

UNOFFICIAL COPY 0020945091

1333/0066 45 001 Page 1 of 14
2002-08-28 09:28:11
Cook County Recorder 47.00

Tax Parcel Numbers: 07-13-101-012-0000
(Corner of American Lane and National Parkway,
Schaumburg, Cook County, Illinois; legal
description attached as Exhibit "A")



HYNES # 76-89-298-D1

This Document Prepared By:
Timothy K. Adams
Jones, Cork & Miller, LLP
P. O. Box 6437
Macon, GA 31208

After Recording Return to:
Mr. Larry Hynes
Chicago Title Insurance Company
171 North Clark - Div. 1
Chicago, IL 60601

Clerk: Please Cross-Index to
98479984

MODIFICATION AGREEMENT

Between

Oxford HPC Schaumburg Property Company, LLC,
a Delaware limited liability company,
as Mortgagor

and

Branch Banking & Trust Company,
Successor by Merger to
Century South Bank of Northeast Georgia, N.A.,
as Mortgagee

Dated as of May 1, 2002

BOX 333-CP

UNOFFICIAL COPY

Property of Cook County Clerk's Office

40-622 X08

UNOFFICIAL COPY

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT is executed as of the 1st day of May, 2002, by and between OXFORD HPC SCHAUMBURG PROPERTY COMPANY, LLC, herein called "**Borrower**", and BRANCH BANKING & TRUST COMPANY, successor by merger to Century South Bank of Northeast Georgia, N.A., herein called "**Lender**";

Recitals

A. On or about June 8, 1998, Borrower executed a note dated June 8, 1998, in the principal amount of \$7,182,000.00 payable to Ocwen Partnership, LP (the "Note"), and a Loan Agreement relative to the indebtedness evidenced by the Note (the "Loan Agreement").

B. Payment of the Note is secured by, among other collateral, a Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents dated June 8, 1998, executed by Oxford HPC Schaumburg Property Company, LLC, as mortgagor, in favor of Ocwen Partnership, LP, as mortgagee (the "Mortgage"), which Mortgage was filed for record in the Office of the Cook County, Illinois Recorder on June 8, 1998, as Document No. 98479984. A legal description of the real property encumbered by the Mortgage is attached hereto as Exhibit "A" and is by this reference incorporated herein and made a part hereof.

20945091

UNOFFICIAL COPY

C. On March 5, 2001, Ocwen Partnership, LP endorsed the Note over to Century South Bank of Northeast Georgia, N.A. ("Century South"), and assigned to Century South the Loan Agreement and all of the collateral which secures the payment of the Note, including, but not limited to, the Mortgage. The Assignment of the Mortgage was filed for record in the Office of the Cook County, Illinois Recorder on March 12, 2001, as Document No. 0010193420.

D. Subsequent to March 5, 2001, Century South was merged into Lender, and as a result of the merger, Lender now owns the Note as well as all of the collateral which secures or relates to the payment of the Note.

E. Borrower and Lender have agreed that the interest rate on the Note will be modified in accordance with the terms hereafter set forth in this Note Modification Agreement.

Agreements

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, and as an inducement to Lender to modify the interest rate on the Note, the parties hereby agree as follows:

1. The above Recitals are incorporated herein as though set forth in full. Borrower represents and warrants to Lender that all of the Recitals (except D) are true and correct. Lender represents and warrants to Borrower that Recital D is true and correct.

2. Subparagraph (a) of Section 1 of the Note (Base Interest) is hereby deleted and the following new subparagraph (a) of Section 1 is substituted in its place:

"(a) Effective May 1, 2002, interest shall accrue and be payable on the unpaid principal balance of this Note at the rate from time to time which is one percent (1%) per annum above the Prime Rate as hereafter defined (the "**Base Interest**

UNOFFICIAL COPY

Rate). As used herein, the term "Prime Rate" means the rate of interest per annum announced by Lender from time to time and adopted as Lender's prime rate. Lender lends at rates above and below the Prime Rate, and the Prime Rate is one of several rate indexes employed by Lender when extending credit. Any change in the Base Interest Rate resulting from a change in Lender's prime rate shall become effective as of the opening of business on the effective date of the change. The Base Interest Rate as of May 1, 2002, is 5.75% per annum.

Notwithstanding anything to the contrary in this Section (but subject to the provisions of Section 8 of this Note), the Base Interest Rate shall not at any time exceed 9.75% per annum"

3. Subparagraph (b) of Section 3 of the Note (Repayment of Interest and Principal) is hereby deleted and the following new subparagraph (b) of Section 3 is substituted in its place:

"(b) Beginning on June 1, 2002, and on the first day of each month thereafter through and including June 1, 2003, Borrower shall make a payment of principal and interest, in arrears, in the amount of Fifty One Thousand Nine Hundred Twenty and No/100's Dollars (\$51,920.00). Notwithstanding anything to the contrary herein, Lender shall have the right, in its sole discretion, to adjust the fixed payment due hereunder quarterly on August 1, 2002 and continuing on the same day of each quarter thereafter, in order to maintain an amortization period of no more than 276 months from May 1, 2002. Borrower understands that the amount of each monthly payment may increase if the Prime Rate increases to the point that the scheduled monthly payments are insufficient to maintain the required amortization.

UNOFFICIAL COPY

4. Subparagraphs (a), (b) and (c) of Section 5 (Maturity Date) are hereby deleted and the following is substituted in their place:

“The entire unpaid principal balance with interest, unless sooner paid or accelerated, shall be due and payable on June 30, 2003 (the “**Loan Maturity**”).

5. The Interest Rate ceiling set forth in paragraph 2(a) above shall not affect the Default Rate (Section 8 of Note) which shall continue to be equal to the lesser of:

(i) The Base Interest Rate (which will be no more than 9.75% per annum),

plus 5%; or

(ii) The maximum amount allowed by law.

6. Subparagraph (a) of Section 9 of the Note is hereby deleted and the following subparagraph (a) substituted in its place:

“(a) All payments required to be made pursuant to this Note shall be sent by wire transfer of United States Dollars to Lender, as follows:

BB&T
Wilson, North Carolina
ABA 061113415
Attn: Stacy Martin
Gainesville, Georgia
770-535-8001, xt. 2355
For Credit to Oxford HPC Schaumburg
Loan Acct. 954-1246840 - 00001
Loan Acct. 954-1246840 - 00002

or by bank check sent via U.S. Mail or overnight delivery service addressed as follows:

Branch Banking & Trust Company
Attn: Ms. Stacy Martin
455 Jesse Jewell Parkway
Gainesville, GA 30501”

20945091

UNOFFICIAL COPY

7. The name and address of Lender in Section 23 of the Note are hereby changed as follows:

Branch Banking & Trust Company
Attn: Ms. Stacy Martin
455 Jesse Jewell Parkway
Gainesville, GA 30501

8. The parties hereby acknowledge that the principal balance outstanding on the Note after the payment of the installment which was due on May 1, 2002, was the principal sum of \$6,494,426.70.

9. The parties hereby ratify and reaffirm the Note, as herein modified, and also ratify and reaffirm the Mortgage, Loan Agreement and all other documents which relate to or secure the payment of the Note. Without limiting the generality of the foregoing, Borrower reaffirms its obligation to pay to Lender the Repayment Interest as provided for in Section 3.4 of the Loan Agreement.

10. Borrower acknowledges and agrees that the Note, as herein modified, and the Mortgage, and any other collateral securing the payment of the Mortgage, are enforceable against Borrower in accordance with the respective terms thereof, and that Borrower has no defenses, offsets or counterclaims which could be asserted against Lender, or Lender's predecessor in interest.

11. Borrower agrees to pay Lender a loan fee in the amount of \$10,000.00, and to reimburse Lender for its attorney's fees and expenses incurred in connection with this Modification Agreement and also any tax payable on the Note, as herein modified.

12. This Agreement shall be binding upon and shall inure to the benefit of the parties,

20945091

UNOFFICIAL COPY

and their successors and assigns.

13. This Agreement, and the Consents of the Guarantors, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals as of the day and year first above written.

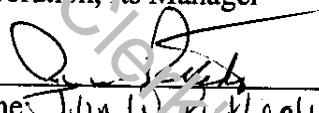
BORROWER:

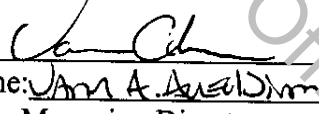
OXFORD HPC SCHAUMBURG PROPERTY COMPANY, L.L.C., a Delaware limited liability company

By: Oxford HPC Investment Company, L.L.C., a Delaware limited liability company, Its Sole Member

By: Oxford BlackPoint Company III, L.L.C., a Delaware limited liability company, Its Manager

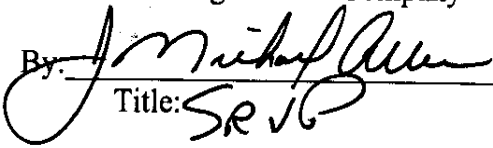
Oxford Capital Partners, Inc., an Illinois corporation, Its Manager

By: 
Name: John W. Kitley
Title: Managing Director

By: 
Name: Ann A. Avedis
Title: Managing Director

LENDER:

Branch Banking & Trust Company

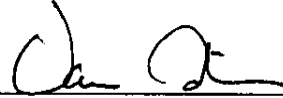
By: 
Title: SR VP

UNOFFICIAL COPY

CONSENT AND REAFFIRMATION

The undersigned executed a Payment and Recourse Guaranty dated June 8, 1998 (the "Payment and Recourse Guaranty"), pursuant to which the undersigned guaranteed payment of the Note. The undersigned hereby consent to the execution and delivery by Oxford HPC Schaumburg Property Company, LLC of the foregoing Modification of Promissory Note, and hereby ratify and reaffirm all of their obligations under the Payment and Recourse Guaranty.

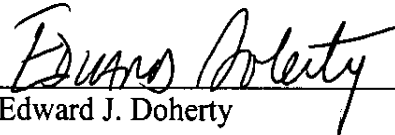
Signed, sealed and delivered as of the 1st day of May, 2002.



Vann A. Avedisian



John W. Rutledge



Edward J. Doherty

Property of Cook County Clerk's Office

20945091

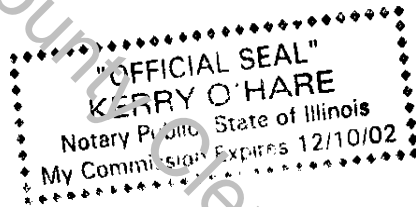
UNOFFICIAL COPY

STATE OF IL,

COUNTY OF Cook.

On this 29 day of July, 2002, before me, a notary public, Vann A. Avedisian and John W. Rutledge, as the managing directors of Oxford Capital Partners, Inc., which is the Manager of Oxford BlackPoint Company, III, LLC, which is the manager of Oxford HPC Investment Company, LLC, which is the sole member of Oxford HPC Schaumburg Property Company, LLC, personally known to me to be the persons whose name are subscribed to the foregoing instrument, and acknowledged that they executed the foregoing instrument for the purposes therein contained. They are personally known to me.

Kerry O'Hare
Notary Public
My commission expires: 12/10/02



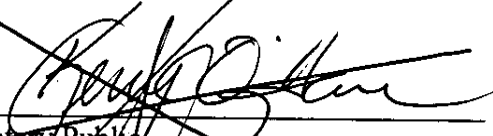
20945091

UNOFFICIAL COPY


STATE OF GEORGIA

COUNTY OF HALL

The foregoing instrument was acknowledged before me this 29 day of July, 2002, by J. Michael Allen, as the Sr. Vice President of Branch Banking & Trust Company, on its behalf. He is personally known to me.



Notary Public
My commission expires: 12/10/02



Notary

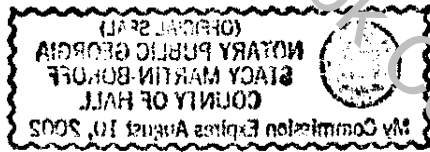
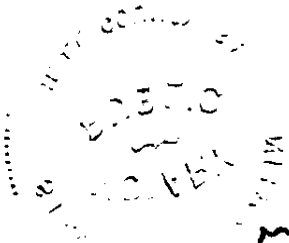


Property of Cook County Clerk's Office

20945091

UNOFFICIAL COPY

Property of Cool County Clerk's Office



UNOFFICIAL COPY

STATE OF IL,

COUNTY OF Cook.

On this 29 day of July, 2002, before me, a notary public, Vann A. Avedisian, personally known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

Kerry Gillan

Notary Public

My commission expires: 12/10/02

Property of Cook County Clerk's Office

20945091

UNOFFICIAL COPY

STATE OF IL

COUNTY OF Cook

On this 29 day of July, 2002, before me, a notary public, John W. Rutledge, personally known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

Kenny O'Hare

Notary Public

My commission expires: 12/10/02

Property of Cook County Clerk's Office

20945091

UNOFFICIAL COPY

STATE OF IL

COUNTY OF Cook

On this 29 day of July, 2002, before me, a notary public, Edward J. Doherty, personally known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

Kenny O'Hara
Notary Public
My commission expires: 12/10/02

Property of Cook County Clerk's Office

20945091

UNOFFICIAL COPY

RECORDED

EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

THE NORTH 275.00 FEET OF LOT 1 IN ANDERSON'S THIRD RESUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 2 IN ANDERSON'S SECOND RESUBDIVISION, A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED APRIL 28, 1998 AND RECORDED MAY 6, 1998 AS DOCUMENT 98373511 FROM FIRST BANK OF SCHAUMBURG, AS TRUSTEE UNDER TRUST NUMBER 252 TO OXFORD SCHAUMBURG COMPANY, LLC FOR THE PURPOSE OF INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THE SOUTH 105 FEET OF THE NORTH 380 FEET AND THE WEST 75 FEET OF LOT 1 IN ANDERSON'S THIRD RESUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 2 IN ANDERSON'S SECOND RESUBDIVISION, A RESUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: Corner of American Lane and National Parkway, Schaumburg, Cook County, Illinois

P.I.N.: 07-13-101-012-0000

PIN # 07-13-101-012-0000

20945091

98-79984

CHMAIN02:222956_3.WPD
962475-050006
Printed: 05-05-98 20:44
Hawthorn Suites Hotel/Schaumburg
(Owner)