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Permanent Real Estate Index Nos.  
07-13-101-012-000 & 07-13-101-011-000



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**MORTGAGE, ASSIGNMENT OF LEASES AND PROFITS,  
SECURITY AGREEMENT AND FIXTURE FILING**

from

**OXFORD MPC SCHAUMBURG PROPERTY COMPANY, L.L.C.**  
a Delaware limited liability company, as Mortgagor

to

**GMAC COMMERCIAL MORTGAGE BANK**  
a Utah industrial bank, as Mortgagee

Dated:  
As of February 1, 2006

Hawthorn Suites  
1251 E. American Lane  
Schaumburg, IL 60173

**PREPARED BY AND RECORDING REQUESTED BY  
AND UPON RECORDATION RETURN TO:**

Katten Muchin Rosenman LLP  
1025 Thomas Jefferson Street, N.W.  
East Lobby, Suite 700  
Washington, D.C. 20007  
Attention: Christopher J. Hart, Esq.

**Box 400-CTCC**

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**UNOFFICIAL COPY****EXECUTION COPY****Loan No.: 01-1051630****MORTGAGE, ASSIGNMENT OF LEASES AND PROFITS,  
SECURITY AGREEMENT AND FIXTURE FILING**

This **MORTGAGE, ASSIGNMENT OF LEASES AND PROFITS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Mortgage**") is dated this 1st day of February, 2006, from **OXFORD HPC SCHAUMBURG PROPERTY COMPANY, L.L.C.**, a Delaware limited liability company, whose address is c/o Oxford Capital Partners, Inc., 350 West Hubbard Street, Suite 440, Chicago, IL 60610 ("**Mortgagor**") to **GMAC COMMERCIAL MORTGAGE BANK**, a Utah industrial bank, its successors and assigns ("**Mortgagee**"), having its principal office at 6955 Union Park Center, Suite 330, Midvale, Utah 84047, or at such other place either within or without the State of Utah, as Mortgagee may from time to time designate.

**Mortgagor**, in consideration of the indebtedness herein recited, and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee, the receipt of which is hereby acknowledged, does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, grant a security interest in, transfer and convey unto Mortgagee and its successors and assigns forever, all of Mortgagor's right, title and interest in and to certain land in Cook County, Illinois, more particularly described in **Exhibit A** attached hereto and made a part hereof, the "**Land**"; together with all of the following described property, collectively, the "**Property**";

**TOGETHER WITH** all buildings, structures and improvements now or hereafter situated or to be situated on the Land or appurtenant thereto, including without limitation, that certain "Hawthorn Suites" hotel currently operating on the Land (collectively, the "**Improvements**").

**TOGETHER WITH** all machinery, furnishings and equipment including, without limitation, all furnaces, boilers, oil burners, radiators and piping, coal stokers, refrigeration and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, awnings, window shades, kitchen cabinets, plants and shrubbery and all other equipment and machinery, motor vehicles and other vehicles, appliances, fittings and fixtures of every kind in or used in the operation of the Land and the Improvements, together with any and all replacements thereof and additions thereto, fixtures (including, without limitation, all heating, air-conditioning, plumbing and bathroom, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, clock radios, television sets, intercom and paging equipment, electric and

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electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and all proceeds and products of any such property;

**TOGETHER WITH** all accounts, escrows (including, without limitation, the Accounts), documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, investment property and general intangibles, as such terms are defined in the Uniform Commercial Code, and all agreements, contracts, certificates, instruments, and other documents, now or hereafter entered into, including, without limitation, the Management Agreements and the Franchise Agreement (to the extent permitted thereby), and all proceeds, substitutions and replacements thereof, all contract rights, insurance proceeds, condemnation award or proceeds, security deposits, franchises, books, records, appraisals, architectural and engineering plans, specifications, environmental and other reports relating to the Land, trademarks (to the extent assignable), trade names (to the extent assignable), servicemarks, logos, copyrights, goodwill, symbols, permits, licenses (to the extent assignable), approvals, actions, tenant or guest lists, correspondence with present and prospective purchasers, tenants, guests and suppliers, advertising materials and telephone exchange numbers as identified in such materials, all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Land as a result of tax certiorari or any applications or proceedings for reduction, and causes of action which now or hereafter relate to, are derived from or are used in connection with the Land, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, "Intangibles");

**TOGETHER WITH** all leases and other agreements affecting the use, enjoyment or occupancy of the Land or the Improvements heretofore or hereafter entered into (including, without limitation, the Operating Lease, any subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Land, together with any guarantees, supplements, amendments, modifications, extensions and renewals of any thereof, and all additional remainders, reversions, and other rights and estates appurtenant thereto, as the same may be amended from time to time (collectively, "Leases");

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**TOGETHER WITH** all of Mortgagor's right, title and interest in and to any easements and appurtenances benefiting or affecting the Property;

**TOGETHER WITH** all of Mortgagor's right, title and interest in and to the Operating Agreements (as hereinafter defined), together with any amendments, modifications, extensions and renewals of any thereof, and all subordinations, estoppels and other rights in connection therewith;

**TOGETHER WITH**, to the extent assignable under applicable law, all agreements (including, without limitation, the Management Agreements (as hereinafter defined), the Franchise Agreement (as hereinafter defined) and all agreements now or hereafter entered into for the use and enjoyment of all food, liquor and other beverage licenses), contracts, certificates, instruments, franchises, permits, licenses (including, without limitation, food, liquor and other beverage licenses to the extent assignable), plans, specifications and other documents, now or hereafter entered into, together with any amendments, modifications, extensions and renewals of any thereof, and all subordinating estoppel rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, while an Event of Default (as hereinafter defined) remains uncured, to receive and collect any sums payable to Mortgagor thereunder;

**TOGETHER WITH** the right, in the name and on behalf of Mortgagor, to commence any action or proceeding to protect the interest of Mortgagee in the Property and while an Event of Default remains uncured, to appear in and defend any action or proceeding brought with respect to the Property;

**TOGETHER WITH** all (i) income, rents, room rates, receipts, issues, profits, revenues (including all oil and gas or other mineral royalties or bonuses), deposits and other benefits now due or which may become due or to which Mortgagor is now or hereafter may become entitled or which Mortgagor may demand or claim arising or issuing from or out of the operation of the business at the Land or any part thereof and all amounts paid as rents for such Land or the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels or other lodging facilities, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms, recreational facilities and otherwise; and (ii) receivables, customer obligations, installment payment obligations and other payment obligations whether already accrued, now accruing or to accrue in the future for the occupancy or use of the Property or any part thereof, or arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land or personalty located thereon, or the rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, parking space, guest rooms or other space, halls, stores or offices, including any deposits securing reservations

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of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land, regardless of whether the revenues described in the preceding clauses (i) and (ii) are paid or accrued before or after the filing by or against Mortgagor of any petition for relief under any state or federal bankruptcy or insolvency laws (collectively, "Profits"); and

**TOGETHER WITH** all awards heretofore and hereafter made to Mortgagor for taking by eminent domain the whole or any part of the Land or any easement therein, including any awards for changes of grade of streets; and

**TOGETHER WITH** any and all rights of Mortgagor in and to the foregoing.

**TO HAVE AND TO HOLD** the Property unto Mortgagee and unto its successors and assigns in fee simple forever with all appurtenances hereunto belonging, together with all Profits therefrom.

**PROVIDED, HOWEVER,** that upon full payment of all indebtedness hereby secured, the Property shall be reconveyed and released to Mortgagor.

**TO SECURE** to Mortgagee:

(a) Payment of all indebtedness evidenced by an interest-bearing loan and debt in the original principal sum of **EIGHT MILLION and No/100 DOLLARS (\$8,000,000)** (the "Loan") evidenced by that certain Mortgage Note dated as of the date hereof from Mortgagor, as Maker, to Mortgagee, as Payee (the "Note"), the terms of which are incorporated herein by reference as well as all renewals, extensions, modifications and recastings of the Note.

(b) The performance of all covenants, obligations, indemnities and agreements required of Mortgagor or of any other person or entity liable under the Note, this Mortgage, any indemnity executed in connection with the Loan, and all other agreements, documents, and instruments evidencing, securing or otherwise relating to the indebtedness hereby secured (the Note, this Mortgage, the Lease Assignment, the Contract Assignment, the Security Agreement, the Financing Statements, the Environmental Agreement, the Guaranty, the Replacement Reserve Agreement, the Lockbox Agreements, the Operating Lease Subordination Agreement, the Manager Subordination Agreements, and all such other agreements, documents and instruments are hereinafter referred to collectively as the "Loan Documents").

(c) The payment of (i) interest, default interest, late charges and other sums as provided in the Loan Documents; (ii) any Extension Fee (as defined in the Note); and (iii) all other monies agreed or provided to be paid by Mortgagor in the Loan Documents.

(d) The payment of any and all future advances made to Mortgagor hereunder or under any of the Loan Documents.

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(e) The performance of all obligations of any surety, guarantor or indemnitor of any of the obligations of Mortgagor under the Loan Documents.

(f) The payment of all costs and expenses, including court costs, attorneys' fees, witness fees (including fees of expert witnesses), paid, advanced, or incurred by Mortgagee to protect or preserve the Property or the validity or priority of this Mortgage, or to enforce the remedies of Mortgagee as provided for herein or in the other Loan Documents.

(g) The performance by Mortgagor of all obligations of Mortgagor as landlord under any Lease of all or any portion of the Property, the performance by Mortgagor of all obligations of Mortgagor under the Management Agreements and the performance by Mortgagor of all obligations of Mortgagor under the Franchise Agreement.

## I. Defined Terms

The following terms shall have the following meanings:

- (a) "Access Laws" shall have the meaning set forth in Section 39(a) hereof.
- (b) "Accounts" shall have the meaning set forth in Section 7(b) hereof.
- (c) "Asbestos" shall have the meaning set forth in Section 36 hereof.
- (d) "Asset Management Agreement" shall mean the Asset Management Agreement dated May 29, 1998, between Oxford Capital Partners, Inc., an Illinois corporation ("Asset Manager") and Oxford HPC Investment Company, L.L.C.
- (e) "Budget" shall mean the budget for the use and application of the Loan and gross income derived from the operation of the Property, including all expenses to be satisfied from the Accounts, as set forth in the budget delivered by Mortgagor to Mortgagee with respect to the balance of the current calendar year, and the annual budget to be delivered in accordance with the terms hereof for each subsequent calendar year for so long as any portion of the Debt remains outstanding.
- (f) "Closing Date" shall mean the date hereof.
- (g) "Collateral" shall have the meaning set forth in Section 29 hereof.
- (h) "Condemnation" shall have the meaning set forth in Section 8(a) hereof.
- (i) "Contract Assignment" shall have the meaning set forth in Section 2(b) hereof.
- (j) "Debt" shall mean the outstanding principal balance of the Note from time to time, with all accrued and unpaid interest thereon, and all other sums now or hereafter due under the Loan Documents, and as described in the last paragraph of this Section.



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(k) "Debt Service Coverage Ratio" shall mean the ratio of:

(i) the NOI produced by the operation of the Property during the twelve (12) calendar month period immediately preceding the calculation, to

(ii) the projected payments of principal and interest due under the Note for the twelve (12) calendar month period immediately following the calculation, as said coverage ratio is reasonably calculated by Mortgagee in accordance with its then-applicable underwriting standards and adjustments, including the application of a five percent (5%) of gross revenue replacement reserve, the greater of (a) actual and (b) four percent (4%) of gross revenue asset and base management fees, fully assessed property taxes, and the greater of (x) actual debt service and (y) a mortgage loan constant of not less than eight and five-tenths percent (8.5%).

(l) "Default Rate" shall mean the rate of interest payable from and after the occurrence of an Event of Default (hereinafter defined), as more particularly described in the Note; provided, however, that with respect to an Event of Default of the type described in Section 24(a) hereof, such rate of interest shall apply from and after the date on which any such payment is due, without any period of grace or cure.

(m) "Environmental Agreement" shall have the meaning set forth in Section 2(b) hereof.

(n) "Environmental Laws" shall have the meaning set forth in Section 35 hereof.

(o) "Equipment" shall mean all machinery, furnishings, equipment, fixtures (including, without limitation, all heating, air-conditioning, plumbing, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, clock radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an

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interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements.

(p) "ERISA" shall have the meaning set forth in Section 40(a) hereof.

(q) "Event of Default" shall have the meaning set forth in Section 24 hereof.

(r) "Expenses" shall mean the aggregate of the following items (capitalized terms in this subsection and not otherwise defined herein shall have the meanings ascribed to such terms by the Hotel Standard Chart of Accounts) actually incurred by Mortgagor, whether or not paid, during the twelve (12) month period ending one (1) month prior to the date on which the NOI is to be calculated (except that capital expenses and reserves set forth in subsection (xiv) below shall be reasonably adjusted by Mortgagee to reflect projected adjustments for the subsequent twelve (12) month period beginning on the date on which the NOI is to be calculated):

(i) departmental expenses incurred at departments within the Property including rooms, food and beverage, telephone and other;

(ii) the Property's pro rata share of costs and expenses of the national and regional reservations system service under the Management Agreements or Franchise Agreement;

(iii) administrative and general expenses incurred by the Property;

(iv) marketing, advertising and business promotion expenses incurred by the Property;

(v) franchise fees and other fees due under the Franchise Agreement;

(vi) all costs and fees of technical consultants and operational experts who are retained or employed by Manager for specialized services (including, without limitation, quality assurance inspectors) and the costs of attendance by employees of the Property at training and manpower development programs sponsored by Manager;

(vii) all utility costs including heat, light power, water, telephone, and computer line charges;

(viii) operations and maintenance expenses, which include the cost of necessary repair or replacement of Improvements or replacement of Equipment of like

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kind and quality or such kind or quality that is necessary to maintain the Property to the standards are required under the Management Agreements or Franchise Agreement, this Mortgage or any of the Loan Documents, as reasonably determined by Mortgagee (to the extent such are paid for by Mortgagor from sources other than the Replacement Reserve Account);

(ix) common area maintenance fees and improvement district assessments;

(x) property and asset management fees required under the Management Agreements (not to exceed four percent (4%) of the gross income derived from the operation of the Property and reasonable reimbursements);

(xi) any costs and expenses incurred by Manager in terminating its employees at the Property pursuant to the Management Agreements;

(xii) Taxes and Other Charges (to the extent such are paid by Mortgagor from sources other than the Tax and Insurance Escrow Account);

(xiii) general and operating insurance premiums (to the extent such are paid by Mortgagor from sources other than the Tax and Insurance Escrow Account);

(xiv) monthly installments made by Mortgagor to the Tax and Insurance Escrow Account and the Replacement Reserve Account (exclusive of the initial deposit made by Mortgagor to such accounts);

(xv) lease payments and associated costs on any operating (as opposed to capital) leases of Equipment;

(xvi) rental payments pursuant to any ground lease;

(xvii) all costs and fees of independent professionals or other third parties who are retained by Manager to perform services required or permitted under the Management Agreements; and

(xviii) such other costs and expenses incurred by Manager as are otherwise reasonably necessary for the proper and efficient operation of the Property.

(s) "FF&E Financing" shall have the meaning set forth in Section 10(t) hereof.

(t) "Financing Statements" shall mean any and all UCC financing statements filed by or on behalf of Mortgagee as additional security hereunder.

(u) "Franchise Agreement" shall mean the Agreement dated as of March 18, 1998, as amended on June 15, 1998, November 14, 2001, April 15, 2002, October 24, 2003, and

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December 13, 2004, between Operator and Franchisor pursuant to which the hotel located on the Property is operated under a name and/or hotel system controlled by Franchisor.

- (v) "Franchisor" shall mean Hawthorn Suites Franchising, Inc.
- (w) "Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government.
- (x) "Guarantor" shall mean, individually and collectively, Oxford Capital Partners, Inc., an Illinois corporation, Oxford Investment Holdings, LLC, a Delaware limited liability company, and Edward Doherty, an individual, jointly and severally.
- (y) "Guaranty" shall have the meaning set forth in Section 2(b) hereof.
- (z) "Hazardous Substances" shall have the meaning set forth in Section 35 hereof.
- (aa) "Improvements" shall have the meaning set forth in the recitals of this Mortgage.
- (bb) "Insurance Premiums" shall have the meaning set forth in Section 4(e) hereof.
- (cc) "Insured Casualty" shall have the meaning set forth in Section 4(f)(ii) hereof.
- (dd) "Intangibles" shall have the meaning set forth in the recitals of this Mortgage.
- (ee) "Investor" shall have the meaning set forth in Section 21 hereof.
- (ff) "Land" shall mean the real property comprising the Property, more particularly described on Exhibit A to this Mortgage.
- (gg) "Lease Assignment" shall have the meaning set forth in Section 2(b) hereof.
- (hh) "Leases" shall have the meaning set forth in the recitals of this Mortgage.
- (ii) "Loan" shall have the meaning set forth in the recitals of this Mortgage.
- (jj) "Loan Documents" shall have the meaning set forth in the recitals of this Mortgage.

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(kk) "Loan-To-Value Ratio" shall mean the ratio of: (i) the Debt, plus all other debt (or other liquidated economic obligations) which is then outstanding and secured by the Property, to (ii) the appraised value of the Property as estimated by an appraiser acceptable to Mortgagee. Any appraisal for purposes of calculating the Loan-To-Value Ratio shall be performed in accordance with the then-approved standards under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

(ll) "Lockbox Agreements" shall have the meaning set forth in Section 2(b) hereof.

(mm) "Major Lease" shall mean any Lease in excess of one thousand (1,000) square feet.

(nn) "Management Agreements" shall mean, collectively, the Property Management Agreement and the Asset Management Agreement (each, a "Management Agreement").

(oo) "Manager" shall mean, individually and collectively, the Property Manager and the Asset Manager.

(pp) "Manager Subordination Agreements" shall have the meaning set forth in Section 2(b) hereof.

(qq) "Material Adverse Effect" shall mean, with respect to any circumstance, act, condition or event of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, or circumstance or circumstances, whether or not related, in Mortgagee's reasonable judgment, a material adverse change in or a materially adverse effect upon: (i) the business, operations, property, or condition (financial or otherwise) of Mortgagor; (ii) the ability of Mortgagor to pay all of its liabilities or to perform all of its obligations in the manner and within the time periods required under the Loan Documents; (iii) the validity, enforceability or consummation of the Loan Documents, the transactions contemplated thereby, or any of Mortgagee's rights, title and interest thereunder; (iv) the title to the Property, the permitted uses of the Property or the value of the security provided by the Loan Documents; (v) Mortgagee's ability to have recourse against the Property; (vi) the compliance of the Property with applicable laws; or (vii) the value of the Property.

(rr) "Maturity Date" shall mean the Applicable Maturity Date (as such term is defined in the Note) or any earlier acceleration of sums due under the Note pursuant to Mortgagee's declaration of an Event of Default.

(ss) "Mortgage" shall have the meaning set forth in the recitals of this Mortgage.

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(tt) "Mortgagee" shall have the meaning set forth in the preamble to this Mortgage.

(uu) "Mortgagor" shall have the meaning set forth in the preamble to this Mortgage.

(vv) "NOI" shall mean as of any date of determination, the aggregate amount of the gross income derived from the operation of the Property for the twelve (12) month period prior to each respective date of determination, or an actual annualized basis, to the extent there is not a twelve (12) calendar month period immediately preceding the date of determination, less the aggregate amount of Expenses for the twelve (12) month period, or such actual annualized basis, ending one (1) month prior to each respective date of determination, adjusted as Mortgagee reasonably deems necessary to reflect the net operating income of the Property in accordance with Mortgagee's then current underwriting standards. NOI shall include only Profits and such other income, including any rent loss, business interruption or business income insurance proceeds, vending or concession income, late fees, forfeited security deposits and other miscellaneous tenant charges, which are actually received and Expenses actually incurred or payable during the period for which the NOI is being calculated, as set forth on operating statements reasonably satisfactory to Mortgagee. NOI shall be calculated on an accrual basis in accordance with generally accepted accounting principles consistently applied, based on the Uniform System of Accounts.

(ww) "Note" shall have the meaning set forth in the recitals of this Mortgage.

(xx) "O&M Plan" shall have the meaning set forth in Section 36 hereof.

(yy) "OFAC List" shall mean the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by an Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

(zz) "Operating Agreements" shall have the meaning set forth in Section 20 hereof.

(aaa) "Operating Lease" shall mean the Lease dated May 29, 1999 between Mortgagor and Oxford HPC Schaumburg Operating Company, L.L.C., a Delaware limited liability company ("Operator").

(bbb) "Operating Lease Subordination Agreement" shall have the meaning set forth in Section 2(b) hereof.

(ccc) "Other Charges" shall have the meaning set forth in Section 5 hereof.

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(ddd) "Payment Due Date" shall have the meaning set forth on page 1 and Section 2(a) of the Note.

(eee) "Person" shall mean an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

(fff) "Phase I" shall have the meaning set forth in Section 35 hereof.

(ggg) "Policies" shall have the meaning set forth in Section 4(e) hereof.

(hhh) "Profits" shall have the meaning set forth in the recitals of this Mortgage.

(iii) "Property" shall have the meaning set forth in the recitals of this Mortgage.

(jjj) "Property Management Agreement" shall mean the Management Agreement dated May 18, 1998, as amended as of May 18, 2003, between Mortgagor and The Bricton Group, Inc., an Illinois corporation ("Property Manager"), pursuant to which Property Manager operates the Property as a hotel.

(kkk) "Remedial Work" shall have the meaning set forth in Section 37 hereof.

(lll) "Replacement Reserve Agreement" shall have the meaning set forth in Section 2(b) hereof.

(mmm) "Replacement Reserve Account" shall have the meaning set forth in Section 7(b) hereof.

(nnn) "Requirements of Law" shall mean (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

(ooo) "Securities" shall have the meaning set forth in Section 21(b) hereof.

(ppp) "Security Agreement" shall have the meaning set forth in Section 2(b) hereof.

(qqq) "Tax and Insurance Escrow Account" shall have the meaning set forth in Section 7(b) hereof.

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(rrr) "Tax and Insurance Escrow Fund" shall have the meaning set forth in Section 6 hereof.

(sss) "Taxes" shall have the meaning set forth in Section 5 hereof.

(ttt) "Title Exceptions" shall mean those title exceptions approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage.

(uuu) "Uniform Commercial Code" shall mean the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located.

(vvv) "Uniform System of Accounts" shall have the meaning set forth in Section 10(h) hereof.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Note. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor or any part thereof or any interest therein", the word "Mortgagee" shall mean "Mortgagee, its successors and assigns, and any subsequent holder of the Note", the word "Debt" shall mean "any indebtedness evidenced by the Note and any other evidence of indebtedness secured by this Mortgage", the word "Property" shall include any portion of the Property and any interest therein, and the words "attorneys' fees" shall include any and all reasonable attorneys' fees, paralegal and law clerk fees including, without limitation, fees at the pretrial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property and Collateral and enforcing its rights hereunder. 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.

## 2. The Loan

(a) Upon and subject to the terms and conditions herein set forth, Mortgagee agrees to lend to Mortgagor and Mortgagor agrees to borrow from Mortgagee, the principal sum not to exceed Eight Million and No/100 Dollars (\$8,000,000). Mortgagor will pay the Debt at the time and in the manner provided in the Note, this Mortgage and the other Loan Documents. All payments made to Mortgagee in respect of the Debt after payment of principal and interest due and payable under the Note shall be applied by Mortgagee in the following order of priority:

- (i) first, to fund the Tax and Insurance Escrow Account;
- (ii) next, to reimburse Mortgagee for any unpaid costs, sums and expenses incurred or advanced by Mortgagee on Mortgagor's behalf or in the enforcement of Mortgagee's rights hereunder in accordance with the provisions of the Loan Documents;



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- (iii) intentionally omitted
- (iv) next, to fund the Replacement Reserve Account; and
- (v) thereafter, one hundred percent (100%) of the balance, if any, to reduce the outstanding principal balance of the Loan.

(b) All the covenants, conditions and agreements contained in the Note, the Assignment of Leases, Rents and Profits dated as of the date hereof from Mortgagor to Mortgagee (the "Lease Assignment"), the Environmental Indemnity Agreement dated as of the date hereof among Mortgagee, Mortgagor and Guarantor (the "Environmental Agreement"), the Guaranty of Recourse Obligations dated as of the date hereof from Guarantor to Mortgagee (the "Guaranty"), the Assignment of Contracts, Licenses, Permits, Agreements, Warranties and Approvals, dated as of the date hereof from Mortgagor for the benefit of Mortgagee (the "Contract Assignment"), the Security Agreement dated as of the date hereof by and among, Mortgagor, Operator and Mortgagee (the "Security Agreement"), the Replacement Reserve Agreement dated as of the date hereof from Mortgagor for the benefit of Mortgagee (the "Replacement Reserve Agreement"), the Subordination and Attornment Agreement dated as of the date hereof among Mortgagor, Operator and Mortgagee (the "Operating Lease Subordination Agreement"), the Consent, Subordination and Recognition Agreement dated as of the date hereof among Mortgagor, Property Manager and Mortgagee and the Consent, Subordination and Recognition Agreement dated as of the date hereof among Mortgagor, Asset Manager and Mortgagee (collectively, the "Manager Subordination Agreements"), the Lockbox – Deposit Account Agreement, dated as of the date hereof, between Mortgagor and Mortgagee, together with the assigned account agreements issued by Mortgagor's Property operating account bank, if any (collectively, the "Lockbox Agreements"), and the other Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

### 3. Warranty of Title

Mortgagor represents and warrants that Mortgagor has good, marketable and indefeasible fee simple title to the Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to acquire, encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign, hypothecate and grant a security interest in the Property and that Mortgagor possesses an unencumbered fee estate in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the Title Exceptions. Mortgagor further represents and warrants that upon recordation of this Mortgage and the filing of the Financing Statements in the central filing office in the state in which the Mortgagor was formed and in the UCC records for the county in which the Property is located (to the extent the security interests granted herein may be perfected by a filing under the Uniform Commercial Code), this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Property, subject only to the Title Exceptions. Mortgagor shall forever warrant, defend and preserve such title and the

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validity and priority of the lien of this Mortgage and shall forever warrant and defend such title, validity and priority to Mortgagee against the claims of all persons whomsoever.

## 4. Insurance

(a) Mortgagor, at its sole cost and expense, will keep the Property insured during the entire term of this Mortgage for the mutual benefit of Mortgagor and Mortgagee in accordance with the terms and provisions of this Section against loss or damage by fire and standard "all risk" perils pursuant to an insurance policy covering "all risks of physical loss" including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. No such insurance policy shall contain an exception or exclusion for terrorism or terrorist acts. Such insurance policy shall (i) contain an income loss endorsement, (ii) be on a replacement cost basis with an "agreed amount" endorsement attached or with no co-insurance and, (iii) if any of the Improvements or the use of the Property shall at any time constitute legal nonconforming structures or uses, a law and ordinance endorsement. Such insurance shall be in an amount equal to the greater of: (A) the original principal amount of the Loan (in no event less than the minimum amount required to compensate for damage or loss on a replacement cost basis), (B) the then full replacement cost of the Improvements and the Equipment, without deduction for physical depreciation, and exclusive of excavations, footings and foundations, landscaping and paving; and (C) such amount that the insurer would not deem Mortgagor or Mortgagee a co-insurer under such policies. The deductible in respect of such insurance shall not exceed the lesser of: (1) Twenty-Five Thousand and No/100 Dollars (\$25,000.00); or (2) one percent (1%) of the face value of such policy, unless a higher deductible is required by law. The premiums for the insurance carried in accordance with this Section shall be paid annually in advance and each policy shall contain the "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Mortgagor shall also obtain and maintain during the entire term of this Mortgage, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, the following policies of insurance:

(i) Flood insurance, if any part of the Property is currently or at any time in the future located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto), in an amount at least equal to the lesser of: (A) the outstanding principal amount of the Note; or (B) the full replacement cost of the Improvements and the Equipment;

(ii) (A) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and "Dram shop" or other liquor liability coverage if alcoholic beverages are sold from or may be consumed at the Property, and containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00) and Two Million and No/100 Dollars (\$2,000,000.00) general aggregate for the Land and the

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Improvements, or such greater amount as may be required under the Franchise Agreement or Management Agreements; and (B) Umbrella liability insurance containing minimum limits of Ten Million and No/100 Dollars (\$10,000,000.00) for the Land and the Improvements, or such greater amount as may be required under the Franchise Agreement or Management Agreements;

(iii) Rental loss insurance in an amount equal to the aggregate annual amount of all rents and additional rents payable by all of the tenants under the Leases (whether or not such Leases are terminable in the event of a fire or casualty), such rental loss insurance to cover rental losses for a period of at least one year after the date of the fire or casualty in question. The amount of such rental loss insurance shall be increased from time to time, but in no event more frequently than once per year, during the term of this Mortgage as and when new Leases and renewal Leases are entered into in accordance with the terms of this Mortgage, to reflect all increased rent and increased additional rent payable by all of the tenants under such renewal Leases and all rent and additional rent payable by all of the tenants under such new Leases;

(iv) Business interruption insurance: (A) with loss payable to Mortgagee, its successors and/or assigns, as their respective interests may appear; (B) covering all risks required to be covered by the insurance provided for in Section 4(b); (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and all personal property has been repaired, the continued loss of income will be insured until the Property is restored (or if such income is not as of the date of restoration at the same level it was at prior to the loss, then until two (2) months following the restoration date), or the expiration of twelve (12) months from the date of the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to One Million Six Hundred Thirty Nine Thousand and No/100 Dollars (\$1,639,000) (based on Expenses and NOI for the Property). The amount of such business interruption insurance shall be determined prior to the date hereof and at least once each year thereafter based on clause 4(c)(iv)(D). All insurance proceeds payable to Mortgagee pursuant to this Section shall be held by Mortgagee and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Mortgagor of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually and timely paid out of the proceeds of such business interruption insurance;

(v) Insurance, in an amount equal to the lesser of Two Million and No/100 Dollars (\$2,000,000.00) per occurrence or the insurable value of the Improvements and the Equipment, against loss or damage from: (A) leakage of sprinkler systems; and (B) explosion of steam boilers, air-conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements;

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(vi) Worker's compensation insurance with respect to any employees of Mortgagor, as required by any governmental authority or legal requirement;

(vii) Motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles, containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00) with the same minimum limits of liability umbrella coverage as is specified under clause (c)(ii)(B) above or such greater amount as may be required under the Franchise Agreement or Management Agreements;

(viii) Blanket crime and fidelity bond insurance coverage insuring against losses resulting from dishonest or fraudulent acts committed by Mortgagor's or Manager's personnel;

(ix) Earthquake insurance (including subsidence), if the Property is located in an earthquake prone region as determined by Mortgagee, insuring in an amount equal to one times (1X) the probable maximum loss of the Property (as determined by Mortgagee) with a maximum deductible of no greater than ten percent (10%) of the replacement cost of the Property covered under the policy; provided, however, that if the deductible exceeds five percent (5%), Mortgagee shall have the right to require Mortgagor to escrow funds with Mortgagee in an amount sufficient to fund the amount of the deductible in excess of five percent (5%);

(x) if required by Mortgagee, ordinance or law coverage to compensate for the cost of demolition and the increased cost of construction;

(xi) insurance coverage for terrorism and terrorist acts, in form and content and with coverages acceptable to Mortgagee in its sole discretion, which is commercially available for similarly situated properties, and as acceptable to commercial mortgage-backed securities lenders; and

(xii) Such other insurance as may from time to time be reasonably required by Mortgagee or as may be required by the Franchise Agreement or Management Agreements against other insurance hazards or casualties which at the time are customarily required to be insured against for similarly situated properties, including, without limitation, during the course of any construction of, or repairs to, any Improvements, builder's completed value risk insurance against "all risks of physical loss" including (A) collapse, water damage and transit coverage, in a nonreporting form, covering the total value of work performed or contracted for and equipment, supplies and materials furnished or contracted for, plus interest, costs and other "soft" construction costs as Mortgagee deems appropriate, and (B) a full installation floater to insure all materials stored on the Land but not yet part of the permanent installation.

The insurance coverage required under this Section 4(c) may be offered under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the security hereunder; provided that any such blanket policy shall specify, except in the case of

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public liability insurance, the portion of the total coverage of such policy that is allocated to the Property.

(c) Mortgagor shall increase the amount of insurance required to be provided hereunder at the time that each such policy is renewed (but, in any event not less frequently than once during each twelve (12) month period) by using the F.W. Dodge Building Index to determine whether there has been an increase in the replacement cost of the Improvements since the most recent adjustment of any such policy and, if there has been any such increase, the amount of insurance required to be provided hereunder shall be adjusted accordingly.

(d) All policies of insurance required pursuant to this Section (collectively, the "Policies") shall: (i) be issued by an insurer authorized to issue insurance in the state where the Property is located, and if Mortgagor uses four (4) or fewer insurers, then at least seventy-five percent (75%) of such insurers, or, if Mortgagor uses five (5) or more insurers, then at least sixty percent (60%) of such insurers, shall have at least an A.M. Best's general policyholder's rating of "A" with a financial size category of "X" or an investment grade, claims paying ability rating, of "A" by Standard & Poors Rating Group or an equivalent rating from a rating agency of similar stature and quality or issued by an insurer otherwise acceptable to Mortgagee in its sole discretion (or, if not acceptably rated by any of the foregoing, a cut through endorsement from an acceptably rated company will be required, with a reinsurance agreement having a total value, one hundred percent (100%) assumption of liability endorsement, which must include a requirement for at least ninety (90) days notice of cancellation thereof); (ii) contain a standard "noncontributory mortgagee" clause or endorsement and a "lender's loss payable endorsement" or their equivalents and shall name Mortgagee, its successors and/or assigns, as their respective interests may appear, as an additional insured and loss payee and as the person to which all payments made by such insurance company shall be paid; (iii) contain a waiver of subrogation against Mortgagee; (iv) be maintained throughout the term of this Mortgage without cost to Mortgagee; (v) be assigned and delivered to Mortgagee; (vi) contain such provisions as Mortgagee deems reasonably necessary or appropriate to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer thereunder, that Mortgagee shall have no liability for insurance premiums thereunder and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; provided, however, Mortgagee must receive at least ten (10) days advance written notice in the event of a cancellation due to non-payment of any premium; and (vii) be satisfactory in form and substance to Mortgagee, and be approved by Mortgagee as to amounts, form, risk coverage, deductible, loss payees and insureds. Mortgagor shall have delivered to Mortgagee certificates of insurance evidencing the existence of such Policies, which certificate shall be satisfactory to Mortgagee in its sole but reasonable discretion. Unless such premiums are deposited in the Tax and Insurance Escrow Account, Mortgagor shall pay or cause Manager to pay the premiums for the Policies (the "Insurance Premiums") as they become due and payable. Not later than fifteen (15) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each Policy. Notwithstanding anything to the contrary herein, in the event that the Franchise Agreement or the Management Agreements, as applicable, requires (1)

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greater amounts of coverage for any insurance required hereunder, or (2) additional types of insurance coverage, then the Franchise Agreement or the Management Agreements, as applicable, insurance requirements shall prevail. In the event Mortgagor fails to provide, maintain, keep in force, or deliver and furnish to Mortgagee the Policies, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will reimburse Mortgagee for all premiums paid by Mortgagee, together with interest thereon from the date paid at the Default Rate, promptly upon demand by Mortgagee. Until such payment is made by Mortgagor, the amount of all such premiums, together with interest thereon, shall be secured by this Mortgage.

(e) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt written notice thereof to Mortgagee.

(i) In the case of a loss covered by Policies, Mortgagee may: (A) settle and adjust any claim with the prior consent of Mortgagor, not to be unreasonably withheld or (B) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, however, that, if no Event of Default shall have occurred and be continuing, Mortgagor may adjust losses aggregating not in excess of One Hundred Thousand and no/100 Dollars (\$100,000.00) if such adjustment is carried out in a competent and timely manner and provided in any case that Mortgagee shall be, and is hereby, authorized to collect and receipt for any such insurance proceeds. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, Mortgagee may settle and adjust any claim without the consent of Mortgagor. The reasonable expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt, shall be secured by this Mortgage and shall be reimbursed by Mortgagor to Mortgagee on demand.

(ii) In the event of any insured damage to or destruction of the Property or any part thereof (an "Insured Casualty"), the proceeds of insurance collected shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Property or the part thereof subject to the Insured Casualty, subject to the conditions and in the manner set forth below. In no case shall any such application reduce or postpone any payments otherwise required pursuant to the Note. Notwithstanding the foregoing, in the event of any Insured Casualty where: (A) the proceeds of insurance, plus any additional amounts contributed by Mortgagor, are sufficient to enable Mortgagor to fully restore the Property; (B) the term of, and proceeds derived from, Mortgagor's business interruption insurance (or other similar insurance) shall be sufficient to fully cover the period that the Property is undergoing restoration, or additional amounts contributed by Mortgagor; (C) Mortgagee determines that the restoration is reasonably capable of being completed (and can actually be completed), at least nine (9) months prior to the Maturity Date; (D) the Loan-To-Value Ratio upon completion of restoration is estimated, by an appraiser reasonably acceptable to Mortgagor, and at Mortgagor's expense, to be no greater than seventy-five percent (75%);

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(E) the Management Agreements or Franchise Agreement has not been terminated as a result of the Insured Casualty; (F) the restoration can be completed within nine (9) months from the date that the Insured Casualty occurred, or within such shorter time period as may be required by the Franchise Agreement or Management Agreements, or, in the event Mortgagor is restricted from accessing the Property by any Requirements of Law, such that commencement of restoration cannot occur immediately after the date of the Insured Casualty, such time frame for completion shall commence from the date Mortgagor is legally permitted access to the Property pursuant to any applicable Requirements of Law); (G) the restoration is permitted or required under the Management Agreements or Franchise Agreement, and (H) the Debt Service Coverage Ratio upon completion of the restoration is reasonably estimated by Mortgagee to be a minimum of 1.25:1.0, then, if no Event of Default shall have occurred and be continuing, the proceeds of insurance shall be applied to the cost of restoring, repairing, replacing or rebuilding the Property or the part thereof subject to the Insured Casualty, as provided for below; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding. NOI for purposes of this calculation shall be NOI for the twelve (12) calendar month period immediately preceding the casualty, unless the appraiser referenced in clause 4(f)(ii)(D) above estimates that NOI after the restoration will be more than ten percent (10%) less than NOI for such twelve (12) calendar month period, in which case the Debt Service Coverage Ratio shall be calculated using the appraiser's estimate of NOI.

(iii) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Property, Mortgagor hereby covenants to restore, repair, replace or rebuild the Property to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law and plans and specifications approved in advance by Mortgagee and otherwise in accordance with the requirements of the Franchise Agreement or Management Agreements, if any; provided, however, that Mortgagor shall pay all costs (and if required by Mortgagee, shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance required to be made available pursuant to the terms hereof.

(iv) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time, but in no event more frequently than once per month, upon Mortgagee being furnished with: (A) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding; (B) funds, or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding; and (C) such architect's certificates, waivers of lien for work previously performed or contemporaneously funded, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and

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performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work (which approval shall not be unreasonably withheld). Unless the prior written consent of Lender is obtained, which consent shall not be unreasonably withheld or delayed, no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds, and at all times the undisbursed balance of such proceeds remaining in Mortgagee's possession, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens and claims of lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be delivered to Mortgagor, provided such restoration was performed in accordance with the provisions of this Section and Mortgagor is not then in default of its obligations under the Loan Documents. If the conditions in the immediately preceding sentence have not been satisfied, Mortgagee shall apply such surplus proceeds to the payment of the Debt in any order in its sole discretion.

(f) Mortgagor shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Section. Notwithstanding the foregoing, Mortgagor may carry insurance not required under this Mortgage, provided any such insurance affecting the Property shall be for the mutual benefit of Mortgagor and Mortgagee, as their respective interests may appear, and shall be subject to all other provisions of this Section.

(g) Prior to/or contemporaneous with the execution of this Mortgage, Mortgagor shall provide Mortgagee with evidence that the insurance required hereunder is in full force and effect in accordance with the terms hereof, with all premiums due thereunder prepaid through the first twelve (12) months subsequent to the execution of this Mortgage or such shorter period as Mortgagee may require.

## 5. Payment of Taxes

Subject to the provisions of Section 6 hereof, Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied, assessed or imposed against the Property or any part thereof (collectively, the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied, assessed or imposed against the Property or any part thereof (collectively, the "Other Charges") as they become due and payable. Mortgagor will deliver to Mortgagee evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid, or are



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not then delinquent, no later than thirty (30) days following the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which may be or become a lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. Mortgagor shall furnish to Mortgagee or its designee receipts for the payment of the Taxes, Other Charges and charges for utility services prior to the date that such obligations shall become delinquent. Mortgagor shall be entitled to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount of any Taxes or Other Charges. Notwithstanding the preceding sentence, during the pendency of any such contest Mortgagor shall pay or cause to be paid all Taxes and Other Charges as and when due and payable, or otherwise in accordance with Section 32 hereof.

### **Tax and Insurance Escrow Fund**

Mortgagor shall pay to Mortgagee on the Closing Date an initial deposit to the Tax and Insurance Escrow Fund in an amount which, when added to the monthly amounts to be deposited as specified below, will be sufficient in Mortgagee's reasonable estimation, to satisfy the next due Taxes and Other Charges and the next due Insurance Premiums. Mortgagor shall thereafter pay to Mortgagee monthly on the Payment Due Date of each calendar month: (a) one-twelfth (1/12th) of an amount which would be sufficient to pay the Taxes and Other Charges payable, or estimated by Mortgagee to be payable, during the next ensuing twelve (12) months; and (b) one-twelfth (1/12th) of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts described in clauses (a) and (b) of Section 4 above, collectively, the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the monthly installments of principal and interest payable under the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Tax and Insurance Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Sections 4 and 5 hereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 4 and 5 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. If the Tax and Insurance Escrow Fund is not sufficient to pay the items set forth in Sections 4 and 5 above, Mortgagor shall promptly pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then comprising the Tax and Insurance Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Escrow Fund shall constitute additional security for the Debt. To the extent permitted by applicable law, the Tax and Insurance Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. The Tax and Insurance Escrow Fund shall be interest bearing, and any such interest shall be and become part of the Tax and Insurance Escrow Fund, for the benefit of Mortgagor.

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## 7. Annual Budget; Accounts

(a) No later than December 31 of each year, Mortgagor shall submit to Mortgagee, for Mortgagee's approval, a form of budget for the twelve (12) calendar months succeeding the term covered by the last approved budget. Mortgagee's approval of any proposed budget shall not be unreasonably withheld or delayed. If Mortgagee's approval or disapproval is not given prior to January 31, Mortgagor shall be deemed to be authorized to operate the Property in accordance with the most recently approved budget with each line item increased by five percent (5%).

(b) Mortgagee shall this day, or as soon hereafter as is practicable, establish and shall thereafter maintain the following escrow accounts at one or more federally insured institutions selected by Mortgagee (collectively, the "Accounts"), each of which shall be in Mortgagee's name and shall constitute additional security for the Loan:

(i) Replacement Reserve Account, being an interest bearing account, into which shall be deposited certain sums as set forth in the Replacement Reserve Agreement, from which Mortgagor may request withdrawal from time to time no more frequently than once in any calendar month to refurbish, repair or replace Equipment at the Property, all as more particularly set forth in the Replacement Reserve Agreement (the "Replacement Reserve Account"); and

(ii) Intentionally omitted

(iii) Tax and Insurance Escrow Account, being an interest bearing account, into which shall be deposited on the Closing Date an amount described in the first sentence of Section 6 above and thereafter monthly on the Payment Due Date of each calendar month, pursuant to the Budget, an amount sufficient to satisfy Mortgagor's obligations under Section 6 hereof (the "Tax and Insurance Escrow Account").

(c) Mortgagee shall have sole signatory authority with respect to any and all withdrawals from the Accounts. All such withdrawals shall be made solely in accordance with the Budget, and by this instrument Mortgagor does hereby irrevocably authorize and direct Mortgagee to make all such withdrawals on Mortgagor's behalf to satisfy Mortgagor's obligations hereunder.

## 8. Condemnation

(a) Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for such Condemnation and to make any compromise or settlement in connection with such proceeding, subject to the provisions of this Mortgage. Notwithstanding

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any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, this Mortgage and the other Loan Documents, and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided in the Note.

(b) If the Property shall be the subject of a Condemnation, in whole or in part, Mortgagor shall give prompt written notice thereof to Mortgagee.

(i) In the case of a Condemnation, Mortgagee may: (A) settle and adjust any claim with the prior written consent of Mortgagor, or (B) allow Mortgagor to agree with the condemning authority on the amount to be paid upon the Condemnation; provided, however, that, if no Event of Default shall have occurred and be continuing, Mortgagor may adjust losses aggregating not in excess of One Hundred Thousand and no/100 Dollars (\$100,000.00) if such adjustment is carried out in a competent and timely manner, and provided in any case that Mortgagee shall be, and is hereby, authorized to collect and receipt for any such Condemnation award or proceeds. Notwithstanding the foregoing, if an Event of Default shall have occurred and be continuing, Mortgagee may settle and adjust any claim without the consent of Mortgagor. The expenses incurred by Mortgagee in the adjustment and collection of a Condemnation award or proceeds shall become part of the Debt, shall be secured by this Mortgage and shall be reimbursed by Mortgagor to Mortgagee on demand.

(ii) In the event of any Condemnation affecting all or any portion of the Property, the award or proceeds collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to the cost of restoring, repairing, replacing or rebuilding the Property or the part thereof subject to the Condemnation subject to the conditions and in the manner set forth below. In no case shall any such application reduce or postpone any payments otherwise required pursuant to the Note. Notwithstanding the foregoing, in the event of any Condemnation where: (A) the Condemnation proceeds, plus any additional amounts contributed by Mortgagor, are sufficient to enable Mortgagor to fully restore the Property; (B) the term of, and proceeds derived from, Mortgagor's business interruption insurance (or other similar insurance) or additional amounts contributed by Mortgagor shall be sufficient to fully cover the period that the Property is undergoing restoration; (C) Mortgagee determines that the restoration is reasonably capable of being completed, at least nine (9) months prior to the Maturity Date; (D) the Loan-To-Value Ratio upon completion of restoration is estimated, by an appraiser reasonably acceptable to Mortgagee, and at Mortgagor's expense, to be no greater than seventy-five percent (75%); (E) the Franchise Agreement or Management Agreements have not been terminated as a result of the Condemnation; (F) the restoration can be completed within nine (9) months

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from the date that the Condemnation occurred, or within such shorter time period as may be required by the Management Agreements or Franchise Agreement; (G) the restoration is permitted or required under the Management Agreements or Franchise Agreement, and (H) the Debt Service Coverage Ratio upon completion of the restoration is reasonably estimated by Mortgagee to be a minimum of 1.25:1.0, then, if no Event of Default shall have occurred and be continuing, the Condemnation proceeds shall be applied to the cost of restoring, repairing, replacing or rebuilding the Property or the part thereof subject to the Condemnation, as provided for below; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding. NOI for purposes of this calculation shall be NOI for the twelve (12) calendar month period immediately preceding the casualty, unless the appraiser referenced in clause 8(b)(ii)(D) above estimates that NOI after the restoration will be more than ten percent (10%) less than NOI for such twelve (12) calendar month period, in which case the Debt Service Coverage Ratio shall be calculated using the appraiser's estimate of NOI.

(iii) In the event that a Condemnation award or proceeds, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Property, Mortgagor hereby covenants to restore, repair, replace or rebuild the Property to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law and plans and specifications approved in advance by Mortgagee; provided, however, that Mortgagor shall pay all costs (and if required by Mortgagee, shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net award or proceeds made available pursuant to the terms hereof.

(iv) In the event Mortgagor is entitled to reimbursement out of proceeds held by Mortgagee, such proceeds shall be disbursed from time to time, but in no event more frequently than once per month, upon Mortgagee being furnished with: (A) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding; (B) funds, or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the Condemnation award or proceeds to complete the proposed restoration, repair, replacement and rebuilding; and (C) such architect's certificates, waivers of lien for work previously performed or contemporaneously funded, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work (which approval shall not be unreasonably withheld). Unless the prior written consent of Lender is obtained, which consent shall not be unreasonably withheld or delayed, no payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than the Condemnation award or

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proceeds shall be disbursed prior to disbursement of such proceeds, and at all times the undisbursed balance of such proceeds remaining in Mortgagee's possession, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens and claims of lien. Any surplus which may remain out of a Condemnation award or proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be delivered to Mortgagor, provided such restoration was performed in accordance with the provisions of this Section, and Mortgagor is not then in default of its obligations under the Loan Documents.

## **9. Leases and Profits**

(a) In connection with the Loan, Mortgagor has absolutely and unconditionally assigned to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Profits, it being intended by Mortgagor that such assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Mortgagee. Mortgagor shall execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Mortgagee has granted to Mortgagor a revocable license to operate and manage the Property and to collect the Profits. Mortgagor shall hold the Profits, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon the occurrence of an Event of Default, the license granted to Mortgagor shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Profits, whether or not Mortgagee enters upon or takes control of the Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Profits. Any Profits collected after revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem appropriate.

(b) Mortgagor shall furnish Mortgagee with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions and shall be subject to the prior written approval of Mortgagee, except that any proposed Lease shall not be subject to Mortgagee's prior written consent if such proposed Lease: (1) (i) does not individually or in the aggregate materially alter the ratio of office/retail space to hotel space as presently utilized in the Property; (ii) is the result of an arms-length transaction; (iii) provides for rental rates comparable to existing market rates; and (iv) does not contain any terms which would have a Material Adverse Effect, or (2) is not a Major Lease. All Leases shall provide that they are subordinate to this

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Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor shall: (A) observe and perform, in all material respects, all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to materially impair the value of the Leases as security for the Debt; (B) promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive thereunder; (C) to the extent commercially reasonable, enforce all of the terms, covenants and conditions contained in the Leases on the part of the lessee thereunder to be observed or performed, short of termination thereof; (D) not collect any Profits more than one (1) month in advance (except for security deposits held in accordance with Section 9(c) below); (E) not execute any other assignment of the lessor's interest in the Leases or Profits without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld; (F) other than de minimis non-financial amendments, not alter, modify or change the terms of any Major Lease without the prior written consent of Mortgagee, or, except if a lessee is in default, cancel or terminate any Major Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; provided, however, that any Major Lease may be canceled if at the time of the cancellation thereof a new Major Lease is entered into with a bona fide, independent third party on substantially the same terms or more favorable terms as the canceled Major Lease; (G) not alter, modify or change the terms of any guaranty of any Major Lease or cancel or terminate such guaranty without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld; (H) not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld; and (I) execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Property as Mortgagee shall from time to time request.

(c) All security deposits of lessees, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor into a separate "Security Deposits Account." Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Mortgagee subject to the terms of the Leases.

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## 10. Representations Concerning Loan and Anti-Terrorism Laws

Mortgagor represents, warrants and covenants as follows:

(a) Mortgagor is duly organized and validly existing in good standing under the applicable laws of the state of its creation as a limited liability company, and Mortgagor is qualified to do business in and is in good standing in its state of formation and in the state in which the Property is located, with full power, right, authority and legal capacity to enter into this Mortgage, the Loan and the Loan Documents and to operate the Property as contemplated hereunder. Mortgagor is a valid limited liability company for federal and state income tax purposes. If the issuance of any interest in Mortgagor is subject to any so-called "Blue Sky Laws" and/or any federal securities laws and regulations, each such issuance has been in compliance with all such laws and regulations to which it is subject. Oxford HPC Investment Company, L.L.C., a Delaware limited liability company, is the sole member of Mortgagor (the "Sole Member"). Sole Member is duly organized and validly existing in good standing under the applicable laws of the state of its creation as a limited liability company, and Sole Member is in good standing in its state of formation. If the issuance of any interest in Sole Member is subject to any so-called "Blue Sky Laws" and/or any federal securities laws and regulations, each such issuance has been in compliance with all such laws and regulations to which it is subject. Sole Member is a valid limited liability company for federal and state income tax purposes.

(b) The execution, delivery and performance of the Loan Documents executed or delivered by Mortgagor and the consummation of the transactions contemplated thereby: (i) have been duly authorized by all requisite organizational actions; (ii) have been approved or consented to by all of their respective constituent entities whose approval or consent is required to be obtained; (iii) do not require the approval or consent of any governmental authority having jurisdiction over any of Mortgagor or the Property; (iv) do not and will not constitute a violation of, or default under, the governing instruments of Mortgagor or any applicable requirement of a governmental authority; and (v) will not be in contravention of any court or administrative order or ruling applicable to Mortgagor or the Property, or any mortgage, indenture, agreement, commitment or instrument to which Mortgagor is a party or by which it or its assets are bound, nor create or cause to be created any mortgage, lien, encumbrance, or charge against the assets of Mortgagor other than those permitted by the Loan Documents.

(c) There are no actions, suits or proceedings pending, or, to the best knowledge of Mortgagor, threatened, nor any pending or, to the best knowledge of Mortgagor, threatened labor disputes, against or affecting Mortgagor or the Property, or any other collateral covered by the Loan Documents, or involving the validity or enforceability of the Loan Documents or the priority of the liens created or to be created thereby, at law or in equity, or before or by any governmental authority that: (1) have not been disclosed to Mortgagee by Mortgagor in writing and (2) have a Material Adverse Effect or are not adequately covered by insurance, each as determined by Mortgagee in its sole and absolute discretion. Mortgagor has complied with all requirements of ERISA.

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(d) This Mortgage and the other Loan Documents are the legal, valid and binding obligations of Mortgagor, and are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage or the other Loan Documents unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(e) All certifications, permits, licenses and approvals required for the legal use, occupancy and operation of the Property as a hotel, including, without limitation, any applicable liquor license, certificate of completion and occupancy permit, have been obtained and are in full force and effect. Except as disclosed in the structural and/or engineering report prepared for Mortgagee in connection with the Loan, the Property is free of material damage and is in good repair, and there is no proceeding pending or, to the best of Mortgagor's knowledge, threatened for the total or partial condemnation of, or affecting, the Property.

(f) Except as disclosed in the survey prepared for Mortgagee in connection with the Loan and subject to the Title Exceptions, all of the Improvements which were considered in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Property. The Property is contiguous to and has access to a physically and legally open all-weather public street, has all necessary permits and approvals for ingress and egress (to the extent required and/or applicable pursuant to any Requirements of Law), is serviced by public water, sewer systems and utilities and is on one or more separate tax parcels, all of which are separate and apart from any other property owned by Mortgagor or any other person. The Property has all necessary access by public roads or easements which in each case are not terminable and are not subordinate to any mortgage other than this Mortgage. The Property and all of the Improvements comply with all laws, ordinances or regulations pertaining to the use or operation of the Property, including, without limitation, applicable zoning, subdivision and land use, fire, health and safety laws, regulations and ordinances.

(g) The Property is not subject to any leases, licenses or other use or occupancy agreements other than the Leases, the Management Agreements and Franchise Agreement disclosed and delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Property or right to occupy any portion thereof except under and pursuant to the provisions of the Leases or transient hotel guests in the ordinary course of Mortgagor's business.

(h) The financial statements of Mortgagor heretofore furnished to Mortgagee and certified by a senior financial officer as true, correct and complete as of the end of and for such period are, as of the date specified therein, complete and correct in all material respects and fairly present the financial condition of Mortgagor and are, with respect to the general



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partner, managing member, sole member, or manager, as appropriate, of Mortgagor, prepared in accordance with GAAP and the Uniform System of Accounts for hotel and motel properties as approved by the American Hotel and Motel Association (as in effect from time to time, the "Uniform System of Accounts") applied on a consistent basis. Mortgagor does not on the date hereof have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments which in each case are known to Mortgagor and which, in Mortgagor's opinion, are reasonably likely to result in a Material Adverse Effect, except as referred to or reflected or provided for in the financial statements heretofore furnished to Mortgagee or as otherwise disclosed to Mortgagee herein. Since the last date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Mortgagor from that set forth in such financial statements as of the dates thereof.

(i) The Franchise Agreement is in full force and effect and, to Mortgagor's best knowledge, there is no default, breach or violation existing thereunder by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party thereunder.

(j) The Management Agreements are in full force and effect and, to Mortgagor's best knowledge, there is no default, breach or violation existing thereunder by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party thereunder.

(k) Neither the execution and delivery of the Loan Documents, Mortgagor's performance thereunder, the recordation of this Mortgage, nor the exercise of any remedies by Mortgagee, will adversely affect (i) in any material respect, Mortgagor's rights under the Franchise Agreement, the Management Agreements, the Leases (including the Operating Lease) or the Operating Agreements or (ii) the licenses, registrations, permits, certificates, authorizations and approvals necessary for the operation of the Property as a hotel.

(l) The Leases are in full force and effect and, to Mortgagor's best knowledge, there is no default, breach or violation existing thereunder by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party thereunder.

(m) To Mortgagor's best knowledge, since the date of the last inspection of the Property by Mortgagee: (i) no portion of the Property has been damaged and not repaired to Mortgagee's satisfaction or has been taken in condemnation or other similar proceedings; and (ii) no change has occurred in the structure or physical condition of the Property other than customary wear and tear.

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(n) To Mortgagor's best knowledge, since the date of the information and documentation relating to the Property furnished to Mortgagee, no material adverse change in the Property has occurred.

(o) No default has occurred and is continuing in the performance of any obligation of Mortgagor or any affiliate of Mortgagor which would be deemed an Event of Default under the Loan Documents if they were in effect, or any instruments evidencing, securing or guaranteeing any other loan.

(p) There exists no fact, event or disclosure in connection with the Loan that reasonably could be expected to cause the Loan to become delinquent or otherwise have a Material Adverse Effect.

(q) Except as previously disclosed to Mortgagee in writing, no notice of violation of any municipal ordinances has been filed against the Property by any municipal department.

(r) Except as disclosed in the structural and/or engineering report prepared for Mortgagee in connection with the Loan, Mortgagor has no knowledge of any latent or patent defects in the roof, foundations, sprinkler mains, garage, structural, mechanical and HVAC systems and masonry wall in any of the Improvements.

(s) To Mortgagor's best knowledge, the survey of the Property delivered to Mortgagee in connection with this Mortgage has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is situated and does not fail to reflect any material matter affecting the Property or the title thereto.

(t) Mortgagor is the owner of all of the furniture, fixtures and equipment located on or used in connection with the Property, except for certain operating leases or other subordinate financing, copies of which have been previously delivered to Mortgagee, of equipment used in the ordinary course of business in the operation of hotels and which, in the aggregate, have a payment stream that does not exceed \$30,000 per year, and, in the aggregate over the term of all such leases or subordinate financing, have a payment stream that does not exceed \$120,000 (the "FF&E Financing").

(u) No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity.

(v) Mortgagor, and to the best of Mortgagor's knowledge, after having made diligent inquiry, (a) each Person owning an interest of ten percent (10%) or more in Mortgagor and in Mortgagor's general partner, managing member, sole member or manager, as appropriate, other than publicly-traded companies and pension plans, (b) each Guarantor, (c) Asset Manager, (d) Property Manager, and (e) each commercial tenant at the Property: (i) is not currently identified on the OFAC List, and (ii) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other

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prohibition of United States law, regulation, or Executive Order of the President of the United States. Mortgagor has implemented procedures, and will consistently apply those procedures throughout the term of the Loan, to ensure the foregoing representations and warranties remain true and correct during the term of the Loan.

(w) Mortgagor shall comply with all Requirements of Law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Upon Mortgagee's request from time to time during the term of the Loan, Mortgagor shall certify in writing to Mortgagee that Mortgagor's representations, warranties and obligations under subsection (v) above and this subsection (w) remain true and correct and have not been breached. Mortgagor shall immediately notify Mortgagee in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Mortgagor has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Mortgagor shall comply with all Requirements of Law and directives of Governmental Authorities and, at Mortgagee's request, provide to Mortgagee copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. Mortgagor shall also reimburse Mortgagee any expense incurred by Mortgagee in evaluating the effect of such an event on the Loan and Mortgagee's interest in the collateral for the Loan, in obtaining any necessary license from Governmental Authorities as may be necessary for Mortgagee to enforce its rights under the Loan Documents, and in complying with all Requirements of Law applicable to Mortgagee as the result of the existence of such an event and for any penalties or fines imposed upon Mortgagee as a result thereof.

## 11. Single Purpose Entity; Authorization

Mortgagor represents and warrants, and covenants for so long as any obligations secured by this Mortgage remain outstanding, as follows:

(a) Mortgagor does not and will not own any asset or property other than: (i) the Property; and (ii) personal property necessary for the ownership or operation of the Property.

(b) Mortgagor does not and will not engage in any business other than the ownership, management and operation of the Property and activities incidental thereto.

(c) Mortgagor will not enter into any contract or agreement with Guarantor or an affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length third-party basis.

(d) Mortgagor has not incurred and will not incur any indebtedness, including any leases or other financing for Equipment, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation and including any debt owing to a partner or member in, or an affiliate of, Mortgagor), other than the Debt, FF&E Financing, and trade and operational debt (not including any FF&E Financing), provided such trade and operational debt

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is incurred in the ordinary course of business with trade creditors and in amounts as are customary and reasonable under the circumstances. Except with Mortgagee's prior written approval in each instance, no indebtedness other than the Debt is or shall be secured by the Property. Mortgagee's approval shall be granted or withheld at Mortgagee's sole discretion.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any constituent party, Guarantor or any affiliate of Mortgagor, or any constituent of Guarantor), except in de minimis amounts in the ordinary course of business and of the character of trade or operational expenses.

(f) Mortgagor has done or caused to be done, and will do or cause to be done, all things necessary to preserve its existence, and Mortgagor will not, nor will Mortgagor permit any party to amend, modify or otherwise change the partnership certificate, partnership agreement, operating agreement, articles of organization or other organizational documents, as the case may be, of Mortgagor or Guarantor in a manner which would adversely affect Mortgagor's existence as a single purpose entity.

(g) Mortgagor will maintain books and records and bank accounts separate from those of its affiliates and any constituent party, and Mortgagor and Guarantor each will file or cause to be filed separate tax returns, provided, however, that for so long as Mortgagor is a single-member limited liability company, Mortgagor shall be permitted to file consolidated tax returns with its sole member. Mortgagor shall not change the principal place of its business without immediately notifying Mortgagee of such change, nor change the jurisdiction of its formation without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

(h) Mortgagor is and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or constituent party of Mortgagor or any affiliate or constituent party of Guarantor), and will use and conduct its business in its own name.

(i) Neither Mortgagor nor any constituent party will cause or seek the dissolution or winding up, in whole or in part, of Mortgagor.

(j) Mortgagor will not commingle its funds and other assets with those of, or pledge its assets for the benefit of, any affiliate or constituent party of Mortgagor, any affiliate or constituent party of Guarantor, or any other person.

(k) Mortgagor does not or will not hold itself out to be responsible for the debts or obligations of any other person and does not or will not pay another person's liabilities out of its own funds.

(l) Intentionally Omitted.

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## 12. Maintenance of Property

Mortgagor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal abandonment in the ordinary course of business or normal replacement of the Equipment) without the prior written consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Property, or the use thereof, subject to Mortgagor's right to contest the same as provided in this Mortgage. Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated, or which may be affected by any proceeding of the character referred to in Section 8 hereof, and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Except as expressly permitted in writing by Mortgagee, Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the prior written consent of Mortgagee. Mortgagor shall not without the prior written consent of Mortgagee: (a) change the use of the Land as currently configured and utilized; (b) permit or suffer to occur any waste on or to the Property or to any portion thereof; or (c) take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of ownership. Mortgagor shall not enter into any license, easement, covenant or other agreement affecting the Property without the prior written consent of Mortgagee.

## 13. Transfer or Encumbrance of the Property

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor and its general partner, managing member, sole member, limited partners, members and beneficial owners, as applicable, in owning and operating properties such as the Property in agreeing to make the loan secured by this Mortgage, and that Mortgagee will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property. Mortgagor shall not, without the prior written consent of Mortgagee, directly or indirectly sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof or any interest therein, or permit the Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section shall be deemed to include: (i) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be

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paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Profits; (iii) if Mortgagor, Guarantor, or any general partner of Mortgagor is a corporation, the merger, consolidation or voluntary or involuntary sale, exchange, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly (at any tier) controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock, in one or a series of transactions, in any such case the result of which is that an aggregate of more than forty-nine percent (49%) of such corporation's stock (or such controlling corporation's stock) shall be vested, legally or beneficially, in a party or parties who are not now stockholders; (iv) if Mortgagor, Guarantor or any general partner or managing member (or if no managing member, any member), of Mortgagor is a limited or general partnership or joint venture, (A) any merger or consolidation of such entity or of any entity directly or indirectly (at any tier) controlling such entity, (B) the change, removal or resignation of a general partner, managing partner or joint venturer, the admission of a new general partner, managing partner or joint venturer, or the direct or indirect (at any tier) transfer or pledge of the legal or beneficial rights to the partnership interests of any general partner, managing partner or joint venturer or any profits or proceeds related thereto, or (C) the voluntary or involuntary merger, consolidation, sale, exchange, conveyance or direct or indirect (at any tier) transfer of legal or beneficial rights to the profits or other partnership interests in such partnership or joint venture, or the creation or issuance of new partnership interests, in one or a series of transactions, in any such case the result of which is that an aggregate of more than forty-nine percent (49%) of such entity's partnership or venturer interests shall be vested, legally or beneficially, in a party or parties who are not now partners or venturers; (v) if Mortgagor, Guarantor or any general partner or member of Mortgagor or Guarantor is a limited liability company, (A) any merger or consolidation of such entity or of any entity directly or indirectly (at any tier) controlling such entity, (B) the change, removal or resignation of a managing member or of a non-member manager (or if no managing member or non-member manager, any member), or the direct or indirect (at any tier) transfer of the legal or beneficial ownership of membership interests or "units" of a managing member or of a non-member manager (or if no managing member or non-member manager, any member) or any profits or proceeds relating to such membership interests or "units", or (C) the voluntary or involuntary sale, exchange, conveyance or direct or indirect (at any tier) transfer of membership interests or "units" in such limited liability company, or the creation or issuance of new membership interests or "units" in one or a series of transactions, in any such case the result of which is that an aggregate of more than forty-nine percent (49%) of such company's membership interests or "units" shall be vested, legally or beneficially, in a party or parties who are not now members; and (vi) the removal, resignation or substitution of the Sole Member or the merger, consolidation or voluntary or involuntary sale, exchange, conveyance or direct or indirect (at any tier) transfer of the controlling interest in the Sole Member's stock, partnership interests or membership interests, as applicable, to parties who are not now currently holders of such ownership interests.

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(c) No sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property, or of any interest therein, shall be permitted during the term of the Loan without Mortgagee's prior written approval. Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property without Mortgagee's written consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property shall not be deemed to be a waiver of Mortgagee's right to require such consent in the future. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property made in contravention of this Section shall be null and void and of no force or effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all expenses (including, without limitation, Mortgagee's out-of-pocket reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval or disapproval, and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

#### 14. Certificates: Affidavits

(a) Within ten (10) days after request by Mortgagee, Mortgagor shall furnish Mortgagee with a statement, duly acknowledged and certified, setting forth: (i) the amount of the original principal amount of the Note; (ii) the then outstanding principal balance of the Note; (iii) the rate of interest of the Note; (iv) the date on which installments of interest and/or principal were last paid; (v) any offsets or defenses to the payment of the Debt; and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations of Mortgagor, which have not been modified or if modified, giving particulars of such modification.

(b) Within ten (10) days after written request by Mortgagee, Mortgagor shall furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each tenant under a Lease in form and substance satisfactory to Mortgagee; provided, however, that Mortgagor shall not be required to deliver such certificates more frequently than once in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale or transfer) of the Loan by Mortgagee.

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## 15. Changes in the Laws Regarding Taxation

If any law is enacted, adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee or its counsel determines that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

## 16. No Credits on Account of the Debt

Mortgagor will not claim, demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

## 17. Documentary Stamps

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or shall impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

## 18. Controlling Agreement

It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt (or, if the Note and all other Debt have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents,



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so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

## **19. Books and Records**

Mortgagor will maintain full and accurate books of accounts and other records reflecting the operations of the Property. Mortgagor will furnish, or cause to be furnished to Mortgagee, within thirty (30) days of the end of each calendar month, the following items, each certified by a senior financial officer of Mortgagor as true, correct and complete as of the end of and for such period (subject to normal year-end adjustments), and as having been prepared in accordance with the Uniform System of Accounts and generally accepted accounting principles, consistently applied: (a) to the extent requested by Mortgagee, a written occupancy statement dated as of the last day of the most recently ended calendar month identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; (b) monthly and trailing twelve (12) month to date operating statements detailing the total revenues received and total expenses incurred in connection with the ownership and operation of the Property, including a comparison of the budgeted income and expenses and the actual income and expenses for such month and the year to date (which operating information shall include the Improvements); and (c) a written statement dated as of the last day of the most recently ended month showing the percentage of hotel or motel rooms rented and occupied during such month and the average daily room rate charged during such month to the extent such information is not included in the monthly operating statements. Mortgagor will provide a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts in the aggregate for revenues and expenses for such periods. In the event an error in excess of ten percent (10%) is determined, an annual review of Mortgagor may be ordered by Mortgagee by an independent third party selected by Mortgagee, the cost of which shall be paid by Mortgagor. Mortgagor shall furnish, within ninety (90) days following the end of each calendar year, a statement of the financial affairs and condition of the Property, including a statement of profit and loss and a balance sheet for the Property (and Mortgagor) for the immediately preceding fiscal year, prepared by and certified by a senior financial officer of Mortgagor. Mortgagor shall deliver to Mortgagee on or before December 31 of any calendar year a management plan for the Property for the next succeeding calendar year in such detail as Mortgagee may reasonably request. Mortgagor shall promptly after receipt deliver to Mortgagee copies of all quality inspection reports or similar reports or inspection results that are delivered to it by the Franchisor or Manager. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial

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data as Mortgagee or its agents shall reasonably request with respect to Mortgagor and the ownership, maintenance, use and operation (and, if applicable, conversion and construction) of the Property. All information required to be furnished to Mortgagee pursuant to this Section shall be on the form provided by Mortgagee (which form shall accompany Mortgagee's request).

## 20. Performance of Other Agreements

(a) Mortgagor shall observe and perform, in all material respects, each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or instrument affecting or pertaining to the Property, including, without limitation, the Operating Lease, the Antenna Site Management Agreement between Foresite Management, Inc. ("Foresite") and Mortgagor dated as of January 12, 2000, and the Antenna Site License Agreement between Foresite and Mortgagor dated as of January 12, 2000 (collectively, the "Operating Agreements"). Upon written request by Mortgagee, Mortgagor shall deliver to Mortgagee estoppel certificates from each party to the Operating Agreements in form and substance reasonably satisfactory to Mortgagee; provided, however, that Mortgagor shall not be required to deliver such certificates more frequently than once in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale or transfer) of the Loan by Mortgagee.

(b) Mortgagor will not surrender its interests under the Operating Agreements or terminate, cancel, modify, change, supplement, alter or amend the Operating Agreements orally or in writing without the express written consent of Mortgagee, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Operating Agreements without the prior written consent thereof of Mortgagee shall be void and of no force or effect, provided, however, that Mortgagee's prior written consent shall not be required for de minimis non-financial amendments, modifications, supplements that have no Material Adverse Effect, and provided further that Mortgagor immediately provides copies of such amendments, modifications or supplements to Mortgagee. No release or forbearance of any of Mortgagor's obligations under the Operating Agreements, pursuant to the Operating Agreements or otherwise, shall release Mortgagor from any of its obligations under this Mortgage, including its obligations with respect to the payment of all sums as provided for in the Operating Agreements and the performance of all of the terms, conditions and agreements contained in the Operating Agreements to be kept, performed and complied with by the Mortgagor therein.

(c) Mortgagor shall observe and perform, in all material respects, each and every term to be observed or performed by Mortgagor pursuant to the terms of the Operating Agreements and shall:

(i) diligently proceed to cure any default and satisfy any demand made upon it pursuant to the Operating Agreements;

(ii) promptly notify Mortgagee in writing of any default notice received by Mortgagor under the Operating Agreements and provide Mortgagee with copies of any notices delivered in connection therewith;

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(iii) to the extent commercially reasonable, promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the other party under the Operating Agreements; and

(iv) grant Mortgagee the right, but Mortgagee shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Operating Agreements on the part of Mortgagor to be performed or observed to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under said Operating Agreements shall be kept free from default.

## 21. Further Assurances

(a) Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section; provided, however, that so long as Mortgagor is in compliance with the terms and conditions of this Mortgage, Mortgagee will first seek Mortgagor's assistance in exercising and perfecting such rights and remedies.

(b) Mortgagor acknowledges that Mortgagee intends to sell the loan evidenced by the Note and the Loan Documents to a party who may pool the Loan with a number of other loans and to have the holder of such loans grant participations therein or issue one or more classes of Mortgage-Backed, Pass-Through Certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). The Securities may be rated by one or more national rating agencies. Mortgagor acknowledges and agrees that Mortgagee may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue Mortgage-Backed, Pass-Through Certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private

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placement. In this regard, Mortgagor agrees to make available to Mortgagee all information concerning its business and operations which Mortgagee reasonably requests. Mortgagee may share such information with the investment banking firms, rating agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan or the Securities. Mortgagee may forward to each purchaser, transferee, assignee, servicer, participant or investor in such securities or any credit rating agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Mortgagee now has or may hereafter acquire relating to Mortgagor and the Property, whether furnished by Mortgagor or otherwise, as Mortgagee determines necessary or desirable consistent with full disclosure for purposes of marketing and underwriting the Loan. Mortgagor shall furnish and hereby consents to Mortgagee furnishing to any Investor or any prospective Investor any and all information concerning Mortgagor and the Property as may be reasonably requested by Mortgagee, any Investor or any prospective Investor in connection with any sale, transfer or participation interest. It is understood that the information provided by Mortgagor to Mortgagee may ultimately be incorporated into the offering documents for the Securities and thus such information may be disclosed to any Investor and any prospective Investor. Mortgagee and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor. Mortgagee, at its sole option, may also elect to split the Loan into two or more loans, each secured by liens on the Property, and sell, assign, pledge or otherwise hypothecate one or more of such loans to third parties. Mortgagor shall cooperate in all such efforts by executing and delivering all such documents, certificates, instruments and other things to evidence or confirm Mortgagor's obligations hereunder, and in no such event shall the Debt or Mortgagor's obligations hereunder be increased as a result thereof. Upon any transfer or proposed transfer contemplated above and by the Loan Documents, at Mortgagee's request, Mortgagor shall provide a reasonably customary estoppel certificate to the Investor or any prospective Investor. Mortgagee shall use reasonable efforts not to unnecessarily disclose Mortgagor's confidential information and shall endeavor to obtain from any such Investor an agreement to keep such information strictly confidential to itself and its advisors.

## 22. Recording of Mortgage

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien thereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest thereof upon, and the interest of Mortgagee in, the Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental thereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, impositions, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental thereto, any security instrument with respect to the Property or any instrument of further

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assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

## 23. Reporting Requirements

Mortgagor agrees to give prompt written notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or any partner thereof, or the insolvency or bankruptcy filing of Guarantor.

## 24. Events of Default

The term "Event of Default" as used herein shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- (a) if any regularly scheduled monthly payment of principal or interest due on the Debt, or if any required deposit into any of the Accounts, is not paid on or before the Payment Due Date on which such payment is due, or if the entire Debt is not paid on or before the Maturity Date;
- (b) if any other monetary sum (other than as specified in Section 24(a) and Section 24(c)) is not paid prior to the fifth (5th) day following written notice from Mortgagee to Mortgagor that such sum is due;
- (c) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when due and payable;
- (d) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;
- (e) if Mortgagor transfers or encumbers any portion of the Property in a manner inconsistent with the terms of this Mortgage;
- (f) if any representation or warranty of Mortgagor, or of Guarantor, made herein, in any Loan Document, any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made, and such representation or warranty has not been rendered accurate on a current basis within thirty (30) days after Mortgagor or any Guarantor (as the case may be) becomes aware of the applicable defect, provided that Mortgagee has not been materially damaged prior to such cure;
- (g) if Mortgagor or Guarantor shall make an assignment for the benefit of creditors, or if Mortgagor shall generally not be paying its debts as they become due;

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- (h) if a receiver, liquidator or trustee of Mortgagor or of Guarantor shall be appointed, or if Mortgagor or Guarantor shall be adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of Guarantor shall be instituted; provided, however, that such appointment, adjudication, petition or proceeding, if involuntary and not consented to by Mortgagor or Guarantor, shall constitute an Event of Default only if not being discharged, stayed or dismissed within ninety (90) days;
- (i) if Mortgagor shall be in default under any other mortgage or security agreement beyond any applicable cure period thereunder, covering any part of the Property, whether it be superior or junior in lien to this Mortgage;
- (j) subject to Mortgagor's right to contest as provided herein, if the Property becomes subject to any mechanic's, materialman's, water, sewer, vault or other lien or encumbrance except a lien or encumbrance for local real estate taxes and assessments not then due and payable;
- (k) if Mortgagor fails to cure reasonably promptly, after notice thereof from any source, any violations of applicable laws, ordinances or regulations affecting the Property or pertaining to its use or operation, or, in the event that such violation of law is not reasonably susceptible of prompt cure, if Mortgagor fails to promptly commence to cure such violation or thereafter fails to diligently pursue such cure to completion, except to the extent such violation of law is being adequately remediated to Lender's satisfaction or is being challenged or contested in accordance with the provisions of the Loan Documents;
- (l) except as permitted in this Mortgage, the actual alteration, improvement, demolition or removal of any of the Improvements without the prior written consent of Mortgagee;
- (m) if there shall occur any damage to the Property in any manner which is not covered by insurance (subject to permitted deductibles) solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;
- (n) if without Mortgagee's prior written consent: (i) the manager under any Management Agreement (or any succeeding management agreement) resigns or is removed and is not replaced with a manager approved in writing by Mortgagee within thirty (30) days; or (ii) there is any material change in or termination of any Management Agreement (or any succeeding management agreement);
- (o) if without Mortgagee's prior written consent, there is a material change in or termination of the Franchise Agreement;

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(p) if a default by Mortgagor has occurred and continues beyond any applicable cure period under the Management Agreements or if any event occurs giving any Manager the right to cancel or terminate any Management Agreement;

(q) if a default by Mortgagor has occurred and continues beyond any applicable cure period under the Franchise Agreement or if any event occurs giving Franchisor the right to cancel or terminate the Franchise Agreement;

(r) if Mortgagor terminates or cancels any Management Agreement or Franchise Agreement or operates the Property under the name of any hotel chain or system other than Hawthorn Suites, except that upon the prior written consent of Mortgagee (which consent may be withheld and conditioned in the sole discretion of Mortgagee), Mortgagor may replace Franchisor with a franchisor who is similar to Franchisor, being nationally recognized and established, of high-quality, and a franchisor of limited-service, extended stay hotels;

(s) if Mortgagor or Guarantor shall be in default beyond any applicable notice and cure period under any term, covenant, or condition of this Mortgage or any of the other Loan Documents;

(t) if Mortgagor ceases to operate a hotel on the Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any renovations to the Property or restoration of the Property after casualty or condemnation or similar force majeure event); or

(u) if for more than thirty (30) days after receipt of written notice from Mortgagee, Mortgagor shall continue to be in default under any term, covenant, or condition of this Mortgage, the Lease Assignment, the Environmental Agreement or any of the other Loan Documents other than as specified in any of subsections of this Section; provided, however, that if the cure of any such default cannot reasonably be effected within such thirty (30) day period and Mortgagor shall have promptly and diligently commenced to cure such default within such thirty (30) day period, then the period to cure shall be deemed extended for up to an additional sixty (60) days (for a total of ninety (90) days from Mortgagee's default notice) so long as Mortgagor diligently and continuously proceeds to cure such default to Mortgagee's satisfaction.

## **25. Late Payment Charge; Servicing Fees**

If any portion of the Debt is not paid on or before the Payment Due Date on which such payment is due (other than at maturity or earlier acceleration), Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of: (i) the maximum amount permitted by applicable law, and (ii) five percent (5%) of such overdue portion of the Debt, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such additional amount shall be secured by this Mortgage and the other Loan Documents.

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## 26. Right to Cure Defaults

Upon the occurrence and during the continuance of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, take such action as Mortgagee may deem necessary to protect its security for the Loan. Mortgagee is authorized to enter upon the Property for such purposes or to appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including Mortgagee's attorneys' fees to the extent permitted by law), with interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

## 27. Remedies

(a) Subject to the provisions of Section 42 hereof, and upon the occurrence of any Event of Default, Mortgagee may take such action without any obligation to do so and notice or demand, except for any notice which may not be waived pursuant to applicable law or which is expressly provided for herein, and without releasing Mortgagor from any obligation hereunder, as Mortgagee deems advisable to protect and enforce its rights against Mortgagor and in and to the Property including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute judicial proceedings or nonjudicial proceedings, by notice and advertisement to the extent required by law, for the complete foreclosure of this Mortgage in which case the Property or any interest therein may be sold for cash, upon credit or otherwise in one or more parcels or in several interests or portions and in any order or manner;
- (iii) sell for cash, upon credit or otherwise the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;



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(v) recover judgment on the Note (in accordance with the terms thereof) either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(vi) apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, Guarantor or of any person, firm or other entity liable for the payment of the Debt;

(vii) subject to applicable law, revoke the license granted to Mortgagor to collect the Profits and other sums due under the Leases and enforce Mortgagee's interest in the Leases and Profits and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may to the maximum extent permitted, or not restricted, under applicable law: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Profits, earnings, revenues, and other income of the Property and every part thereof; and (E) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all expenses (including Mortgagee's reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(viii) require Mortgagor to pay monthly in advance to Mortgagee or any receiver appointed to collect the Profits, the fair and reasonable rental value for the use and occupancy of any portion of the Property occupied by Mortgagor and require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, evict Mortgagor by summary proceedings or otherwise;

(ix) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code, including the right to establish a lock box for all Profits and other receivables of Mortgagor relating to the Property; and

(x) exercise any and all rights afforded to Mortgagee under the Manager Subordination Agreements, including, without limitation, the right, to cause Manager to pay any and all sums due and owing to Mortgagor directly to Mortgagee.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

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(b) The proceeds of any sale made under or by virtue of this Section, together with any other sums which then may be held by Mortgagee under this Mortgage or the other Loan Documents, whether under the provisions of this Section or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) To the extent permitted under applicable law, Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which such sale shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, to act in its name and stead (such power of attorney being coupled with an interest, and irrevocable), to make all necessary conveyances, assignments, transfers and deliveries of the Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

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(g) To the extent permitted under applicable law, Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or the other Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

(j) Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations under any of the Loan Documents.

## **28. Right of Entry**

Mortgagee and its agents shall have the right to enter and inspect the Property during normal business hours upon reasonable notice in a manner which minimizes disruption and inconvenience to tenants and hotel guests, and if requested by Mortgagee, Mortgagor shall provide such notice as may be required pursuant to Mortgagor's right of entry and/or inspection set forth in any applicable leases or contracts.

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## 29. Security Agreement

This Mortgage is a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor has granted and thereby grants to Mortgagee, as security for the Debt, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (such portion of the Property so subject to the Uniform Commercial Code being called in this Section the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time reasonably consider necessary to create, perfect or preserve Mortgagee's security interest therein granted. This Mortgage shall also be effective as a financing statement covering any other property and may be filed in any other appropriate filing or recording office. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. All or part of the Property are or are to become fixtures. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at the Land. Mortgagor shall pay to Mortgagee on demand any and all expenses, including Mortgagee's reasonable attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

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## 30. Actions and Proceedings

After the occurrence and during the continuance of an Event of Default, Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

## 31. Waiver of Setoff and Counterclaim

All amounts due under this Mortgage, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a counterclaim (other than a compulsory counterclaim) in any action or proceeding brought against it by Mortgagee, or arising out of or in any way connected with this Mortgage, the Note, any of the other Loan Documents, or the Debt.

## 32. Contest of Certain Claims

Notwithstanding the provisions of Sections 5 and 24(c) and (j) hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or a mechanic's or materialman's lien asserted against the Property if, and so long as: (a) Mortgagor shall have notified Mortgagee of such nonpayment and the reasons therefor within five (5) business days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest such Taxes, Other Charges or lien by appropriate legal proceedings which shall operate to prevent the enforcement or collection thereof and the sale of the Property or any part thereof, in satisfaction thereof; (c) if such contest involves an amount in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500), Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety reasonably satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof, provided, however, that if Mortgagor contests any Taxes not yet due, then the requirement to furnish a cash deposit shall be reduced by the amount of funds in the Tax and Insurance Escrow Account then held by Mortgagee for the payment of such Taxes in Mortgagee's reasonable estimation (which estimation shall not include funds then held for the purpose of paying Insurance Premiums and Other Charges); (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; and (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claims does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Property. Notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to

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be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Mortgagee, the entitlement of such claimant is established.

### 33. Recovery of Sums Required to Be Paid

Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as they become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

### 34. Marshaling and Other Matters

Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force, and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

### 35. Hazardous Substances

Mortgagor hereby represents and warrants to Mortgagee that, to the best of Mortgagor's knowledge, except as set forth in the Phase I Environmental Site Assessment dated November 29, 2005, prepared by EMG (the "Phase I"): (a) the Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation or common law pertaining to or imposing liability or standards of conduct concerning the protection of human health, environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, and any state super-lien and environmental clean-up statutes (collectively, "Environmental Laws"); (b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated substances, Toxic Mold (as defined in the Environmental Agreement), solvents, wastes, materials, pollutants or contaminants, petroleum, tremolite, anthophyllite or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances, materials or solvents which are included under or regulated by Environmental Laws, including, without limitation, Asbestos (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been, prior to Mortgagor's acquisition of the Property, discharged, generated, treated, disposed of or stored on, incorporated in or removed or transported from the Property other than in compliance with all Environmental

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Laws; and (d) no underground storage tanks exist on any of the Property. So long as Mortgagor owns or is in possession of the Property, Mortgagor shall keep or cause the Property to be kept free from Hazardous Substances (other than de minimis quantities of Hazardous Substances that are necessary and lawfully used in the operation of the Property as a hotel or motel and which are stored and disposed of in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on the Property and/or if Mortgagor shall become aware that the Property is in direct or indirect violation of any Environmental Laws and Mortgagor shall remove such Hazardous Substances and/or cure such violations, as applicable, as required by law, promptly after Mortgagor becomes aware of such Hazardous Substances or such violations, at Mortgagor's sole expense. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. Upon Mortgagee's request, at any time and from time to time while this Mortgage is in effect (but in no event more frequently than once in any three-year period or more frequently if required by Lender in connection with an Extension (as defined in the Note), or if specific facts and circumstances reasonably dictate (or otherwise at Mortgagee's election, but at Mortgagee's expense)), Mortgagor shall provide at Mortgagor's sole expense, an inspection or audit of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on the Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order such inspection or audit, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be paid by Mortgagor and added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies thereunder including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure, provided, however, Mortgagor shall not be obligated nor liable to Mortgagee with respect to any violation which Mortgagor can establish results from Hazardous Substances, wastes, substances or materials being placed on, above or under the Property only subsequent to (a) any foreclosure by Mortgagee or acceptance by Mortgagee of a deed in lieu of foreclosure with respect to the Property, or (b) the satisfaction, in full, of the Loan.

## 36. Asbestos

(a) Mortgagor represents and warrants that, to the best knowledge of Mortgagor, except as set forth in the Phase I, no asbestos or any substance containing asbestos (collectively, "Asbestos") is located on the Property. Mortgagor shall not install in the Property, nor permit to be installed in the Property, Asbestos and shall remove or remediate (if removal is not required pursuant to any Environmental Laws) any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Upon Mortgagee's request, at any time and from time to time (but in no event more frequently than once in any three-year period or more frequently if required by Lender in connection with an Extension (as defined in the Note),

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or if specific facts and circumstances reasonably dictate (or otherwise at Mortgagee's election, but at Mortgagee's expense)), Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order such inspection or audit. The cost of such inspection or audit shall be paid by Mortgagor and added to the principal balance of the sums due under the Note and this Mortgage, and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies thereunder, including, but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure, provided, however, Mortgagor shall not be obligated nor liable to Mortgagee with respect to any violation which Mortgagor can establish results from Asbestos being placed on, above or under the Property only subsequent to (a) any foreclosure by Mortgagee or acceptance by Mortgagee of a deed in lieu of foreclosure with respect to the Property, or (b) the satisfaction, in full, of the Loan.

(b) Mortgagor shall, subject to Mortgagee's reasonable approval, develop an operations and maintenance plan for the Property with respect to the presence of Asbestos in the Improvements (the "O&M Plan"). Mortgagor shall comply in all respects with the terms and conditions of the O&M Plan. Unless required by Environmental Laws, Mortgagor shall not modify or amend the O&M Plan without Mortgagee's prior written consent.

(c) Mortgagor shall not remove, disturb, encapsulate or otherwise remediate the Asbestos in the Improvements except in compliance with the O&M Plan and all Environmental Laws. If Mortgagor makes any alterations or modifications to the Improvements that would disturb or expose any Asbestos in the Improvements or cause any of such Asbestos to become friable, Mortgagor shall remove or encapsulate such Asbestos in compliance with all applicable Environmental Laws before allowing occupancy of such space or opening such space to the public.

### 37. Environmental Monitoring

Mortgagor shall give prompt written notice to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substances on, under, from or about the Property; (b) all claims made or threatened by any third party against Mortgagor or the Property relating to any loss or injury resulting from any Hazardous Substances; and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate, as a party if it so elects, in any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Laws or Hazardous Substances, and Mortgagor shall pay all attorneys' fees incurred by Mortgagee in connection therewith. In the event that any environmental site assessment report prepared for the Property recommends that



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an operations and maintenance plan be implemented for Asbestos or any Hazardous Substances, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee and in accordance with the recommendation. In the event that any inspection, assessment, investigation, site monitoring, containment, cleanup, removal, restoration, corrective action or other work of any kind to prevent, cure or mitigate any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or which is reasonably necessary or desirable under an applicable Environmental Law ("Remedial Work") is recommended, Mortgagor shall, at its sole cost and expense, commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law).

### **38. Management of the Property**

Mortgagor further covenants and agrees with Mortgagee as follows:

- (a) Mortgagor shall cause the hotel located on the Property to be operated pursuant to the Franchise Agreement and the Management Agreements.
- (b) Mortgagor shall:
  - (i) pay all sums required to be paid by Mortgagor under the Franchise Agreement and the Management Agreements and promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Franchise Agreement and the Management Agreements and do all things necessary to preserve and to keep unimpaired its material rights thereunder;
  - (ii) promptly notify Mortgagee in writing of any default under the Franchise Agreement or the Management Agreements of which it is aware and provide Mortgagee with copies of any notices delivered in connection therewith;
  - (iii) promptly deliver to Mortgagee a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Franchise Agreement or the Management Agreements;
  - (iv) to the extent commercially reasonable, promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the franchisor under the Franchise Agreement and the manager under the Management Agreements;
  - (v) assign to Mortgagee any right it may have to modify the Franchise Agreement or the Management Agreements;

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(vi) grant Mortgagee the right, but Mortgagee shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement or Management Agreements on the part of Mortgagor to be performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Franchise Agreement or Management Agreements shall be kept unimpaired and free from default;

(vii) use its reasonable efforts to obtain, from time to time, from the Franchisor and Manager such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Franchise Agreement and the Management Agreements as may be requested by Mortgagee;

(viii) exercise each individual option, if any, to extend or renew the term of the Franchise Agreement or Management Agreements upon demand by Mortgagee made at any time within one year of the last day upon which any such option may be exercised, and Mortgagor hereby expressly authorizes and appoints Mortgagee its attorney-in-fact to exercise any such option in the name of and upon behalf of Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest; and

(ix) promptly notify Mortgagee in writing and provide Mortgagee with copies of any notices delivered to Mortgagor, including, without limitation, any notice of violation of any laws, regulations, or ordinances or other notice from any governmental or quasi-governmental authority, or any notice of default under the Leases, the Management Agreements or any other document or agreement relating to the Property, which contain information that, if true, might materially adversely affect the value, use or operation of the Property.

(c) Mortgagor shall not, without Mortgagee's prior written consent not to be unreasonably withheld: (i) surrender, terminate or cancel the Franchise Agreement or the Management Agreements; (ii) reduce or consent to the reduction of the term of the Franchise Agreement or the Management Agreements; (iii) increase or consent to the increase of the amount of any charges under the Franchise Agreement or the Management Agreements; (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the Franchise Agreement or the Management Agreements in any material respect; or (v) operate the Property under the name of any hotel chain or system other than Hawthorn Suites, except as expressly provided in the remainder of this Section.

(d) Mortgagor shall not, without Mortgagee's prior written consent not to be unreasonably withheld, enter into transactions with any affiliate including, without limitation, any arrangement providing for the management of the hotel on the Property, the rendering or receipt of services or the purchase or sale of inventory, except any such transaction in the ordinary course of business of Mortgagor if the monetary or business consideration arising therefrom would be substantially as advantageous to Mortgagor as the monetary or business

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consideration which would obtain in a comparable transaction with a person not an affiliate of Mortgagor. Notwithstanding anything to the contrary in this Section 38(d), Mortgagee acknowledges and approves the Management Agreement with Manager

(e) Mortgagor irrevocably authorizes and directs Franchisor to deliver to Mortgagee: (i) all operating information concerning the Property submitted by Mortgagor to Franchisor; (ii) the written results of all quality assurance inspections of the Property performed by Franchisor's quality assurance directors; and (iii) such other information that Mortgagee or Mortgagee's agents may reasonably request, from time to time, including any information in the possession of Franchisor relating to Mortgagor not included in the reports referred to above.

(f) Notwithstanding the foregoing, upon the prior written consent of Mortgagee (which consent may be withheld and conditioned in the sole discretion of Mortgagee), Mortgagor may replace Franchisor with a franchisor who is similar to Franchisor, being nationally recognized and established, of high-quality, and a franchisor of limited-service, extended stay hotels.

### 39. Handicapped Access

(a) Mortgagor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Property, Mortgagor shall not alter the Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee, which approval shall not be unreasonably withheld. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt written notice to Mortgagee of: (i) the receipt by Mortgagor of any written complaints or other notification related to violation of any Access Laws submitted to or issued by any governmental authority having jurisdiction over the matter; and (ii) notice of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(d) Mortgagor agrees to indemnify Mortgagee for any or all loss, cost, liability, judgment, claim, damage or expense sustained, suffered or incurred by Mortgagee (including, without limitation, Mortgagee's reasonable attorneys' fees) arising out of or attributable or relating to any claims or lawsuits brought under any Access Laws.

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## 40. ERISA

(a) Mortgagor covenants and agrees that it shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Note, this Mortgage, and the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended ("ERISA").

(b) Mortgagor further covenants and agrees to deliver to Mortgagee such certifications or other evidence from time to time throughout the term of this Mortgage, as requested by Mortgagee in its sole discretion, that: (i) Mortgagor is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Mortgagor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Mortgagor are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Mortgagor are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(C) Mortgagor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

## 41. Indemnification

In addition to any other indemnifications provided herein, in the Lease Assignment, the Environmental Agreement or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, out-of-pocket attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of: (a) ownership, administration, repayment, or enforcement of the Loan, any consent, approval or waiver related thereto, or in any way related to this Mortgage, the Property or any interest therein or receipt of any Profits; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (f) the presence,

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disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substances or Asbestos on, from, or affecting the Property or any other property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substances or Asbestos including, without limitation, the costs and expenses of any remedial action, out-of-pocket attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Mortgage or the other Loan Documents being false or misleading in any respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto; (m) the claims of any lessee of all or any portion of the Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; and (n) claims of any persons arising under or as a consequence of the Operating Agreements. Any amounts payable to Mortgagee by reason of the application of this Section shall be immediately due and payable, shall be secured by this Mortgage and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. Notwithstanding the foregoing or anything to the contrary in any of the Loan Documents, Mortgagor shall not be liable for any losses incurred by Mortgagee only to the extent such losses are a direct result of Mortgagee's gross negligence or willful misconduct. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction or assignment of this Mortgage or the entry of a judgment of foreclosure, sale of the Property by nonjudicial foreclosure sale, or delivery of a conveyance in lieu of foreclosure, but shall continue to be subject to the limitations on recourse set forth in Section 42 below, to the extent applicable, which shall also survive.

## **42. Recourse and Indemnification**

(a) Subject to the qualifications set forth in Section 9 of the Note and the qualifications set forth in the Guaranty and the Environmental Agreement, the terms and provisions of which are hereby incorporated by reference, neither Mortgagor nor Guarantor shall be personally liable either at law or in equity for the repayment of the Debt or the failure of performance of any other terms or provisions contained in the Mortgage or the other Loan Documents and Mortgagee will satisfy any judgments, orders or decrees on account of the failure to repay such Debt and/or the failure to perform any such obligation, from the Property and any other real or personal property, tangible or intangible, as Mortgagor, Guarantor or any other entity shall have pledged or assigned to secure the Note by any of the Loan Documents, except that Mortgagee may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Mortgagee to enforce and realize upon the Note, the Mortgage, the other Loan Documents, and the interests in the Property and any other collateral given to Mortgagee pursuant to the Mortgage and the other Loan Documents; provided, however, that, except as specifically provided in this Section, any judgment in any

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such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in the Property and in any other collateral given to Mortgagee. Mortgagee, by accepting the Note, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor in any such action or proceeding, under, by reason of or in connection with the Mortgage, the other Loan Documents or the Note. The provisions of this Section shall not, however: (i) constitute a waiver, release or impairment of any obligation evidenced or secured by the Mortgage or the other Loan Documents or the Note; (ii) impair the right of Mortgagee to name Mortgagor as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (iii) affect the validity or enforceability of any guaranty or indemnity made in connection with the Mortgage or the other Loan Documents; (iv) impair the right of Mortgagee to obtain the appointment of a receiver; (v) subject to the terms and provisions of Section 9 of the Note, impair the right of Mortgagee to bring suit with respect to fraud or misrepresentation by Mortgagor in connection with the Mortgage or the other Loan Documents; (vi) affect the validity or enforceability of the Loan Documents; or (vii) affect the ability or right of Mortgagee to sue any Guarantor for those matters addressed in the Guaranty or the Environmental Agreement and/or to sue Mortgagor for any of those matters addressed in Section 9 of the Note.

(b) Nothing herein shall be deemed to be a waiver of any right which Mortgagee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the debt owing to Mortgagee in accordance with the Note, the Mortgage and the other Loan Documents.

## 43. Notice

Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be deemed given on the next business day if sent by Federal Express or other reputable overnight courier and designated for next business day delivery, or on the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, at the addresses set forth below, of the party to whom such notice is to be given, or to such other address or additional party as Mortgagor, Guarantor or Mortgagee, as the case may be, shall in like manner designate in writing:

Mortgagor:

Oxford HPC Schaumburg Property Company, L.L.C.  
 c/o Oxford Capital Partners, Inc.  
 350 West Hubbard Street, Suite 440  
 Chicago, IL 60610  
 Attention: John W. Rutledge

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With a copy to: Bell, Boyd & Lloyd LLC  
70 West Madison Street, Suite 3100  
Chicago, Illinois 60602  
Attention: Terrence E. Budny, Esq.

Mortgagee: GMAC Commercial Mortgage Bank  
6955 Union Park Center, Suite 330  
Midvale, Utah 84047  
Attention: President

With copies to: GMAC Commercial Mortgage Corporation  
200 Witmer Road  
Horsham, Pennsylvania 19044  
Fax No.: (215) 328-4620  
Attention: Servicing - Executive Vice President

and

GMAC Commercial Mortgage Corporation  
3514 Westwood Center Drive, Suite 630  
Vienna, Virginia 22182  
Fax No.: (703) 749-4367  
Attention: Lewis L. Delafield  
Loan No. 01-1051630

and: Katten Muchin Rosenman LLP  
1025 Thomas Jefferson Street, N.W.  
Washington, D.C. 20007-5201  
Fax No.: (202) 298-7570  
Attn.: Christopher J. Hart, Esq.

**44. Authority**

Mortgagor represents and warrants that: (a) it has full power, authority, and right to execute, deliver and perform its obligations pursuant to this Mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations. Mortgagee represents and warrants that it has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage.

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## 45. Waiver of Notice

Neither Mortgagor nor Guarantor shall be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor or Guarantor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor and Guarantor each hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor or Guarantor, including, without limitation, notice of default, notice of intention to accelerate sums under the Loan Documents and notice of acceleration of sums under the Loan Documents. All notices required hereunder must be in writing, delivered by certified mail (return receipt requested), personal delivery or overnight delivery.

## 46. Remedies of Mortgagor

In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or has unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the other Loan Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any indirect, consequential, speculative or punitive damages, and Mortgagor's and Guarantor's remedies shall be limited to actual compensatory damages suffered or incurred by Mortgagor, injunctive relief or declaratory judgment.

## 47. Sole Discretion of Mortgagee

Wherever pursuant to this Mortgage Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein. Without limiting the generality of the foregoing, Mortgagee shall not exercise its discretion in a manner which is arbitrary and capricious as regards this particular Mortgagor, but rather shall formulate its decisions and determinations in light of its then-current underwriting standards and practices as the highest standards and practices of similar institutional lenders making loans similar to this Loan.

## 48. Non-Waiver

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise to enforce any of the provisions hereof or of the Note or the other Loan Documents; (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage



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or the other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

## **49. No Oral Change**

This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

## **50. Liability**

If Mortgagor or Guarantor consists of more than one person, the obligations and liabilities of each such person hereunder and of each of Mortgagor and Guarantor shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor, Guarantor and Mortgagee and their respective successors and assigns forever.

## **51. Inapplicable Provisions**

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

## **52. Section Headings**

The headings and captions of the various Sections of this Mortgage 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.

## **53. Counterparts**

This Mortgage may be executed in any number of counterparts and each such duplicate original shall be deemed to be an original.

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## 54. Certain Definitions

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor or any part thereof or any interest therein", the word "Mortgagee" shall mean "Mortgagee, its successors and assigns, and any subsequent holder of the Note", the word "Debt" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage", the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority and any other entity, and the word "Property" shall include any portion of the Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees including, without limitation, fees at the pretrial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property and Collateral and enforcing its rights hereunder. 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.

## 55. Assignments

Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage. Neither Mortgagor nor Guarantor shall, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, assign or transfer its rights under this Mortgage or any of the Loan Documents.

## 56. SUBMISSION TO JURISDICTION

**MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OF ILLINOIS OR FEDERAL COURT SITTING IN COOK COUNTY, STATE OF ILLINOIS OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE. MORTGAGOR MAY, AT ITS SOLE DISCRETION, ELECT THE STATE OF ILLINOIS, OR THE UNITED STATES OF AMERICA FEDERAL DISTRICT COURT HAVING JURISDICTION OVER THE STATE OF ILLINOIS AS THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO SUCH VENUE AS BEING AN INCONVENIENT FORUM.**

## 57. Agent for Receipt of Process

Mortgagor hereby irrevocably appoints Terrence E. Budny, Esq., having an address at c/o Bell, Boyd & Lloyd LLC, 70 West Madison Street, Suite 3100, Chicago, Illinois 60602, as its authorized agent to accept and acknowledge, on behalf of Mortgagor, service of any and all process which may be served in any suit, action or proceeding of the nature referred to in Section 56 hereof in any State or Federal court within the State of Illinois. If such agent shall cease so to

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act, Mortgagor shall irrevocably designate and appoint without delay another such agent satisfactory to Mortgagee, and shall promptly deliver to Mortgagee written evidence of such other agent's acceptance of such appointment.

## 58. Service of Process

To the extent permitted by applicable law, process in any suit, action or proceeding of the nature referred to in Section 57 hereof may be served: (a) by registered or certified mail, postage prepaid, to Mortgagor or Guarantor, as applicable, at the address set forth above or to such other address of which Mortgagor or Guarantor, as applicable, shall have given Mortgagee written notice; or (b) if Mortgagor or Guarantor, as applicable, shall not have made an appearance within twenty-one (21) days after service in accordance with clause (a) of this Section, by hand delivery to the agent identified in Section 57 hereof, or such successor agent as shall have been identified in accordance with Section 57 hereof. Nothing in this Section shall affect the Mortgagee's right to serve process in any manner permitted by law, or limit Mortgagee's right to bring proceedings against Mortgagor or Guarantor in the courts of any other jurisdiction.

## 59. WAIVER OF JURY TRIAL

**MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.**

## 60. Homestead

Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part thereof.

## 61. CHOICE OF LAW

**THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF SUCH JURISDICTION.**

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## 62. Time of Essence

Time is of the essence of this Mortgage and of each and every term, covenant and condition herein.

## 63. Survival

All covenants, representations and warranties made herein shall survive the making of the Loan and the delivery of the Note and other Loan Documents.

## 64. No Third-Party Mortgagee Rights Created

The parties hereto expressly declare that it is their joint and mutual intention that this Mortgage and the transactions contemplated hereby shall not be construed as creating a third party beneficiary contract, and neither this Mortgage nor any of the other Loan Documents shall be construed as giving or conferring any rights or benefits whatsoever to or upon any other persons or entities other than Mortgagor, Guarantor and Mortgagee.

## 65. Discharge

If all indebtedness secured hereby is promptly paid when due and all other provisions hereof are faithfully performed, the conveyance of the Property shall be null and void, otherwise to remain in full force and effect.

## 66. Maintaining Priority of Mortgage

Mortgagor shall, at its expense, cause the recordation of this Mortgage and of any other instrument evidencing or securing the Note wherever such recording would or might be required in order to protect the first lien and priority of this Mortgage or such instrument against the claims of third parties. Mortgagor hereby covenants and agrees at all times, at its sole expense, take such other action and execute and record such other instruments as may be necessary or desirable to preserve and protect the first lien and priority of this Mortgage and all other instruments evidencing or securing the Note.

## 67. Costs

(a) Mortgagor acknowledges and confirms that Mortgagee shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement. Mortgagor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Mortgagee or any governmental or

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quasi-governmental authority. Mortgagor hereby acknowledges and agrees to pay, promptly following demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any such event or otherwise. Wherever it is provided for herein that Mortgagor pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Mortgagee, whether of retained firms, the reimbursement for the expenses of in-house staff or otherwise.

(b) (i) Mortgagor shall pay all reasonable legal fees incurred by Mortgagee in connection with (A) the preparation of the Note, this Mortgage and the other Loan Documents; and (B) the items set forth in subsection (A) above, and (ii) Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until such expenses are paid by Mortgagor.

## 68. Local Law Provisions

Notwithstanding any term or provision otherwise set forth in this Mortgage, the following terms and provisions shall govern and control:

### (a) Compliance with Illinois Mortgage Foreclosure Law

(i) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (the "Act"), including all amendments thereto which may become effective from time to time after the date hereof, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(ii) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 27 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(b) Waiver of Homestead and Redemption. Mortgagor releases and waives all rights under the homestead and exemption laws of the State of Illinois. Mortgagor acknowledges that the Property and its interest therein does not include "agricultural real estate" or "residential real estate" as those terms are defined in 735 ILCS 5/15-1201 and 5/15-1219. Pursuant to 735 ILCS 5/15-1601(b), Mortgagor waives any and all rights of redemption from

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sale under any order of foreclosure of this Instrument, or other rights of redemption, which may run to Mortgagor or any other Owner of Redemption, as that term is defined in 735 ILCS 5/15-1212. Mortgagor waives all rights of reinstatement under 735 ILCS 5/15-1602 to the fullest extent permitted by Illinois law.

(c) **Maximum Amount of Indebtedness.** Notwithstanding any provision to the contrary in this Mortgage, the Note or any other Loan Document which permits any additional sums to be advanced on or after the date of this Mortgage, whether as additional loans or for any payments authorized by this Instrument, the total amount of the principal component of the Debt shall not at any time exceed three hundred percent (300%) of the original principal amount of the Note set forth in the granting clauses of this Mortgage.

(d) **Business Loan.** The Mortgagor represents, warrants and agrees that the proceeds of the Note have been or will be used for the purposes specified in 815 ILCS 205/4(i)(c), and that the indebtedness evidenced by the Note constitutes a business loan which comes within the purview of said statute.

(e) **Insurance.** Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

(f) **Protective Advances.** All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by Mortgagee in accordance with the terms of the Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (2) preserve the lien of the Mortgage or the priority thereof; or (3) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Mortgagee of: (1) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by the Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

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(iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(iv) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of the Mortgage as referred to in Sections 1504(d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of the Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the Property;

(v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act; and

(vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof which are required to be paid; (2) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Mortgagee to be for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by mortgagor; and (9) if the Mortgage is insured, payments of FNA or private mortgage insurance required to keep insurance in force.

All Protective Advances shall be so much additional indebtedness secured by the Mortgage, and shall become immediately due and payable without notice and with

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interest thereon from the date of the advance until paid at the rate due and payable after a default under the terms of the Note.

The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) determination of the amount of indebtedness secured by the Mortgage at any time;
- (2) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment the court may reserve jurisdiction for such purpose;
- (3) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (4) application of income in the hands of any receiver or Mortgagee in possession; and
- (5) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1511 of the Act.

(g) **Mortgagee in Possession.** Subject to Section 69(a)(i), in addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

## 69. Lockbox Agreements

Mortgagor has entered into the Lockbox Agreements, which provide, among other things, that all Profits and other sums collected from, or arising with respect to, the Property shall be deposited in the deposit account maintained in connection with such Lockbox Agreements and that such amounts shall be disbursed in accordance therewith. Until expended or applied,



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amounts held pursuant to or in connection with the Lockbox Agreements shall constitute additional security for the Debt.

**[SIGNATURE APPEARS ON FOLLOWING PAGE]**

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IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage, Assignment of Leases and Profits, Security Agreement and Fixture Filing under seal as of the day and year first above written.

**MORTGAGOR:**

**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

By: Oxford Capital Partners, Inc., an Illinois corporation, its Non-Member Manager

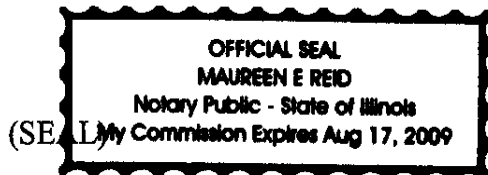
By: *John W. Rutledge* (SEAL)

Name: John W. Rutledge

Title: Managing Director

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

Before me, *the undersigned*, on this day personally appeared John W. Rutledge, known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be the Managing Director of Oxford Capital Partners, Inc., an Illinois corporation which is the non-member manager of Oxford Blackpoint Company III, L.L.C., the manager of Oxford HPC Investment Company, L.L.C., the sole member of OXFORD HPC SCHAUMBURG PROPERTY COMPANY, L.L.C., a Delaware limited liability company, and acknowledged to me that he executed said instrument for the purposes and consideration therein expressed, and as the duly authorized act of said limited liability company. Given under my hand and seal of office this 27<sup>th</sup> day of January, 2006.



*Maureen E. Reid*  
Notary Public

My Commission Expires:  
8/17/2009

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

LOT 1 IN OXFORD CAPITAL PARTNERS' RESUBDIVISION, BEING A RESUBDIVISION 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 ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

NOTE OF INFORMATION: OXFORD CAPITAL PARTNERS' RESUBDIVISION WAS RECORDED JULY 23, 1998 AS DOCUMENT 98639897.

PERMANENT REAL ESTATE INDEX NUMBER: 07-13-101-012-0000

#### 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 105.00 FEET OF THE NORTH 380.00 FEET OF THE WEST 75.00 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 ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### ALSO DESCRIBED AS FOLLOWS:

THE NORTH 105.00 FEET OF THE WEST 75.00 FEET OF LOT 2 IN OXFORD CAPITAL PARTNERS RESUBDIVISION, BEING A RESUBDIVISION 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 ¼ OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.