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Doc#: 0725360028 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/10/2007 11:32 AM Pg: 1 of 9

*RETURN TO:
Wheatland Title
39 Mill Street
Montgomery, IL 60538

SEP 11-0000-9955.0
(3 of 3)

Prepared by and upon
recording, return to:
David Jacobs, Esq.
Alston & Bird LLP
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280-4000

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First National Financial Title Services, Inc.
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Duluth, GA 30096 43438-S

SUBORDINATION OF TENANTS IN COMMON AGREEMENT

BLDG ARLINGTON LLC,

MITSUCHIC LLC,

and

BACAEI ARLINGTON LLC

for the benefit 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

RE: Parcel Numbers: 08-16-202-028-0000 and 08-16-402-001-0000
Location: 100 East Algonquin Road, Arlington Heights, Illinois

Dated as of August 30, 2007

LL

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SUBORDINATION OF TENANTS IN COMMON AGREEMENT

THIS SUBORDINATION OF TENANCY-IN-COMMON AGREEMENT (this "*Subordination*") is made as of August 30, 2007, by BLDG ARLINGTON LLC, Delaware limited liability company ("*Borrower 1*"), MITSUCHIC LLC, a Delaware limited liability company ("*Borrower 2*"), and BACAEL ARLINGTON LLC, a Delaware limited liability, as tenants in common ("*Borrower 3*" and, together with Borrower 1 and Borrower 2, collectively and individually, "*Borrower*"), in connection with that certain loan (the "*Loan*") made by BANK OF AMERICA, N.A., a national association (the "*Original Lender*"), and assigned to 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 28257, Attn: Capital Markets Servicing Group ("*Lender*").

Recitals

A. The Loan was originally made to YAHII II, LLC, a Delaware limited liability company ("*Original Borrower*"), to finance certain real property and improvements located in Cook County, Illinois, as more particularly described on Exhibit A attached hereto and incorporated herein (the "*Property*").

B. The Loan is evidenced by that certain 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*") and a Loan Agreement dated April 28, 2005 by and among Original Borrower, the GFW Trust, a California trust, and Original Lender (the "*Loan Agreement*").

C. The Loan and Note are secured, in part, by that certain Mortgage, Assignment of Leases and Rent, and Security Agreement dated April 28, 2005 (the "*Mortgage*"), executed by Original Borrower in favor of Mortgage Electronic Registration Systems, Inc., as nominee for Original Lender, granting to Original Lender, among other things, a lien on the Property, and certain UCC financing statements (the "*Financing Statements*") and various other documents executed by Original Borrower and others in favor of Original Lender (together with the Financing Statements, the Note, the Loan Agreement and the Mortgage, the "*Loan Documents*").

D. 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.

E. Original Borrower sold and conveyed the Property to Borrower and Borrower assumed the Loan and all obligations of Original Borrower under the Loan Documents pursuant to that certain Loan Assumption and Substitution Agreement ("*Assumption Agreement*") dated as of August 30, 2007 (the "*Assumption*")

F. Borrower 1, Borrower 2 and Borrower 3 have entered into that certain unrecorded Tenants in Common Agreement dated August 30, 2007 (the "*TIC Agreement*").

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G. It is a condition of Lender's consent to the Assumption of the Loan by Borrower that the TIC Agreement and the rights of Borrower 1, Borrower 2 and Borrower 3 thereunder be subordinate to the Mortgage, the Assumption Agreement and the other Loan Documents and the rights of Lender pursuant to the Note, the Loan Agreement, the Mortgage and the other Loan Documents.

H. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Assumption Agreement.

NOW, THEREFORE, in consideration of Lender's consent to the Assumption by Borrower of the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, separately and collectively, hereby covenants and agrees as follows:

1. **Subordination of TIC Agreement; Waivers.**

(a) The TIC Agreement and all of the terms, covenants and provisions thereof, and any and all liens, rights, indemnities, remedies, options (including, without limitation, any option to purchase or first refusal rights) and interests (whether choate or inchoate) claimed or held by any Borrower under or pursuant to the TIC Agreement, are, and shall be in all respects, subordinate and inferior to (a) the rights of Lender pursuant to the Note, the Loan Agreement, the Mortgage and the other Loan Documents, and (b) the liens and security interests created, or to be created, for the benefit of Lender under the Mortgage, the Assumption Agreement and the other Loan Documents, and all renewals, extensions, increases, supplements, amendments, modifications, spreaders, consolidations or replacements thereof, with the same force and effect as if the Note, the Loan Agreement, the Mortgage, the Assumption Agreement and the other Loan Documents had been executed, delivered and recorded prior to the execution of the TIC Agreement.

(b) Each Borrower hereby waives (i) any and all lien and partition rights it may have in respect of the other Borrower or the other Borrower's interest in the Property, and (ii) the right to pursue any rights or remedies against the other Borrower under the TIC Agreement if the same will result in a default under any Loan Document.

2. **Termination.** At such time as (i) the Debt (as defined in the Loan Agreement) and all other obligations under the Loan Documents are satisfied and the Mortgage is released of record, or (ii) upon the transfer to the TIC Transferee pursuant to Section 17 of the Assumption Agreement, this Subordination and all of Lender's right, title and interest hereunder with respect to the TIC Agreement shall terminate.

3. **Estoppel.** Borrower represents and warrants that (a) the TIC Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Subordination; (b) no Borrower is in default under any of the terms, covenants or provisions of the TIC Agreement and no Borrower knows of any event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the TIC Agreement, and (c) no Borrower has commenced any action or given or received any notice for the purpose of terminating the TIC Agreement.

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4. **Governing Law.** THIS SUBORDINATION SHALL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

5. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be delivered in accordance with Section 9 of the Assumption Agreement.

6. **No Oral Change.** This Subordination may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

7. **Successors and Assigns.**

(a) This Subordination shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The rights and remedies of any permitted assignee or transferee of any Borrower under the TIC Agreement, if any, shall be subject to the terms and conditions of this Subordination, and each such permitted assignee or transferee waives and, by taking title to any part of the Property or any interest therein, shall be deemed to have waived (i) any and all lien and partition rights it may have in respect of any other party to the TIC Agreement or any such other party's interest in the Property, and (ii) the right to pursue any rights or remedies under the TIC Agreement against any other party to the TIC Agreement if the same will result in a default under any Loan Document.

(b) Lender shall have the right to assign or transfer its rights under this Subordination in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Subordination.

8. **Inapplicable Provisions.** If any term, covenant or condition of this Subordination is held to be invalid, illegal or unenforceable in any respect, this Subordination shall be construed without such provision.

9. **Headings, Etc.** The headings and captions of various paragraphs of this Subordination are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

10. **Duplicate Originals, Counterparts.** This Subordination may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Subordination may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Subordination, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

11. **Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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12. **Reliance.** Borrower has executed this Subordination in order to induce Lender to accept the Mortgage and the other Loan Documents and with full knowledge that Lender shall rely upon the representations, warranties, covenants and agreements herein contained, and that but for this instrument and the representations, warranties, covenants and agreements herein contained, Lender would not take such actions.

[NO FURTHER TEXT ON THIS PAGE]

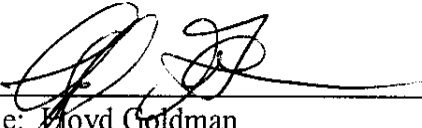
Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Borrower has executed this Subordination as of the date and year first written above.

BORROWER:

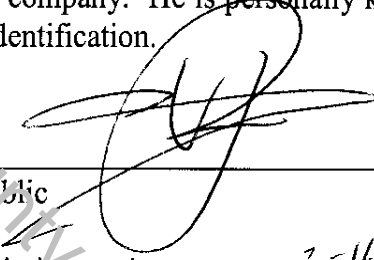
BLDG ARLINGTON LLC, a Delaware limited liability company

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 16th 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

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BACAEL ARLINGTON LLC, a Delaware limited liability company

By: 
Name: David Goldman
Title: President

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 15th 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

(NOTARIAL SEAL)

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

SUBORDINATION OF TENANTS IN COMMON AGREEMENT

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MITSUCHIC LLC, a Delaware limited liability company

By: [Signature]
Name: Jeffrey Fishman
Title: Managing Member

STATE OF NEW YORK

COUNTY OF NEW YORK

The foregoing instrument was executed, acknowledged and delivered before me this 16th day of August, 2007, by Jeffrey Fishman, 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

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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 RECORDER'S OFFICE ON OCTOBER 26, 2001 AS DOCUMENT NUMBER 0011005775 AND KNOWN AS THE FINAL PLAT OF NITSUWA 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.