



Doc#: 0405118131
Eugene "Gene" Moore Fee: \$56.50
Cook County Recorder of Deeds
Date: 02/20/2004 03:55 PM Pg: 1 of 17

CERTIFICATION

OF

LESSOR ESTOPPEL AND AGREEMENT

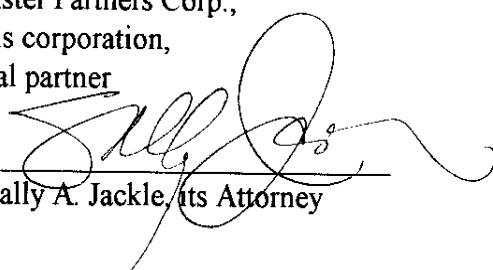
(The Above Space for Recorder's Use Only)

The undersigned hereby certifies that attached hereto is a true, correct and complete original of the LESSOR ESTOPPEL AND AGREEMENT by and among the STATE OF ILLINOIS, acting through its Department of Central Management Services, and STATE BUILDING VENTURE, an Illinois limited partnership, dated January 27, 2000 (the "Agreement"), concerning the Land legally described on Exhibit B attached to the Agreement, the Building commonly known as the James R. Thompson Center, and the Retail Space and Retail Improvements located in said building. All of such capitalized terms are defined in the Agreement.

Tax Numbers: 17-09-434-021-0000, 17-09-434-022-0000, 17-09-434-023-0000, 17-09-434-020-8003, -8006, -8012, -8013, -8023, -8033, -8034, -8038, -8041, -8044, -8049, -8052, -8053, -8056, -8058 through and including -8092

STATE BUILDING VENTURE,
an Illinois limited partnership

By: Westminster Partners Corp.,
an Illinois corporation,
its general partner

By: 
Sally A. Jackle, its Attorney

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LESSOR ESTOPPEL AND AGREEMENT

THIS LESSOR ESTOPPEL AND AGREEMENT (this "Agreement") is made as of this 11 day of January, 2000, by and among the **STATE OF ILLINOIS**, acting through its Department of Central Management Services (hereinafter "Landlord"), and **STATE BUILDING VENTURE**, an Illinois limited partnership ("Tenant").

WHEREAS, Landlord and Tenant have entered into that certain Commercial Lease of Illinois State Property dated November 11, 1983, between Landlord, as the landlord thereunder, and American National Bank & Trust Company of Chicago (successor-in-interest of National Boulevard Bank of Chicago), not personally but as trustee under Trust Agreement dated July 1, 1983, and known as Trust No. 6777 (the "**Original Tenant**"), the tenant thereunder and the predecessor-in-interest to Tenant, which has been amended by those certain amendments and letter agreements referenced more particularly in the attached Exhibit A (all of the foregoing, together with this Agreement, as same may be further amended, modified, substituted or extended, are hereinafter collectively referred to as the "**Lease**"), pursuant to which Landlord has leased Retail Space (as defined in the Lease) to Tenant, which Retail Space is commonly referred to as The Atrium Mall and which is located in the James R. Thompson Center at 100 West Randolph Street, Chicago, Illinois. The land upon which the James R. Thompson Center is located is more particularly described on Exhibit B attached hereto;

WHEREAS, Tenant is desirous of obtaining from **FIRST UNION NATIONAL BANK** (hereinafter "**Lender**") a loan in the principal amount of \$11,500,000 (hereinafter the "**Loan**") secured by a first leasehold mortgage (the "**Leasehold Mortgage**") upon Tenant's interest in the Premises and its interest under the Lease; and

WHEREAS, Lender is unwilling to make the Loan unless Landlord and Tenant execute and deliver this Agreement.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby certify and agree as follows for the mutual benefit of Lender, Landlord and Tenant:

1. All capitalized terms used herein but not otherwise defined herein shall have the meaning given such capitalized terms in the Lease.
2. In accordance with Section 11.2 of the Lease, Landlord hereby (a) approves Tenant as an assignee of all of Original Tenant's right, title and interest in the Lease; (b) consents to the assignment of the Lease to Tenant and the conveyance of the Retail Improvements to Tenant; and (c) recognizes Tenant as the tenant under the Lease.
3. In accordance with Section 23.1 of the Lease, Landlord hereby acknowledges that the granting by Tenant of the Leasehold Mortgage to Lender is permitted under the terms of the Lease. Landlord further acknowledges that it does not have a right to

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consent to the Leasehold Mortgage as long as the principal amount of the Loan does not exceed \$11,500,000.00 and the amount of the Loan payments does not exceed fifteen percent (15%) of the principal amount of the Loan in any year. Landlord also approves Lender and agrees to recognize Lender as a "Leasehold Mortgagee" as such term is defined in Section 23.1 of the Lease for all purposes under the Lease. Landlord also approves any successor or assign of Lender and agrees to recognize any such successor or assign as a Leasehold Mortgagee provided such successor or assign is a bank, insurance company, pension fund, real estate investment trust, savings and loan association, mutual fund or other entity or institution engaged in the business of making commercial loans or engaged in making commercial loans as part of its investment program (but in no event shall any successor or assign of Lender be an individual). In addition, Lender anticipates that it will transfer the Loan and assign the Leasehold Mortgage to a trust or other entity (the "Trust") which will issue securities in connection with a securitization of a pool of commercial mortgages (including the Leasehold Mortgage), and Landlord hereby approves of such Trust as a Leasehold Mortgagee and agrees to recognize such Trust as a Leasehold Mortgagee.

4. All of the Leasehold Mortgagee protection provisions contained in the Lease, including, but not limited to Section 23 of the Lease, and all other provisions set forth in the Lease inuring to the benefit of Leasehold Mortgagees or their successors and assigns, are hereby incorporated into this Agreement by reference and restated and confirmed by Landlord for the benefit of Lender, its successors and assigns.

5. Landlord hereby confirms that should Lender become the tenant under any new or direct Lease (as permitted under Section 23 of the Lease), then (a) title to all Retail Improvements shall automatically vest in Lender and (b) Landlord shall promptly assign to Lender all space leases and subleases under which the subtenants have attorned, with the written consent of the Lender.

6. Landlord hereby represents and warrants to Lender that Landlord is a governmental entity and, due to such fact, the Land, Building and Retail Space (excluding the Retail Improvements) are exempt from real estate taxes or assessments. Notwithstanding the foregoing, in the event that at any time while the Leasehold Mortgage remains unsatisfied of record, the Landlord or another state governmental entity is no longer the landlord under the Lease, and real estate taxes or assessments (or payments in lieu or substitution thereof) (collectively "Taxes"), become due on any portion of the Land, Building or Retail Space (excluding the Retail Improvements) (but only if the non-payment of such taxes, assessments or payments in lieu or substitution thereof could result in the termination or forfeiture of the Atrium Lease or the leasehold estate created thereby or in the sale, loss, forfeiture or diminution of the Retail Space or any part thereof or any interest of Mortgagee therein) Landlord agrees to immediately pay or deliver to Lender cash, cash equivalent or such other cash collateral acceptable to Lender, in its sole discretion, in an amount reasonably determined by Lender to insure that, at all times while the Leasehold Mortgage encumbers the leasehold estate in the Retail Space, all Taxes and assessments assessed against the Land, Building and/or Retail Space will be paid on or prior to the date that same become due. Landlord agrees to execute and deliver (and record or file, if requested by either party) such written documents and agreements (e.g., an

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escrow agreement, security agreement, financing statement, etc.) necessary or appropriate to evidence the foregoing, all on terms reasonably acceptable to both Landlord and Lender.

7. Landlord hereby covenants and agrees that neither the Lease, any new or direct Lease permitted pursuant to Section 23 of the Lease, nor the Leasehold Mortgage shall be subject or subordinate to any mortgage or other lien encumbering the fee estate of the Land, Building or Retail Space, and for so long as the Leasehold Mortgage remains unsatisfied of record Landlord agrees that Landlord shall not mortgage, pledge, hypothecate, place any lien or security interest on or otherwise encumber the Retail Improvements.

8. Notwithstanding any provisions in the Lease to the contrary, Landlord hereby agrees that Tenant shall have the right to assign or sublet Tenant's interest under the Lease to Lender and its successors or assigns (including, without limitation, the Trust) without the consent of Landlord. In addition, and notwithstanding any provision in the Lease to the contrary, if Lender, its successor or assign (including, without limitation, the Trust) or its designee, or a purchaser at a foreclosure sale, shall either become the owner of the Tenant's interest under the Lease upon the exercise of any remedy provided for in the Leasehold Mortgage, or shall enter into a new or direct Lease as permitted under Section 23 of the Lease, then Lender, its successor or assign, its designee or such purchaser shall have the right to assign to any person or entity such interest or such new Lease upon notice to the Landlord, without the necessity of obtaining the consent or approval of the Landlord, and in the event of such assignment, Lender and its designee shall be released from all liability under the Lease arising after the effective date of such assignment.

9. Landlord and Tenant hereby covenant and agree that Lender shall be entitled to participate in any settlement regarding insurance or condemnation proceeds or awards accruing to Tenant's interest in the improvements and its leasehold estate, to collect and hold any such proceeds or awards so accruing to Tenant and, notwithstanding any provision contained in the Lease to the contrary, to determine and direct, in its discretion, whether any such proceeds or awards are made available for the restoration of the Premises, razing of improvements or are applied to the repayment of the Loan, all as provided in the Leasehold Mortgage.

10. Notwithstanding the terms of Section 14(h) of the Lease to the contrary, for so long as the Leasehold Mortgage remains unsatisfied of record all proceeds of Insurance covering physical damage to any part of the Building (including without limitation the Common Areas and Facilities and the Retail Space, but excluding insurance covering physical damage to any part of the Retail Improvements) which are required under such Section 14(h) to be paid to Tenant, as trustee, shall instead be paid to Lender to be held for the mutual benefit of Landlord and Tenant and disbursed as provided for in this Agreement or the Lease, as applicable.

11. Landlord and Tenant hereby agree that while Lender holds any interest in the leasehold estate created by the Lease or by any New Lease which Landlord is obligated to enter into pursuant to Section 23 of the Lease, unless Lender shall otherwise expressly consent in writing, the fee title to the Land, Building and Retail Space and the leasehold estate created by the Lease shall in no event merge into one estate, but shall remain separate and distinct, notwithstanding the acquisition of the fee title and said leasehold estate by the Tenant, the

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Landlord or by a third party, by purchase, operation of law or otherwise, and the Lease shall remain in full force and effect unless otherwise agreed to by Lender.

12. Landlord and Tenant hereby acknowledge and agree that Tenant shall not be permitted to terminate the Lease as permitted under Section 4 of Lease by sending a notice of non-renewal of any renewal period to Landlord unless Lender has previously consented in writing to such non-renewal, and Landlord hereby further agrees to send written notice to Lender in the event that Tenant delivers any such notice of non-renewal to Landlord.

13. Landlord hereby certifies as follows: (a) Landlord is the owner of the fee simple estate in the Land, Building and Retail Space and is the landlord under the Lease; (b) Tenant is the owner of the leasehold estate in the Retail Space and is the tenant under the Lease; (c) the Lease is in full force and effect in accordance with its terms and has not been further supplemented, modified or otherwise amended; (d) to the best of Landlord's actual knowledge, each of the obligations on Tenant's part to be performed to date under the Lease have been performed, (e) to the best of Landlord's actual knowledge, Tenant has no offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease, (f) there are, with respect to the Lease, no options to renew or extend, and no security deposits or prepaid rent or liens, except as set forth therein; (g) there do not exist any other agreements (including Subordination, Non-Disturbance and Attornment Agreements) concerning the Land, Building or Retail Space, whether oral or written between Landlord and Tenant (or their respective predecessors or successors) under the Lease; (h) as of the date hereof, no basic rent or additional rent is due from Tenant under the Lease; (i) the basic rent currently payable by Tenant under the Lease is \$455,776.00 per annum ~~(\$437,236.00~~ after the transfer of space 200 to the Landlord); (j) basic rent due under the Lease has been paid through December 31, 1999; (k) the commencement date of the Lease was September 20, 1984, and the current term of the lease shall expire on September 19, 2004 subject to eight (8) five (5) year automatic renewal periods which may extend the Lease until September 19, 2044 (subject to the Tenant's right to terminate the Lease at the end of each renewal period, provided Lender has consented to such termination); (l) Tenant has not assigned the Lease or sublet the Retail Space or the Common Areas and Facilities (other than those certain subleases listed on the attached Exhibit C); (m) Landlord has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Lease or the Premises and there are currently no mortgages, deeds of trust or other security interests encumbering Landlord's fee interest in the Land, Building or Retail Space and no third party has an option or preferential right to purchase all or any part of the Land, Building or Retail Space; (n) Landlord has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against the Landlord's interest in the Land, Building or Retail Space; and (o) Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises and its operation thereon, including, without limitation, any environmental laws or the Americans with Disabilities Act, and has no reason to believe that there are grounds for any claim or such violation.

14. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall otherwise be made in accordance with Section 35.1 of the Lease. The current notice addresses of Landlord, Tenant and Lender are set forth on Exhibit D attached hereto.

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15. This Agreement and the representations and agreements made herein are given with the understanding that this Agreement constitutes a material inducement for Lender in making the Loan to Tenant and that Lender shall rely hereon in making the Loan to Tenant. This Agreement and the representations and agreements made herein shall inure to the benefit of Lender, its successors and assigns and shall be binding on Landlord, Tenant and their respective heirs, legal representatives, successors and assigns, and the obligations set forth herein shall "run with the land" and be binding upon any and all subsequent owners of any interest in the Land, Building and Retail Space.

16. At the direction of Lender, Tenant hereby agrees to record this Agreement in the Cook County Recorder's Office, and Landlord hereby consents to the recording of this Agreement.

17. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]

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Executed this 27 day of December, 1999. *January*

LANDLORD:

STATE OF ILLINOIS, acting through its Department of Central Management Services, on behalf of the State of Illinois

By: _____
Name:
Title:

TENANT:

STATE BUILDING VENTURE,
an Illinois limited partnership

By: Westminster Partners Corp.
an Illinois corporation,
its general partner

By:  _____
Erik Moskowitz, President

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Executed this 27 day of ^{January 2000} December, 1999.

LANDLORD:

STATE OF ILLINOIS, acting through its Department of Central Management Services, on behalf of the State of Illinois

By: *Michael S. Schwartz*
Name: Michael S. Schwartz
Title: Director

TENANT:

STATE BUILDING VENTURE,
an Illinois limited partnership

By: **Westminster Partners Corp.**
an Illinois corporation,
its general partner

By: _____
Erik Moskowitz, President

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STATE OF ILLINOIS)
COUNTY OF Cook)

ss.

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY that Erik Moskowitz, the President of WESTMINSTER PARTNERS CORP., an Illinois corporation, the general partner of STATE BUILDING VENTURE, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered said instrument in such capacity, for the uses and purposes herein set forth.

GIVEN under my hand and Notary Seal this 27 day of January, 2000.

[Signature]
Notary Public

My Commission Expires: _____

[Notarial Seal]



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EXHIBIT A

1. Commercial Lease of Illinois State Property, dated November 11, 1983
2. Memorandum of Lease, dated March 28, 1984 and recorded with the Cook County Recorder of Deeds April 9, 1984 as Document No. 27037576
3. First Amendment to Commercial Lease of Illinois State Property, dated April 30, 1984
4. Second Amendment to Commercial Lease of Illinois State Property, dated September 10, 1984
5. Third Amendment to Commercial Lease of Illinois State Property, dated April 4, 1985
6. Letters and Letter Agreements Concerning Master Lease - November 1983 through May 1986
 - A. Opinion Letter of Counsel for Department of Central Management Services, dated November 23, 1983
 - B. Letter Agreement dated November 11, 1983 (concerning City of Chicago Permits)
 - C. Letter of Understanding dated November 22 and 29, 1983 (concerning Affirmative Action Goals)
 - D. Letter Agreement dated March 27, 1984 (concerning Extension of Mortgage Contingency Period)
 - E. Letter Agreement dated June 22, 1984 (concerning City of Chicago Permits)
 - F. Letters dated August 16, 1984 and September 12, 1984 (concerning Representatives of Parties to Master Lease)
 - G. Letter Agreement dated May 29, 1986 (concerning Hallmark Rent Subsidy)
7. Letter Agreement dated June 5, 1987 (concerning changes in rent, cleaning services, hot and chilled water costs, engineering services, operation and maintenance of water feature and other matters)
8.
 - A. Insurance Trustee Letter Agreement dated February 1, 1988 from Boulevard Bank N.A. to Chicago Title and Trust Company
 - B. Letter Agreement dated August 21, 1988 from Boulevard Bank N.A. to Dept. of Central Management Services concerning certain operating engineer services

Exhibit A

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- C. Letter Agreement dated January 29, 1988 to Dept. of Central Management Services concerning certain cleaning services
9. Fourth Amendment to Commercial Lease of Illinois State Property dated November 15, 1989
 10. Fifth Amendment to Commercial Lease of Illinois State Property dated October 1, 1990
 11. Letter Agreement dated June 8, 1992 regarding Representatives of the parties under Section 35.2 of the Master Lease
 12. Sixth Amendment to Commercial Lease of Illinois State Property dated February 15, 1991
 13. Letter dated October 21, 1993 regarding change from The Palmer Group Ltd to TPG Realty Services and new addresses for Charles W. Palmer and Raymond P. Felson
 14. Seventh Amendment to Commercial Lease of Illinois State Property dated May 31, 1995
 15. First Amendment to Exhibit 2 Cleaning Services Agreement dated August 15, 1995
 16. Letter Agreement dated November 28, 1995 confirming names and addresses of the persons who are representatives of the parties under Section 35.2 of the Master Lease
 17. Trustee's Assignment and Deed of Conveyance, dated January 19, 2000, and recorded or to be recorded with the Cook County, Illinois Recorder of Deeds.
 18. Eighth Amendment to Commercial Lease of Illinois State Property dated January 19, 2000
 19. Ninth Amendment to Commercial Lease of Illinois State Property dated January 24, 2000

Exhibit A

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EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1:

BLOCK 34 IN ORIGINAL TOWN OF CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THE WEST 3 FEET THEREOF, TAKEN FOR WIDENING NORTH LA SALLE STREET), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE VACATED WEST 16 FEET OF CLARK STREET LYING EAST OF AND ADJOINING BLOCK 34 IN ORIGINAL TOWN OF CHICAGO IN THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT C

SUBLEASES

1. Sweet Factory
(Archibald Candy Corp.)
2. Sterling Buns
(Schlotzsky's)
3. Pay Day Loans
4. State of Illinois Center
Currency Exchange
(MFA Associates)
5. Sbarro
(Mater Inc.)
6. Chicago Smoothie's
7. Dunkin Donuts
8. Mrs. Field's
9. Pita Express
10. Hallmark
11. Rainbow/AIJ
12. A&B Tobacco
13. Cobo Copy
14. Illinois Vehicle Ins.
15. Panda Express
(Rezko-Citadel)
16. Robinson Ribs
17. Sun Restaurant
18. Casual Corner
(Petite Sophisticate)
19. Eastern Lobby Shops

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20. GNC
21. Wall Street Del
22. AAA Motor Club
23. U.S. Postal Service
24. Lifesource Blood Services
25. Randolph Cleaners
(Christine Kim)
26. Venice Coffee
27. Buyer's Agent
(TPG Residential)
28. CODA Acquisition
(J. Riggins)
29. Wolf Camera
30. Cultural Bookstone
31. Jenny Craig
32. Supercuts
33. Paul Harris
34. Casual Corner
35. Credit Union 1

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EXHIBIT D

ADDRESSES FOR LENDER, LANDLORD AND TENANT

If to Lender:

First Union National Bank
One First Union Center DC6
301 South College Street
Charlotte, North Carolina 28288-0166
Attention: William J. Cohane

If to Landlord or Tenant and for address for the payment of rent and all other sums due under the Lease at the addresses provided for in that certain Letter Agreement dated November 28, 1995.

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