\$5801 & CT *-97-364329 COOK COUNTY RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE

97364329

Loan No. 97-023

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

This ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made as of this 1st day of May, 1997 by ARLINGTON HEIGHTS HOUSING PARTNERS LIMITED PARTNERSHIP, a Wisconsin limited partnership (the "Partnership"), whose address is 440 Science Drive, Madison, Wisconsin 53711, and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as trustee under a Trust Agreement dated June 1, 1985 (the "Land Trust Agreement") and known as Trust No. 64424 (the "Land Trustee" and, collectively with the Partnership, the "Assignor"), whose address is 33 North LaSalle Street, Chicago, Illinois 60670, to HELLER FINANCIAL, INC., a Delaware corporation (the "Assignee"), with its chief executive office at 500 West Monroe Street, 15th Floor, Chicago, Illinois 60661.

1. <u>Definitions</u>. In addition to the capitalized terms defined elsewhere herein the following terms shall have the meanings described below:

"Leases" means all present and future leases, subleases, tenancies and other agreements affecting the use, enjoyment or occupancy of the Pioperty, and all guaranties, amendments, extensions and renewals thereof (and security therefor) for all or any part of the Property.

"Letter of Credit Agreement" has the meaning assigned to took term in the Mortgage.

"Mortgage" means the Mortgage, Assignment of Rents and Security Agreement, of even date herewith, which encumbers the Property.

THIS DOCUMENT WAS PREPARED BY AND AFTER RECORDING SHOULD BE MARLED TO

Kenneth M. Jacobson, Esq. Katten, Muchin & Zavis 525 West Monroe Street, Suite 1600 Chicago, Illinois 60661 Street Address: See Schedule 1 attached hereto

Permanent Real Estate Tax Index Nos: See Schedule 1 attached hereto

"Property" means the real estate described in Exhibit A attached hereto, together with all improvements thereon.

"Rents" means all of the rents, income, receipts, revenues, issues, royalties and profits, and prepayments of the same, including, without limitation, lease termination, cancellation or similar fees now due or which may become due or to which the Assignor may now or shall hereafter become entitled or which it may demand or claim and arising directly or indirectly from the Leases or the Property.

"Tenant(s)" means all present or future tenants, subtenants or occupants of the Property.

All capitalized terms not otherwise defined herein, shall have the meanings ascribed such terms in the Letter of Credit Agreement and the Mortgage.

- 2. Assignment. The Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and unconditionally assign, convey, and deliver unto the Assignee:
 - (a) all of the Assignor's right, title and interest in and to all of the Leases;
 - (b) the immediate and continuing right to collect and receive all of the Rents; and
 - (c) any and all rights and claims of any kind that the Assignor may have now or in the future against any Tenant.

To have and to hold the same unto the Assignee, its successors and assigns until termination of this Assignment as hereinafter provided.

Absolute Assignment. The parties intend that this Assignment shall be a present, absolute and unconditional assignment, and shall, immediately upon execution, give the Assignee the right to collect the Rents and apply them in payment of the principal, interest and other sums payable under the Credit Documents. Such assignment and grant shall continue in effect until the Indebtedness is paid in full and all of the Obligations are satisfied. Subject to the provisions set forth herein and in the Mortgage, and provided the Assignor has not defaulted in the performance of the terms, covenants or provisions of the other Credit Documents or this Assignment, the Assignee grants to the Assignor a license to enforce the Leases and collect the Rents as they become due (excluding, however, any Lease termination, cancellation or similar payments in respect of nonresidential Leases which the Assignor agrees shall be paid to Assignee and held in accordance with Section 5 of the Reserve Agreement but including any such Lease termination, cancellation or similar payments in respect of residential Leases). The Assignor shall deliver such Rents to the Assignee as are necessary for the payment of principal, interest and other sums payable under the Credit Documents as such sums become due in accordance with the provisions of the Letter of Credit Agreement and the other Credit Documents.

The Assignor further agrees that the Assignee may enforce this Assignment without first resorting to or exhausting any security or collateral for the Obligations; however, nothing herein contained shall prevent the Assignee from exercising any other right under any of the Credit Documents.

- Assignee its true and lawful attorney-in-fact with respect to the collection of the Rents, with full power of substitution and with full power for the Assignee in its own name and capacity or in the name and capacity of the Assignor, subject to the license granted in Section 3 above from the Assignee to the Assignor with respect to collection of the Rents, to demand and collect any and all Rents and to file any claim or take any other action or proceeding and make any settlemer, regarding the Leases. After the Assignee revokes the license granted in Section 3 above from the Assignee to the Assignor with respect to collection of Rents, all Tenants are hereby expressly authorized and directed to pay to the Assignee, or to such nominee as the Assignee may designate in a writing delivered to such Tenants, all amounts due the Assignor pursuant to the Leases and all Tenants are expressly relieved of all duty, liability or obligation to the Assignor in respect of all payments so made to the Assignee or such nominee.
- 5. <u>Consideration</u>. This Assignment is made for and in consideration of the issuance of the Letter of Credit and the agreement to make the Loan as set forth in the Credit Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.
- 6. <u>Indemnity</u>. The Assigner hereby agrees to indemnify the Assignee and to hold the Assignee harmless from any liability, loss or damage, including, without limitation, reasonable attorneys' fees, costs and expenses which may or might be incurred by the Assignee under the Leases or by reason of this Assignment, and from any and all claims and demands which may be asserted against the Assignee by reason of any term, covenant or agreement contained in any of the Leases, except such liability, loss or da nage caused by the Assignee's own willful misconduct or fraud; provided, however, that the foregoing indemnity shall not include any loss resulting directly and solely from the failure to collect Rent after the license granted in Section 3 has been revoked.
- 7. Performance of Lease Covenants. The Assignee may, at its option, perform any Lease covenant for and on behalf of the Assignor, and all monies expended in so doing shall be chargeable to the Assignor and added to the Obligations secured hereby, and shall be immediately due and payable.
- 8. Representations and Warranties. The Land Trustee represents and the Partnership represents and warrants:
 - (a) the Leases in effect as of the Closing Date are in full force and effect and have not been modified (except as expressly disclosed in the Borrower's Certificate delivered to Assignee on or before the Closing Date);
 - (b) to the best knowledge of Assignor (except as expressly disclosed in the Borrower's Certificate delivered to Assignee on or before the Closing Date), there are

no defaults, defenses or set-offs of either landlord or tenant under the Leases, nor is there any fact which, with the giving of notice or lapse of time to cure or correct such fact or both, would constitute a default under the Leases;

- (c) the sole ownership of the entire landlords' interest in the Leases is vested in the Assignor, and the Leases are not, as of the Closing Date, otherwise assigned or pledged;
- (d) except as expressly disclosed in the Borrower's Certificates delivered to Assignee on or before the Closing Date, all Rents due to date have been collected, no Rent has been collected in advance, and no Tenant has been granted any Rent concession or indicement whatsoever, other than as expressly approved by the Assignee in writing; and
- (e) the Assignor has furnished to the Assignee a true, correct and complete schedule of all Leases.
- 9. Cover arts and Agreements. The Assignor hereby covenants and agrees as follows:
 - (a) The Assignor shall not permit any Rent under any Lease of the Property to be collected more than one (1) month in advance of the due date thereof (other than security deposits and, if collected, the last months' Rent for a Lease).
 - (b) The Assignor shall act properly and in a commercially reasonable manner to enforce all available remedies against any actinquent Tenant to protect the interest of the landlord under the Leases and to preserve the value of the Property.
 - manner all of its obligations as landlord under all Leases. The Assignor shall give notice to the Assignee of any default by the Assignor or by any Tenapi under any nonresidential Lease in such time to afford the Assignee an opportunity to cure such default prior to the Tenant having the right to terminate the Lease. The Assignor shall provide the Assignee notice of the commencement of any action for ejectment or any summary proceedings for dispossession of any nonresidential Tenant or if at any time such actions for ejectment or dispossession involve more than 5% of the total number of Leases then in effect.
 - (d) The Assignor, upon request by the Assignee, shall furnish promptly to the Assignee the original or certified copies of all Leases now existing or hereafter created. The Assignee shall have the right to notify any Tenant at any time and from time to time of any provision of the Credit Documents.
 - (e) All leases shall be on a form approved by the Assignee, and the Assignee shall approve a schedule of minimum rental rates and minimum and maximum lease durations. The Assignor shall not lease any portion of the Property for any nonresidential use without prior written approval of the Assignee. At the Assignee's request, the Assignor shall use reasonable efforts to cause the Tenant under any

nonresidential lease to execute a subordination and attornment agreement in form and substance satisfactory to the Assignee.

- (f) The Assignor shall not without the prior written consent of the Assignee: (i) perform any act or execute any other instrument which might interfere with the exercise of the Assignee's rights hereunder; (ii) execute any assignment, pledge or hypothecation of Rents or any of the Leases; (iii) suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage and the other Credit Documents.
- (g) This Assignment transfers to the Assignee all of the Assignor's right, title and interest in any security deposits, provided that the Assignor shall have the right to retain the security deposits as long as the Assignor is not in default under this Assignment or the other Credit Documents. The Assignee shall have no obligation to any Tenant with respect to its security deposit unless and until the Assignee comes into possession and control of such deposit.
- (h) The Assigner shall use commercially reasonable efforts to obtain and deliver to the Assignee, promptly upon request, a duly executed estoppel certificate from any Tenant in form and content satisfactory to the Assignee.
- (i) The Assignee may posign its right, title and interest in the Leases, and any subsequent assignee shall have all of the rights and powers provided to the Assignee by this Assignment.
- Assignee any of the obligations or duties of the landlord of the Assignor provided in any Lease. The Assignor hereby acknowledges and agrees: (i) the Assignor is and will remain liable under the Leases to the same extent as though this Assignment had not been made; and (ii) the Assignee has not by this Assignment assumed any of the obligations of the Assignor under the Leases, except as to such obligations which arise after such time at the Assignee shall have assumed full ownership or control of the Property. This Assignment shall not make the Assignee responsible for the control, care, management or repair of the Property or any personal property, or for the carrying out of any of the terms of the Leases. The Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property.
- any term, provision, condition or covenant contained in this Assignment, which is required to be performed, kept or observed by the Assignor, which failure continues for thirty (30) days after notice and demand from the Assignee; provided, however, that if such failure by its nature cannot be cured within thirty (30) days, and if the Assignor commences to cure such failure and thereafter diligently pursues the curing thereof (and then in all events cures such failure within sixty (60) days of the original notice thereof), the Assignor shall not be in default hereunder during the period of diligent curing; (ii) any representation or warranty of the Assignor made herein shall prove to have been false or misleading in any material respect; or (iii) upon any Event of Default under any of the Credit Documents, then without notice to, or the consent of,

the Assignor, the Assignee shall have any and all rights and remedies contained in this Assignment or in any other Credit Document, or otherwise available at law or in equity, including, without limitation, the right to do any one or more of the following:

- (a) to enter upon, take possession of and manage the Property for the purpose of collecting the Rents;
- (b) to dispossess by the usual summary proceedings any Tenant defaulting in the payment thereof to the Assignor;
 - (c) to lease the Property or any part thereof;
 - id) to repair, restore, and improve the Property;
- (e) to apply the Rents after payment of Property expenses as determined by the Assignee to satisfaction of the Assignor's Obligations under the Credit Documents; and
- (f) to apply to any court of competent jurisdiction for specific performance of this Assignment, an injunction against the violation hereof and/or the appointment of a receiver.
- Tenant Bankruptcy. In the event any Tenant should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of a Lease, the Assignor covenants and agrees that no settlement for damages with respect to nonresidential Tenants shall be made without the prior written consent of the Assignee, and any check for payment of any damages for rejection or termination of any nonresidential Lease shall be made payable to both the Assignor and the Assignee. The Assignor hereby assigns any such payment to the Assignee, which shall be held in accordance with Section 5 of the Reserve Agreement and further covenants and agrees to duly endorse to the order of the Assignee any such check. All payments in settlement of such damages for residential Leases will be treated as Rents.
- 13. No Waiver. Neither the exercise of any rights under this Assignment by the Assignee, nor the application of any Rents to payment of the Assignor's indebtedness under the Credit Documents, shall cure or waive any Event of Default under the Credit Documents. Failure of the Assignee to avail itself of any of the terms of this Assignment for any period of time or for any reason shall not constitute a waiver of the Assignment.
- 14. Other Documents. This Assignment is intended to be supplementary to, and not in substitution for or in derogation of, any assignment of rents contained in the Mortgage or the other Credit Documents.
- 15. <u>Notices</u>. Any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth in Section 7.17 of the Letter of Credit Agreement.

- 16. Exculpation. The liabilities of the Partnership hereunder are subject to the provisions of Section 7.03(b) of the Letter of Credit Agreement, which are incorporated herein by this reference.
- Land Trust Exculpation. This Assignment is executed by American 17. and Trus,
 as Land Trus,
 formed by Americ,
 ally as Land Trustee, and en information and be.
 That be asserted or be enforce.
 Chicago by reason of any of the te.
 contained in (ii) Assignment. National Bank and Trust Company of Chicago, not personally, but solely as Land Trustee under the Land Trust Agreement, in the exercise of the power and authority conferred upon and vested

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UNOFFICIAL COPY

IN WITNESS WHEREOF, the Assignor has executed this Assignment or has caused the same to be executed by its duly authorized representatives as of the date first set forth above.

DOOP CO

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Land Trustee as aforesaid

By: MunName: T.M. Whelun
Its: Ve

Name: ASCISIANT SECREMENT

ARLINGTON HEIGHTS HOUSING PARTNERS LIMITED PARTNERSHIP, a Wisconsin limited partnership

By: Madison Real Estate Limited Partnership, a Colorado limited partnership, its general partner

By: Madison Investment Properties Corporation, a Wisconsin corporation, its general partner

By: Michael L. Morey, Vice President

STATE OF ILLINOIS) SS. COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Michael L. Morey, the Vice President of Madison Investment Properties Corporation, the general partner of Madison Real Estate Limited Partnership, the General Partner of Arlington Heights Housing Partners Limited Partnership, a Wisconsin limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the fiee and voluntary act of said corporation and limited partnerships, for the uses and purposes therein set forth.

th.

Lunder my

Clarks Office GIVEN under my hand and Notarial Seal this 1946 day of May, 1997.

Deborah A. King Deborah A. King

My Commission Expires:

97364329

UNOFFICIAL COPY

STATE OF ILLINOIS)) SS.
COUNTY OF COOK)
in the State aforesaid, DO HEREBY CERTIFY THAT LA MICHAEL WHELAN President of American National Bank and Trust Company of Chicago, a national banking association, and GREGORY S. KASPRZYK AST Secretary of said American National Bank and Trust Company of Chicago, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE President and Secretary, 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 American National Bank and Trust Company of Chicago, as Land Trusce as aforesaid, for the uses and purposes therein set forth; and said AST Secretary then and there acknowledged that he as custodian of the corporate seal of said American National Bank and Trust Company of Chicago, did affix the corporate seal of American National Bank and Trust Company of Chicago to said instrument as h free and voluntary act and as the free and voluntary act of American National Bank and Trust Company of Chicago as Trustee as aforesaid, for the uses and purposes therein set forth.
GIVEN under my hand and Notarial Seal, this 2/ day of May, 1997.
BRIANT. HOSEY NOTARY PUBLIC STATE OF ILLINOIS My Commission Expires 11/01/99 Notary Public Notary Public
My Commission Expires:
GIVEN under my hand and Notarial Seal, this 2/ day of May, 1997. **PICIAL SEAL** BRIAN T. HOSEY NOTARY PUBLIC STATE OF ILLINOIS My Commission Expires 11/01/99 My Commission Expires:

EXHIBIT A

Legal Description

PARCEL 1:

LOTS 4 AND 5 IN BLOCK 26, AND LOTS 5, 6, 7 AND 8 IN BLOCK 31, TOGETHER WITH THE NORTH 1/2 OF VACATED ROBINSON STREET, LYING SOUTH OF AND ADJOINING SAID LOT 4 IN BLOCK 26 AND ALL THAT PART OF VACATED ROBINSON STREET, LYING SOUTH OF AND ADJOINING, SAID LOT 5 IN BLOCK 26 AND LYING NORTH OF, AND ADJOINING. SAID LOT 8 IN BLOCK 31 AS SHOWN ON THE "MAP OF THE TOWN OF DUNTON, COOK COUNTY" BEING A SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11. EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED DECEMBER 8, 1854 AS DOCUMENT NO. 55328 IN THE RECORDERS OFFICE OF COOK COUNTY, ILLINOIS AND RE-RECORDED MARCH 4, 1886 AS DOCUMENT NO. 695762 IN THE RECORDERS OFFICE OF COOK COUNTY, ILLINOIS.

PARCEL 2:

- (i) REASONABLE INGRESS AND EGRESS FROM AND TO LUPLIC STREETS TO AND FROM THE GARAGE FACILITY AND FOR VEHICULAR TRAVEL AND FOR PARKING OVER AND UPON THE GARAGE FACILITY FOR MOTOR VLHICLES FOR WHICH A PARKING PERMIT HAS BEEN ISSUED:
- (ii) INGRESS, EGRESS AND TRAVEL OVER AND ACROSS THE GARAGE FACILITY AND THE GARAGE SITE FOR GRANTEE, OCCUPANTS, AND PARKING PERMIT HOLDERS AND THEIR RESPECTIVE INVITEES, LICENSEES, AND GUESTS;
- (iii) CONNECTION (AND RECONNECTION AS MAY BE REQUIRED) OF THE SKY BRIDGE (OR ANY REPLACEMENT THEREOF) TO THE GARAGE FACILITY IN ANY REASONABLE LOCATION, AS DETERMINED BY GRANTEE IN ITS SOLE DISCRETION, AND ADEQUATE INGRESS AND EGRESS TO THE SKY BRIDGE FOR GRANTEE, OCCUPANTS AND THEIR RESPECTIVE INVITEES, LICENSEES, AND GUESTS OVER, ACROSS AND UPON THE GARAGE SITE AND THE GARAGE BUILDING;

- (iv) THE USE OF THE SKY BRIDGE SITE FOR THE PURPOSE OF CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE SKY BRIDGE BY THE GRANTEE, INCLUDING, BUT NOT LIMITED TO, THE INSTALLATION, OPERATION AND MAINTENANCE OF HVAC AND UTILITY SYSTEMS SERVING THE SKY BRIDGE;
- (v) REASONABLY ADEQUATE ACCESS FOR THE GARAGE FACILITY AND GARAGE SITE FOR PURPOSES OF MAINTAINING, SERVING, REPLACING, AND/OR REPAIRING THE GARAGE FACILITY AND THE SKY BRIDGE AND FOR PERFORMING ANY OBLIGATION OF GRANTOR THAT GRANTEE HAS THE RIGHT TO PERFORM; AND
- (vi) FOR THE ENCROACHMENT OF THE SKY BRIDGE ONTO OR OVER "VAIL STREET" AND THE GARAGE SITE

OVER THE FOLLOWING DESCRIBED LAND:

GARAGE SITE:

LOTS 5, 6, 7, 8, 9, AND THE NORTH 5 FEET OF LOT 10 AND THE NORTH 5 FEET OF LOT 11, AND ALL OF LOTS 12, 13, 14, 15, AND 16 IN SIEBURG'S SUBDIVISION OF BLOCK 25 (EXCEPT THE EAST 1/2 OF LOTS 1 AND 2) AND ALSO THE NORTH 1/2 OF BLOCK 32 AND SO MUCH OF ROBINSON STREET AS LIES BETWEEN SAID BLOCKS 25 AND 32 IN THE TOWN OF DUNTON IN THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN. IN COOK COUNTY, ILLINOIS.

SKY BRIDGE SITE:

THAT PART OF BLOCKS 31 AND 32 AND OF VAIL STREET LYING ADJACENT THERETO, ALL IN THE TOWN OF DUNTON, BEING A SUBDIMISION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 8, 1854, AS DOCUMENT NUMBER 55328 AND RERECORDED MARCH 4, 1886, AS DOCUMENT NUMBER 695762 IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID BLOCK 31, THENCE NORTH 00 DEGREES 14 MINUTES 05 SECONDS WEST ALONG THE EAST LINE OF SAID VAIL STREET FOR 201.94 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 82 DEGREES 06 MINUTES 00 SECONDS EAST FOR 5.05 FEET TO A LINE THAT IS 5.00 FEET EAST OF AND PARALLEL TO THE EAST LINE OF VAIL STREET; THENCE NORTH 00 DEGREES 14 MINUTES 05 SECONDS WEST PARALLEL TO THE EAST LINE OF VAIL STREET FOR 14.14 FEET; THENCE NORTH 82 DEGREES 06 MINUTES 00 SECONDS WEST FOR 82.83 FEET TO A LINE 11.00 FEET WEST OF AND PARALLEL TO THE WEST LINE OF VAIL STREET; THENCE SOUTH 00 DEGREES 14 MINUTES 05 SECONDS EAST PARALLEL TO THE WEST LINE OF VAIL STREET FOR 14.14 FEET; THENCE SOUTH 82 DEGREES 06 MINUTES 00 SECONDS EAST FOR 77.78 FEET

TO THE POINT OF BEGINNING; THE BOTTOM PLANE OF THE VERTICAL SPACE OF THE SKY BRIDGE SHALL BE (BASED ON VILLAGE OF ARLINGTON HEIGHTS BENCHMARK NO. 32903) FROM AN ELEVATION OF 704.57 FEET ON THE EAST LINE OF SAID PARCEL, TO AN ELEVATION OF 704.68 FEET ON THE WEST LINE OF SAID PARCEL; AND THE TOP PLANE OF THE VERTICAL SPACE OF THE SKY BRIDGE SHALL BE 13.00 FEET ABOVE SAID ELEVATIONS CITED FOR THE BOTTOM PLANE, IN COOK COUNTY, ILLINOIS.

■ DOCUMENT # CHGOO(A (38204-00022-3) 279889 1.DATE (\$) 15/97 TIME (\$-4) =

SCHEDULE 1

Street Address:

55 South Vail Avenue, Arlington Heights, Illinois 60005

Permanent Real Estate Tax Index Nos.:

03-29-347-005-0000 03-29-347-007-0000 Property of Cook County Clark's Office 03-29-347-008-0000