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Doc#: 0608833142 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/29/2006 01:08 PM Pg: 1 of 10

Recording at the Request of and  
When Recorded Mail Original to:

Wells Fargo Bank, National Association  
REMAC/REMB - Irvine  
2030 Main Street, Suite 800  
Irvine, CA 92614  
Attn: Jennifer Estill  
Loan No. 102984

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of March 28, 2006, by 230 WEST MONROE PT LLC, a Delaware limited liability company, having an address at c/o GE Asset Management Incorporated, 3001 Summer Street Stamford Plaza, Stamford, Connecticut 06904 ("Assignor"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, having an address at 123 N. Wacker Drive, Suite 1900, Chicago, IL 60606, as administrative agent ("Administrative Agent") on behalf of the Lenders (as defined below).

### Recitals

- A. Assignor, Administrative Agent, and certain lenders ("Lenders") have entered into that certain Loan Agreement of even date herewith ("Loan Agreement"), pursuant to which the Lenders agreed to make a loan to Assignor of \$61,400,000.00.
- B. Assignor has agreed to provide an assignment of leases and rents in favor of Administrative Agent for the benefit of the Administrative Agent and the Lenders on the terms provided herein to secure Assignor's obligations under the Loan Agreement and the other Loan Documents (such term and other capitalized terms used herein without definition having the definitions provided in the Loan Agreement or the Mortgage).

This Document Prepared by:  
David D. Gregg  
GoodSmith Gregg & Unruh LLP  
105 W. Adams, 26<sup>th</sup> Floor  
Chicago, Illinois 60603

Box 400-CTCC

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## Agreement

1. **ASSIGNMENT.** Assignor hereby irrevocably assigns to Administrative Agent for the benefit of the Administrative Agent and the Lenders all of Assignor's right, title and interest in, to and under: (a) all leases of any of the property described on Exhibit A hereto or the improvements thereon (the "Subject Property") or any portion thereof, and all other agreements of any kind, including licenses, relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof, including any entered into during any redemption period after foreclosure of this security interest ("Leases"); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Assignor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder.
2. **GRANT OF LICENSE.** Administrative Agent confers upon Assignor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence and during the continuance of a Default (as hereinafter defined). Upon and during the continuance of a Default, the License shall be automatically revoked and Administrative Agent may collect and apply the Payments pursuant to Section 5 without notice (except as required by law) and without taking possession of the Subject Property. Assignor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Administrative Agent for the payment to Administrative Agent of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Assignor hereby relieves the lessees from any liability to Assignor by reason of relying upon and complying with any such notice or demand by Administrative Agent.
3. **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Administrative Agent to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Administrative Agent shall not directly or indirectly be liable to Assignor or any other person as a consequence of: (i) the exercise or failure to exercise by Administrative Agent, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Administrative Agent hereunder (except to the extent of Administrative Agent's gross negligence or willful misconduct); or (ii) the failure or refusal of Administrative Agent to perform or discharge any obligation, duty or liability of Assignor arising under the Leases.
4. **RIGHTS RELATING TO LEASES AND RENTS.** Assignor has, pursuant to Section 1 of this Assignment, assigned to Administrative Agent all Payments under each of the Leases covering all or any portion of the Subject Property. Administrative Agent may upon the occurrence of a Default, and without notice (except as required by law), either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Subject Property or any part thereof, and in its own name, sue for or otherwise collect the Payments. All Payments collected by Administrative Agent shall be applied as provided for in this Assignment; provided, however, that if the reasonable out-of-pocket costs, expenses, and attorneys' fees shall exceed the amount of Payments collected, the excess shall be added to the Secured Obligations, shall bear interest at the rate of interest then applicable on the outstanding principal balance of the Note, and shall be immediately due and payable. The entering upon and taking possession of the Subject Property, the collection of Payments, and the application thereof as aforesaid shall not cure or waive any Default or notice of default, if any, hereunder nor invalidate any act done pursuant to such notice,

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except to the extent any such Default is fully cured. Failure or discontinuance by Administrative Agent at any time or from time to time, to collect said Payments shall not in any manner impair the subsequent enforcement by Administrative Agent of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Administrative Agent shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien of this Assignment, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Payments, with respect to the Subject Property or any other collateral given by Assignor to Administrative Agent. In addition, from time to time Administrative Agent may elect, and notice hereby is given to each lessee under any Lease, to subordinate the lien of this Assignment to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election the lien of this Assignment shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance such subordination will not affect or be applicable to, and expressly excludes any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature whatsoever with respect to all or any portion of the Subject Property and Collateral to the extent that the same may have arisen or intervened during the period between the recordation of this Assignment and the execution of the Lease identified in such instrument of subordination.

5. **APPLICATION OF OTHER SUMS.** All sums received by Administrative Agent under Section 4 or Section 2, less all reasonable out-of-pocket costs and expenses incurred by Administrative Agent or any receiver under Section 4 or Section 2, including, without limitation, reasonable attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Administrative Agent shall determine in the order set forth in the Mortgage; provided, however, Administrative Agent shall have no liability for funds not actually received by Administrative Agent.
6. **REPRESENTATIONS AND WARRANTIES.** Assignor represents and warrants that: (a) Assignor has delivered to Administrative Agent a true, accurate and complete copy of all Leases; (b) to the best of Assignor's knowledge, all existing Leases are in full force and effect in all material respects and are enforceable in accordance with their respective terms, and no material breach or default, or event which would constitute a material breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) except as disclosed to Administrative Agent in writing prior to the date hereof, no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
7. **COVENANTS.**
  - (a) Assignor covenants and agrees at Assignor's sole cost and expense to: (i) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (ii) give Administrative Agent prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (iii) use commercially reasonable efforts to lease all leasable space in the Subject Property at no less than fair market rental rates; (iv) deliver to Administrative Agent fully executed, counterpart copies of each and every Lease if requested to do so; and (v) execute and record such additional assignments of any Lease, as Administrative Agent may request. Assignor shall not, without Administrative Agent's prior written consent: (i) enter into any Leases which are not Approved Leases; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due under any of the Leases; (iv) terminate, materially modify or amend any of the terms (including without limitation provisions relating to payment, assignment and the length of the term) of the Leases or in any manner release or discharge the lessees from any obligations thereunder (except for termination as expressly contemplated or permitted by the terms of such Lease or in the event of a default by the lessee under such Lease);

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- (v) consent to any assignment or subletting by any lessee under any Lease; or  
 (vi) subordinate or agree to subordinate any of the Leases to any other mortgage, deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 7(a), shall be null and void.
- (b) Without in any way limiting the requirement of Administrative Agent's consent hereunder, any sums received by Assignor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be applied in accordance with the terms of the Loan Agreement.
8. **ADDITIONAL PROVISIONS.** The Loan Documents grant further rights to Administrative Agent and contain further agreements and affirmative and negative covenants by Assignor which apply to this Assignment and to the Subject Property and such further rights and agreements are incorporated herein by this reference.
9. **MERGE.** It being the desire and the intention of the parties hereto that this Assignment and the lien hereof do not merge in fee simple title to the Subject Property, it is hereunder understood and agreed that, should Administrative Agent acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Administrative Agent as evidenced by an appropriate document duly recorded, this Assignment and the lien hereof shall not merge in the fee simple title, such that this Assignment may be foreclosed as if owned by a stranger to the fee simple title.
10. **OBLIGATIONS OF ASSIGNOR, JOINT AND SEVERAL.** If more than one person has executed this Assignment as "Assignor", the obligations of all such persons hereunder shall be joint and several.
11. **WAIVER OF MARSHALLING RIGHTS.** Assignor, for itself and for all parties claiming through or under Assignor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of the lien of this Assignment or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Administrative Agent shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Administrative Agent may designate.
12. **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
13. **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 13 does not waive or modify the provisions of Section 5.10 of the Mortgage.
14. **EXECUTION IN COUNTERPARTS.** To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon.

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and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

15. **GOVERNING LAW.** The Subject Property is located in the State of Illinois, this Assignment was accepted by Administrative Agent in the State of Illinois and proceeds of the Note secured hereby were disbursed from the State of Illinois, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity enforceability and performance, this Assignment, the Note and the other Loan documents and obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois applicable to contracts made and performed in such state (including, without limitation, 735 ILCS Section 105/5-1 et seq, but otherwise without regard to conflict of laws provisions) and any applicable law of the United States of America. Except as provided in the immediately preceding sentence, Assignor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than Illinois governs this Assignment, the Note and the other Loan Documents.
16. **CONSENT TO JURISDICTION.** Assignor irrevocably submits to the jurisdiction of: (a) any state or federal court sitting in the State of Illinois and County of Cook over any suit, action, or proceeding, brought by Assignor against Administrative Agent, arising out of or relating to this Assignment, the Note or the Loan; (b) any state or federal court sitting in the state and county where the Subject Property is located or the state and county in which Assignor's principal place of business is located over any suit, action or proceeding, brought by Administrative Agent against Assignor, arising out of or relating to this Assignment, the Note or the Loan; and (c) any state court sitting in the county of the state where the Subject Property is located over any suit, action, or proceeding, brought by Administrative Agent to exercise any of its remedies under this Assignment or any action brought by Administrative Agent to enforce its rights with respect to the Collateral. Assignor irrevocably waives, to the fullest extent permitted by law, any objection that Assignor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
17. **INCORPORATION.** Exhibit A, as attached, is incorporated into this Assignment by this reference.
18. **NOTICES.** All notices, demands, or other communications under this Assignment and the other Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Assignment). All communications shall be deemed served if delivered in the manner specified in the Mortgage at the address specified in the Mortgage.
- Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of two (2) business days' prior notice to the other party in the manner set forth hereinabove. Assignor shall forward to Administrative Agent, without delay, any notices, letters or other communications delivered to the Subject Property to Assignor naming Administrative Agent, "Administrative Agent" or the "Construction Lender" or any similar designation as addressee.
19. **NO THIRD PARTY BENEFICIARY.** This Assignment is made for the sole benefit of Assignor and Administrative Agent, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.
20. **NO WAIVER.**
- (a) **General Waiver Provisions.** No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Administrative Agent, and any such waiver shall be effective only to the extent set forth in

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such writing. No failure by Administrative Agent to exercise or delay by Administrative Agent in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedy provided by law or equity. No notice or demand on Assignor in any case shall, in itself, entitle Assignor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Administrative Agent to any other or further action in any circumstances without notice or demand.

- (b) Specific Waiver Provisions. If Administrative Agent (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or in any other document or instrument securing any of the Note; (iv) releases with or without consideration any of the Subject Property from the lien of this Assignment or any other security for the payment of the Secured Obligations; (v) changes any of the terms, covenants, conditions or agreements of any of the Note or this Assignment or in any other document or instrument securing any of the Note; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Subject Property; (vii) consents to the granting of any easement or other right affecting the Subject Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect, except to the extent of the changes referred to in clause (v) above, the original liability under any of the Note, this Assignment or any other obligation of Assignor or any subsequent purchaser of the Subject Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Administrative Agent from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default, except to the extent expressly agreed to in writing by Administrative Agent, nor, except as otherwise expressly provided in an instrument or instruments executed by Administrative Agent, shall the lien of this Assignment or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.
- (c) Partial Releases. Without limitation of the foregoing, Administrative Agent hereby reserves the right to make partial release or releases of any security held by Administrative Agent with respect to all or any part of the Collateral (as defined in the Mortgage), without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Assignment on the portion of said property not so released. Administrative Agent hereby agrees to make partial releases from the lien of this Assignment from time to time upon the terms and conditions set forth herein and in the Loan Agreement.

21. **ENTIRE AGREEMENT; AMENDMENT.** THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. The provisions of this Assignment and the Loan Documents may be amended or waived only by an instrument in writing signed by the Assignor and Administrative Agent.

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22. **DELIVERY OF SUMMONS, ETC.** If any action or proceeding shall be instituted which (i) is intended to evict Assignor or recover possession of the Subject Property or any part thereof, or (ii) could result in a material money judgment for failure to pay any obligation relating to the Subject Property or this Assignment (which judgment would not be covered and fully paid by applicable insurance), Assignor, to the extent required under the Loan Agreement, shall immediately, upon service thereof on or by Assignor deliver, to Administrative Agent a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.
23. **RECOURSE.** This Assignment is subject to Section 13.31 of the Loan Agreement.

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IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representative as of the date first above written.

"ASSIGNOR"

230 WEST MONROE PT LLC,  
a Delaware limited liability company

By: NACA Realty Corporation, a Delaware corporation,  
its Manager

By: *Pamela C. Beam*  
Name: Pamela C. Beam  
Title: Vice President

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STATE OF CONNECTICUT  
COUNTY OF FAIRFIELD SS.

On this 24<sup>th</sup> day of MARCH, 2006, before me, CORINNE BASTA a Notary Public in and for the State of CONNECTICUT, personally appeared Pamela C. Beam personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

Corinne Basta

My commission expires \_\_\_\_\_

Corinne Basta  
Notary Public - State of CT  
No. 109789  
Qualified in Fairfield City  
Expires August 31, 2010

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## DESCRIPTION OF SUBJECT PROPERTY

Exhibit A to Assignment of Leases and Rents executed by 230 WEST MONROE PT LLC, a Delaware limited liability company, as Assignor, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION.

ALL OF LOT 7 AND ALL OF LOT 8 (EXCEPT THE WEST 40.00 FEET THEREOF TAKEN FOR WIDENING OF FRANKLIN STREET) IN BLOCK 94 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING FROM SAID PREMISES THE NORTH 9.00 FEET THEREOF TAKEN FOR ALLEY), IN COOK COUNTY, ILLINOIS.

PIN# 17-10-202-013-0000  
17-10-202-014-0000

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