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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/10/2007 11:31 AM Pg: 1 of 34

\*RETURN TO:  
Wheatland Title  
39 Mill Street  
Montgomery, IL 60538  
SFH-0600-9955.0 (213)

*Please Return To*

*Zonia N. Veal*

*First National Financial Title Services, Inc.  
3237 Satellite Blvd, Bldg. 300, Ste. 450  
Duluth, GA 30096 H34385*

PREPARED BY AND, UPON RECORDATION,  
RETURN TO.

Alston & Bird LLP  
101 S. Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Attention: David Jacobs, Esq.

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LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE IN TRUST FOR THE  
HOLDERS OF BANC OF AMERICA COMMERCIAL MORTGAGE, INC., COMMERCIAL  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-3

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**LOAN ASSUMPTION  
AND  
SUBSTITUTION AGREEMENT**

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Dated: As of August 30, 2007  
Location: 100 East Algonquin Road  
Arlington Heights, Illinois  
County: Cook County  
Parcel No.: 08-16-202-028-0000  
Parcel No.: 08-16-402-001-0000

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## LOAN ASSUMPTION AND SUBSTITUTION AGREEMENT

THIS LOAN ASSUMPTION AND SUBSTITUTION AGREEMENT (this "*Agreement*") is made and entered into as of August 30, 2007, by and among BLDG ARLINGTON LLC, a Delaware limited liability company, having an address of c/o BLDG Management Co., Inc., 417 Fifth Avenue, 4<sup>th</sup> Floor, New York, New York 10016, MITSUCHIC LLC, a Delaware limited liability company, having an address of 3 Quartz Ledge, Bedford, New York 10506, and BACAEL ARLINGTON LLC, a Delaware limited liability company, having an address of 38 Cardinal Drive, Roslyn, New York 11576, as tenants in common (individually and collectively, "*Assuming Borrower*"), LLOYD GOLDMAN, an individual, having an address of c/o BLDG Management Co., Inc., 417 Fifth Avenue, 4<sup>th</sup> Floor, New York, New York 10016, DAVID GOLDMAN, an individual, having an address of c/o Bacael Partners II, L.P., 38 Cardinal Drive, Roslyn, New York 11576, and JEFFREY FISHMAN, an individual, having an address of c/o Marketchic LLC, 3 Quartz Ledge, Bedford, New York 10506 (individually and collectively, the "*Assuming Indemnitor*"), YAHII II, LLC, a Delaware limited liability company, having an address at c/o The Bentley Forbes Group, 10250 Constellation Boulevard, Suite 2300, Los Angeles, California 90067 ("*Original Borrower*"), and THE GFW TRUST, a California Trust, having an address at c/o The Bentley Forbes Group, 10250 Constellation Boulevard, Suite 2300, Los Angeles, California 90067 ("*Original Indemnitor*"), in favor of LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE IN TRUST FOR THE HOLDERS OF BANC OF AMERICA COMMERCIAL MORTGAGE, INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-3, whose mailing address is c/o Bank of America, N.A., 900 West Trade Street, Suite 650, Mail Code: NC1-026-06-1, Charlotte, NC 28255, Attn: Capital Markets Servicing Group ("*Lender*").

### Recitals

A. Bank of America, N.A., a national banking association (the "*Original Lender*"), pursuant to the Loan Documents (as hereinafter defined) made a loan to Original Borrower in the original principal amount of \$12,500,000.00 (the "*Loan*"). The Loan is evidenced and secured by the following documents executed in favor of Original Lender by Original Borrower and Original Indemnitor:

- (1) Promissory Note dated April 28, 2005, payable by Original Borrower to Original Lender in the original principal amount of \$12,500,000.00 (the "*Note*");
- (2) Mortgage, Assignment of Leases and Rents and Security Agreement dated April 28, 2005 granted by Original Borrower to Mortgage Electronic Registration Systems, Inc., in its capacity as nominee for Original Lender, recorded as Instrument No. 0511939105 in the real estate records of Cook County, Illinois ("*Recorder's Office*") (the "*Mortgage*"); and
- (3) Loan Agreement by and among Original Borrower, Original Indemnitor (with respect to Article 4, Section 12.6, Article 15 and Article 18 thereof) and Original Lender of even date with the Note (the "*Loan Agreement*").

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The foregoing documents, together with any and all other documents executed by Original Borrower and/or Original Indemnitor in connection with the Loan, are collectively called the "**Loan Documents**." As used herein, the term "**Assuming Obligors**" shall mean Assuming Borrower and Assuming Indemnitor; and the term "**Original Obligors**" shall mean Original Borrower and Original Indemnitor.

B. Original Lender assigned, sold and transferred its interest in the Loan and all Loan Documents to Lender and Lender is the current holder of all of Original Lender's interest in the Loan and Loan Documents.

C. Original Borrower continues to be the owner of the Property (as defined below).

D. Pursuant to that certain Purchase and Sale Agreement (as amended and as assigned to Assuming Borrower, the "**Sales Agreement**"), Original Borrower agreed to sell, and Assuming Borrower agreed to purchase, that certain real property more particularly described on Exhibit A attached hereto, together with all other property encumbered by the Mortgage and the other Loan Documents (collectively, the "**Property**"). The Sales Agreement requires that the Assuming Borrower assume the Loan and the obligations of Original Borrower under the Loan Documents, and conditions the closing of the sale of the Property upon the Lender's consent to the sale of the Property and the assumption of the Loan.

E. Pursuant to Section 7.5 of the Loan Agreement, Original Borrower has the right to sell the Property and the Loan to a third party subject to the satisfaction of certain conditions specified therein. Original Borrower and Assuming Borrower have requested that Lender consent to the sale, conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Loan Agreement, the Mortgage and the other Loan Documents, and to the assumption by Assuming Borrower of the Loan and the assumption by Assuming Obligors of the obligations of Original Obligors under the Loan Documents, to the extent set forth herein (the "**Assumption**").

F. Lender is willing to consent to the sale, conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Loan Agreement, the Mortgage and the other Loan Documents, and to the Assumption on and subject to the terms and conditions set forth in this Agreement, in the Loan Agreement, in the Mortgage and in the other Loan Documents.

G. Lender, Original Obligors and Assuming Obligors by their respective executions hereof, evidence their consent to the transfer of the Property to Assuming Borrower and the Assumption as hereinafter set forth.

## Statement of Agreement

In consideration of the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. Representations, Warranties, and Covenants of Original Obligors, Release of Lender.

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(a) Original Obligor hereby represent to Lender, as of the date hereof, that (i) simultaneously with the execution and delivery hereof, Original Borrower has conveyed and transferred all of the Property to Assuming Borrower; (ii) simultaneously with the execution and delivery hereof, Original Borrower has assigned and transferred to Assuming Borrower all leases, tenancies, security deposits and prorated rents of the Property in effect as of the date hereof ("Leases") retaining no rights therein or thereto; (iii) Original Borrower has not received a mortgage from Assuming Borrower encumbering the Property to secure the payment of any sums due Original Borrower or obligations to be performed by Assuming Borrower; (iv) except as may otherwise be permitted pursuant to the Loan Documents, the Mortgage is a valid first lien on the Property for the full unpaid principal amount of the Loan and all other amounts as stated therein; (v) no Default or Event of Default (each as defined in the Loan Agreement) has occurred and is continuing; (vi) there are no defenses, set-offs or rights of defense, set-off or counterclaim whether legal, equitable or otherwise to the obligations evidenced by or set forth in the Loan Documents; (vii) all provisions of the Loan Documents are in full force and effect, except as modified herein; (viii) except as may otherwise be permitted pursuant to the Loan Documents, there are no subordinate liens of any kind covering or relating to the Property nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received; and (ix) the representations and warranties made by Original Obligor in the Loan Documents or in any other documents or instruments delivered in connection with the Loan Documents, including, without limitation, all representations and warranties with respect to environmental matters, are true, on and as of the date hereof, with the same force and effect as if made on and as of the date hereof.

(b) Original Obligor hereby covenant and agree that: (i) from and after the date hereof, Lender may deal solely with Assuming Obligor in all matters relating to the Loan, the Loan Documents, and the Property; (ii) they shall not at any time hereafter take (x) a mortgage or other lien encumbering the Property or (y) a pledge of direct or indirect interests in Assuming Borrower from Assuming Obligor to secure any sums to be paid or obligations to be performed by Assuming Obligor so long as any portion of the Loan remains unpaid; and (iii) Lender has no further duty or obligation of any nature relating to this Loan or the Loan Documents to Original Obligor.

Original Obligor understand and intend that Lender shall rely on the representations, warranties and covenants contained herein.

## 2. Representations, Warranties, and Covenants of Assuming Obligor.

(a) Assuming Obligor hereby represent and warrant to Lender, as of the date hereof, that: (i) simultaneously with the execution and delivery hereof, Assuming Borrower has purchased from Original Borrower all of the Property, and has accepted Original Borrower's assignment of the Leases; (ii) Assuming Borrower has assumed the performance of Original Borrower's obligations under the Leases from and after the date hereof; (iii) Assuming Borrower has not granted to Original Borrower (x) a mortgage or other lien upon the Property or (y) a pledge of direct or indirect interests in the Assuming Borrower to secure any debt or obligations owed to Original Borrower; (iv) to the knowledge of Assuming Obligor, no Default or Event of Default has occurred or is continuing; (v) to the knowledge of Assuming Obligor, all provisions of the Loan Documents are in full force and effect; (vi) to the knowledge of Assuming Obligor,

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the representations and warranties made in the Loan Documents or in any other documents or instruments delivered in connection with the Loan Documents are true, on and as of the date hereof; and (vii) Assuming Obligors have reviewed all of the Loan Documents and consent to the terms thereof, as modified pursuant to this Agreement.

(b) Assuming Borrower shall not hereafter, without Lender's prior consent in accordance with the terms of the Loan Documents, further encumber the Property or sell or transfer the Property or any interest therein, except as may be specifically permitted in the Loan Documents. Assuming Obligors have no knowledge that any of the representations and warranties made by the Original Obligors herein are untrue, incomplete, or incorrect.

(c) Assuming Indemnitor hereby represents and warrants to the Lender that Assuming Indemnitor is an affiliate of the Assuming Borrower and Assuming Indemnitor will derive substantial economic benefit from the Lender's consent to the Assumption. The Assuming Indemnitor hereby acknowledges and agrees that the Assuming Indemnitor has executed this Agreement and agreed to be bound by the covenants and agreements set forth herein in order to induce the Lender to consent to the transaction described herein. Accordingly, the Assuming Indemnitor acknowledges that the Lender would not consent to the transaction described herein without the execution and delivery by the Assuming Indemnitor of this Agreement.

(d) Assuming Borrower certifies to Lender that all funds used by Assuming Borrower at closing were provided by its members as capital contributions and are not secured directly or indirectly by an interest in Assuming Borrower or other collateral for the Loan.

(e) All obligations of Assuming Borrower under the Loan Documents shall be joint and several with respect to each Assuming Borrower, and all obligations of Assuming Indemnitor under the Loan Documents shall be joint and several with respect to each Assuming Indemnitor.

Assuming Obligors understand and intend that Lender shall rely on the representations, warranties and covenants contained herein.

3. Assumption of Obligations of Borrower. Assuming Borrower hereby assumes the Debt (as defined in the Loan Agreement) and Assuming Borrower hereby assumes all the other obligations of Original Borrower of every type and nature set forth in the Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement. Assuming Borrower further agrees to abide by and be bound by all of the terms of the Loan Documents applicable to the "Borrower" or "Mortgagor" (as applicable), in accordance with their respective terms and conditions, including but not limited to, the covenants, assurances and indemnifications therein, all as though each of the Loan Documents had been made, executed, and delivered by Assuming Borrower. Assuming Borrower agrees to pay when and as due all sums due under the Note and agrees to pay, perform, and discharge each and every other obligation of payment and performance of the "Borrower" or "Mortgagor" (as applicable) pursuant to and as set forth in the Loan Documents at the time, in the manner and otherwise in all respects as therein provided. Assuming Borrower hereby acknowledges, agrees and warrants that to its knowledge (i) there are no rights of set-off or counterclaim, nor any defenses of any

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kind, whether legal, equitable or otherwise, which would enable Assuming Borrower to avoid or delay timely performance of its obligations under the Loan Documents, as applicable; and (ii) there are no monetary encumbrances or liens of any kind or nature against the Property except those created by the Loan Documents, and all rights, priorities, titles, liens and equities securing the payment of the Note are expressly recognized as valid and are in all things renewed, continued and preserved in force to secure payment of the Note, except as amended herein.

#### 4. Assumption of the Obligations of the Original Indemnitor under the Loan Documents.

(a) From and after the date of this Agreement, the Assuming Indemnitor shall be obligated and responsible for the performance of each and all of the obligations and agreements of the "*Borrower Principal*" (referred to herein as "*Borrower Principal*") under the Loan Agreement, including, without limitation, Article 4, Section 12.6, Article 15 and Article 18 of the Loan Agreement, and the other Loan Documents to which Original Indemnitor is a party, and the Assuming Indemnitor shall be liable and responsible for each and all of the liabilities of the Borrower Principal thereunder, arising from and after the date hereof, and shall be substituted in lieu of and in place of the Original Indemnitor, as fully and completely as if the Assuming Indemnitor had originally executed and delivered such Loan Documents as the Borrower Principal thereunder with respect to those matters arising from and after the date hereof. The Assuming Indemnitor further agrees to abide by and be bound by all of the terms of the Loan Documents having reference to the Borrower Principal with respect to those matters arising from and after the date hereof, all as though each of the Loan Documents to which the Original Indemnitor is a party had been made, executed, and delivered by the Assuming Indemnitor as the Borrower Principal, solely as it respects such matters ongoing from and after the date hereof. The Assuming Indemnitor hereby agrees to pay, perform, and discharge each and every obligation of payment and performance of the Borrower Principal arising from and after the date hereof under, pursuant to and as set forth in the Loan Documents at the time, in the manner and otherwise in all respects as therein provided. With respect to Section 12.6 of the Loan Agreement, the liability of Assuming Indemnitor shall be joint and several with that of the Assuming Borrower.

(b) Original Indemnitor hereby renews, reaffirms, ratifies and confirms the Loan Documents to which it is a party, and acknowledges and agrees that the Loan Documents remain in full force and effect without impairment and without modification and that no rights or remedies of Lender under the Loan Documents have been waived. Original Indemnitor shall continue to be liable and responsible for each and all of the liabilities of the Borrower Principal thereunder, which occur prior to the date hereof.

(c) Notwithstanding anything in this Section 4 to the contrary, Assuming Indemnitor shall only be obligated and responsible for the performance of each of the obligations and agreements of the Borrower Principal under the Loan Documents arising on or after the date of this Agreement.

5. Notices to Indemnitor. Without amending, modifying or otherwise affecting the provisions of the Loan Documents except as expressly set forth herein, the Lender shall, from and after the date of this Agreement, deliver any notices to the Borrower Principal which are

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required to be delivered pursuant to the Loan Documents, or are otherwise delivered by the Lender thereunder at Lender's sole discretion, to the Assuming Indemnitor's address set forth above.

6. Consent to Conveyance, Assumption and Addition of Borrower Principal; Reaffirmation of Original Indemnitor; Lender Estoppel.

(a) Subject to the terms and conditions set forth in this Agreement, Lender consents to: (a) the sale, conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Loan Agreement, the Mortgage and the other Loan Documents; (b) the assumption by Assuming Borrower of the Loan and the obligations of Original Borrower under the Loan Documents; and (c) the assumption by Assuming Indemnitor of the obligations of the Original Indemnitor under the Loan Documents arising from and after the date hereof. Original Obligors are hereby released from any liability to Lender under any and all of the Loan Documents first arising or accruing subsequent to the Assumption. Lender's consent to such transfer and Assumption shall, however, not constitute its consent to any subsequent transfers of the Property. Original Obligors hereby acknowledge and agree that the foregoing release shall not be construed to release Original Obligors from any personal liability under the Note or any of the other Loan Documents for any act or event occurring or obligation arising prior to or simultaneously with the closing of the transaction described herein.

(b) Lender hereby represents and warrants to Assuming Obligors and Original Obligors that, to the "actual knowledge of Lender" as of the date hereof, no Event of Default has occurred and is continuing under the Loan Documents. For purposes of this paragraph, the "actual knowledge of Lender" shall mean the actual knowledge of employees of the Capital Markets Servicing Group of Bank of America, N.A. ("BOA") actively involved with the transactions described herein or with the servicing of the Loan without any independent inquiry or investigation. The "actual knowledge of Lender" shall not include knowledge imputed from other Lender Parties (defined below) or other groups or employees of BOA not actively involved in servicing the Loan. Lender reserves the right to declare any existing Event of Default which subsequently comes to the attention of the Lender. As used in this Section 6(b), "Event of Default" shall have the meaning assigned to such term in the Loan Documents.

7. Release and Covenant Not to Sue. Original Obligors and Assuming Obligors, on behalf of themselves and their heirs, successors and assigns, hereby release and forever discharge Lender, any trustee of the Loan, any servicer of the Loan, each of their respective predecessors in interest and successors and assigns, together with the officers, directors, partners, employees, investors, certificate holders and agents of each of the foregoing (collectively, the "Lender Parties"), from all debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, claims, damages, judgments, executions, actions, inactions, liabilities demands or causes of action of any nature, at law or in equity, known or unknown, which Original Obligors and Assuming Obligors now have by reason of any cause, matter, or thing through and including the date hereof, including, without limitation, matters arising out of or relating to: (a) the Loan, including, without limitation, its funding, administration and servicing; (b) the Loan Documents; (c) the Property; (d) any reserve and/or escrow balances held by Lender or any servicers of the Loan; or (e) the sale, conveyance, assignment and transfer of the Property. Original Obligors and Assuming Obligors, on behalf of themselves and their heirs,

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successors and assigns, covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of the Lender Parties by reason of or in connection with any of the foregoing matters, claims or causes of action.

8. Acknowledgment of Indebtedness. This Agreement recognizes the reduction of the principal amount of the Note and the payment of interest thereon to the extent of payments made by Original Borrower prior to the date of execution of this Agreement. The parties acknowledge and agree that, as of the date of this Agreement, the principal balance of the Note is \$12,145,783.21 and interest on the Note is paid to July 31, 2007. Assuming Borrower acknowledges and agrees that the Loan, as evidenced and secured by the Loan Documents, is a valid and existing indebtedness payable by Assuming Borrower to Lender. The parties acknowledge and agree that Lender is holding the following escrow and/or reserve balances:

Replacement Reserve:           \$51,633.34

The parties acknowledge and agree that Lender shall continue to hold the escrow and reserve balances for the benefit of Assuming Borrower in accordance with the terms of the Loan Documents. Original Obligors covenant and agree that the Lender Parties have no further duty or obligation of any nature to Original Obligors relating to such escrow and/or reserve balances. Original Obligors hereby release and forever discharge the Lender Parties from any obligations to Original Obligors relating to such escrow and/or reserve balances. Assuming Obligors acknowledge and agree that the funds listed above constitute all of the reserve and escrow funds currently held by Lender with respect to the Loan and authorize such funds to be transferred to an account controlled by Lender for the benefit of Lender and Assuming Borrower.

9. Modifications of the Loan Documents. The Loan Documents are hereby modified as follows:

(a) For purposes of any notification, demand, request or other written communication to be delivered to the Assuming Borrower pursuant to the Loan Documents, a notice, demand, request or other written communication delivered to BLDG Arlington LLC (the "*Managing Tenant In Common*") pursuant to and in accordance with Sections 12.1 and 12.2 of the Mortgage and/or Section 16.1 of the Loan Agreement, as applicable, shall be deemed a proper notification, demand, request or other written communication to each and every Assuming Borrower. The Managing Tenant In Common hereby agrees to promptly provide any such notice, demand, request or written communication to each other Assuming Borrower. The failure of the Managing Tenant In Common to provide such notice, demand, request or other written communication to any other Assuming Borrower shall not alter the effect of such notice, demand, request or other written communication under the Loan Documents and result in no liability or obligation of the Lender Parties. Any notice, demand, request or other written communication from the Assuming Borrower to the Lender or Mortgagee under the Loan Documents shall be solely made by the Managing Tenant In Common. The Assuming Borrower shall enter into an agreement, which agreement shall be delivered to Lender on or prior to the date hereof, appointing Managing Tenant In Common as their nominee and agent to manage the fulfillment of the obligations under the Loan Documents and communicate with the Lender.



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(b) Sections 12.1 and 12.2 of the Mortgage and Section 16.1 of the Loan Agreement are hereby deleted in their entirety and the following substituted in their stead:

**“Notices.** All notices, demands, requests or other written communications hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with a reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee addressed as follows:

If to Assuming  
Borrower/Managing  
Tenant In Common:

BLDG Arlington LLC  
c/o BLDG Management Co., Inc.  
417 Fifth Avenue, 4<sup>th</sup> Floor  
New York, NY 10016  
Attention: Lloyd Goldman  
Telephone No.: (212) 624-4300  
Telecopy No.: (212) 624-7263

With a copy to:

Greenberg Traurig, LLP  
Metlife Building  
200 Park Avenue, 15<sup>th</sup> Floor  
New York, NY 10166  
Attention: Gary S. Kleinman, Esq.

If to Assuming  
Indemnitor (as applicable):

Lloyd Goldman  
c/o BLDG Management Co., Inc.  
417 Fifth Avenue, 4<sup>th</sup> Floor  
New York, NY 10016  
Telephone No.: (212) 624-4300  
Telecopy No.: (212) 624-7263

David Goldman  
c/o Bacael Partners II, L.P.  
38 Cardinal Drive  
Roslyn, NY 11576  
Telephone No.: (212) 624-4300  
Telecopy No.: (212) 624-7263

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Jeffrey Fishman  
 c/o Marketchic LLC  
 3 Quartz Ledge  
 Bedford, NY 10506  
 Telephone No.: (212) 916-3362  
 Telecopy No.: (212) 599-3744

With a copy to:

Greenberg Traurig, LLP  
 Metlife Building  
 200 Park Avenue, 15<sup>th</sup> Floor  
 New York, NY 10166  
 Attention: Gary S. Kleinman, Esq.

If to Original Indemnitor:

The GFW Trust  
 c/o The Bentley Forbes Group  
 10250 Constellation Boulevard, Suite 2300  
 Los Angeles, CA 90067  
 Attention: C. Frederick Wehba II  
 Telephone No.: (310) 282-8000  
 Telecopy No.: (310) 282-8585

If to Lender:

LaSalle Bank National Association,  
 as trustee in trust for the holders of  
 Banc of America Commercial  
 Mortgage, Inc., Commercial  
 Mortgage Pass-Through Certificates,  
 Series 2005-3  
 c/o Bank of America, N.A.  
 900 West Trade Street, Suite 650  
 Mail Code: NC1-026-06-1  
 Charlotte, NC 28255  
 Attn: Capital Markets Servicing Group

With a copy to:

Alston & Bird LLP  
 Bank of America Plaza  
 101 S. Tryon Street, Suite 4000  
 Charlotte, NC 28280-4000  
 Attn: David Jacobs, Esq.

All notices, demands and requests shall be effective (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in the United States mail as provided above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the

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parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.”

(c) Section 1.1(o) of the Mortgage is hereby renumbered to be Section 1.1(p) and a new Section 1.1(o) is hereby created to state the following:

“(o) Other Contracts. Any and all rights, title and interest of Borrower in and to the TIC Agreement and the Management Agreement by and among Borrower and the manager of the Property.”

(d) The definition “Borrower” in the Loan Documents is hereby replaced with the Assuring Borrower as defined herein.

(e) The definition of “Borrower Principal” in the Loan Agreement is hereby deleted in its entirety and the following substituted in its stead:

“ “Borrower Principal” shall mean (i) with respect to the applicable obligations under the Loan Documents arising prior to August 30, 2007, the GFW Trust, a California Trust (the “Original Indemnitor”), and (ii) with respect to the applicable obligations arising under the Loan Documents on or after August 30, 2007, Lloyd Goldman, David Goldman and Jeffrey Fishman, each individuals, jointly and severally (individually and collectively, the “Assuring Indemnitor”).”

(f) The definition of “Bentley Forbes” in the Loan Agreement is hereby deleted in its entirety.

(g) The definition of “Eligible Joint Venture” in the Loan Agreement is hereby deleted in its entirety.

(h) The definition of “Lockbox Bank” in the Loan Agreement is hereby amended to replace “U.S. Bank National Association, a national banking association” with “JP Morgan Chase Bank, N.A.”

(i) Sections 7.3(d) and 7.3(e) of the Loan Agreement are hereby deleted in their entirety; the word “or” is hereby inserted at the end of Section 7.3(p) of the Loan Agreement; and a period shall replace the semicolon at the end of Section 7.3(c) of the Loan Agreement.

(i) Section 11.1 of the Loan Agreement is hereby modified as follows:

(1) The period at the end of Section 11.1(m) is hereby deleted and replaced with a semi-colon.

(2) Section 11.1(n) is inserted after 11.1(m) and provides as follows:

“any violation of any provision of that certain Tenancy in Common Agreement among BLDG Arlington LLC, Mitsuchic LLC and

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Bacael Arlington LLC (the "**TIC Agreement**"), including, but not limited to, any provision precluding the commencement of a partition action; and"

- (3) Section 11.1(o) is inserted after 11.1(n) and provides as follows:

"the filing of an involuntary bankruptcy petition against an Owner (as defined in the TIC Agreement) by an Owner or any affiliate of an Owner that is not dismissed within sixty (60) days of such filing, the filing of a voluntary bankruptcy by either of such Owner, or the violation of the special purpose entity requirements of Article 6 of the Loan Agreement by any Owner."

- (j) Section 15.1(c) of the Loan Agreement is hereby modified as follows:

- (1) The word "or" is deleted at the end of Section 15.1(c)(v).
- (2) The period at the end of Section 15.1(c)(vi) is deleted and replaced with a semicolon and the word "or".
- (3) Section 15.1(c)(vii) is inserted after Section 15.1(c)(vi) and provides as follows:

"(vii) any amendment or termination of (1) the TIC Agreement, and/or (2) the Management Agreement by and among Borrower and BLDG Management Co., Inc., a New York company, regarding the management of the Property, is made or occurs, without the prior written consent of Lender."

(k) The organizational chart contained in Exhibit A to the Loan Agreement is hereby deleted and substituted with the organizational chart set forth in Exhibit B to this Agreement.

10. Interest Accrual Rate and Monthly Installment Payment Amount to Remain the Same. The interest rate and the monthly payments set forth in the Note shall remain unchanged. Prior to the occurrence of an Event of Default hereunder or under the Note, interest shall accrue on the principal balance outstanding from time to time at the Note Rate (as defined in the Note) and principal and interest (which does not include such amounts as may be required to fund escrow obligations under the terms of the Loan Documents) shall continue to be paid in accordance with the provisions of the Note.

11. Conditions. This Agreement shall be of no force and effect until each of the following conditions has been met to the complete satisfaction of Lender:

(a) Fees and Expenses. Original Borrower and/or Assuming Borrower shall pay, or cause to be paid at closing: (i) all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, filing fees, surveyor fees, broker fees, transfer or

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mortgage taxes, rating agency confirmation fees, application fees, all third party fees, search fees, transfer fees, inspection fees, title insurance policy or endorsement premiums or other charges of the title company and escrow agent, and the fees and expenses of legal counsel to any Lender Party and any applicable rating agency and (ii) an assumption fee to Lender in the amount of \$30,364.46 being one-quarter of one percent (0.25%) of the outstanding principal balance of the Note as of the date of the transfer and assumption contemplated by this Agreement and the other fees and expenses outlined in the beneficiary statement distributed to the parties by Lender.

(b) Other Conditions. Satisfaction of all requirements under the Loan Documents and the closing checklist for this transaction as determined by Lender and Lender's counsel in their sole discretion.

## 12. Default.

(a) Breach. Any material breach of Assuming Obligors of any of the representations, warranties and covenants contained herein shall constitute a default under the Loan Agreement, the Mortgage and each other Loan Document.

(b) Failure to Comply. Any failure of Assuming Obligors to fulfill any one of the conditions set forth in this Agreement shall constitute a default under this Agreement and the Loan Documents.

13. No Further Consents. Assuming Obligors and Original Obligors acknowledge and agree that Lender's consent herein contained is expressly limited to the sale, conveyance, assignment and transfer herein described, that such consent shall not waive or render unnecessary Lender's consent or approval of any subsequent sale, conveyance, assignment or transfer of the Property, and that Article 7 of the Loan Agreement shall continue in full force and effect.

14. Additional Representations, Warranties and Covenants of Assuming Obligors. As a condition of this Agreement, Assuming Obligors represent and warrant to Lender as follows:

(a) Each Assuming Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and in good standing in the State of Illinois. Each Assuming Borrower has full power and authority to enter into and carry out the terms of this Agreement and to assume and carry out the terms of the Loan Documents.

(b) Partnership 94, L.P. is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for the operation of the business or properties of BLDG Arlington LLC. Partnership 94, L.P. is, and shall remain, the Sole Member of BLDG Arlington LLC.

(c) Marketchic LLC is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for

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the operation of the business or properties of Mitsuchic LLC. Marketchic LLC is, and shall remain, the Sole Member of Mitsuchic LLC.

(d) Bacael Partners II, L.P. is a limited partnership duly organized and validly existing in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for the operation of the business or properties of Bacael Arlington LLC. Bacael Partners II, L.P. is, and shall remain, the Sole Member of Bacael Arlington LLC.

(e) Each Assuming Indemnitor is a resident of the State of New York and is legally competent to execute this Agreement and to assume the obligations of the Original Indemnitor as contained in the Loan Documents to the extent provided in this Agreement.

(f) This Agreement and the Loan Documents constitute legal, valid and binding obligations of Assuming Obligors enforceable in accordance with their respective terms subject to applicable laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting creditors' rights generally and general principles of equity. Neither the entry into nor the assumption and performance of and compliance with this Agreement or any of the Loan Documents has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assuming Obligors or any property of Assuming Obligors are bound or any statute, rule or regulation applicable to Assuming Obligors.

(g) To the actual knowledge of Assuming Obligors, there is no action, proceeding or investigation pending or threatened which questions, directly or indirectly, the validity or enforceability of this Agreement or any of the other Loan Documents, or any action taken or to be taken pursuant hereto or thereto, or which might result in any material adverse change in the condition (financial or otherwise) or business of Assuming Obligors.

(h) There has been no legislative action, regulatory change, revocation of license or right to do business, fire, explosion, flood, drought, windstorm, earthquake, accident, other casualty or act of God, labor trouble, riot, civil commotion, condemnation or other action or event which has had any material adverse effect, on the business or condition (financial or otherwise) of Assuming Obligors or any of their properties or assets, whether insured against or not, since Assuming Obligors submitted to Lender their request to assume the Loan.

(i) The financial statements and other data and information supplied by Assuming Obligors in connection with Assuming Obligors' request to assume the Loan or otherwise supplied in contemplation of the assumption of the Loan by Assuming Obligors were in all material respects true and correct on the dates they were supplied, and since their dates no material adverse change in the financial condition of Assuming Obligors has occurred, and there is not any pending or, to the actual knowledge of Assuming Obligors, threatened litigation or proceedings which might impair to a material extent the business or financial condition of Assuming Obligors.

(j) Without limiting the generality of the assumption of the Loan Documents by Assuming Obligors, Assuming Obligors hereby specifically remake and reaffirm the

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representations, warranties and covenants set forth in the Loan Documents to which they are a party and to the extent such representations, warranties and covenants are applicable as of the date hereof.

(k) To the actual knowledge of Assuming Obligors, no representation or warranty of Assuming Obligors made in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representations and warranties not misleading in light of the circumstances under which they are made.

(l) Assuming Borrower hereby represents and warrants to Lender that Assuming Borrower will not permit the transfer of any interest in Assuming Borrower to any person or entity (or any beneficial owner of such entity) who is listed on the specifically Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of Office of Foreign Asset Control, Department of the Treasury or pursuant to any other applicable Executive Orders (such lists are collectively referred to as the "OFAC Lists"). Assuming Borrower will not knowingly enter into a lease with any party who is listed on the OFAC Lists. Assuming Borrower shall immediately notify Lender if Assuming Borrower has knowledge that any member or beneficial owner of Assuming Borrower is listed on the OFAC Lists or (A) is indicted on or (B) arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Assuming Borrower shall immediately notify Lender if Assuming Borrower has actual knowledge that any tenant is listed on the OFAC Lists or (A) is convicted on, (B) pleads nolo contendere to, (C) is indicted on or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Assuming Borrower further represents and warrants to Lender that Assuming Borrower is currently not on the OFAC List. None of the Assuming Borrower, any subsidiary of the Assuming Borrower or any affiliate of the Assuming Borrower or Assuming Indemnitor is (i) named on the list of Specially Designated Nationals or Blocked Persons maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, or (ii) (A) an agency of the government of a country, (B) an organization controlled by a country, or (C) a person residing in a country that is subject to a sanctions program identified on the list maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control and available at <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>, or as otherwise published from time to time, as such program may be applicable to such agency, organization or person.

15. Additional Representations, Warranties and Covenants of Original Obligors. As a condition of this Agreement, Original Obligors represent and warrant to Lender as follows:

(a) Original Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business and in good standing in the State of Illinois. Original Borrower has full power and authority to enter into and carry out the terms of this Agreement and to convey the Property and assign the Loan Documents.

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(b) Yahi Holdings II, LLC is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware and is authorized to transact business as a foreign corporation in each jurisdiction in which such authorization is necessary for the operation of the business or properties of Original Borrower. Yahi Holdings II, LLC is the Managing Member of Original Borrower and has full power and authority to enter into this Agreement as Managing Member on behalf of Original Borrower, and to execute this Agreement.

(c) Original Indemnitor is a trust duly organized and validly existing under the laws of the State of California. Original Indemnitor has full power and authority to enter into and carry out the terms of this Agreement.

(d) This Agreement, the Sales Agreement and all other documents executed by Original Obligors in connection therewith, constitute legal, valid and binding obligations of Original Obligors enforceable in accordance with their respective terms subject to applicable laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting creditors' rights generally and general principles of equity. Neither the entry into nor the performance of and compliance with this Agreement, the Sales Agreement and all other documents executed by Original Obligors in connection therewith has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Original Obligors or any property of Original Obligors are bound or any statute, rule or regulation applicable to Original Obligors.

(e) Original Obligors have not received any written notices from any governmental entity claiming that either the Property or Original Obligors' use of the Property is not presently in compliance with any laws, ordinances, rules, and regulations bearing upon the use and operation of the Property, including, without limitation, any notice relating to zoning laws or building code regulations.

(f) The certified rent roll provided to Lender of even date herewith, is a true, complete and accurate summary of all tenant leases ("*Tenant Leases*" or individually, a "*Tenant Lease*") affecting the Property as of the date of this Agreement. No rent has been prepaid under any Tenant Lease except rent for the current month. Each Tenant Lease has been duly executed and delivered by, and, to the knowledge of Original Obligors, is a binding obligation of, the respective tenant, and each Tenant Lease is in full force and effect. Each Tenant Lease is fully and freely assignable by the Original Borrower without notice to or the consent of the tenant thereunder.

(g) Original Borrower is the current owner of the Property. There are no pending or threatened suits, judgments, arbitration proceeding, administrative claims, executions or other legal or equitable actions or proceedings against Original Obligors or the Property, any pending or threatened condemnation or annexation proceedings affecting the Property, any agreements to convey any portion of the Property, or any rights thereto, that are not disclosed in this Agreement, including, without limitation, any pending or threatened administrative claim by any governmental agency.



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(h) No representation or warranty of Original Obligors made in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representations and warranties not misleading in light of the circumstances under which they are made.

## 16. Additional Representations, Warranties and Covenants of Assuming Borrower Regarding Ownership as Tenants-In-Common.

(a) Assuming Borrower covenants and agrees that Assuming Borrower shall not modify, amend, terminate (except to the extent a termination of the TIC Agreement results from a transfer to a TIC Transferee, pursuant to Section 17 of this Agreement) or in any way change the TIC Agreement delivered to, and approved by Lender, or exercise any rights pursuant to the TIC Agreement otherwise restricted by this Agreement and the Loan Documents without the prior written consent of the Lender. Assuming Borrower further covenants and agrees that the TIC Agreement will remain in full force and effect for so long as the Loan Documents are in effect pursuant to the terms hereof and thereof. Assuming Borrower agrees to promptly deliver to Lender a copy of any notice sent or received in connection with the TIC Agreement. Lender shall be a third party beneficiary of the TIC Agreement.

(b) Assuming Obligors acknowledge and agree that (i) the TIC Agreement has been collaterally assigned to Lender pursuant to the Loan Documents; (ii) all rights of each Assuming Borrower under the TIC Agreement and any rights of first refusal or option rights shall be subordinate to the Loan Documents and (iii) that each Assuming Borrower shall not exercise any rights given under the TIC Agreement in a manner that is inconsistent with any provision of the Loan Documents.

(c) Assuming Borrower acknowledges and agrees that, under the TIC Agreement, Assuming Borrower has waived any partition rights, tenant-in-common lien and foreclosure rights and all similar rights provided under applicable law.

(d) Assuming Borrower acknowledges and agrees that, under the TIC Agreement, with the prior written consent of Lender and subject to any Creditor Rights Laws (as defined in the Loan Agreement), as applicable, each Owner (as defined in the TIC Agreement) may purchase or buy-out any other Owner's interest in the Property (the "Selling Owner") should (i) such Selling Owner initiate litigation or commence a similar action against any other Owner regarding the Property, or (ii) such Selling Owner files for protection under any Creditor Rights Laws an involuntary bankruptcy petition under any Creditor Rights Laws is commenced against such Selling Owner or any affiliate of such Selling Owner.

(e) Assuming Obligors have delivered to Lender \$150,000.00 that will be placed in escrow (the "**Multi-Borrower Reserve**"). The Multi-Borrower Reserve shall be considered part of the Reserve Funds (as defined in the Loan Agreement) and shall be maintained, and disbursed after an Event of Default, in accordance with Section 9.7 of the Loan Agreement. The funds held in the Multi-Borrower Reserve shall be considered part of the collateral for the Loan until such time as either (i) the Loan is defeased, (ii) the Loan is paid in full in accordance with the terms of the Loan Documents, or (iii) the Property is transferred to TIC Transferee (as defined below) in accordance with Section 17 below, provided that no Event

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of Default has occurred and is continuing and such transfer has been completed within 540 days of the date hereof.

17. Permitted Transfers. In addition to those transfers permitted under Section 7.3 of the Loan Agreement, Assuming Borrower may, upon prior written notice to Lender, dissolve and terminate the TIC Agreement and transfer the Property to a newly formed single purpose entity that complies with the provisions of Article 6 of the Loan Agreement ("*TIC Transferee*"), provided that:

(a) No Default and no Event of Default has occurred and is continuing hereunder or under any of the other Loan Documents which has not been waived;

(b) Assuming Borrower pays Lender, concurrently with the closing of such transfer, all out-of-pocket costs and expenses, including, without limitation, recording and title fees, and reasonable attorneys' fees, incurred by Lender in connection with such transfer;

(c) The TIC Transferee and Assuming Indemnitor execute, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require in connection with such transfer, including, but not limited to, an assumption agreement, financing statements, and guaranties or indemnities, or reaffirmations thereof, all in form and substance satisfactory to Lender. The TIC Transferee shall also deliver to Lender such insurance policies and other documents and certificates as the Lender may require; and

(d) The TIC Transferee, prior to such transfer, delivers to Lender any opinions as Lender shall reasonably require, which opinions shall be in form, scope and substance, and from a law firm reasonably acceptable in all respects to Lender and the applicable rating agencies.

18. Incorporation of Recitals. Each of the Recitals set forth above in this Agreement are incorporated herein and made a part hereof.

19. Property Remains as Security for Lender. All of the Property shall remain in all respects subject to the lien, charge or encumbrance of the Mortgage. Except as expressly set forth in this Agreement, nothing contained herein shall affect or be construed to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Note, the Loan Agreement or the Mortgage, nor shall anything contained herein affect or be construed to affect any other security for the Note held by Lender.

20. No Waiver by Lender. Nothing contained herein shall be deemed a waiver of any of Lender's rights or remedies under any of the Loan Documents, or under applicable law.

21. References. From and after the date hereof: (a) references in any of the Loan Documents to any of the other Loan Documents will be deemed to be references to such other Loan Documents as modified by this Agreement; (b) references in the Loan Documents to "*Borrower*" or "*Mortgagor*" shall hereafter be deemed to refer to Assuming Borrower; (c) references in the Loan Documents to the "*Guarantor*", "*Borrower Principal*" or "*Borrower Principal*" shall hereafter be deemed to refer to Assuming Indemnitor; and (d) all references to the term "*Loan Documents*" in the Loan Agreement shall hereinafter refer to the Loan

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Documents as defined herein, this Agreement, and all documents executed in connection with this Agreement, including, without limitation, the Guaranty, the Subordination of TIC Agreement and the Lockbox Agreement.

22. Relationship with Loan Documents. To the extent that this Agreement is inconsistent with the Loan Documents, this Agreement will control and the Loan Documents will be deemed amended by this Agreement. Except as explicitly amended hereby, the Loan Documents shall remain unchanged and in full force and effect.

23. Titles and Captions. Titles and captions of sections and subsections of this Agreement have been inserted for convenience only, and neither limit nor amplify the provisions of this Agreement.

24. Partial Invalidity. Any provision of this Agreement or the Loan Documents held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provision hereof or thereof or affecting the legality, validity or enforceability of such provision in any other jurisdiction.

25. Entire Agreement. This Agreement and the documents contemplated to be executed herewith constitute the entire agreement among the parties hereto with respect to the assumption of the Loan. The Agreement supersedes all prior negotiations regarding the transfer of the Property and the Assumption. This Agreement and the Loan Documents may only be amended, revised, waived, discharged, released or terminated by a written instrument executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination of this Agreement which is not in writing and signed by the parties shall not be effective as to any party.

26. Binding Effect. This Agreement and the documents contemplated to be executed in connection herewith shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the foregoing provision shall not be a consent by Lender to any further sale, conveyance, assignment or transfer of the Property by Assuming Borrower.

27. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original and shall be binding upon all parties and all of which, taken together, shall constitute one and the same Agreement.

28. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located.

29. Effective Date. This Agreement shall be effective as of the date of its execution by the parties hereto and upon such date this Agreement shall be incorporated into the terms of the Loan Documents.

30. Time of Essence. Time is of the essence with respect to all provisions of this Agreement.

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31. Cumulative Remedies. All remedies contained in this Agreement are cumulative and Lender shall also have all other remedies provided at law and in equity contained in the Loan Agreement, the Mortgage, the Guaranty and other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole discretion of Lender and may be exercised in any order and as often as occasion therefor shall arise.

32. Construction. Each party hereto acknowledges that it has participated in the negotiation of this Agreement and that no provision shall be construed against or interpreted to the disadvantage of any party. Assuming Obligors and Original Obligors have had sufficient time to review this Agreement, have been represented by legal counsel at all times, have entered into this Agreement voluntarily and without fraud, duress, undue influence or coercion of any kind. Lender has not made a representation or warranty to any party except as set forth in this Agreement.

33. WAIVER OF JURY TRIAL. ORIGINAL OBLIGORS, ASSUMING OBLIGORS AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN DOCUMENTS OR THIS AGREEMENT.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first aforesaid.

**ASSUMING  
BORROWER:**

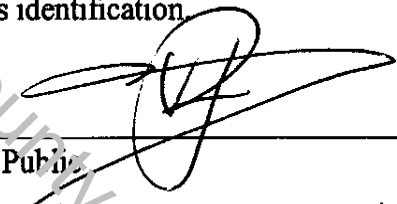
BLDG ARLINGTON LLC, a Delaware limited liability company

By:   
Name: Lloyd Goldman  
Title: President

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 16<sup>th</sup> day of August, 2007, by Lloyd Goldman, the President of BLDG Arlington LLC, a Delaware limited liability company, on behalf of such company. He is personally known to me or has produced \_\_\_\_\_ as identification.

  
Notary Public

My commission expires: 2-16-10

(NOTARIAL SEAL)

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010

# UNOFFICIAL COPY

MITSUCHIC LLC, a Delaware limited liability company

By: [Signature]  
Name: Jeffrey Fishman  
Title: President

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 16<sup>th</sup> day of August, 2007, by Jeffrey Fishman, the President of Mitsuchic LLC, a Delaware limited liability company, on behalf of such company. He is personally known to me or has produced \_\_\_\_\_ as identification.

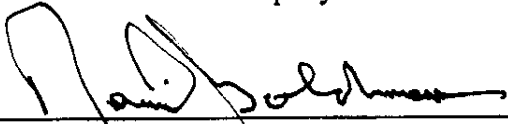
[Signature]  
Notary Public  
My commission expires: 2-16-10

(NOTARIAL SEAL)

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010

# UNOFFICIAL COPY

BACAEL ARLINGTON LLC, a Delaware limited liability company

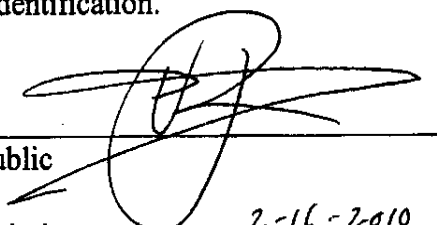


By: \_\_\_\_\_  
Name: David Goldman  
Title: President

STATE OF NEW YORK

COUNTY OF NEW YORK

15<sup>th</sup> The foregoing instrument was executed, acknowledged and delivered before me this day of August, 2007, by David Goldman, the President of Bacael Arlington LLC, a Delaware limited liability company, on behalf of such company. He is personally known to me or has produced \_\_\_\_\_ as identification.



Notary Public

My commission expires: 2-16-2010

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010

(NOTARIAL SEAL)

# UNOFFICIAL COPY

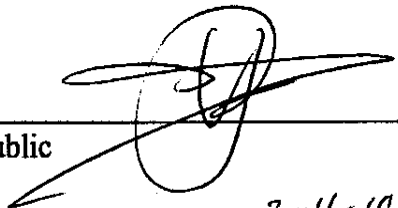
**ASSUMING  
INDEMNITOR:**

  
\_\_\_\_\_  
LLOYD GOLDMAN

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 16<sup>th</sup> day of August, 2007, by Lloyd Goldman. He is personally known to me or has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 2-16-10

(NOTARIAL SEAL)

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010



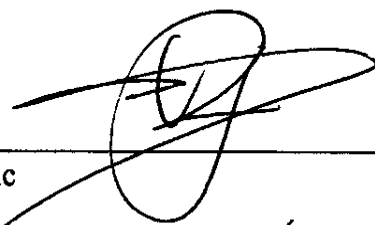
# UNOFFICIAL COPY

  
DAVID GOLDMAN

STATE OF NEW YORK

COUNTY OF NEW YORK

15<sup>th</sup> The foregoing instrument was executed, acknowledged and delivered before me this day of August, 2007, by David Goldman. He is personally known to me or has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 2-16-2010

(NOTARIAL SEAL)

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010

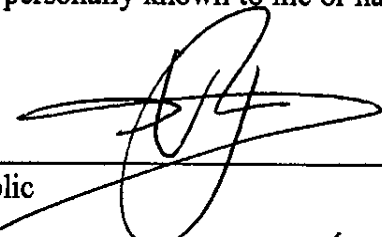
# UNOFFICIAL COPY

  
JEFFREY FISHMAN

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 16<sup>th</sup> day of August, 2007, by Jeffrey Fishman. He is personally known to me or has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public

My commission expires: 2-16-10

(NOTARIAL SEAL)

SENEN V. BACALAN  
Notary Public, State of New York  
No. 41-4920180  
Qualified in Rockland County  
Term Expires February 16, 2010

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**ORIGINAL  
BORROWER:**

**YAH! II, LLC,**  
a Delaware limited liability company

By: YAH! Holdings II, LLC,  
a Delaware limited liability company

Its: Managing Member

By: 

Name: C. Frederick Wehba II

Title: Manager

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Property of Cook County Clerk's Office

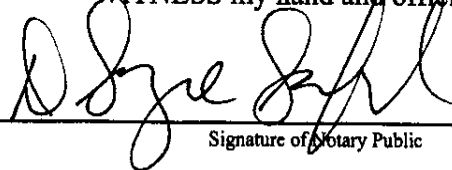
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## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

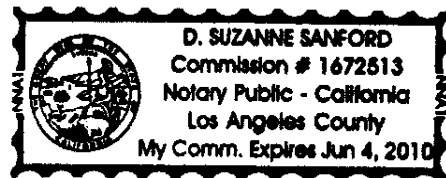
State of CALIFORNIA )County of LOS ANGELES )On 8/24/2007 before me, D. Suzanne Sanford, Notary Public  
(here insert name and title of the officer)personally appeared C. Frederick Wenba II

personally known to me (or 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.

WITNESS my hand and official seal.



Signature of Notary Public



(Seal)

### ADDITIONAL OPTIONAL INFORMATION

#### DESCRIPTION OF THE ATTACHED DOCUMENT

Loan Assumption & Substitution

(Title or description of attached document)

Agreement

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

YAH II, LLC

(Additional information)

#### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

#### INSTRUCTIONS FOR COMPLETING THIS FORM

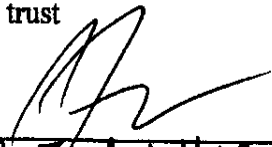
Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ◆ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ◆ Indicate title or type of attached document, number of pages and date.
  - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

# UNOFFICIAL COPY

**ORIGINAL  
INDEMNITOR:**

**THE GFW TRUST,  
a California trust**

By:   
Name: C. Frederick Wehbe II  
Title: Trustee

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was executed, acknowledged and delivered before me this \_\_\_\_\_ day of August, 2007, by \_\_\_\_\_, the \_\_\_\_\_ of the GFW Trust, a California trust, on behalf of the trust. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_  
(NOTARIAL SEAL)

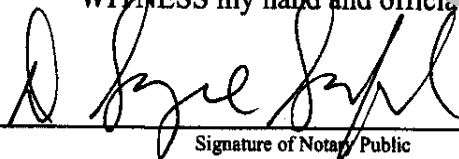
# UNOFFICIAL COPY

## CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of CALIFORNIA )County of LOS ANGELES )On 8/29/2007 before me, D. Suzanne Sanford, Notary Public  
(here insert name and title of the officer)personally appeared C. Frederick Wehba II

personally known to me (~~or 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.

WITNESS my hand and official seal.



Signature of Notary Public



(Seal)

### ADDITIONAL OPTIONAL INFORMATION

#### DESCRIPTION OF THE ATTACHED DOCUMENT

Loan Assumption &

(Title or description of attached document)

Substitution Agreement

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

YAHU II, LLC Disposition

(Additional information)

#### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

#### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ◆ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ◆ Indicate title or type of attached document, number of pages and date.
  - ◆ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

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**LENDER:**

LASALLE BANK NATIONAL ASSOCIATION, as trustee in trust for the holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2005-3

By: BANK OF AMERICA, N.A., a national banking association, solely in its capacity as Master Servicer, as authorized under that certain Pooling and Servicing Agreement dated as of July 1, 2005

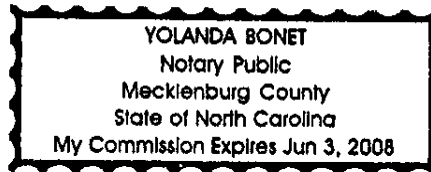
By: *Joseph M. Davis*  
 Name: Joseph M. Davis  
 Title: Principal

STATE OF NORTH CAROLINA )  
 )  
 COUNTY OF MECKLENBURG )

On this 21 day of August, 2007, personally appeared before me Joseph M. Davis, as Principal of BANK OF AMERICA, N.A., a national banking association, acting in its authorized capacity as Master Servicer for and on behalf of LaSalle Bank National Association, as trustee in trust for the holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2005-3, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said entities, before me. He/she is personally known to me or has produced a driver's license as identification.

*Yolanda Bonet*  
 Notary Public  
 My commission expires: June 03, 2008

(Notary Seal)



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## EXHIBIT "A"

### Legal Description

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE DISTRICT OF COOK COUNTY, ILLINOIS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL 1:**

LOT 1 AND OUTLOT "A" AS SHOWN ON THAT CERTAIN PLAT RECORDED IN THE COOK COUNTY RECORDERS OFFICE ON OCTOBER 26, 2001 AS DOCUMENT NUMBER 0011005775 AND KNOWN AS THE FINAL PLAT OF MITSUWA RESUBDIVISION, BEING A RESUBDIVISION OF THE FINAL PLAT OF YAohan RESUBDIVISION LOCATED IN PART OF THE NORTHEAST QUARTER AND THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF ARLINGTON HEIGHTS, COOK COUNTY, ILLINOIS.

**PARCEL 2:**

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AND OTHER PROPERTY FOR INGRESS, EGRESS, USE AND ENJOYMENT AS CREATED BY AND SET FORTH IN THE RECIPROCAL EASEMENT AND USE RESTRICTION AGREEMENT RECORDED OCTOBER 26, 2001 AS DOCUMENT NUMBER 0011005781, SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.



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## EXHIBIT B

### ORGANIZATIONAL CHART

[Attached]

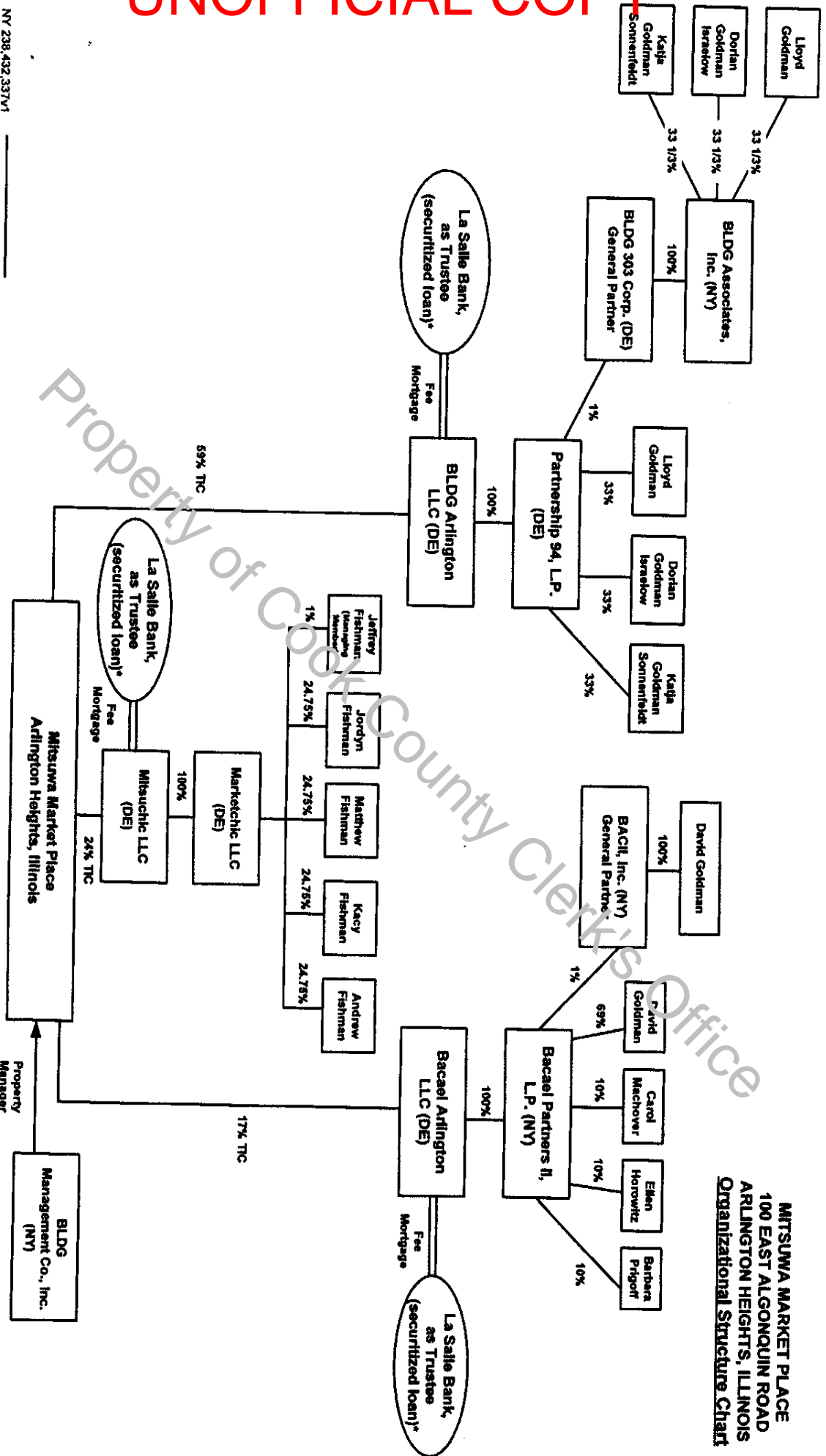
Property of Cook County Clerk's Office

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NY 238,432,337v1

\*Loan in the original principal amount of \$12,500,000.00 made by Bank of America, N.A., to be assumed by new owners.



**MITSUMA MARKET PLACE  
100 EAST ALGONQUIN ROAD  
ARLINGTON HEIGHTS, ILLINOIS  
Organizational Structure Chart**

Property of Cook County Clerk's Office