

# UNOFFICIAL COPY



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")

Doc#: 0326539142  
Eugene "Gene" Moore Fee: \$60.00  
Cook County Recorder of Deeds  
Date: 09/22/2003 01:42 PM Pg: 1 of 19

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  
Chicago, IL 60601

Clerk: Please Cross-Index to  
98479984

## THIRD MODIFICATION AGREEMENT

Between

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

and

Flag Bank

Dated as of August 1, 2003

6 of 6 LHY:es # 76-89-298-D1

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## THIRD MODIFICATION AGREEMENT

THIS THIRD MODIFICATION AGREEMENT is executed as of the 22<sup>nd</sup> day of August, 2003, by and between OXFORD HPC SCHAUMBURG PROPERTY COMPANY, L.L.C, herein called "**Borrower**", and FLAG BANK, a Georgia banking corporation, whose address is 3475 Piedmont Road, N.E., Suite 550, Atlanta, Georgia 30305, 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 Borrower, 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.

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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 Branch Banking & Trust Company ("BB&T").

E. BB&T and Borrower entered into a Modification Agreement dated as of the 1<sup>st</sup> day of May, 2002 (the "First Amendment"), which First Amendment was filed for record in the Office of the Cook County, Illinois Recorder on August 28, 2002, as Document Number 0020945091.

F. BB&T and Borrower entered into a Second Modification Agreement dated as of the 1<sup>st</sup> day of July, 2003 (the "Second Amendment"), which Second Amendment will be recorded in the Office of the Cook County, Illinois Recorder.

G. Immediately prior to the execution of this Third Modification Agreement, BB&T endorsed the Note over to Flag Bank ("Lender") and assigned to Lender 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 will be filed in the Office of the Cook County, Illinois Recorder.

H. Borrower and Lender have agreed to enter into this Third Modification Agreement (the "Third Amendment").

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I. Vann A. Avedisian, John W. Rutledge and Edward J. Doherty executed a Payment and Recourse Guaranty dated June 8, 1998. The Guarantors have consented to the execution of this Third Amendment and have ratified and reaffirmed their obligations under the Payment and Recourse Guaranty, as set forth on the attached Consent and Reaffirmation.

J. Oxford HPC Investment Company, LLC is the sole member of Oxford HPC Schaumburg Property Company, L.L.C., Oxford BlackPoint Company III, L.L.C. is the manager of Oxford HPC Investment Company, L.L.C., and Oxford Capital Partners, Inc. is the manager of Oxford BlackPoint Company III, L.L.C.

K. The Mortgage is the only mortgage, security agreement or other collateral document which encumbers the real and personal property owned by Borrower. There are no financing statements on file which encumber any asset of Borrower other than financing statements filed by Lender or by Lender's predecessors in interest.

## Agreements

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, and as an inducement to Lender to extend the Maturity Date of the Note, and other valuable considerations, receipt of which are hereby acknowledged, 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 are true and correct.

2. Paragraphs 2, 3, 4, 5, 6 and 7 of the First Amendment and paragraph 2 of the Second Amendment are hereby deleted, and are hereby replaced by paragraphs 3 through 8 of this Third Amendment.

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3. 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 as of the Effective Date, interest shall accrue and be payable on the unpaid principal balance of this Note at the rate from time to time which is two and one half percent (2½%) per annum above the Prime Rate as hereafter defined (the “Base Interest Rate”). As used herein, the term “Prime Rate” means the “Prime Rate” published in the *Money Rates* Section of *The Wall Street Journal* from time to time. The Base Interest Rate will change as and when the Prime Rate changes. 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 the Prime Rate shall become effective as of the opening of business on the effective date of the change. The Base Interest Rate as of the Effective Date, is 6½% per annum.”

4. 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) On September 1, 2003, Borrower shall pay to Lender the sum of \$15,226.61. Beginning on October 1, 2003, and on the first day of each month thereafter through and including January 1, 2006, Borrower shall make a payment to Lender in the amount of Forty Seven Thousand Two Hundred Two and 50/100's Dollars (\$47,202.50), with such payments to be applied first to interest and then to principal. Notwithstanding anything to the contrary herein, (i) for so long as the Base Interest Rate is at a per annum rate such that a fully amortizing level principal and interest payment calculated at such Base Interest Rate and the then current principal balance over a 240-month amortization period

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(from the Effective Date, e.g., twelve (12) months from the Effective Date, the amortization period would be 228 months [240 minus 12 = 228]) produces an amount that exceeds \$51,922.75, then the monthly payment shall equal \$51,922.75 and (ii) in no event shall the monthly payment be less than an amount necessary to pay interest accrued for the prior month at the then current Base Interest Rate.”

5. 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 February 1, 2006 (the “Loan Maturity”).”

6. The Interest Rate ceiling contained in paragraph 2(a) of the First Amendment will no longer be applicable. There will be no Interest Rate ceiling.

7. 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:

Flag Bank  
 3475 Piedmont Road, N.E., Ste. 550  
 Atlanta, Georgia 30305  
 ABA:  
 Attn: Mr. Jeff Loggins (404-760-7700)  
 For Credit to Oxford HPC Schaumburg  
 Loan Acct. 954-1246840 - 00001  
 Loan Acct. 954-1246840 - 00002

or by bank check sent via overnight delivery service addressed as follows:

Flag Bank  
 Attn: Jeff Loggins  
 3475 Piedmont Road, N.E., Ste. 550  
 Atlanta, GA 30305”

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

Flag Bank  
Attn: Jeff Loggins  
3475 Piedmont Road, N.E., Ste. 550  
Atlanta, GA 30305

9. Subject to the qualifications hereafter set forth, the provisions of Section 3.5 of the Loan Agreement shall not apply while this Third Modification Agreement is in effect. In the event Borrower defaults and Lender exercises its right to accelerate payment of the Note, if, thereafter, Lender allows Borrower to reinstate the Loan, Lender shall have the right to make the provisions of Section 3.5 applicable as a condition to the Loan being reinstated. Also, if the Note is not paid at maturity, and Lender and Borrower agree to extend the Maturity Date, Lender will have the right to make the provisions of Section 3.5 applicable as a condition to agreeing to an extension. Any reinstatement or extension of the Maturity Date will be in the sole discretion of Lender.

10. The parties hereby acknowledge that the principal balance outstanding on the Note as of August 1, 2003 is the principal sum of Six Million One Hundred Four Thousand Six Hundred Forty Three and 05/100's Dollars (\$6,104,643.05). Interest has been paid through August 21, 2003, and the next monthly payment is due on September 1, 2003.

11. 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 2 of the Note and in Section 3.4 of the Loan Agreement.

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12. Borrower acknowledges and agrees that the Note, as herein modified, and the Mortgage, and any other collateral securing the payment of the Note, and all other documents executed in connection with the loan which is evidenced by the Note, 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. Lender represents and warrants to Borrower, and Borrower acknowledges to Lender that Lender is a holder in due course of the Note.

13. Borrower agrees to pay Lender an extension fee in the amount of \$61,046.43, 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.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties, and their successors and assigns.

15. 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.



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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: \_\_\_\_\_  
**Vann A. Avedisian,  
Managing Director**

**LENDER:**

**Flag Bank**

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

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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: \_\_\_\_\_

Vann A. Avedisian,  
Managing Director

LENDER:

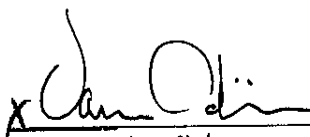
Flag Bank

By:  \_\_\_\_\_  
Title: *vice President*

**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, L.L.C. of the foregoing Third Modification Agreement, and hereby ratify and reaffirm all of their obligations under the Payment and Recourse Guaranty.

Signed, sealed and delivered as of the Effective Date referred to in such Third Modification Agreement.




---

 Vann A. Avedisian

---

 John W. Rutledge

---

 Edward J. Doherty

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\_\_\_\_\_  
Vann A. Avedisian



\_\_\_\_\_  
John W. Rutledge

\_\_\_\_\_  
Edward J. Doherty

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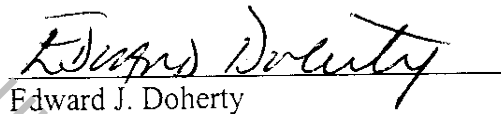
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Signed, sealed and delivered as of the Effective Date referred to in such Third Modification Agreement.

\_\_\_\_\_  
Vann A. Avedisian

\_\_\_\_\_  
John W. Rutledge

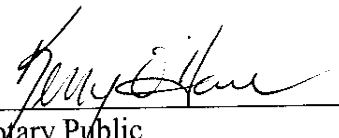
  
\_\_\_\_\_  
Edward J. Doherty

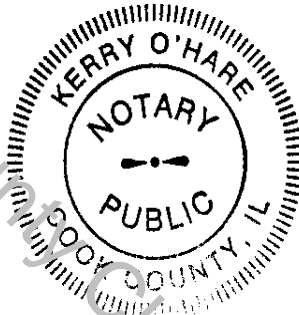
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STATE OF ILLINOIS,

COUNTY OF COOK.

On this 22<sup>nd</sup> day of August, 2003, before me, a notary public, Vann A. Avedisian, as the managing director 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.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 12/7/07



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STATE OF GEORGIA

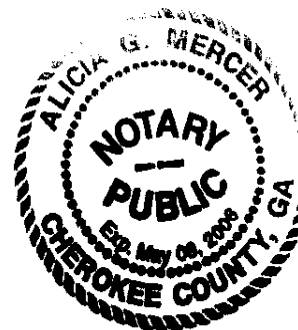
COUNTY OF FULTON

The foregoing instrument was acknowledged before me this 22 day of August, 2003, by Randy Lee, as the Sr. Vice Pres of Flag Bank, on its behalf. He is personally known to me.

Alicia Mercer

Notary Public

My commission expires: May 8, 2006



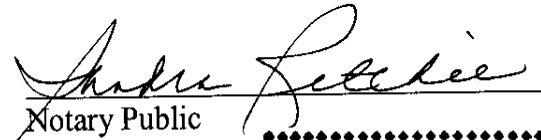
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS,

COUNTY OF COOK.

On this 22<sup>nd</sup> day of August, 2003, 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.



Notary Public

My commission expires:



Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF IL,

COUNTY OF Cook.

On this 22 day of August, 2003, 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.

*Ken E. Hare*

Notary Public

My commission expires: 12/7/07

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF \_\_\_\_\_,

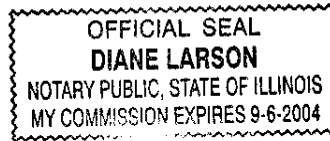
COUNTY OF Cook.

On this 25<sup>th</sup> day of August, 2003, 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.

*Diane Larson*

Notary Public

My commission expires: \_\_\_\_\_



Property of Cook County Clerk's Office

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## EXHIBIT C

### 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 330 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