

Tax Parcel Nos

07-13-101-001-0000

This document prepared by
and after recording return
to:

Susan Elliott
Jones, Day, Reavis & Pogue
77 West Wacker Drive
Chicago, Illinois 60601-1692

SUBORDINATION OF OPERATING LEASE

THIS SUBORDINATION OF OPERATING LEASE ("Subordination Agreement") is dated as of this 8th day of June, 1998, and is made by and among OXFORD HPC SCHAUMBURG OPERATING COMPANY, L.L.C., a Delaware limited liability company ("Operating Tenant"), OXFORD HPC SCHAUMBURG PROPERTY COMPANY, L.L.C., a Delaware limited liability company (f/k/a Oxford Schaumburg Company, L.L.C., a Delaware limited liability company) ("Owner"), and OCWEN PARTNERSHIP, L.P., a Virginia limited partnership, ("Lender")

Background:

A. Pursuant to that certain Construction Loan Agreement, dated of even date herewith, between Owner and Lender (as the same may be amended, restated, modified and supplemented from time to time, the "Loan Agreement"), Owner has applied to Lender for, and Lender has agreed to make, a loan in the principal amount of SEVEN MILLION ONE HUNDRED EIGHTY-TWO THOUSAND DOLLARS (\$7,182,000) (the "Loan"). The Loan is evidenced by that certain Promissory Note of even date herewith (the "Note") in the original principal amount of SEVEN MILLION ONE HUNDRED EIGHTY-TWO THOUSAND DOLLARS (\$7,182,000), and which is secured by, *inter alia*, that certain Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents (the "Mortgage"), and that certain Assignment of Leases and Rents (the "Assignment of Leases"), each of even date herewith encumbering the real property described on Exhibit A hereto (herein, the "Property"). (The Loan Agreement, the Note, the Mortgage, the Assignment of Leases, and all other documents executed and delivered by Owner to Lender in connection with the Loan, as the same may be amended, restated, modified and supplemented from time to time, shall be hereinafter collectively referred to as the "Loan Documents".) (To the extent not otherwise defined herein, all capitalized terms shall have the meaning given them in the Loan Agreement.)

BOX 333-CTI

76 897 98 D1 DL1 596

B. Pursuant to that certain Loan Agreement, dated of even date herewith, between Operating Tenant and Lender (as the same may be amended, restated, modified and supplemented from time to time, the "Tenant Loan Agreement"), Operating Tenant has applied to Lender for, and Lender has agreed to make, a loan in the principal amount of FOUR HUNDRED FORTY-SEVEN THOUSAND DOLLARS (\$447,000) (the "Tenant Loan"). The Tenant Loan is evidenced by that certain Promissory Note of even date herewith (the "Tenant Note") in the original principal amount of FOUR HUNDRED FORTY-SEVEN THOUSAND DOLLARS (\$447,000), and which is secured by, *inter alia*, that certain Leasehold Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents (the "Leasehold Mortgage"), that certain Assignment of Leases and Rents (the "Tenant Assignment of Leases"), and that certain Security Agreement (the "Tenant Security Agreement")

C. Under a certain operating lease, dated *May 27, 1998* (the "Operating Lease"), Owner has leased to Operating Tenant, and Operating Tenant has accepted and hired from Owner, a portion of the Property as described in the Operating Lease (said portion referred to herein as the "Leased Premises") for the period of time, and upon the covenants, terms, and conditions, stated in the Operating Lease

D. Lender has agreed to make the Loan to Owner and the Loan to Operating Tenant, and to permit Owner and Tenant to enter into the Operating Lease for the operation of the Hotel, which agreement and permission have been given by Lender upon and subject to the satisfaction of certain conditions more fully set forth in the Loan Agreement, including without limitation, the conditions that (i) the Operating Lease is fully and completely subordinate to the Loan (all as more fully described and set forth herein), and (ii) the Operating Lease terminates automatically upon the occurrence of certain Defaults under the Owner Loan Agreement and upon the occurrence of any Event of Default under the Owner Loan Agreement (all as more fully set forth herein).

E. In order to satisfy the condition that the Operating Lease be fully and completely subordinate to the Loan (all as more fully described and set forth herein), Operating Tenant, Owner and Lender desire to enter into this Subordination Agreement.

Statement of Agreement

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

1. Subordination of Operating Lease. Owner and Operating Tenant do hereby covenant, agree, acknowledge and confirm that the Operating Lease, any modifications and amendments to the Operating Lease, and all rights, options, liens, or charges created in the Operating Lease are, and shall continue to be, subject and subordinate in all respects to:

(a) The Loan and all other present and future indebtedness (principal and interest, including without limitation, fees, collection costs and expenses and other amounts), liabilities and obligations of Owner to Owen (including, without limitation, all of the indebtedness, liabilities and obligations under any one or more of the Loan Documents), all whether fixed

or contingent, matured or unmatured, liquidated or unliquidated, and whether arising under contract, tort or otherwise (all of the foregoing collectively the "Owen Indebtedness").

(b) The Loan Documents, including, without limitation, the Mortgage and the liens created thereby, and all other present and future agreements, documents, and or instruments evidencing, documenting, securing or otherwise relating to any or all of the Owen Indebtedness, all as the same may be amended, modified, extended, renewed or restated from time to time.

(c) Any and all advances made under the Loan Documents,

(d) Any extensions, modifications, or renewals of the Loan Documents or any of them, and

(e) Any other mortgage or lien on or against the Property or any of the other Collateral that may hereafter be held by Lender

2. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their respective heirs, representatives, executors, administrators, beneficiaries, successors, and assigns, including without limitation, any person who shall obtain, directly or by assignment or conveyance:

(a) Any interest in the Loan Documents,

(b) Any deed, certificate of purchase, or similar instrument or writing following foreclosure of the Mortgage,

(c) Any certificate of redemption following any such foreclosure; or

(d) Any interest in the Property, whether through foreclosure, deed in lieu of foreclosure, or otherwise.

Furthermore, the provisions of this Agreement shall be binding upon any guarantor of Operating Tenant's obligations under the Operating Lease.

3. **Automatic Termination of Operating Lease and Right to Possession.** Notwithstanding anything contained in the Operating Lease or applicable Laws to the contrary, Operating Tenant and Owner each covenant and agree that upon the occurrence of: (a) an Event of Default under the Owner Loan Agreement, or (b) a condition or occurrence which, with the giving of notice or the passage of time or both, would be an Event of Default under Sections 16.1(h) or 16.1(i), then Operating Lease immediately shall terminate without further action on the part of either Owner or Operating Tenant, and Operating Tenant's right to possession of the Leased Premises and Operating Tenant's right to operate the Hotel shall likewise cease and terminate. Owner and Operating Tenant hereby covenant and agree that until all of the Obligations under the Owner Loan Agreement shall have been fully paid and performed, the provisions of this Section 3 shall be deemed

to be an amendment to the Operating Lease, binding upon Owner, Operating Tenant, and their respective successors and assigns.

4. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Illinois.

5. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the date first above written.

OWNER:

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 Manager

By: [Signature]
Name: Nancy A. Ardiziani
Title: Managing Director

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OPERATING TENANT:

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

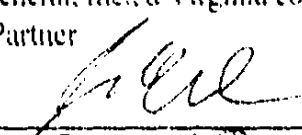
By: Oxford Capital Partners, Inc., an Illinois corporation, Its Manager

By: [Signature]
Name: Nancy A. Ardiziani
Title: Managing Director

LENDER:

OCWEN PARTNERSHIP, L.P., a Virginia limited partnership

By: Owen General, Inc., a Virginia corporation, its General Partner

By: 

Name: Jordan C. Paul

Title: Executive Vice President

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Gina Venturella, a Notary Public in and for the State and County aforesaid, do hereby certify that, Wynn H. Breckner, Managing Director of Oxford Capital Partners, Inc., an Illinois corporation, Manager of Oxford BlackPoint Company III, L.L.C., a Delaware limited liability company, the Manager of Oxford HPC Investment Company, L.L.C., a Delaware limited liability company, the sole member of Oxford HPC Schaumburg Property Company, L.L.C., a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary acts of said corporation and limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of May, 1998.

Gina Venturella
Notary Public

My commission expires: 7/25/00



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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Gina Venturella, a Notary Public in and for the State and County aforesaid, do hereby certify that, Van A. Avdisian, Managing Director of Oxford Capital Partners, Inc., an Illinois corporation, Manager of Oxford BlackPoint Company III, L.L.C., a Delaware limited liability company, the Sole Member of Oxford HPC Schaumburg Operating Company, L.L.C., a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary acts of said corporation and limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 24th day of May, 1998.

Gina Venturella
Notary Public

My commission expires: 7/25/00



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UNOFFICIAL COPY

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STATE OF Florida)
) SS
COUNTY OF Duval)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that William O'Connell, personally known to me to be the Executive Vice President of Owen General, Inc., a Virginia corporation which is general partner of Owen Partnership, L.P., a Virginia limited partnership, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and deed, and the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 27 day of April, 1998.

Maria L. Rios
Notary Public

My Commission Expires:

OFFICIAL NOTARY SEAL
MARIA L. RIOS
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. 10763620
MY COMMISSION EXP. APR 27 1998

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EXHIBIT A

Legal Description

PARCEL 1.

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

PARCEL 2.

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

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

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

P.I.N. 07-13-101-011-0000