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



Doc#: 0603343348 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/02/2008 01:42 PM Pg: 1 of 16

8324960-DA-TMS (3043)

SUBORDINATION AND ATTORNMENT AGREEMENT

by and between

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

and

GMAC COMMERCIAL MORTGAGE BANK
a Utah industrial bank

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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EXECUTION COPY

Loan No.: 01-1051630

SUBORDINATION AND ATTORNMENMENT AGREEMENT

This **SUBORDINATION AND ATTORNMENMENT AGREEMENT** (this "Agreement") is made and entered into as of February 1, 2006, made by **OXFORD HPC SCHAUMBURG OPERATING COMPANY, L.L.C.**, a Delaware limited liability company ("Operator"), having an address at c/o Oxford Capital Partners, Inc., 350 West Hubbard, Suite 440, Chicago, Illinois 60610, in favor of **GMAC COMMERCIAL MORTGAGE BANK**, a Utah industrial bank, having an address at 6955 Union Park Center, Suite 330, Midvale, Utah 84047, Attention: President (the "Lender").

RECITALS

1. Oxford HPC Schaumburg Property Company, L.L.C., a Delaware limited liability company ("Borrower"), having an address at c/o Oxford Capital Partners, Inc., 350 West Hubbard, Suite 300, Chicago, Illinois 60610, is the fee simple owner of the property described on Exhibit A attached hereto (the "Property"), and Lender is the holder of the Mortgage (defined in Section 1 below) which encumbers the Property.

2. Borrower and Operator have entered into the Operating Lease (defined in Section 1 below), for which a Memorandum of Operating Lease was recorded with the Cook County Recorder on June 8, 1998, as Document No. 98479987, and pursuant to which Operator is responsible for the obligations and duties set forth therein.

3. Lender has required this Agreement as a condition to making the loan secured by the Mortgage.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree and covenant as follows:

1. **Definitions.** Any capitalized term which is not specifically defined in this Agreement shall have the meaning set forth in the Mortgage. The following terms when used in this Agreement shall have the meanings indicated:

"Foreclosure" shall mean any exercise of the remedies available to the holder of the Mortgage, upon a default under the Mortgage or other loan documents, which results in a transfer of title to or possession of the Property. The term "Foreclosure" shall include, without limitation: (i) a transfer by judicial foreclosure; (ii) a transfer by deed in lieu of foreclosure; (iii) the appointment by a court of a receiver to assume possession of the Hotel; (iv) intentionally omitted; (v) a transfer resulting from an order given in a bankruptcy, reorganization, insolvency

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or similar proceeding; or (vi) any similar judicial or non-judicial exercise of the remedies held by the holder of the Mortgage.

"Foreclosure Date" shall mean the date on which title to or possession of the Property is transferred by means of a Foreclosure.

"Hotel" shall mean "Hawthorn Suites" operating on the site described in Exhibit A hereto, together with the fixtures, furnishings, equipment and other real and personal property associated therewith.

"Lender" shall mean any of the following: (i) the entity identified as the "Lender" in the Preamble; (ii) any successors or assigns of that entity; (iii) any nominee or designee of that entity (or any other entity described in this definition); (iv) any initial or subsequent Lender of all or any portion of the interest of that entity in the Mortgage; or (v) any entity which is a participant in the financing secured by the Mortgage, or otherwise acquires an equitable interest in the Mortgage.

"Mortgage" shall mean that certain Mortgage, Assignment of Leases and Profits, Security Agreement and Fixture Filing from Borrower, as mortgagor, to Lender, as mortgagee, securing the indebtedness and obligations described therein, including that certain Mortgage Note of even date herewith payable by Borrower in the original principal sum of Eight Million and No/100 Dollars (\$8,000,000) (the "Note"), which Mortgage is being recorded in the appropriate land records of Cook County, Illinois. The Mortgage encumbers the Property. The term "Mortgage", as used in this Agreement, shall include: (i) any amendments, modifications, supplements, replacements, extensions or refinancings of the Mortgage, including, without limitation, any permanent loan refinancings; and (ii) any existing or future financing by Lender which is solely secured by the Hotel.

"Operating Lease" shall mean that certain Lease between Borrower, as landlord, and Operator, as tenant, dated as of May 29, 1998, as amended from time to time to the extent permitted under the Mortgage and the other Loan Documents.

"Subsequent Owner" shall mean any individual or entity which acquires the fee simple title to or possession of the Property at or through a Foreclosure (together with any successors or assigns thereof), including, without limitation: (i) Lender; (ii) any purchaser of the Property from Lender, or any lessee of the Property from Lender; or (iii) any purchaser of the Hotel at Foreclosure.

2. **Subordination of Operating Lease.** The Operating Lease and all right, title and interest of Operator thereunder and in and to the Property or any portion thereof, if any, are and shall be subject and subordinate to the lien of the Mortgage, including, without limitation, any and all fees and reimbursable expenses and other sums payable to Operator under the Operating Lease. Operator hereby acknowledges that all provisions of the Operating Lease relating to the application of insurance proceeds and condemnation awards are subject to and junior and inferior to the terms and provisions of the Mortgage, and the terms and provisions of the Mortgage shall govern and control in the event of any conflict but shall not otherwise affect the enforceability of the provisions of the Operating Lease as between Borrower and Operator.

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3. Attornment/Termination.

(a) Operator agrees that, upon a Foreclosure of the Mortgage, provided that the Operating Lease has not expired or otherwise been earlier terminated in accordance with its terms for reasons other than such Foreclosure, Operator shall attorn to any Subsequent Owner and shall remain bound by all of the terms, covenants and conditions of the Operating Lease, for the balance of the remaining term thereof (and any renewals thereof which may be effected in accordance with the Operating Lease) with the same force and effect as if such Subsequent Owner were the landlord under the Operating Lease and without the payment by such Subsequent Owner of any fees arising from such succession to the interests of Borrower. Such attornment shall be effective and self-operative as an agreement between Operator and Subsequent Owner without the execution of any further instruments on the part of any party; provided, however, that at Lender's request, Operator shall execute an instrument confirming such attornment, in form and substance reasonably acceptable to Lender and Operator. If any Subsequent Owner shall elect, for any reason whatsoever, to succeed to the interest of Borrower under the Operating Lease, without terminating the Operating Lease, such Subsequent Owner shall not be (i) liable for any act or omission of any prior landlord (including Borrower), provided that, to the extent such Subsequent Owner has a current obligation as landlord to correct such conditions pursuant to the landlord's maintenance obligation set forth in Section 5(c) of the Operating Lease, such Subsequent Owner shall be obligated to correct any conditions that exist as of the date of attornment (but such Subsequent Owner shall not assume any of such prior landlord's liability for any such acts or omissions), (ii) subject to any offsets or defenses which Operator might have against any prior landlord (including Borrower), (iii) liable for or bound by any fees, commissions, rent, security deposit, additional rent or other sums or deposits which Operator might have paid to any prior landlord (including Borrower), unless such amounts are received by Subsequent Owner, or (iv) bound by any amendment or modification of the Operating Lease made without such Subsequent Owner's express written consent.

(b) Upon a Foreclosure, notwithstanding the rights of Subsequent Owner under Section 3(a) above, Subsequent Owner, in its sole and absolute discretion, may elect to terminate the Operating Lease, and Operator agrees that such termination may be made without payment of any termination fees, liquidated damages or other fees and charges under the Operating Lease. Operator expressly agrees that it shall not, in any event, cause or permit any lien, claim of lien, encumbrance or other charge to be placed or asserted against the Property or any portion thereof in connection with any amounts owing or to become owing to Operator under the Operating Lease. Upon any such termination of the Operating Lease by Lender or other Subsequent Owner, Operator shall promptly remit to Lender or other Subsequent Owner an accounting of, and all sums then held in, any Accounts maintained by Operator under the Operating Lease. Operator hereby acknowledges that none of such sums shall be delivered to Borrower upon any such termination of the Operating Lease by Lender or other Subsequent Owner. Operator shall have no liability to Owner for complying in good faith with the exercise of such right by Lender. Upon any such termination, Operator shall afford to Lender or other Subsequent Owner all rights and benefits provided to Operator under the Operating Lease, including, without limitation, cooperating and assisting Lender or Subsequent Owner to effect a smooth transition of operational control, assigning to Lender or such Subsequent Owner all assignable operating licenses and permits for the Hotel then issued in Operator's name and delivering to Lender (or its designee) or such Subsequent Owner, all keys, locks and safe

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combinations, reservation lists, ledgers, bank statements for the Property accounts, books and records, insurance policies, and other documents and agreements required for the operation of the Property. If such assignment of licenses and permits is not permitted under applicable law, Operator shall cooperate with, and provide reasonable assistance to, Lender or such Subsequent Owner in its efforts to obtain food, liquor and other licenses and permits for the normal use and operation of the Property. Upon the request of Lender or other Subsequent Owner, Operator shall periodically execute and deliver a statement, no more frequently than once every six (6) months, in a form reasonably satisfactory to Lender or such Subsequent Owner, reaffirming Operator's obligation to attorn as set forth in this Section 3.

4. Notice and Opportunity to Cure.

(a) In the event of a failure in the performance or observance of any of Borrower's duties or covenants set forth in the Operating Lease, and in the event that Operator gives written notice thereof to Borrower, Operator shall also give a duplicate copy (herein referred to as the "First Notice") of such notice to Lender, in accordance with Section 6 of this Agreement. In addition, in the event that such failure of performance is not cured within the applicable cure period under the Operating Lease, and Operator intends to exercise its remedy of terminating the Operating Lease, Operator shall send a second notice (the "Second Notice") to Borrower and Lender, in accordance with Section 6 hereof, stating Operator's intention to terminate the Operating Lease. Notwithstanding any provisions in the Operating Lease to the contrary, Operator shall forbear from taking any action to terminate the Operating Lease for a period of thirty (30) days after the service of the First Notice, and for an additional period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above), except that, following the Second Notice, if any, and as to non-monetary defaults or breaches not reasonably susceptible to cure within such thirty (30) day period (including without limitation, a bankruptcy filing by or against Borrower), Lender shall have such additional cure period as may be reasonably required, through the use of continuous and diligent efforts by Lender, to cure such failure of performance (other than termination and so long as such remedies do not interfere with the cure rights of Lender).

(b) No notice (either the First Notice or the Second Notice, as the case may be) given by Operator to Borrower shall be effective as a notice under the Operating Lease unless the applicable duplicate notice to Lender which is required under Section 4(a) above (either the First Notice or the Second Notice, as the case may be) is given to Lender in accordance with this Agreement. It is understood that any failure by Operator to give such a failure of performance notice (either the First Notice or the Second Notice, as the case may be) to Lender shall not be a failure of performance by Borrower either under this Agreement or under the Operating Lease, but rather shall operate only to void the effectiveness of any such notice by Operator to Borrower under the Operating Lease.

(c) Operator agrees to accept performance by Lender with the same force and effect as if same were performed by Borrower, in accordance with the provisions and within the cure periods prescribed in the Operating Lease (except that Lender shall have such additional cure periods, not available to Borrower, as are set forth in Section 4(a) above).

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(d) Except as specifically limited in the foregoing paragraphs, nothing herein shall preclude Operator from exercising any of its rights or remedies against Borrower with respect to any default by Borrower under the Operating Lease.

5. **Assignment of Operating Lease.** Borrower has, pursuant to the applicable provisions of the Mortgage, collaterally assigned to Lender, as additional security for the indebtedness secured by the Mortgage, all of Borrower's right, title and interest in and to the Operating Lease.

6. **Notices.** Notices, statements and other communications to be given under the terms of this Agreement shall be as set forth in the Mortgage.

7. **Management of the Property.**

Operator further covenants and agrees with Lender as follows:

(a) Operator shall cause the hotel located on the Property to be operated pursuant to the Franchise Agreement and the Management Agreement.

(b) Operator shall, or for so long as the Operating Lease remains in full force and effect:

(i) pay all sums required to be paid by Operator under the Franchise Agreement and the Management Agreement 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 Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder;

(ii) promptly notify Lender in writing of any default under the Franchise Agreement or the Management Agreement of which it is aware and provide Lender with copies of any notices delivered in connection therewith;

(iii) promptly deliver to Lender a copy of each financial statement, business plan, and capital expenditures plan received by it under the Franchise Agreement or the Management Agreement;

(iv) 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 Agreement;

(v) assign to Lender any right it may have to modify the Franchise Agreement or the Management Agreement;

(vi) grant Lender the right, but Lender 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 on the part of Operator to be

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performed or observed on behalf of Operator, to the end that the rights of Operator in, to and under the Franchise Agreement 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 Operator with the terms of the Franchise Agreement and the Management Agreement as may be requested by Lender;

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

(ix) promptly notify Lender in writing and provide Lender with copies of any notices delivered to Operator, including, without limitation, any notice of violation of any laws, regulations, or ordinances or other material notice from any governmental or quasi-governmental authority, or any notice of default under the Leases, the Management Agreement 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) Operator shall not, without Lender's prior written consent: (i) surrender, terminate or cancel the Franchise Agreement or the Management Agreement; (ii) reduce or consent to the reduction of the term of the Franchise Agreement or the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Franchise Agreement or the Management Agreement; (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 Agreement in any material respect; or (v) operate the Property under the name of any hotel chain or system other than a "Hawthorn Suites".

(d) Except for the Management Agreement, Operator shall not, without Lender's prior written consent, 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 Operator if the monetary or business consideration arising therefrom would be substantially as advantageous to Operator as the monetary or business consideration which would obtain in a comparable transaction with a person not an affiliate of Operator.

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

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8. **Leasing.** Upon the reasonable request of Lender, Operator shall furnish Lender 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. All proposed Major Leases shall be subject to the prior approval of Lender (not to be unreasonably withheld, conditioned or delayed). If Lender shall fail to provide its approval of any Major Lease as required herein within thirty (30) days of its receipt of Operator's request for approval, Lender's approval of such Lease shall be deemed granted. All Leases entered into from and after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender.

9. **Estoppel Certificates/Estoppel.**

(a) Operator shall, at any time and from time to time upon reasonable request from Lender, but in no event more frequently than once every twelve (12) months, execute, acknowledge and deliver to Lender, or to any third party specified by Lender, a statement in writing: (1) certifying that the Operating Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications); (2) stating whether or not to the actual knowledge of Operator: (i) there is a continuing failure by Borrower in the performance or observance of any covenant, agreement or condition contained in the Operating Lease; or (ii) there shall have occurred any event or condition which, with the giving of notice or passage of time or both, would become such a failure of performance, and, if so, specifying each such failure of performance or occurrence of which Operator may have knowledge; and (3) stating such other information as Lender may reasonably request. Such statement shall be binding upon Operator and may be relied upon by Lender and/or such third party specified by Lender as aforesaid.

(b) Operator hereby represents and warrants to Lender as follows: (1) the Operating Lease, as modified by this Agreement, is otherwise unmodified and is in full force and effect; (2) to the actual knowledge of Operator: (i) there is no failure by either Borrower or Operator in the performance or observance of any covenant, agreement or condition contained in the Operating Lease; and (ii) there is no event or condition, which, with the giving of notice or the passage of time or both, would become such a failure of performance; (3) Operator has received no written notice from Borrower indicating that Operator has failed to perform any covenant, agreement or condition of the Operating Lease and, to the actual knowledge of Operator, no such failure of performance on the part of Operator currently exists; and (4) there are no outstanding loans or advances from Operator or its affiliates to Borrower or its affiliates.

10. **Additional Operator Covenants.** Operator further covenants and agrees as follows:

(a) Operator shall not collect any payment or reimbursement due to Borrower under the Operating Lease more than thirty (30) days in advance of when such payment is due.

(b) Operator shall not, without Lender's prior written consent, not to be unreasonably withheld, conditioned or delayed, (i) reduce or consent to the reduction of the initial or renewal term of the Operating Lease, or (ii) otherwise modify, change, supplement, alter or amend the Operating Lease in any material respect; and Operator acknowledges that

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Borrower has assigned and transferred to Lender, pursuant to the Mortgage, any rights which Borrower may have to amend the Operating Lease, so that any such purported amendment to the Operating Lease shall be null and void as to Lender unless it has granted its prior written consent thereto.

(c) Without obtaining the prior written consent of Lender, Operator and its affiliates shall not loan or advance funds to Borrower or its affiliates. To the extent that Lender consents to any such loans or advances, Operator acknowledges that repayment of the same shall be subordinated to repayment in full of the loan secured by the Mortgage.

(d) Notwithstanding any provision to the contrary contained in the Operating Lease, in this Agreement or in any other Loan Document, or in any other agreement by and between Borrower and Operator relating to the Property, Operator shall in no event assign the Operating Lease, sublet all or any portion of the Property leased pursuant to the Operating Lease, or otherwise transfer or encumber the Operating Lease or the Property, including without limitation Operator's leasehold estate therein, unless the prior written consent of Lender is first obtained, which consent may be withheld or conditioned in Lender's sole discretion; provided however, Lender's prior written consent shall not be required for any de minimis subleases of less than one thousand (1000) square feet which (i) do not individually or in the aggregate alter the ratio of office/retail space to hotel space as presently utilized in the Property; (ii) are the result of an arms-length transaction; (iii) provide for rental rates comparable to existing market rates; and (iv) do not contain any terms which would materially affect Lender's rights under this Agreement, the Note, the Mortgage or the other Loan Documents (as defined in the Mortgage).

(e) In the event that the Operating Lease is renewed or extended, or in the event that, following the expiration or other termination of the Operating Lease, Borrower and Operator enter into a new lease agreement relating to the Property, then the provisions of this Agreement shall apply with equal force and effect to such renewal, extension or new lease agreement, without the need for execution of any further instruments on the part of any party (provided that at Lender's request, Borrower and Operator shall execute such instruments as are reasonably appropriate to confirm the continued validity and effectiveness of this Agreement).

(f) Notwithstanding anything in the Operating Lease to the contrary, in the event of the bankruptcy or insolvency of Operator:

(i) In connection with any proceeding under Chapter 7 of the Bankruptcy Code (as defined in the Mortgage) where the trustee of Operator elects to assume the Operating Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of clauses (ii) and (iii) below, which conditions Borrower and Operator acknowledge to be commercially reasonable. In the event the trustee elects to reject the Operating Lease, then Borrower shall immediately be entitled to possession of the Property without further obligation to Operator or the trustee, subject to Lender's rights to terminate the Operating Lease.

(ii) Any election to assume the Operating Lease under Chapter 11 of the Bankruptcy Code by Operator as debtor-in-possession or by Operator's trustee (the "Electing Party") must provide for the Electing Party to cure or provide to Borrower adequate assurance

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that it will cure all monetary defaults under the Operating Lease within thirty (30) days from the date of assumption and it will cure all non-monetary defaults under the Operating Lease within thirty (30) days from the date of assumption; provided, however, that if the cure of any such default cannot reasonably be effected within such thirty (30) day period and such Electing Party 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 thirty (30) days (for a total of sixty (60) days) so long as such Electing Party diligently and continuously proceeds to cure such default. Borrower and Operator acknowledge such condition to be commercially reasonable.

(iii) If the Electing Party has assumed the Operating Lease or elects to assign Operator's interest under the Operating Lease to any other person, such interest may be assigned only if the intended assignee has provided Borrower and Lender adequate assurance of future performance (as herein defined), of all of the obligations imposed on Operator under the Operating Lease. For the purposes hereof, "adequate assurance of future performance" means that Borrower and Lender have ascertained that each of the following conditions has been satisfied:

(A) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by such party of Operator's obligations under the Operating Lease; and

(B) Borrower has obtained consents or waivers from any third parties which may be required under a lease, mortgage, financing arrangement, or other agreement by which Borrower is bound, to enable Borrower to permit such assignment.

(iv) Borrower's acceptance of rent or any other payment from any trustee, receiver, Lender, person, or other entity will not be deemed, in and of itself, to have waived, or waive, the requirement of Borrower's consent, Borrower's right to terminate the Operating Lease for any transfer of Operator's interest under the Operating Lease without such consent, Borrower's claim for any amount of rent in excess of such payment due from Operator, or Borrower's collateral assignment of the foregoing rights to Lender pursuant to the Mortgage and other Loan Documents.

(g) Operator covenants and agrees that for so long as the Loan shall remain outstanding, Operator shall comply with the separateness covenants set forth in Operator's organizational documents.

11. **No Assumption.** Operator expressly acknowledges that Lender assumes no obligations or liabilities of Borrower under the Operating Lease and that Lender will have no obligation to Operator to exercise its rights under this Agreement or the Mortgage, but that the right and option to exercise such rights rests in the sole and absolute discretion of Lender.

12. **Indemnification.** Operator agrees to indemnify Lender and Lenders and defend and hold Lender and Lenders harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including but not limited to reasonable attorney's fees)

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which Lender may incur under the Operating Lease or this Agreement and from any alleged or actual obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Operating Lease. This indemnification will not apply to actions taken by Lender subsequent to Lender's acquisition of title by Foreclosure or to the gross negligence or willful misconduct of Lender. This provision shall survive any termination of the Operating Lease and any Foreclosure.

13. **Confirmatory Documentation.** The provisions of all Sections of this Agreement are and shall be fully effective and binding between the parties, upon the occurrence of the conditions, if any, set forth in such Sections, without the execution of any further instruments by any party. Notwithstanding the foregoing, each party to this Agreement shall have the right (from time to time, for so long as this Agreement is in effect, but no more frequently than once every twelve (12) months) to request either or both of the other parties to execute documentation (in form reasonably satisfactory to all signing parties) confirming (if true) that such conditions (if any) have been satisfied and that the provisions of this Agreement or specified portions thereof have been implemented. In such event, each of the parties which are requested to execute such confirmatory documentation agrees to execute it within a reasonable period of time (not to exceed thirty (30) days) after its receipt of such request.

14. **Miscellaneous.**

(a) This Agreement may be executed in a number of identical counterparts. If so executed, all of such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart, provided that photocopy or facsimile copies of all signatures are produced.

(b) The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors, heirs, legal representatives and assigns of each of the parties hereto.

(c) Notwithstanding anything herein to the contrary, the commencement and prosecution of any Foreclosure of the Mortgage is a matter entirely within the discretion of Lender.

(d) The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

(e) In the event the Operating Lease shall be amended, modified or supplemented, the Operating Lease, as so amended, modified or supplemented, shall continue to be subject to the provisions of this Agreement without the necessity of any further act by the parties hereto. The foregoing provision shall not invalidate or limit the applicability and enforceability of any restrictions or conditions in this Agreement regarding Borrower's and Operator's ability to amend, modify or supplement the Operating Lease without the prior written consent of Lender.

(f) The provisions of this Agreement shall not be modified, amended, waived, discharged or terminated except by a written document signed by all of the parties hereto.

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(g) With respect to matters relating to the enforcement of this Agreement, this Agreement shall be governed by, and be construed in accordance with, the laws of the state in which the Property is located without regard to conflict of law provisions thereof.

(h) Captions of Sections herein are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections to which they refer.

(i) Operator hereby acknowledges and agrees to the provisions of this Agreement and agree that, to the extent there is an inconsistency between the terms and provisions of this Agreement and the Operating Lease, the terms and provisions of this Agreement shall prevail. The performance by the Operator hereunder shall not be deemed a breach of any of its obligations to Borrower under the Operating Lease. Notwithstanding the foregoing, nothing herein shall be deemed a waiver of the choice of governing law provisions set forth in the Operating Lease.

(j) The terms and provisions of Section 33 and Section 34 of the Note are incorporated by reference herein.

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OPERATOR:

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

By: Oxford Blackpoint Company III, L.L.C., a Delaware limited liability company, its Sole Member

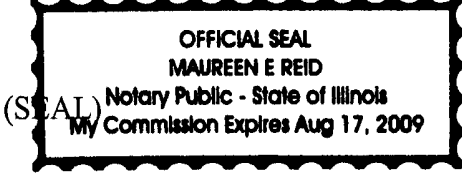
By: Oxford Capital Partners, Inc., an Illinois corporation, its Non-Member Manager

By: *[Signature]* (SEAL)
Name: John W. Rutledge
Title: Managing Director

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
)SS
COUNTY OF COOK

Before me, *Maureen E. Reid*, 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 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 sole member of OXFORD HPC SCHAUMBURG OPERATING 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 27th day of January 2006.



Maureen E. Reid
Notary Public

Name: MAUREEN E. REID

My Commission Expires:
8/17/2009

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ACKNOWLEDGED AND AGREED:

BORROWER:

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

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

By: Oxford Blackpoint Company III, L.L.C., a Delaware limited liability company, its Manager

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, *Maureen E. Reid*, 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 27th day of January, 2006.



(SEAL)

Maureen E. Reid
Notary Public

Name: MAUREEN E. REID

My Commission Expires:

8/17/2009

UNOFFICIAL COPY

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.