



Doc#: 0822822022 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/15/2008 10:32 AM Pg: 1 of 12

This document prepared by
and after recording return to:

Meltzer, Purtil & Stelle LLC
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606
Attn: Randall S. Kulat, Esq.

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ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment") is made and delivered as of the 12th day of August, 2008 by and between by SILVER FERN, LLC, an Illinois limited liability company ("Assignor"), to and for the benefit of COLE TAYLOR BANK, an Illinois banking corporation, its successors and assigns ("Assignee");

RECITALS:

A. Pursuant to the terms and conditions of a Loan Agreement of even date herewith (as amended, modified, replaced or restated from time to time, "Loan Agreement") between Assignor and Assignee, Assignee has agreed to loan to Assignor the principal amount of Eleven Million Two Hundred Forty-Four Thousand and 00/100 Dollars (\$11,244,000.00) ("Loan"). Assignor is executing a certain Promissory Note of even date herewith (as the same may be amended, modified, replaced or restated from time to time, "Note") payable to the order of Assignee to evidence the Loan.

B. A condition precedent to Assignee's making of the Loan to Assignor is the execution and delivery by Assignor of this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. Definitions. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "Mortgage") given as security for the Loan.

2. Grant of Security Interest. Assignor hereby grants, transfers, sets over and assigns to Assignee, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of

1ST AMERICAN TITLE Order # 365284
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or from the real property legally described in **Exhibit A** attached hereto and made a part hereof (“Premises”), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, “Leases”), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

(a) Payment by Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to Assignee by Assignor under or with respect to the Loan Documents (as defined in the Note); and (iii) all out-of-pocket costs and expenses paid or incurred by Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys’ fees and

(b) Observance and performance by Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Assignor or any other obligor to or benefiting Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. **Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that:

(a) this Assignment, as executed by Assignor, constitutes the legal and binding obligation of Assignor enforceable in accordance with its terms and provisions;

(b) Assignor is the lessor under all Leases;

(c) there is no other existing assignment of Assignor’s entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has Assignor entered into any agreement to subordinate any of the Leases or Assignor’s right to receive any of the rents, issues, income or profits assigned hereunder;

(d) Assignor has not executed any instrument or performed any act which may prevent Assignee from operating under any of the terms and provisions hereof or which would limit Assignee in such operation; and

(e) there are no defaults by the landlord and, to Assignor’s actual knowledge, there are no material defaults by tenants under any Leases.

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4. **Covenants of Assignor.** Assignor covenants and agrees that so long as this Assignment shall be in effect:

(a) Subject to the provisions of this Section 4(a), Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of such lease, which consent shall not be unreasonably withheld and which consent shall be deemed given if the Assignee fails to notify the Assignor that the Assignee's consent is being withheld within ten (10) days after the loan officer of the Assignee with primary responsibility for administering the Loan has received (i) the Assignor's request for consent (which request, to be effective, shall specifically and conspicuously refer to the ten (10) day deemed consent provision of this subsection) and (ii) all other information reasonably necessary for the Assignee to adequately evaluate such request (including, without limitation, a copy of the proposed lease, credit information regarding the proposed tenant that is made available to Assignor and a statement of the leasing commissions, tenant improvement costs, tenant incentives and other cost and expenses to be incurred in connection with such lease). Notwithstanding anything contained herein to the contrary, proposed leases for less than 1,000 square feet of at the Premises shall not require prior written approval of Assignee so long as such leases provide for rental rates comparable to existing local market rates and shall be "arm's length" transactions (or shall reflect such terms consistent with those of an "arm's length" transaction;

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and Assignor shall not intentionally do or suffer to be done anything to impair the security thereof. Assignor shall not, with respect to any new leases entered into subsequent to the date hereof (i) release the liability of any tenant under any Lease, except as specifically provided therein or to the extent a creditworthy replacement tenant assumes the obligations of tenant under such Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises. Notwithstanding anything contained herein to the contrary, under no circumstances shall Assignor be permitted to release the liability of any tenant under a lease made to an affiliate of Assignor (an "Affiliate Lease") without the express written consent of Assignee;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

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(e) Assignor shall not modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Assignee's prior written consent (which consent shall not be unreasonably withheld); provided, however, that Assignor may (i) cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease, (ii) cancel or terminate any Lease if at the time of the cancellation thereof a new Lease is entered into on substantially the same or more favorable terms as the cancelled Lease, and/or (iii) amend modify or change the terms of the Leases without Lender's prior consent provided such amendments, modifications or changes are of a *de minimus*, non-financial nature. Notwithstanding anything contained herein to the contrary, under no circumstances shall Assignor be permitted to amend, modify or cancel any Affiliate Lease without the express written consent of Assignee;

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease to us to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder, provided, however, that any Lease may be cancelled if at the time of the cancellation thereof a new Lease is entered into on substantially the same or more favorable terms as the cancelled Lease; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee. Notwithstanding anything contained herein to the contrary, under no circumstances shall Assignor be permitted to cancel any Affiliate Lease without the express written consent of Assignee

(g) Assignor shall not alter, modify or change in a material or financial respect the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law without the prior written consent of Assignee;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease, except to the extent that such waiver or excuse is included in a tenant inducement package on terms consistent with existing local market terms (taking into account the type and quality of the tenant) as of the date such Lease is executed by Assignor. Notwithstanding anything contained herein to the contrary, under no circumstances shall such tenant inducement package be available under an Affiliate Lease without the express written consent of Assignee;

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all out-of-pocket costs and expenses of Assignee, including

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court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

(j) Assignor shall give prompt notice to Assignee of any notice of any default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall promptly notify Assignee of any material breach by the tenant or guarantor under any such Lease;

(l) Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes not delinquent;

(m) Assignor shall not execute hereafter any Lease unless there shall be included therein (or included in a subordination, non-disturbance and attornment agreement reasonably acceptable to Assignee) a provision providing that the tenant thereunder acknowledges that such Lease has been or is capable of being assigned pursuant to this Assignment and agrees not to look to Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by Assignee as security for tenant's performance under such Lease;

(n) If any tenant under any Lease is or becomes 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 Leases assigned hereby, Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Assignee. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, they will duly endorse to the order of Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Section 8 below.

5. **Rights Prior to Default.** Unless or until the occurrence of, and during the continuance, of an Event of Default (as defined in Section 6), Assignor shall have the right to (i) collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same, (ii) operate, lease and manage the Premises, and (iii) to exercise all the rights and remedies of the lessor under the Leases, subject to the provisions of the Loan Documents. Upon the occurrence, and during the continuance, of an Event of Default, Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to Assignor. Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

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6. **Events of Default**. An “Event of Default” shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Loan Agreement or (b) any other Event of Default described in the Note, Mortgage or the other Loan Documents.

7. **Rights and Remedies Upon Default**. At any time upon or following the occurrence of any Event of Default, Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Mortgage or any other lien or security interest granted by the Loan Documents in accordance with applicable law:

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor’s rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee’s collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee; and

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.

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8. **Application of Proceeds.** All sums collected and received by Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) and, unless otherwise specified in such act, in such order as Assignee shall elect in its sole and absolute discretion.

9. **Limitation of Assignee's Liability.** Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default (except to the extent of Assignee's gross negligence or willful misconduct). Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and hereby agrees to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee harmless from and against any and all liability, loss or damage which Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's gross negligence or willful misconduct. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor and if not paid within ten (10) days of written request by Assignee, such sum shall begin to accrue interest at the Default Rate until paid and shall be secured by this Assignment. Until such time, if any, as Assignee shall have taken possession and shall exercise exclusive control over the Premises, this Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Mortgage, and no exercise by Assignee of any of the rights set forth herein or in the Mortgage shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Mortgage.

10. **No Waiver.** Nothing contained in this Assignment and no act done or omitted to be done by Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of Assignee under the terms and provisions of such instruments, and Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to,

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simultaneously with, or subsequent to any action taken by it hereunder. Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. **Further Assurances.** Assignor shall, within five (5) days of written request, execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as Assignee may designate) and shall do or cause to be done such further acts, as Assignee may request in writing, in order to permit Assignee to perfect, protect, preserve and maintain the assignment made to Assignee by this Assignment.

12. **Security Deposits.** Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that Assignee assumes no responsibility or liability for any security so deposited until such time that such security deposits are actually received by Assignee.

13. **Severability.** If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. **Successors and Assigns.** This Assignment is binding upon Assignor and its successors and permitted assigns, and the rights, powers and remedies of Assignee under this Assignment shall inure to the benefit of Assignee and its successors and assigns.

15. **Written Modifications.** This Assignment shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

16. **Duration.** This Assignment shall become null and void at such time as Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Notices.** All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of Assignor and Assignee, as the case may be, as specified in the Mortgage.

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19. Waiver of Trial by Jury. ASSIGNOR AND ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

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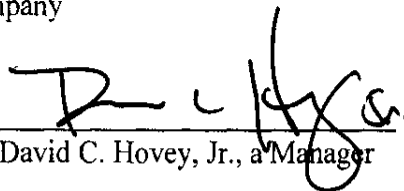
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IN WITNESS WHEREOF, Assignor has executed and delivered this Assignment the day and year first above written.

SILVER FERN, LLC, an Illinois limited liability company

By: _____

David C. Hovey, Jr., a Manager



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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 David C. Hovey, Jr., a Manager of Silver Fern, LLC ("Mortgagor"), who is personally known to me to be the same person whose names is subscribed to the foregoing instrument as such Manager, 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 free and voluntary act as the Manager of Mortgagor, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of August, 2008.





Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 1: UNITS D, E AND I IN THE 630 VERNON CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED LAND: LOT 3 AND PARTS OF LOTS 1, 2 AND 4 (TOGETHER WITH THE EASTERLY HALF OF THE VACATED ALLEY WESTERLY OF AND ADJOINING LOTS 1, 2, 3 AND THE NORTHWESTERLY 10 FEET OF LOT 4) IN BLOCK 24 IN THE VILLAGE OF GLENCOE, A SUBDIVISION IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS AN EXHIBIT TO THE DECLARATION OF CONDOMINIUM RECORDED JANUARY 3, 1996 AS DOCUMENT NUMBER 96006146 AS AMENDED FROM TIME TO TIME TOGETHER WITH ITS UNDIVIDED INTEREST IN THE COMMON ELEMENTS ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE EXCLUSIVE RIGHT TO THE USE OF PARKING SPACE P-31 FOR THE BENEFIT OF UNIT E OF PARCEL 1, A LIMITED COMMON ELEMENT AS SET FORTH IN SAID DECLARATION.

PARCEL 3: THE EXCLUSIVE RIGHT TO THE USE OF STORAGE ROOM #18 FOR THE BENEFIT OF UNIT E OF PARCEL 1, A LIMITED COMMON ELEMENT AS SET FORTH IN SAID DECLARATION.

Commonly known as: 630 Vernon Avenue, Glencoe, IL

PINs: 05-07-211-035-1022 Unit D
05-07-211-035-1023 Unit E
05-07-211-035-1028 Unit I