

**AFFIDAVIT**

(Under Section 255 of the Tax Law)

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }ss:

\_\_\_\_\_, being duly sworn, deposes and says:

1. I am the Managing Member of \_\_\_\_\_, a New York Limited Liability Company, which is the owner (the "Owner") of that certain Wraparound Mortgage dated \_\_\_\_\_ (the "Wrap Mortgage") in the principal sum of \$ \_\_\_\_\_ executed by Owner encumbering the premises commonly known as \_\_\_\_\_, New York, recorded on \_\_\_\_\_, \_\_\_\_\_ in the office of the Register/County Clerk of the County of \_\_\_\_\_ in Reel/Liber \_\_\_\_\_ at page \_\_\_\_\_, which Wrap Mortgage was, and still is, subject to the "Prior Mortgage" as hereafter defined. At the time of the recording of the Wrap Mortgage, Section 255 Affidavits were duly filed and mortgage tax was paid in the amount of \$ \_\_\_\_\_.

2. There is an existing mortgage dated \_\_\_\_\_, \_\_\_\_\_ made by \_\_\_\_\_ to the \_\_\_\_\_ (the "Prior Mortgage") in the original principal sum of \$ \_\_\_\_\_ recorded on \_\_\_\_\_, in the office of the Register/Clerk's of \_\_\_\_\_ County in Reel/Liber \_\_\_\_\_ at page \_\_\_\_\_, upon which a mortgage tax of \$ \_\_\_\_\_ was paid.

3. The Prior Mortgage was assigned by \_\_\_\_\_ to \_\_\_\_\_ ("Assignee Bank") by Assignment intended to be recorded in the office of the Register/Clerk of \_\_\_\_\_ County immediately prior to the recording of the Modification and Extension Agreement referred to in the next paragraph.

4. On \_\_\_\_\_, \_\_\_\_\_, Owner and the Assignee Bank entered into a certain Extension and Modification Agreement which modified and extended the terms of the Prior Mortgage. The principal amount of the Prior Mortgage in the sum of \$ \_\_\_\_\_ remains unpaid.

5. Assignee Bank has this date refinanced the Prior Mortgage by lending \$ \_\_\_\_\_, which amount is evidenced by a note and secured in part by a, mortgage in the sum of \$ \_\_\_\_\_ ("New Mortgage").

6. A Consolidation and Extension Agreement dated this date which Consolidation and Extension Agreement, submitted for recording herewith, consolidates the lien of the Prior Mortgage and the New Mortgage to form a single consolidated lien in the sum of \$ \_\_\_\_\_ (the "Underlying Mortgage").

7. That as further additional security for the payment of the debt secured by the Underlying Mortgage, Owner has executed and delivered to Assignee Bank an Assignment of Lessor's Interest in Lease (the "Assignment of Leases"), which Assignment of Leases is also being submitted for recording. The Assignment of Leases is made for the purposed of further securing the debt secured by the Underlying Mortgage and does not create or secure a new or further indebtedness or obligation.

8. The refinancing of the Prior Mortgage, (provided for by the terms of the Wrap Mortgage), and the increase by \$ \_\_\_\_\_ in the amount secured by the Underlying Mortgage does not evidence or create a new or further indebtedness or obligation, but rather reduces the equity of \_\_\_\_\_, the holder of the Wrap Mortgage, which remains fully liable for the payment of the debt service under the Underlying Mortgage. The increase in the amount secured by the Underlying Mortgage does not exceed the amount of principal indebtedness secured by the Wrap Mortgage in excess of the amount secured by the Prior Mortgage.

9. There have been no re-loans or re-advances under the Wrap Mortgage.

WHEREFORE, Deponent respectfully requests that the New Mortgage, Consolidation and Extension, and the Assignment of Lease be accepted for recording and declared exempt from the payment of mortgage recording taxes pursuant to Section 255 of the Tax Law of the State of New York.

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Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_\_

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