



Doc#: 1119645028 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/15/2011 01:02 PM Pg: 1 of 14

Prepared By and
After Recordation Return To:

Greene Radovsky Maloney Share & Hennigh LLP
Four Embarcadero Center, Suite 4000
San Francisco, CA 94111
Attn: Graham Maloney

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is by and between CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, with a mailing address of 1301 Avenue of the Americas, Real Estate Department – 18th Floor, New York, NY 10019 ("Lender") and FILENE'S BASEMENT, LLC (f/k/a SYL, LLC), a Delaware limited liability company, with its principal place of business at One Syms Way, Secaucus, New Jersey 07094, successor-in-interest to Filene's Basement, Inc. ("Tenant"), and GROSVENOR INTERNATIONAL (AMERICAN FREEHOLDS) LIMITED, a Nevada corporation, and BBCAF-VRC, LLC, a Delaware limited liability company ("Borrower").

RECITALS.

A. Lender has made a loan (together with all advances and increases, the "Loan") to Borrower. The Loan is secured by the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 28, 2011 and recorded July 5, 2011 as Document # 1118629064 in the official records of the Cook County Recorder of Deeds (together with all advances, increases, amendments or consolidations, the "Mortgage"). The Mortgage encumbers the real property, improvements and fixtures located at 830 North Michigan Avenue, in the City of Chicago, County of Cook, State of Illinois (the "Property").

B. Borrower, as landlord, and Tenant have entered into a lease dated July 1, 1993, as amended (the "Lease") pursuant to which Landlord leased to Tenant and Tenant leased from Landlord certain premises consisting of approximately 3,871 rentable square feet on the first, second and third floors, 39,131 rentable square feet on the fourth and fifth floors, and 18,157 square feet on the sixth floor of the building at the Property ("Premises").

IN CONSIDERATION of the mutual agreements contained in this Agreement, Lender and Tenant agree as follows:

1. The Lease and all of Tenant's rights under the Lease are and will remain subject and subordinate to the lien of the Mortgage and the Assignment and all of Lender's rights under the Mortgage and the Assignment and Tenant will not subordinate the Lease to any other lien against the Property without Lender's prior consent.

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2. This Agreement constitutes notice to Tenant of the Mortgage and the Assignment and, upon receipt of notice from Lender, Tenant will pay the Rent as and when due under the Lease to Lender and the payments will be credited against the Rent due under the Lease. Landlord waives all claims against Tenant related to Tenant's compliance with the section.

3. Lender will not name Tenant as a party to any judicial or non-judicial foreclosure or other proceeding to enforce the Mortgage unless joinder is required under applicable law but in such case Lender will not seek affirmative relief against Tenant, the Lease will not be terminated and Tenant's possession of the Premises will not be disturbed.

4. If Lender or any other entity (a "Successor Landlord") acquires the Property through foreclosure, by other proceeding to enforce the Mortgage or by deed-in-lieu of foreclosure (a "Foreclosure"), Tenant's possession of the Premises will not thereby be disturbed and the Lease will continue in full force and effect between Successor Landlord and Tenant in accordance with the terms of the Lease.

5. If, notwithstanding the foregoing, the Lease is terminated as a result of a Foreclosure, a lease between Successor Landlord and Tenant will be deemed created, with no further instrument required, on the same terms as the Lease except that the term of the replacement lease will be the then unexpired term of the Lease. Successor Landlord and Tenant will execute a replacement lease at the request of either.

6. Upon Foreclosure, Tenant will recognize and attorn to Successor Landlord as the landlord under the Lease for the balance of the term. Tenant's attornment will be self-operative with no further instrument required to effectuate the attornment except that at Successor Landlord's request, Tenant will execute instruments reasonably satisfactory to both Tenant and Successor Landlord confirming the attornment.

7. Successor Landlord will not be:

(a) liable for any act or omission of Landlord (except to the extent such act or omission continues beyond the date when such successor landlord succeeds to Landlord's interest and Tenant gives notice of such act or omission);

(b) subject to any defense, claim, counterclaim, set-off or offsets which Tenant may have against Landlord;

(c) bound by any prepayment of more than one (1) month's rent to any prior landlord;

(d) bound by any obligation to make any payment to Tenant which was required to be made prior to the time such Successor Landlord succeeded to Landlord's interest;

(e) bound by any obligation to perform any work or to make improvements to the Premises except for repairs and maintenance required to be made by Landlord under the Lease, and repairs to the Premises as a result of damage by fire or other casualty or a partial condemnation pursuant to the provisions of the Lease;

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(f) bound by any modification, amendment or renewal of the Lease made without such Successor Landlord's consent;

(g) liable for the repayment of any security deposit or surrender of any letter of credit, unless and until such security deposit actually is paid or such letter of credit is actually delivered to such Successor Landlord; or

(h) liable for the payment of any unfunded tenant improvement allowance, refurbishment allowance or similar obligation.

8. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such failure. Tenant shall not take any action with respect to such failure under the Lease, including, without limitation, any action in order to terminate, rescind or avoid the Lease or to withhold any rent thereunder, for a period of thirty (30) days after receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with diligence be cured within said 30-day period, if Lender shall proceed promptly to cure such failure and thereafter prosecute the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity.

9. Tenant shall not, without obtaining the prior written consent of Lender, (a) enter into any agreement amending, modifying or terminating the Lease, (b) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, (c) voluntarily surrender the Premises or terminate the Lease without cause or shorten the term thereof, except as otherwise provided in the Lease, or (d) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Lender's prior consent, shall not be binding upon Lender.

10. All notices, requests or consent required or permitted to be given under this Agreement must be in writing and sent by certified mail, return receipt requested or by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to the appropriate party at the address set forth above.

11. Any claim by Tenant against Successor Landlord under the Lease or this Agreement will be satisfied solely out of Successor Landlord's interest in the Property and any rents, income, equity and proceeds therefrom, and Tenant will not seek recovery against or out of any other assets of Successor Landlord. Successor Landlord will have no liability or responsibility for any obligations under the Lease that are due to events subsequent to any transfer of the Property by Successor Landlord.

12. This Agreement is governed by and will be construed in accordance with the laws of the state or commonwealth in which the Property is located.

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13. Lender and Tenant waive trial by jury in any proceeding brought by, or counterclaim asserted by, Lender or Tenant relating to this Agreement.

14. If there is a conflict between the terms of the Lease and this Agreement, the terms of this Agreement will prevail as between Successor Landlord and Tenant.

15. This Agreement binds and inures to the benefit of Lender and Tenant and their respective successors, assigns, heirs, administrators, executors, agents and representatives.

16. This Agreement contains the entire agreement between Lender and Tenant with respect to the subject matter of this Agreement, may be executed in counterparts that together constitute a single document and may be amended only by a writing signed by Lender and Tenant.

15. This Agreement is not effective unless and until a fully executed copy is delivered to Tenant.

[Signatures on the following page.]

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IN WITNESS WHEREOF, Tenant has executed this Agreement as of the date first above written.

TENANT:

FILENE'S BASEMENT, LLC, a Delaware limited liability company

By: Syms Corp., a New Jersey corporation
Its: Sole Member

By: *Laura McCabe Brandt*
Name: Laura McCabe Brandt
Title: VP & General Counsel

STATE OF NEW JERSEY

COUNTY OF HUDSON:

I, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that Laura McCabe Brandt who is personally well known to me as, of satisfactorily proved to be, the person named as VP & General Counsel of Syms Corp in the foregoing Subordination, Non-Disturbance and Attornment Agreement bearing date as of June 23, 2011 personally appeared before me in the said jurisdiction, and acknowledged the same to be the act and deed of said organization, and delivered the same as such.

GIVEN under my hand and official seal this June 23, 2011.

Richard A. Tereo
Notary Public

[SIGNATURES CONTINUED ON NEXT PAGE]

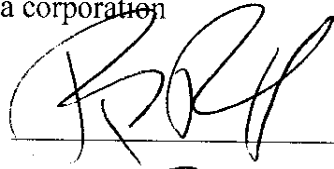
RICHARD A. TERO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MARCH 6, 2016

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IN WITNESS WHEREOF, the Landlord has executed this Agreement as of the date first above written.

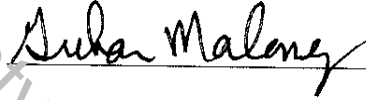
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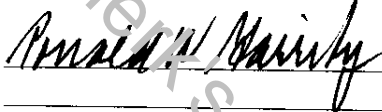
GROSVENOR INTERNATIONAL
(AMERICAN FREEHOLDS) LIMITED, a
Nevada corporation

By: 
Name: _____
Title: _____

By: 
Name: **ALAN V. CHAMORRO**
Title: **SR. VICE PRESIDENT**

BBCAF-VRC, LLC,
a Delaware limited
liability company

By: 
Name: _____
Title: Manager

By: 
Name: _____
Title: Manager

Property of Cook County Clerk's Office

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ACKNOWLEDGMENT

State of California
County of San Francisco)

On June 30, 2011 before me, Karen Fernandes, Notary Public
(insert name and title of the officer)

personally appeared Rekha S. Patel
who proved to me 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Karen Fernandes* (Seal)



PROPERTY OF COOK COUNTY Clerk's Office

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ACKNOWLEDGMENT

State of California
County of San Francisco)

On June 30, 2011 before me, Karen Fernandes, Notary Public
(insert name and title of the officer)

personally appeared Alan V. Chamorro
who proved to me 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Karen Fernandes*



PROPERTY OF COOK COUNTY Clerk's Office

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Francisco

On 6/29/11
Date

before me,

Judy A. Wilson
Here Insert Name and Title of the Officer

personally appeared

Graham Maloney and Ronald W. Garrity
Name(s) of Signer(s)

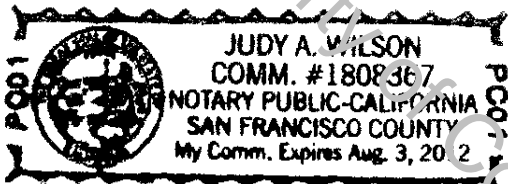
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~she/they executed the same in ~~his~~her/their authorized capacity(ies), and that by ~~his~~her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to a other document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

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IN WITNESS WHEREOF, Lender has executed this Agreement as of the date first above written.

LENDER:

CRÉDIT AGRICOLE CORPORATE &
INVESTMENT BANK (as Administrative
Agent)

By: *Paul T. Ragusin*
Name: Paul T. Ragusin
Title: Director

By: *Daniel J. Reddy*
Name: Daniel J. Reddy
Title: Director

Property of Cook County Clerk's Office

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State of New York)
County of New York)

ss:

I, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that Paul T. Ragusin, who is personally well known to me as, or satisfactorily proved to be, the person named as Director of Cr dit Agricole Corporate And Investment Bank in the foregoing Subordination, Non-Disturbance and Attornment Agreement bearing date as of July 7th, 2011, personally appeared before me in the said jurisdiction, and acknowledged the same to be the act and deed of Cr dit Agricole Corporate And Investment Bank, and delivered the same as such.

GIVEN under my hand and official seal this July 7th, 2011.

Gloria Phillips-Jones
Notary Public

My Commission Expires: August 13, 2011

GLORIA PHILLIPS-JONES
NOTARY PUBLIC, State of New York
No. 01PH6172421
Qualified in Queens County
Term Expires August 13, 2011

State of New York)
County of New York)

ss:

I, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that Daniel S. Reddy, who is personally well known to me as, or satisfactorily proved to be, the person named as Director of Cr dit Agricole Corporate And Investment Bank in the foregoing Subordination, Non-Disturbance and Attornment Agreement bearing date as of July 7th, 2011, personally appeared before me in the said jurisdiction, and acknowledged the same to be the act and deed of Cr dit Agricole Corporate And Investment Bank, and delivered the same as such.

GIVEN under my hand and official seal this July 7th, 2011.

Gloria Phillips-Jones
Notary Public

My Commission Expires: August 13, 2011

GLORIA PHILLIPS-JONES
NOTARY PUBLIC, State of New York
No. 01PH6172421
Qualified in Queens County
Term Expires August 13, 2011

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SCHEDULE A

THAT PART OF LOTS 1 AND 2, TAKEN AS A TRACT, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1; THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST, ALONG THE SOUTH LINE OF LOTS 1 AND 2, A DISTANCE OF 186.19 FEET; THENCE NORTH 0 DEGREES, 02 MINUTES, 05 SECONDS WEST 107.26 FEET TO THE NORTH LINE OF LOT 2;

THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST, ALONG THE NORTH LINE OF LOTS 1 AND 2, A DISTANCE OF 186.65 FEET TO THE NORTHEAST CORNER OF LOT 1; THENCE SOUTH 0 DEGREES, 12 MINUTES, 49 SECONDS WEST, ALONG THE EAST LINE OF LOT 1, A DISTANCE OF 107.26 FEET TO THE SOUTHEAST CORNER OF SAID LOT BEING THE POINT OF BEGINNING OF THE HEREINABOVE DESCRIBED TRACT, ALL IN FERRY'S SUBDIVISION OF PART OF BLOCK 20 IN CANAL TRUSTEE'S SUBDIVISION OF THE SOUTH FRACTIONAL 1/4 OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965528, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") GRANTING A NON-EXCLUSIVE EASEMENT IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS AND TENANTS FROM TIME TO TIME OF THE AMERICAN PROPERTY AND THEIR RESPECTIVE TENANTS, SUBTENANTS, LICENSEES,

CONCESSIONAIRES, SUPPLIERS, AGENTS, EMPLOYEES AND INVITEES THE EASEMENT AREA LOCATED UPON THE CHESTNUT PROPERTY FOR THE PURPOSE OF INGRESS AND EGRESS, DELIVERIES, LOADING AND UNLOADING, TRASH REMOVAL, TEMPORARY PARKING OF DELIVERY AND SERVICE TRUCKS AND VEHICLES, AND PROVIDING ACCESS TO AND FROM THE SERVICE WAYS, CORRIDORS AND FREIGHT ELEVATORS LOCATED ON THE AMERICAN PROPERTY, (SUCH EASEMENT AREA, AND ALL REPLACEMENT AREAS THEREOF, BEING HEREINAFTER COLLECTIVELY CALLED THE "LOADING DOCK").

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PARCEL 3:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965531, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") GRANTING A NON-EXCLUSIVE EASEMENT IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, THEIR RESPECTIVE TENANTS, SUBTENANTS, LICENSEES, CONCESSIONAIRES, SUPPLIERS, AGENTS, EMPLOYEES AND INVITEES AN EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA FOR: (I) PEDESTRIAN INGRESS AND EGRESS TO AND FROM THE FIFTH FLOOR OF THE RETAIL BUILDING, AND (ii) THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF THE ABOVE DESCRIBED ENTRANCE AND DOORS (SUCH ENTRANCE IMPROVEMENTS AND DOORS, AND ALL REPLACEMENTS THEREOF, BEING HEREAFTER COLLECTIVELY CALLED THE "PEDESTRIAN ENTRANCE IMPROVEMENTS").

PARCEL 4:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965530, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N.A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY, THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, A NON-EXCLUSIVE EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA, IN COMMON WITH THE OWNERS, OCCUPANTS, TENANTS, AND INVITEES OF THE CHESTNUT PROPERTY AND THEIR SUCCESSORS AND ASSIGNS, FOR: (1) THE USE OF THE EASEMENT AS A MEANS OF EMERGENCY EGRESS FROM THE AMERICAN PROPERTY AND THE CHESTNUT PROPERTY, TO PEARSON STREET, AND (ii) FOR THE CONSTRUCTION, MAINTENANCE, REPAIR AND REPLACEMENT OF THE FIRE WALL AND ALARM EQUIPMENT AND SYSTEMS AS MAY BE REASONABLY LOCATED WITHIN THE EASEMENT AREA (SUCH WALL, DOORS, AND LIGHTING AND ALARM EQUIPMENT AND SYSTEMS, AND ALL REPLACEMENT THEREOF, BEING HERINAFTER COLLECTIVELY CALLED THE "EMERGENCY CORRIDOR IMPROVEMENTS").

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PARCEL 5:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN EASEMENT AGREEMENT DATED NOVEMBER 19, 1993 AND RECORDED NOVEMBER 26, 1993 AS DOCUMENT 93965529, MADE BY AND BETWEEN LASALLE NATIONAL TRUST, N. A., AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1993 AND KNOWN AS TRUST NUMBERS 118065 AND 118066 (COLLECTIVELY THE "CHESTNUT TRUSTEE") AND AMERICAN FREEHOLDS, A NEVADA GENERAL PARTNERSHIP ("AMERICAN FREEHOLDS") IN FAVOR OF AMERICAN FREEHOLDS AND TO THE OWNERS FROM TIME TO TIME OF THE AMERICAN PROPERTY, AN EXCLUSIVE EASEMENT AND THE RIGHT AND PRIVILEGE TO USE THE EASEMENT AREA FOR THE OPERATION, MAINTENANCE, REPAIR, SERVICING, AND REPLACEMENT OF THE FIRE PROTECTION EQUIPMENT AND SYSTEMS, A STAIRWAY AND WATER MAIN SERVING PARCEL 1 LOCATED IN THE EASEMENT AREA WHICH SERVICE THE AMERICAN PROPERTY.

*C/O/A: 830 N. Michigan Ave., Chicago, IL
PIN: 17-03-225-029-0000*