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SECOND MODIFICATION AGREEMENT

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SL 86-5953C

WHEREAS, THE TORONTO-DOMINION BANK, one of the chartered banks of Canada, through its Atlanta Agency (hereinafter called the "Lender" or "Mortgagee") entered into a certain Construction Loan Agreement dated May 14, 1985 (the "Construction Loan Agreement") with Oxford Properties, Inc. (now known as BCE Development Properties, Inc.), a Colorado corporation (the "Original Borrower"), and LaSalle National Bank, a national banking association, not personally but as Trustee (the "Trustee") under Trust Agreement dated March 1, 1985 and known as Trust No. 109495 (the "Trust") and is the current owner and holder of the following described instruments:

1. That certain Construction Mortgage dated May 14, 1985 (the "Mortgage") made by Original Borrower and Trustee in favor of Lender securing indebtedness provided therein in the amount of \$140,000,000 (the "Loan") and recorded in the Office of the Recorder of Deeds of Cook County Illinois as Document 85-0121024, as amended by that certain First Modification Agreement dated January 16, 1986 by and between Original Borrower, Trustee and Lender recorded as Document 86-025939.

2. That certain Collateral Assignment of Leases and Rents dated May 14, 1985 (the "Leases and Rents Assignment") made by Original Borrower and Trustee in favor of Lender and recorded as Document 85-021023, as amended by First Modification Agreement referred to in preceding paragraph 1 hereof (collectively, the "Documents");

WHEREAS, Original Borrower has assigned to Quaker Tower Limited Partnership, an Illinois limited partnership (the "Limited Partnership") all of its rights as beneficiary of the Trust and all of its rights and obligations under the Documents, all of which obligations Limited Partnership assumed;

COOK COUNTY, ILLINOIS  
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WHEREAS, the Limited Partnership, as part of the transaction contemplated by this instrument, has been converted to an Illinois general partnership and is known as Quaker Tower Partnership (the "Successor Borrower") whose sole partners are Original Borrower and BCED-Riverfront Corporation, an Illinois corporation;

WHEREAS, concurrently herewith and with the consent of Lender and Permanent Mortgagee, Successor Borrower is causing Trustee to convey the Land (but not the Improvements) to LaSalle National Bank, not personally but as Trustee (the "Land Trustee") under Trust Agreement dated June 17, 1987 and known as Trust No. 112420 (the "Land Trust"), the sole beneficiary of which Trust is Original Borrower, and thereafter to enter into a Ground Lease of even date herewith, between Land Trust as Lessor and Trust as Lessee;

WHEREAS, the Original Borrower, Successor Borrower, Trustee, Land Trustee and Lender have entered into a Third Amendment, of even date herewith, to the Construction Loan Agreement which, inter alia, adds Land Trustee and Successor Borrower as parties thereto;

WHEREAS, the Original Borrower, Successor Borrower, Trustee, Land Trustee and Lender desire to modify the Documents in order to facilitate the transactions contemplated by the Third Amendment to Construction Loan Agreement and the issuance by Lender of an aggregate sum of \$24,433,700 in new letters of credit (the "New Letters of Credit") for the benefit of Permanent Mortgagee;

NOW, THEREFORE, in consideration of the premises, Ten Dollars (\$10,00) cash in hand paid by each party hereto to the other and for other good and valuable considerations received, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Mortgage is amended as follows:
  - (a) In the "NOW, THEREFORE" clause on page 1 the reference to \$140,000,000 is amended to \$164,433,700, new clauses (v) and (vi) are inserted as follows:

"(v) the repayment of sums owing to Mortgagee upon disbursement by Mortgagee under a certain Construction Obligation Letter of Credit dated July 7, 1987 in the amount of \$4,993,000 issued by Mortgagee upon Successor Borrower's application for the account of Permanent Mortgagee; and (vi) the repayment of sums owing to Mortgagee upon disbursement by Mortgagee under the New Letters of Credit dated July 7, 1987 in the original aggregate amount of \$24,433,700 issued by Mortgagee upon Successor Borrower's application for the account of Permanent Mortgagee;"

- (b) The first paragraph on page two is amended to read: "THE LAND located in the State of Illinois and legally described as 'Parcel 1' (the 'Land') and the easements appurtenant to Parcel 1 described as Parcels 2 and 3 in Exhibit 'A' attached hereto and made a part hereof;"
- (c) a new granting clause is inserted immediately preceding the habendum clause on Page 3:

"TOGETHER WITH all right, title and interest of Land Trustee in the Land and as Lessor under a certain Ground Lease dated July 7, 1987 of the Land (the "Ground Lease") and all right, title and interest of Trustee as Lessee under the Ground Lease, together with all rents, royalties and income therefrom."

- (d) The following new sections are added:

39. Further Covenants of Mortgagor:

Original Borrower and Land Trustee agree that they will timely keep, observe and perform or cause to be timely kept, observed or performed all terms, obligations and agreements of Lessor under the Ground Lease; and Successor Borrower and Trustee agree that they will timely keep, observe and perform or cause to be timely kept, observed or performed all terms, obligations and agreements of Lessor under the Ground Lease.

40. Easement and Operating Agreement and Parking Agreement

(a) "Easement and Operating Agreement" as used herein shall mean that certain Easement and Operating Agreement dated as of January 14, 1986 by and between Trustee, Original Borrower, LaSalle National Bank, as Trustee under Trust Agreement dated June 29, 1981 and known as Trust No. 104102 ("Trust

No. 104102") and under Trust Agreement dated September 20, 1985 and known as Trust No. 110339 ("Trust No. 110339"), Original Borrower and the JDC-Tishman Chicago Hotel Company, an Illinois general partnership ("JDC-Tishman"), recorded in Cook County, Illinois as Document No. 86-025944, as assigned by Original Borrower to Successor Borrower on January 29, 1987.

(b) "Parking Agreement" as used herein shall mean that certain Parking Agreement dated as of January 14, 1986 by and between Trust No. 110339, JDC-Tishman, Trustee, Original Borrower, Trust No. 104102, recorded in Cook County, Illinois as Document No. 8625945, as assigned by Original Borrower to Successor Borrower on January 29, 1987.

(c) Mortgagor covenants, represents and agrees:

(i) To faithfully perform all obligations of Mortgagor under the Easement and Operating Agreement and the Parking Agreement and to enforce performance by each of the other parties thereto of all obligations to be performed by such other parties (provided, however, that so long as Mortgagor is diligently attempting to enforce performance by each of the other parties thereto who have failed to perform their obligations thereunder, failure of such other parties to have performed such obligations shall not constitute an event of default hereunder).

(ii) That the sending by Trust No. 110339 or JDC-Tishman, or either of their successors and assigns of a notice of a default by Trustee, Original Borrower or Successor Borrower under the Easement and Operating Agreement and/or the Parking Agreement, which default is not cured within the applicable grace period provided therein, if any, and the existence of a default by Trustee, Original Borrower or Successor Borrower under the Easement and Operating Agreement and/or the Parking Agreement (whether or not a notice of such default has been sent by Trust No. 110339 or JDC-Tishman) which, in the sole opinion of Mortgagee, materially adversely affects Mortgagee's interests in the premises, which default is not cured within the applicable grace period provided therein, if any, (provided, however, for the purposes of this provision, such grace period shall begin upon receipt by Mortgagor of notice of such default from as well as from any of the parties to such agreements if receipt of a notice of default is necessary to cause the running of such grace period), shall constitute events of default hereunder.

(iii) The Easement and Operating Agreement and the Parking Agreement are in full force and effect and unmodified.

(iv) Mortgagor has furnished Mortgagee with all documents executed in connection with the Easement and Operating Agreement and the Parking Agreement and the documents delivered to Mortgagee constitute the entire agreement as between the parties thereto.

(v) Mortgagor has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated or otherwise encumbered the Easement and Operating Agreement or the Parking Agreement or its right, title and interest therein, and shall not do so, except to Permanent Mortgagee.

(vi) Neither Trustee, Original Borrower nor Successor Borrower is in default under the Easement and Operating Agreement or the Parking Agreement, and to the best knowledge and belief of Mortgagor, no other party to such agreements is in default thereunder.

(vii) No amendments to or termination of the Easement and Operating Agreement or the Parking Agreement will be made without the prior written consent of Mortgagee.

(viii) That the other parties to the Easement and Operating Agreement and the Parking Agreement, upon written notice from Mortgagee of the occurrence of an event of default hereunder, shall be and are hereby authorized to perform such agreements for the benefit of Mortgagee in accordance with the terms and conditions thereof without any obligation to determine whether or not such an event of default has in fact occurred.

(ix) To promptly send copies to Mortgagee of all notices sent or received by Trustee, Original Borrower or Successor Borrower in connection with the Easement and Operating Agreement and/or the Parking Agreement.

41. Inclusion of Various Advances of Mortgagee as Additional Mortgage and Judgment Indebtedness.

All advances made by Mortgagee before and during a foreclosure and at any time prior to sale for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act, Ch. 110, Sec. 15-101 et seq. Illinois Revised Statutes (1987) (the "Act") shall have the benefit of the provisions of the applicable provisions of the Act, including those provisions hereinbelow referred to:

(a) All monies advanced by Mortgagee in accordance with the terms of this Mortgage to:

- (i) preserve or restore the mortgaged real estate;
- (ii) preserve the lien of this Mortgage or the priority thereof; or
- (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-302 of the Act;

(b) Payments of when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage; when due installments of real estate taxes; other obligations authorized by this Mortgage; or, with court approval any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in Section 15-1505 of the Act;

(c) Attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as referred to in Section 15-1510 of the Act;

(d) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

(e) Payment of all of Mortgagee's expenditures and expenses made pursuant to Section 18 of this Mortgage and any other items mentioned in Section 15-1504(d)(2) of the Act.

(f) Expenses deductible from proceeds of sale referred to in subsections (a) and (b) of Section 15-1512 of the Act; and

#### 42. Certain Future Advances.

In addition to the provisions regarding future advances set forth in Section 28 of this Mortgage, Mortgagor acknowledges that all sums advanced by Lender pursuant to this Mortgage and Loan Agreement as originally executed and all sums advanced pursuant to this Mortgage as amended, the Loan Agreement as amended by the Second Amendment thereto and the Letters of Credit shall be a lien from the time this Mortgage was originally recorded and Mortgagor's repayment obligation of all sums advanced by Lender pursuant to the New Letters of Credit shall be a part of the indebtedness hereby secured from the time of the recording of a Second Modification Agreement and the execution of the Second Amendment to Loan Agreement which latter document commits Lender to issue such New Letters of Credit and binds Lender to make such advances, as contemplated by Section 15-1302(b) of the Act.

#### 43. Mortgagee's Right of Possession.

In addition to the provisions of Section 15(f) and Subsection 19 of this Mortgage, Mortgagee shall have all rights to be placed in possession of the real estate as provided in Section 15-1701 of the Act, or, at its request, to have a receiver appointed pursuant to Section 15-1702 of the Act, and such receiver, or mortgagee, if and when placed in possession, shall have all powers and duties as provided for in Section 15-1701 of the Act.

#### 44. Waiver of Rights Redemption.

Mortgagor acknowledges that the premises do not constitute agricultural real estate, as said term is defined in Section 15-201 of the Act or residential real estate as defined in Section 15-1219 of the Act. The waiver of right of redemption



set forth at Section 23 of this Mortgage shall be disregarded and, in lieu thereof, it is hereby agreed that such waiver is made pursuant to Sub-section (b) of Section 15-1601 of the Act and is binding on Original Borrower, Successor Borrower, Trustee and Land Trustee.

45. Mortgagor Acting As Trustee.

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 15-1205 of the Act.

46. Joinder by Successor Borrower.

This Mortgage is executed by Successor Borrower for the purpose of acknowledging and confirming that it is successor to all of the rights and obligations of Original Borrower under this Mortgage and has assumed all of such obligations.

47. Joinder by Land Trustee.

Land Trustee has executed this Mortgage for the purpose of subjecting its fee simple title in the Land and all its right, title and interest as Lessor under the Ground Lease to the lien of this Mortgage and to be bound by the terms thereof, without, however, any personal liability on the First Note or the Second Note.

2. The Leases and Rents Assignment is amended as follows:

(a) A third Whereas clause is added to Page 1 to read as follows: "WHEREAS, the Construction Loan Agreement has been further amended by a Third Amendment to Construction Loan Agreement dated July 7, 1987 (the "Third Amendment") by and between the Original Borrower, the Successor Borrower, the Trustee, the Land Trustee and the Lender (as those terms are defined in said Third Amendment), which requires that this Assignment be modified to provide that it shall secure, among other things, the repayment obligation of Borrower pursuant to two "new Letters of Credit in the aggregate sum of \$24,433,700;"

(b) All references in the "NOW, THEREFORE" clause on Page 1 to the Loan Agreement or any of the other "Loan Documents" shall mean and include the Third Amendment and the "Current Loan Documents" as defined therein.

3. All references to the Mortgage or the Leases and Rents Assignment in any document executed in connection with

or securing the Loan shall be deemed to be references to the Mortgage or the Leases and Rents Assignment as amended hereby.

4. Except as specifically amended hereby, the Mortgage and the Leases and Rents Assignment and all instruments executed in connection with either of the same are hereby ratified and confirmed in all respects.

5. This instrument is executed by Successor Borrower for the purpose of acknowledging and confirming that it is successor to all of the rights and obligations of Original Borrower under all of the Loan Documents, including the Interim Loan Documents as amended hereby, and has assumed all of such obligations.

6. This instrument is executed by the Trustee and Land Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as Trustee and Land Trustee, respectively, and Trustee and Land Trustee shall have no personal liability hereunder.

WITNESS the due execution hereof as of the 7th day of July, 1987.

LENDER:

THE TORONTO-DOMINION BANK

By: [Signature]  
Manager Credit Administration

SUCCESSOR BORROWER:

QUAKER TOWER PARTNERSHIP, an Illinois general partnership

By: BCE DEVELOPMENT PROPERTIES INC., general partner

By: [Signature]  
Its Vice President

By: [Signature]  
Its Vice President

ORIGINAL BORROWER:

BCE DEVELOPMENT PROPERTIES, INC.

By: [Signature]  
Its Vice President

By: [Signature]  
Its Vice President



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TRUSTEE:

LASALLE NATIONAL BANK, not personally  
but as Trustee under Trust No. 109495

By: [Signature]  
Its Assistant Vice President

LAND TRUSTEE:

LASALLE NATIONAL BANK, not personally  
but as Trustee under Trust No. 112420

By: [Signature]  
Its Assistant Vice President

This instrument prepared by  
~~and when recorded return to:~~

Livingston Fairbank, Jr.  
Rudnick & Wolfe  
30 North LaSalle Street  
Chicago, Illinois 60602

HV MAIL TO: Box 77 Attn: J. Foster

Property of Cook County Clerk's Office

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# UNOFFICIAL COPY

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STATE OF ILLINOIS )  
County of Cook )

The foregoing instrument was acknowledged before me this 7th day of July, 1987, by Scott J. Albert, Manager Credit Administration of THE TORONTO-DOMINION BANK, one of the chartered banks of Canada, on behalf of the Bank.

Kay Sutton  
Notary Public

My commission expires:

10-22-89

STATE OF ILLINOIS )  
County of Cook )

The foregoing instrument was acknowledged before me this 7th day of July, 1987, by Dennis Hoop and Glenn M. Azuma, and as Vice Presidents of ACE DEVELOPMENT PROPERTIES INC., an Illinois corporation on behalf of such corporation.

Kay Sutton  
Notary Public

My commission expires:

10-22-89

STATE OF ILLINOIS )  
County of Cook )

The foregoing instrument was acknowledged before me this 7th day of July, 1987, by Joseph W. Lang, Assistant Vice President of LASALLE NATIONAL BANK, as Trustee under Trust No. 109495, on behalf of the Bank as Trustee.

Kay Sutton  
Notary Public

My commission expires:

10-22-89

STATE OF ILLINOIS )  
County of Cook )

The foregoing instrument was acknowledged before me this 7th day of July, 1987, by Joseph W. Lang, Assistant Vice President of LASALLE NATIONAL BANK, as Trustee under Trust No. 112420, on behalf of the Bank as Trustee.

Kay Sutton  
Notary Public

My commission expires:

10-22-89

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian at and below the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lot 4 and 5 in said Block 2) and the North line of the Chicago River, as occupied; thence North along the East line of said North Clark Street a distance of 300.43 feet; thence East at right angles to the last described line a distance of 134.10 feet; thence South along a line 134.10 feet East of and parallel with the East line of said North Clark Street a distance of 305.09 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 134.18 feet to the point of beginning, in Cook County, Illinois, containing approximately 40,601 square feet or approximately 0.932 acres.

ALSO:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian and above the horizontal plane of +50.00 feet above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the East line of North Clark Street (also being the West line of Lots 4 and 5 in said Block 2) and the North line of the Chicago River, as occupied; thence North along the East line of said North Clark Street a distance of 300.43 feet; thence East at right angles to the last described line a distance of 136.10 feet; thence South along a line 136.10 feet East of and parallel with the East line of said North Clark Street a distance of 305.16 feet to a point on the North line of said Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 136.18 feet to the point of beginning, in Cook County, Illinois, containing approximately 41,111 square feet or approximately 0.946 acres.

PARCEL 2:

Easements appurtenant to and for the benefit of Parcel 1 as described in the Easement and Operating Agreement dated as of January 14, 1986 and recorded January 21, 1986 as Document Number 86025944 made by and between La Salle National Bank, as Trustee under Trust Agreement dated March 1, 1985 and known as Trust Number 109495, La Salle National Bank, as Trustee under Trust Agreement dated June 29, 1981 and known as Trust Number 104102, Oxford Properties, Inc., La Salle National Bank, as Trustee under Trust Agreement dated September 20, 1985 and known as Trust Number 110339 and The JDC-Tishman Chicago Hotel Company, over, under and upon portions of the following described land:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, at and below the horizontal plane of +50.00 feet above Chicago City Datum bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of the Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 187.48 feet to a point on a line 134.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line (said line also being the East face of an existing concrete foundation wall and its Northerly and Southerly extension thereof) a distance of 305.09 feet; thence

*PIN: 17-09-409-006 DR*  
*Vol. 501*  
*Address: 321 N. Clark St.*  
*Chicago, Ill.*

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## LEGAL DESCRIPTION (cont.)

East at right angles to the last described line a distance of 187.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street a distance of 311.60 feet to the point of beginning.

AND

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, at and above the horizontal plane of +50.00 feet above Chicago City Datum bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of the Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 185.48 feet to a point on a line 136.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line a distance of 305.16 feet; thence East at right angles to the last described line a distance of 185.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street a distance of 311.60 feet to the point of beginning.

## PARCEL 3

Easements appurtenant to and for the benefit of Parcel 1, as described in the Parking Agreement dated as of January 14, 1986 and recorded January 21, 1986 as Document Number 86025945 made by and between La Salle National Bank, as Trustee Under Trust Agreement dated September 20, 1985 and known as Trust Number 110339, The JDC-Tishman Chicago Hotel Company, La Salle National Bank, as Trustee under Trust Agreement dated March 1, 1985 and known as Trust Number 109415, Oxford Properties, Inc. and La Salle National Bank, as Trustee Under Trust Agreement dated June 29, 1981 and known as Trust Number 104102, over, across, under and upon portions of the following described land:

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, at and below the horizontal plane +50.00 above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of the Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 187.48 feet to a point on a line 134.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line (said line also being the East face of an existing concrete foundation wall and its northerly and southerly extension thereof) a distance of 305.09 feet; thence East at right angles to the last described line a distance of 187.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street a distance of 311.60 feet to the point of beginning.

AND

That part of Block 2 in Original Town of Chicago in Section 9, Township 39 North, Range 14 East of the Third Principal Meridian, at and above the horizontal plane +50.00 above Chicago City Datum, bounded and described as follows:

Beginning at the point of intersection of the West line of North Dearborn Street (also being the East line of Lots 1 and 8 in said Block 2) and the North line of the Chicago River, as occupied; thence West along the North line of said Chicago River, as occupied, a distance of 185.48 feet to a point on a line 136.10 feet East (as measured at right angles) of and parallel with the East line of North Clark Street; thence North along said line a distance of 305.16 feet; thence East at right angles to the last described line a distance of 185.37 feet to a point on the West line of said North Dearborn Street; thence South along the West line of said North Dearborn Street a distance of 311.60 feet to the point of beginning.

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