

# UNOFFICIAL COPY



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Doc#: 0735518046 Fee: \$42.00  
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Cook County Recorder of Deeds  
Date: 12/21/2007 12:04 PM Pg: 1 of 10

Beth S. Rubin  
Riemer & Braunstein LLP  
71 South Wacker Drive, Suite 3515  
Chicago, Illinois 60606

PIN Numbers:

17-16-202-013  
17-16-202-014

Address of Property:

230 W. Monroe Street  
Chicago, Illinois

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

**THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS** (this "**Assignment**"), is made this 20<sup>th</sup> day of December 2007 by **230 WEST MONROE PT, LLC**, a Delaware limited liability company, having an address at c/o GE Asset Management, 3001 Summer Street, Stamford, Connecticut 06904 ("**Assignor**"), to **ANGLO IRISH BANK CORPORATION PLC**, a bank corporation organized under the laws of the Republic of Ireland, having its principal place of business at Stephen Court, 18 21 St. Stephen's Green, Dublin 2, Ireland and a place of business at 71 South Wacker Drive, Suite 1840, Chicago, Illinois 60606, as agent (hereinafter, "**Agent**", and the term Agent shall include, whenever the context permits, its successors and assigns as the holder of this Assignment and the Note and other Obligations secured hereby) under a certain Loan Agreement (hereinafter, the "**Loan Agreement**") of even date among Assignor, **ANGLO IRISH BANK CORPORATION PLC**, and the other lending institutions which become parties to the Loan Agreement (**ANGLO IRISH BANK CORPORATION PLC**, and such other lending institutions which become parties to the Loan Agreement, are collectively referred to as "**Lenders**" and individually as a "**Lender**"). The term "Assignor" shall also include, wherever the context permits, its successors and assigns.

### WITNESSETH THAT:

1. **Grant of Assignment.** This Assignment is granted pursuant to the terms, provisions and conditions of the Loan Agreement. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, transfers and assigns to Agent and Lenders, and grants to Agent and Lenders a

Handwritten notes: "Send To" with a pointing hand, "328173", "HCC DEC", and "10" in the right margin.

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continuing pledge of and security interest in, the entire present and future interest of Assignor in, to and under: (a) all leases, subleases, rental agreements or other occupancy agreements, including, without limitation, any purchase options provided for in any of the leases and any proceeds thereof (the "**Leases**") now or hereafter in existence, with respect to all or any portion of the real property located and known as 230 W. Monroe Street, Chicago, Cook County, Illinois (the "**Property**"); (b) all rents, income and profits of any kind arising from such interests in the Leases and any renewals or extensions thereof for the use and occupation of all or any portion of the Property; (c) all guaranties of and security for the Leases; and (d) all proceeds of the foregoing. This Assignment is, and is intended to be, an unconditional, absolute and present assignment from Assignor to Agent, on behalf of Lenders, of all of Assignor's right, title and interest in and to the Leases and not an assignment in the nature of a pledge of the Leases or the mere grant of a security interest therein.

After the occurrence and during the continuance of an Event of Default, Assignor shall irrevocably appoint Agent as its true and lawful attorney in its name and stead (with or without taking possession of the Property) to rent, lease, let, or sell all or any portion of the Property to any party or parties at such price and upon such term as Agent in its sole and absolute discretion may determine, to exercise any and all rights including rights of first refusal and options of any Assignor to purchase and otherwise acquire title to all or any part of the Property, and to collect all of such rents, issues, deposits, profits and avails now due or that may hereafter become due under any and all of such agreements or other tenancies now or hereafter existing on the Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Agent would have upon taking possession of the Property pursuant to the provisions set forth hereinafter.

This Assignment confers upon Agent a power coupled with an interest and it cannot be revoked by Assignor.

Assignor is the owner of the Property. A legal description of the Property is annexed hereto as **Exhibit A**.

2. Obligations Secured. This Assignment is made for the purpose of securing the "**Obligations**" as follows:

(i) The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by those certain promissory notes (hereinafter collectively referred to as the "**Note**") dated as of even date herewith, including any extensions, renewals, replacements, modifications and amendments thereof, in the original aggregate amount of EIGHTY EIGHT MILLION TWENTY EIGHT THOUSAND DOLLARS (\$88,028,000.00) given by Assignor to the order of the respective Lenders;

(ii) The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Assignor under and pursuant to this Assignment, or the Loan Agreement and also by Assignor under and pursuant to each of the other Loan Documents referred to in, or executed in connection with, the Loan Agreement;

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(iii) The payment of all costs, expenses, reasonable legal fees and liabilities incurred by Agent or any Lender in connection with the enforcement of any of Agent's or any Lender's rights or remedies under this Assignment, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and

(iv) The payment, performance, discharge and satisfaction of all other liabilities and obligations of Assignor to Agent and Lenders, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, but without limitation express or implied upon the generality of the foregoing, any interest rate swap agreements or other interest rate products entered into with Agent in connection with the Loan and each liability and obligation of Assignor under any one or more of the Loan Documents and each amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

3. Warranties and Representations. ASSIGNOR WARRANTS AND REPRESENTS TO AGENT AND LENDERS that it is and shall be in the future the sole owner of the entire interests described in **Section 1** above and that no rent reserved in the Leases has been or will be in the future otherwise assigned or anticipated, and that no rent for any period subsequent to the date of this Assignment will be collected more than one (1) month in advance except for security deposits and last month's rents or rents taken in the usual course of business pursuant to Approved Leases.

Assignor further warrants and represents to Agent and Lenders that as of the date hereof: (i) to Assignor's actual knowledge, the Leases are in full force and effect and true and complete copies thereof together with all amendments and modifications have been previously delivered to Agent; (ii) to Assignor's actual knowledge, no default exists on the part of any of the lessees or tenants, or of Assignor as lessor in the performance on the part of either of the terms, covenants, provisions or agreements in the Leases contained; (iii) Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the lessees or Assignor under the Leases; and (iv) to Assignor's actual knowledge, no security deposit or advance rental payment has been made by any lessee under the Leases except as may be specifically designated in the copies of the Leases previously furnished to Agent.

4. Covenants. EXCEPT AS MAY BE OTHERWISE PROVIDED FOR OR PERMITTED BY THE LOAN AGREEMENT, ASSIGNOR COVENANTS WITH AGENT: (i) to observe and perform all the obligations imposed upon the lessor under every such Lease and not to do or permit to be done anything that is likely to impair the security thereof; (ii) not to collect any of the rent, income and profits arising or accruing under the Leases or from the Property more than one (1) month in advance of the time when the same shall become due except for security deposits and each month's rents or rents taken in the usual course of business pursuant to Approved Leases; (iii) not to execute any other assignment of lessor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; (iv) not to alter, modify or change the material terms of the Major Leases, or, except as set forth in the Leases, cancel or terminate the same, or,

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except as set forth in the Leases, accept a surrender thereof without the prior written consent of Agent in each instance; (v) not to subordinate any Lease to any mortgage or other encumbrance, or permit, consent or agree to such subordination, without Agent's prior written consent in each instance; (vi) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder, except as set forth in the Leases; (vii) not to alter, modify or change the terms of any guaranty of any Lease, or any security for any Lease, or, except as set forth in the Leases, cancel or terminate any such guaranty or release or reduce any such security, without the prior written consent of Agent in each instance; (viii) not to consent to any assignment of or subleasing under any Major Lease, except in accordance with its terms, without the prior written consent of Agent in each instance; (ix) not to enter into any future Major Lease of all or any part of the Property without Agent's prior written consent in each instance; (x) at Agent's request, furnish to Agent true and complete copies of all Leases and amendments thereto; and (xi) at Agent's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Agent any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Agent all such further assurances and assignments in the Property as Agent in good faith shall from time to time require.

5. Further Terms, Covenants and Conditions. This Assignment is made on the following terms, covenants and conditions:

5.1 Prior to Default. So long as no Event of Default (as defined in the Loan Agreement) exists and is continuing, Assignor shall have the right and license to manage and operate the Property and to collect at the time of, but, except as permitted in this Assignment, not more than one (1) month prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Loan Documents, to retain, use and enjoy the same.

5.2 After Default. At any time after an Event of Default exists and is continuing, Agent, without in any way waiving such default, may at its option, without notice, and without regard to the adequacy of the security for the obligations secured hereby and by the Mortgage revoke the right and license granted above to Assignor and:

(i) Authorize and direct the lessees named in any existing Leases or any other or future lessees or occupants of the Property, upon receipt from Agent of written notice to the effect that Agent is or Lenders are then the holder of the Note and the Mortgage and that an Event of Default has occurred and is continuing, to pay over to Agent all rents, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Agent. Assignor agrees that every lessee and occupant shall have the right to rely upon any such statement and request by Agent that lessee or occupant shall pay such rents to Agent without any obligation or right to inquire as to whether such Event of Default actually exists and is continuing notwithstanding any notice from or claim of Assignor to the contrary and that

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Assignor shall have no right or claim against lessees or occupants for any such rent so paid by lessees or occupants to Agent after such notice to the lessee or occupant by Agent;

(ii) Either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Agent may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Agent; and

(iii) Apply such rents, income and profits to the payment of:

(a) all reasonable expenses of managing the Property including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Agent may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance which Agent may deem necessary or desirable, the payment or refund of security deposits, or interest thereon, and the cost of all improvements, alterations, renovations, repairs or replacements; and

(b) all sums which Assignor is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees, in such order of priority as to any of the items mentioned in this clause (iii), as Agent in its sole discretion may determine, any statute, law, custom, or use to the contrary notwithstanding.

The exercise by Agent of the option granted it in this Section (b) and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver by Agent of any Default under the other Loan Documents, the Leases or this Assignment.

5.3 Continuing Effect. Upon payment in full to Agent and Lenders of the principal sum, interest, indebtedness and other Obligations secured hereby and by the Mortgage, this Assignment shall become and be void and of no effect, but the affidavit of any officer, agent or attorney of Agent or Lenders made in good faith showing any part of said principal, interest, indebtedness or other Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage shall constitute a discharge of this Assignment and a release of Agent's and Lenders' interest in the Leases and rents assigned hereby and reassigned thereof to Assignor and all those claiming of record by, through or under Assignor.

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5.4 No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Agent pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Agent of its rights and remedies hereunder or any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Agent under the terms of any of the other Loan Documents. The right of Agent to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

5.5 No Liability. Neither Agent nor any Lender shall be liable for any loss sustained by Assignor resulting from Agent's failure to let the Property after an Event of Default or from any other act or omission of Agent in managing the Property after an Event of Default unless such loss is caused by the gross negligence or willful misconduct of Agent. Unless and until a foreclosure of the Mortgage or a deed in lieu thereof, Agent shall not be obligated to perform or discharge, nor does Agent hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Agent and each Lender for, and to defend and hold Agent and each Lender harmless from, any and all liability, loss or damage (excluding consequential, special and punitive damages) which is incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which are asserted against Agent or any Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any ground lease, except any that are due to the gross negligence or willful misconduct of Agent or any Lender. Should Agent or any Lender incur any such liability under the Leases or under or by reason of this Assignment, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and Assignor shall reimburse Agent and Lenders therefor within ten (10) Business Days of Assignor's receipt of written notice therefor. Upon the failure of Assignor so to do, Agent may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Property upon Agent, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease unless and until a foreclosure of the Mortgage or a deed in lieu thereof; nor shall it operate to make Agent responsible or liable for any waste committed on the Property by tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger, unless and until a foreclosure of the Mortgage or a deed in lieu thereof. Notwithstanding the foregoing, Agent and Lenders shall not be indemnified on account of, or exculpated from acts of, their own gross negligence or willful misconduct.

5.6 Effect of Foreclosure Deed. Unless Agent otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this Assignment and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. In such event, Assignor hereby

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irrevocably appoints Agent and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

5.7 Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Major Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Major Leases assigned hereby, Assignor covenants and agrees that, if any of the Major Leases is so terminated or rejected, no settlement for damages shall be made without the prior written reasonable consent of Agent, in each instance. After the occurrence or during the continuance of an Event of Default, Assignor agrees to assign any such payment to Agent and further covenants and agrees that upon the request of Agent after the occurrence and during the continuance of an Event of Default, Assignor will duly endorse to the order of Agent any such check, the proceeds of which will be applied to the Obligations secured by this Assignment. Assignor hereby irrevocably appoints Agent and its successors and assigns as its-attorney-in-fact to so endorse any such checks if Assignor does not do so in accordance with the terms hereof.

5.8 Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and any of the other Loan Documents, Agent shall have the right from time to time to determine which provisions shall govern.

5.9 Notices. Any notice or communications in connection herewith shall be sufficiently given only if given in the manner provided for in the Loan Agreement.

5.10 Grace Periods and Notice. The grace period and notice provisions set forth in Sections 11.2.3 and 11.2.4 of the Loan Agreement shall be applicable to any Default under this Assignment.

5.11 Setoff. The terms and provisions of Article 13 of the Loan Agreement are incorporated herein by reference.

5.12 Governing Law and Consent to Jurisdiction.

(i) Governing Law. This Assignment and each of the other Loan Documents shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the State of Illinois without regard to principles of conflicts of law.

(ii) Consent to Jurisdiction. Assignor, Agent and each Lender hereby consents to the nonexclusive personal jurisdiction in any state or Federal court located within the State of Illinois.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered at Chicago, Illinois as of the day and year first above written.

**ASSIGNOR:**

**230 WEST MONROE PT, LLC**, a Delaware limited liability company

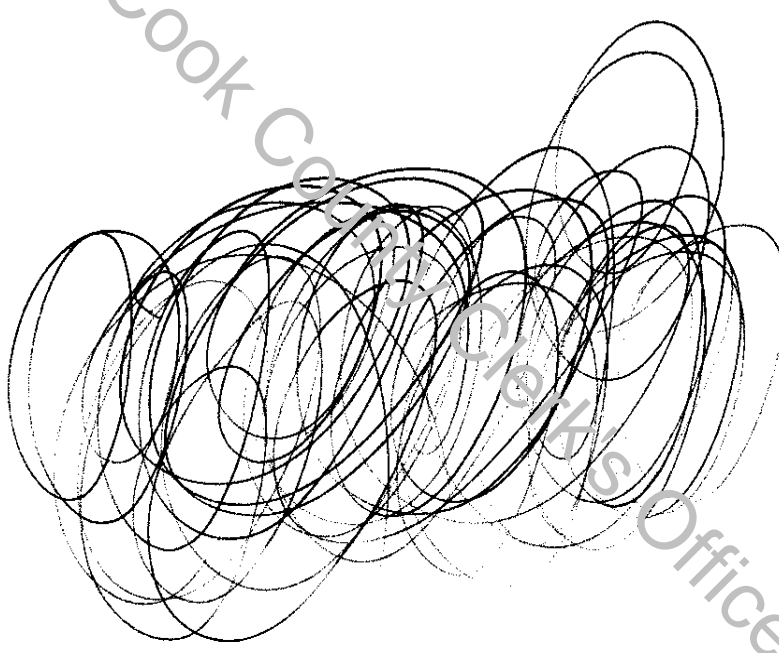
By: NACA Realty Corporation, a Delaware corporation, its Manager

By: \_\_\_\_\_

Name: Gerald Karr

Title: **Executive Vice President**

Property of Cook County Clerk's Office



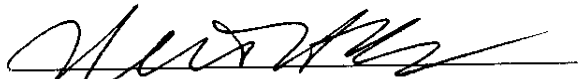


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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Gerald Karr, the EXEC. VP of NACA Realty Corporation, a Delaware corporation, the Manager of 230 WEST MONROE PT, LLC (above named Borrower), a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such EXEC. VP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20<sup>th</sup> day of December, 2007.

  
Notary Public

My Commission Expires:



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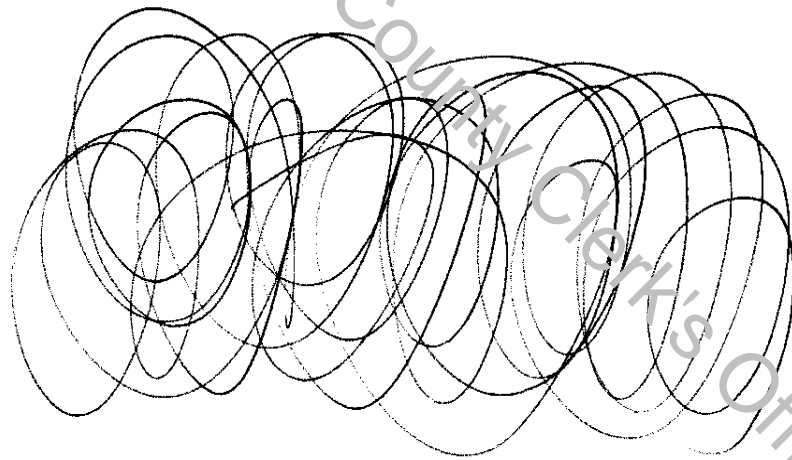
## EXHIBIT A

### LEGAL DESCRIPTION

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.

PINS: 17-16-202-013 and 17-16-202-014

Property Address: 230 West Monroe Street, Chicago, Illinois



Property of Cook County Clerk's Office