrights, trademarks, trade names, patents or other intellectual property which may be owned or licensed by the Borrower;
- (b) the existence on the Closing Date of any specific items constituting the Subject Assets, or the quantity or quality thereof; or
- (c) the condition, quality, suitability, value, merchantability or fitness for a particular purpose of any of the Subject Assets or of the Borrower or any aspect of the Borrower's financial conditions, businesses, prospects, or operations.

THE BUYER ACKNOWLEDGES AND AGREES THAT: (A) THE SALE OF SUBJECT ASSETS TO THE BUYER IS: ON AN "AS IS, WHERE IS" BASIS; WITHOUT ANY REPRESENTATION OR WARRANTY AS TO ITEMS, EXISTENCE, OWNERSHIP, TITLE, CONDITION, OR QUANTITY; (B) LASALLE MAKES NO REPRESENTATIONS AS TO THE VALUE, IF ANY, OF THE SUBJECT ASSETS BEING TRANSFERRED HEREBY; (C) LASALLE MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE POSSIBLE INFRINGEMENT OF ANY COPYRIGHTS, TRADEMARKS, TRADE NAMES PATENTS OR OTHER INTELLECTUAL PROPERTY ARISING OUT OF THE USE BY THE BUYER OF ANY OF THE SUBJECT ASSETS; (D) LASALLE MAKES NO REPRESENTATIONS OR WARRANTIES THAT ALL OR A PORTION OF THE SUBJECT ASSETS ARE MERCHANTABLE (IN THE SENSE OF AN IMPLIED WARRANTY OF MERCHANTABILITY UNDER THE UCC OR OTHERWISE) OR FIT FOR A PARTICULAR PURPOSE; AND (E) THE SOLE REPRESENTATIONS AND WARRANTIES OF LASALLE REGARDING THE SUBJECT ASSETS ARE THOSE SPECIFICALLY PROVIDED IN SECTION 11 OF THIS AGREEMENT.

5. Purchase Price. The purchase price for the Subject Assets is \$4,081,000 (the "Purchase Price"), which shall be payable in full at the Closing referred to in Section 7 below by wire transfer, without any right of setoff, recoupment or deduction (whether based on any breach of this Agreement or otherwise).

6. Obligations and Liens Remain Outstanding. Except to the extent of cash received from the Buyer and actually and finally applied by LaSalle to such liabilities, the Obligations shall remain outstanding, and LaSalle does not release any, but instead specifically reserves all, security interests, liens and other encumbrances and rights relating thereto, in all assets and collateral described in the Loan Documents and the other applicable loan documents which are not included in the Subject Assets and the assets which are not sold to the Buyer under this Agreement.

7. Closing.

7.1 Closing Date. The "Closing Date" shall mean the date upon which the Purchase Price is paid by the Buyer and the Borrower's right, title and interest in the Subject Assets is transferred by LaSalle to the Buyer.

7.2 Time. The transfer and delivery of all documents and instruments necessary to consummate the transactions contemplated by this Agreement (the "Closing") shall be held on or prior to August 15, 2003.

7.3 Transactions at Closing. At the Closing:

(a) LaSalle shall execute and deliver to the Buyer the General Assignment and Bill of Sale in substantially the form of Exhibit B attached hereto.

(b) The Purchase Price shall be immediately delivered in cash to LaSalle by wire transfer.

8. Taxes. Any personal property taxes, sales taxes, and transfer taxes arising as a result of the transactions and sales contemplated by this Agreement shall be paid by the Buyer. Any personal property taxes assessed on the Subject Assets that are attributable to the period prior to the Closing Date shall be the responsibility of the Borrower. Any personal property taxes assessed on the Subject Assets that are attributable to the period on or after the Closing Date shall be the responsibility of the Buyer.

9. Representations, Warranties, and Covenants of the Buyer. The Buyer represents, warrants and covenants to LaSalle that this Agreement has been duly executed and delivered by the Buyer and constitutes the legal, valid and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms, except as such enforcement may be limited by general equitable principles or applicable bankruptcy, insolvency, moratorium or similar laws and judicial decisions from time to time in effect which affect creditors' rights generally.

10. Representations, Warranties, and Covenants of the Borrower. The Borrower represents, warrants and covenants to the Buyer and LaSalle as follows:

10.1 UCC Notice and Foreclosure. Notice to the Borrower for the sale or disposition of the Subject Assets required under Sections 9-610 et seq. of the UCC or otherwise has, by the Borrower's execution of this Agreement, been acknowledged and waived, and the Borrower consents to LaSalle's foreclosure sale of the Subject Assets to the Buyer on the terms and conditions set forth herein.

10.2 Organization of the Borrower. The Borrower is a Delaware corporation, duly incorporated under the laws of the State of Delaware. The Borrower has all corporate power and authority to execute and deliver this Agreement and the other documents, instruments or agreements to be executed and delivered by it in connection herewith, and to carry out all of the actions required of it pursuant to the terms of this Agreement.

10.3 Approval; Binding Effect. The Borrower has obtained all necessary authorizations and approvals required for the execution and delivery of this Agreement and the other documents, instruments or agreements to be executed and delivered by it in connection herewith, and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Borrower and constitutes, the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

10.4 Title. Borrower is the owner of the Subject Assets subject to liens and security interests of record and pursuant to the sale contemplated by this Agreement, Buyer will acquire all right, title and interest in the Subject Assets free and clear of all liens and encumbrances.

10.5 Access. Borrower shall provide to Buyer after the Closing reasonable access to Borrower's records, information and personnel regarding the Subject Assets.

10.6 Intellectual Property.

(a) Borrower owns the entire right, title and interest in and to the rights in Patents and Patent Applications herein conveyed, including the rights to make applications in any and all foreign countries for the subject matter of said Patents.

(b) Borrower owns the entire right, title and interest in and to the Trademarks and Trademark Applications herein conveyed, including all goodwill appurtenant thereto, and further including the rights to make applications in any and all foreign countries for the subject matter of said Trademarks.

(c) The Patents herein conveyed are valid and subsisting as of the date of this Agreement, that all patents annuities, renewals or maintenance fees have been paid, and that there are no third party patents known to be infringed by the subject matter of said Patents.

(d) The Trademarks herein conveyed, including any registrations therefore, are valid and subsisting as of the date of this Agreement, that all trademark annuities or maintenance fees have been paid, and that there are no third party trademarks known to be infringed by the subject matter of said Trademarks.



(e) The Patents and/or Trademarks herein conveyed, including any registrations therefore, are not currently the subject of any civil litigation in any court, or the subject of any proceedings before any governmental agency, including, without limitation, any opposition or cancellation proceedings, any reexamination or reissue proceedings, or any interference proceedings.

(f) That there are no liens or other encumbrances on the Patents and/or Trademarks herein conveyed, including without limitation, any third party licenses under one or more of said Patents and/or Trademarks, and that Borrower has not heretofore conveyed, and will not hereafter convey, to any third party any rights inconsistent with the rights herein conveyed.

(g) Borrower officers, owners and employees are obligated to convey to Borrower any and all rights to all inventions created by said officers, owners and employees pertaining to the business of Borrower and have made and will make all necessary assignments of said rights in favor of Borrower and its assignees.

11. Representations, Warranties, and Covenants of LaSalle. LaSalle represents, warrants and covenants to the Buyer that:

11.1 Liens and Security Interests. LaSalle has a valid first priority security interest in and first lien on the Subject Assets in which a security interest may be created under Article 9 of the UCC. Upon the closing of the foreclosure sale transaction contemplated herein, all of the Borrower's interests in the Subject Assets shall be transferred to Buyer, and all liens and security interests on and in the Subject Assets shall be extinguished.

11.2 Binding Effect. This Agreement has been duly executed and delivered by LaSalle and constitutes the legal, valid and binding obligation of LaSalle, enforceable against LaSalle in accordance with its terms, except as such enforcement may be limited by general equitable principles or applicable bankruptcy, insolvency, moratorium or similar laws and judicial decisions from time to time in effect which affect creditors' rights generally.

11.3 Account Receivable. All payments of accounts receivable received by LaSalle after the Closing shall be delivered to Buyer. LaSalle shall provide an accounting of such payments received on a monthly basis.

12. Limitation of LaSalle's Liability. The Buyer agrees that, in the event that any of LaSalle's representations, warranties and/or covenants in Section 11.1 hereof prove to be incorrect with regard to particular Subject Assets, LaSalle's aggregate liability and obligation to the Buyer shall be limited to the least of (a) actual damages, (b) the portion of the Purchase Price allocable to such particular Subject Assets and (c) the replacement cost of such particular Subject Assets. The Buyer further agrees that LaSalle's maximum aggregate liability and obligation to the Buyer for claims or causes of action related to or arising under this Agreement, including, without limitation, claims referred to in the preceding sentence shall not, in any event or under any circumstances, exceed the Purchase Price.



13. General.

13.1 Entire Agreement. This Agreement, the General Assignment and Bill of Sale, and the related schedules and exhibits delivered in connection herewith contain the entire understanding of the parties with respect to the subject matter hereof, supersede all prior agreements and understandings relating to the subject matter hereof, and shall not be amended except by a written instrument hereafter signed by all of the parties hereto.

13.2 Sections and Section Headings. The headings of the sections and subsections are for reference only and shall not limit or control the meaning thereof.

13.3 Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, successors and assigns; provided, however, that no party may assign, whether absolutely or merely for collateral purposes, its rights, claims and benefits hereunder to any other person or entity without the express written consent of each of the other parties to this Agreement.

13.4 Survival of Representations and Warranties. The representations and warranties of each party hereto contained in this Agreement, notwithstanding any investigation by any other party hereto, shall be deemed to have been relied upon by each such other party, and shall survive the Closing and consummation of the transactions contemplated hereby.

13.5 No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein express or implied is intended or shall be construed to confer upon or to give any person, firm, or corporation other than LaSalle and the Buyer any rights or remedies under or by reason of this Agreement.

13.6 Risk of Loss. The risk of any loss that may occur with respect to any of the Subject Assets being purchased hereunder shall be borne by the Buyer immediately upon and at all times after the Closing Date. LaSalle shall have no liability whatsoever to the Buyer for any loss or damage to the Subject Assets being purchased hereunder that may occur on and after consummation of the Closing.

13.7 Controlling Law. This Agreement shall be construed under and in accordance with the laws of the state of Illinois.

13.8 Counterparts: Facsimile Signatures. This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute an original. Facsimile signatures hereto shall constitute originals for all purposes.

[Signature Pages on the Following Page]



10/07/2003 14:57

8105791748

WHLR PLC

PAGE 08/12

AUG-15-03 12:51pm

From-LASALLE BANK NA

3129046450

T-412 P.02/03 F-028

AUG-15-03 12:23

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WHLR PLC

08/15/2003 09:18

7503050027

ORLMAR GOLF

PAGE 02/02

AUG-15-03 10:08am

From-KEYSTONE CONSULTING GROUP

+3120698548

T-459 P.07/11 F-287

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly respective officers as of the date and the year first above written.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION

By: 

Print Name: ROBERT CORSETINO

Title: SVP

Address:

LaSalle National Bank
135 S. LaSalle Street, Suite 425
Chicago, IL 60603-4105
Attn: Robert Corsetino, Senior Vice President
Telephone: (312) 904-6362
Telecopier: (312) 904-6450

BUYER:

KING PAR CORPORATION

By: 

Print Name: John I. Bishop, Jr.

Title: Vice President

Address:

G-5140 Flushing Road
Flushing, Michigan 48433
Telephone: (810) 792-2470
Telecopier: (810) 792-1826

[Signature Page to the Foreclosure and Sale Agreement]

08951007.8 LaSalle/Orlmar Foreclosure Agreement

10/07/2003 14:57

8105791748

WHLR PLC

+3129603646

T-443 P.01/01 F-295

AUG-15-03 02:10pm

From-KEYSTONE CONSULTING GROUP

FROM: KEYS

FROM: KEYS

+3129603646

T-440 P.08/11 F-291

08/15/2003 13:33 6105791748

WHLR PLC

08/16/2003 10:20 760200027

ORLMAR GOLF

PAGE 07

AUG-15-03 10:09am From-KEYSTONE CONSULTING GROUP

+3129603646

T-440 P.06/11 F-287

BORROWER:

ORLMAR GOLF COMPANY

By: 

Print Name: **MARK SCHLOSSER**

Title: **PRESIDENT**

Address:

Orlmar Golf Company

1985 Park Center Drive

Vista, CA 92083

Attn: Mark Schlosser

[Signature Page to Foreclosure and Sale Agreement]

B-2

Copyright © 1993-2003 by Foreclosure Agreement



EXHIBIT A - SUBJECT ASSETS

"Subject Assets" means the following personal property owned by the Borrower and not subject to a lease (capitalized terms used herein shall have the meaning ascribed to such term under the Uniform Commercial Code as in effect in the State of Illinois):

(a) all Accounts and all Goods whose sale, lease or other disposition by Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by Borrower;

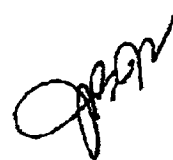
(b) all Chattel Paper, Instruments, Documents and General Intangibles (including, without limitation, all patents, patent applications trademarks, trademark applications, tradenames, trade secrets, good will, copyrights, copyright applications, registrations, licenses, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contract rights, security interests, security deposits and any rights to indemnification);

(c) all Inventory; and

(d) all Goods (other than Inventory), including, without limitation, Equipment, vehicles and fixtures.

[Exhibit A to the Foreclosure and Sale Agreement]

CR0610205.3 LaSalle/Olmar Foreclosure Agreement



Aug-15-03 12:51pm From-LASALLE ANK NA
AUG-15-03 11:06am From-KEYSTONE CONSULTING GROUP

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T-412 P.08/03 F-028

08/15/2003 13:33 8105791748

WHLR PLC

PAGE 09/12

08/15/2003 10:20 7803250927

ORLINAR GOLF

PAGE 09

Aug-15-03 11:06am From-KEYSTONE CONSULTING GROUP

+3129087645

T-439 P.10/11 F-287

EXHIBIT B

FORM OF GENERAL ASSIGNMENT AND BILL OF SALE

LaSalle Bank National Association (the "Lender"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, assign, transfer and deliver to King Far Corporation (the "Buyer"), and its successors and assigns forever, pursuant to Section 9-610 of the Uniform Commercial Code, all the right, title and interest of Orlimar Golf Company (the "Company") in and to all of the personal property and assets of the Company (collectively, the "Subject Assets") listed on Schedule J hereto.

EXCEPT AS EXPRESSLY SET FORTH IN THAT CERTAIN FORECLOSURE AGREEMENT DATED AS OF AUGUST 15, 2003 AMONG LASALLE, THE BUYER AND THE COMPANY, THE LENDER MAKES NO REPRESENTATION, WARRANTY, COVENANT OR UNDERTAKING, EXPRESS OR IMPLIED, WITH RESPECT TO THE EXISTENCE OF ANY SPECIFIC ITEMS CONSTITUTING THE SUBJECT ASSETS OR THE QUANTITY THEREOF, OR THE COMPANY'S BUSINESS OR PROSPECTS, OR THE CONDITION, QUALITY, MERCHANTABILITY (OR THE BASIS OF A SALE WARRANTY), FITNESS FOR A PARTICULAR PURPOSE OR VALUE OF THE SUBJECT ASSETS; AND THE PROPERTY IS SOLD ON AN ABSOLUTE "AS IS, WHERE IS" BASIS.

Dated this 15th day of August, 2003.

LaSalle Bank National Association

By [Signature]
Print Name: ROBERT CORSENTINO
Title: SVP

Sworn to before me this 15 day
of August, 2003
Brenda M. Short
Notary Public



(Exhibit B to the Foreclosure and Sale Agreement)

08/15/2003 11:06am From-KEYSTONE CONSULTING GROUP

[Handwritten Signature]

SCHEDULE I - SUBJECT ASSETS

"Subject Assets" means the following personal property of the Company:

"Subject Assets" means the following personal property owned by the Company and not subject to a lease (capitalized terms used herein shall have the meaning ascribed to such term under the Uniform Commercial Code as in effect in the State of Illinois):

- (a) all Accounts and all Goods whose sale, lease or other disposition by Company has given rise to Accounts and have been returned to, or repossessed or stopped in transit by Company;
- (b) all Chattel Paper, Instruments, Documents and General Intangibles (including, without limitation, all patents, patent applications trademarks, trademark applications, tradenames, trade secrets, good will, copyrights, copyright applications, registrations, licenses, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contract rights, security interests, security deposits and any rights to indemnification);
- (c) all Inventory; and
- (d) all Goods (other than Inventory), including, without limitation, Equipment, vehicles and fixtures.

I hereby certify that the foregoing is a true and correct copy.

Linda L. Braman

LINDA L. BRAMAN, Notary Public
Washtenaw County, MI
My commission expires 8-6-05

[Schedule I to the General Assignment and Bill of Sale]

CH6102053 LaSalle/Ohio Foreclosure Agreement