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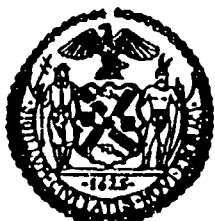
TOTAL NUMBER OF
PAGES IN DOCUMENT
INCLUDING THIS PAGE ► 26

Block v	835	Lots - ONLY IF ENTIRE LOT v	41	Partial Lots v	
Premises v	350 Fifth Ave.		NAME v	Attn: Louis J. Rosado	
Title/Agent Company Name v	COMMONWEALTH LAND TITLE INS. CO.		ADDRESS v	275 Broad Hollow Rd.	
Title Company Number v	Ny 020226		CITY v	STATE v	ZIP v
			Melville,	Ny	11747
NAME & ADDRESS	PARTY 1 v	Empire State Building Development LLC			
	ADDITIONAL PARTY 1 v	Empire State Land Development LLC			
	PARTY 2 v	North Fork Bapt			
	ADDITIONAL PARTY 2 v	275 Broad Hollow Rd, Melville, Ny 11747			
CHECK THIS BOX IF THERE ARE MORE THAN 2 OF EITHER PARTY <input type="checkbox"/>					
CITY REGISTER'S USE ONLY - DO NOT WRITE BELOW THIS LINE					

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Examined by (s): <u>[Signature]</u>		City Register		020184	
Mlge Tax Serial No. _____		Serial Number ►			
Mlge Amount \$ _____		Indexed By (s): <u>[Signature]</u>		Verified By (s): <u>[Signature]</u>	
Taxable Amount \$ _____		Block(s) and Lot(s) verified by <u>[Signature]</u>		Address <u>[Signature]</u> Tax Map <input type="checkbox"/>	
Exemption (✓) _____ YES <input type="checkbox"/> NO <input type="checkbox"/>		Extra Block(s) _____		Lot(s) _____	
Type: [319EE] [255] [OTHER _____]					
Dwelling Type: [1 to 2] [3] [4 to 8] [OVER 8]					
TAX RECEIVED ON ABOVE MORTGAGE ▼					
County (basic) _____	\$ _____	Recording Fee <u>E</u>	\$ <u>147</u>		
City (Addtl) _____	\$ _____	Affidavit Fee (C) _____	\$ _____		
Spec Addtl _____	\$ _____	RPTT Fee (R) _____	\$ _____		
TASF _____	\$ _____	HPD-A <input type="checkbox"/>	HPD-C <input type="checkbox"/>		
MTA _____	\$ _____	New York State Real Estate Transfer Tax ▼			
NYCTA _____	\$ _____	\$ _____			
TOTAL TAX _____	\$ _____	Serial Number ►			
Apportionment Mortgage (✓) _____ YES <input type="checkbox"/> NO <input type="checkbox"/>		New York City Real Property Transfer Tax Serial Number ►			

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RECORDED IN THE OFFICE OF THE CITY REGISTER
OF THE CITY OF NEW YORK

2002 APR 26 P 1:32

DALLAS POLICE DEPARTMENT

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THIS CONSOLIDATION AND EXTENSION AGREEMENT (the "Agreement"), made as of the 17th day of April, 2002, between **EMPIRE STATE BUILDING ASSOCIATES L.L.C.**, a New York limited liability company, with offices c/o Wien & Malkin LLP, 60 East 42nd Street, New York, New York 10165 (the "Leasehold Owner") and **EMPIRE STATE LAND ASSOCIATES L.L.C.**, a New York limited liability company, with offices c/o Wien & Malkin LLP, 60 East 42nd Street, New York, New York 10165 (the "Fee Owner", and, together with the Leasehold Owner, the "Mortgagor") and **NORTH FORK BANK**, a corporation organized under the Banking Law of the State of New York having its principal offices at 275 Broadhollow Road, Melville, New York 11747 (the "Mortgagee").

WHEREAS, the Fee Owner is now the owner in fee simple of the entire premises hereinafter described by metes and bounds as set forth on the attached Schedule A (the "Premises") and the Leasehold Owner is now the owner of the leasehold estate in the Premises (the "Leasehold Estate") created pursuant to that certain Indenture of Ground Lease dated December 21, 1951 made by The Prudential Insurance Company of America, as landlord and Alglan Realty Corporation, Rostev Realty Corporation and Bentob Realty Corporation, as tenants and recorded December 21, 1951 in Liber 4759 Page 534 in the office of the City Register of the County of New York; which lease was assigned by Alglan Realty Corporation, Rostev Realty Corporation and Bentob Realty Corporation to Imperium Corporation by Assignment of Lease (and Conveyance of Buildings) dated December 21, 1951 and recorded December 21, 1951 in Liber 4759 Page 609 in the office of the City Register of the County of New York; which lease was assumed by Imperium Corporation by Assumption of Ground Lease dated December 21, 1951 and recorded December 21, 1951 in Liber 4759 Page 605 in the office of the City Register of the County of New York; which lease was further assigned by Empire State Building Corporation (formerly known as Imperium Corporation) to Empire State Building Associates (with consent from The Prudential Insurance Company of America) dated December 27, 1961 and recorded December 27, 1961 in Liber 5173 Page 41 in the office of the City Register of the County of New York; which lease was modified by Modification of Indenture of Lease dated December 27, 1961 made between The Prudential Insurance Company of America and Empire State Building Associates and recorded December 27, 1961 in Liber 5173 Page 49 in the office of the City Register of the County of New York; which lease was further assigned by Assignment and Assumption of Lease dated October 26, 1964 made by Empire State Building Associates to Celeritas Realty Corp. (with consent from The Prudential Insurance Company of America) and recorded October 28, 1964 in Liber 5300 Page 334; which lease was further assigned by Reassignment and Reassumption of Lease dated October 26, 1964 made by Celeritas Realty Corp. to Empire State Building Associates and recorded November 6, 1964 in Liber 5302 Page 125; which lease was further modified by Second Modification of Indenture of Lease dated February 15, 1965 made between The Prudential Insurance Company of America and Empire State Building Associates and recorded February 15, 1965 in Liber 5314 Page 479 in the office of the City Register of the County of New York; which lease was made subject to the provisions of that certain Assignment of Disbursement Rights made by Lawrence A. Wien, Harry S. Helmsley, Wice Trading Corporation and Martin Wiener Realty Corporation, Joint Venturers Associated Under the name of Empire State Building Associates and Empire State Building Associates to Morgan Guaranty Trust Company of New York dated February 15, 1965 and recorded February 15, 1965 in Liber 5315 Page 23 in the office of the City Register of the

County of New York; which lease was made subject to the provisions of that certain Agreement and Declaration made by and between The Prudential Insurance Company of America and Empire State Building Associates dated December 6, 1965 and recorded December 10, 1965 in Liber 5353 Page 260 in the office of the City Register of the County of New York; which lease was assigned by The Prudential Insurance Company of America to E.G. Holding Co. Inc. by Lessor's Assignment of Lease dated November 27, 1991 and recorded November 27, 1991 in Reel 1828 Page 1978 in the office of the City Register of the County of New York; which lease was further assigned by Assignment and Assumption of (Landlord's Interest In) Lease made by NS 1999 American Company as nominee for The NS 1991 American Trust (successor by merger to E.G. Holding Co. Inc.) to Trump Empire State Partners, dated as of June 28, 1994 and recorded July 1, 1994 in Reel 2111 Page 2039 in the office of the City Register of the County of New York; which lease was assigned by Trump Empire State Partners to Empire State Land Associates L.L.C. by Assignment of Lease dated as of April 17, 2002 and intended to be recorded immediately prior hereto in the office of the City Register of the County of New York (all of the foregoing collectively referred to as the "Lease"); and

WHEREAS, the Leasehold Owner is the owner of the buildings and improvements now or hereafter located on the Premises (the "Improvements"); and

WHEREAS, the Mortgagee is the owner and holder of two (2) certain notes and the mortgages securing the same as set forth on the attached Schedule B, encumbering the Premises; and

WHEREAS, the Mortgagor and the Mortgagee desire to modify and spread the terms of the two (2) mortgages hereinbefore described so as to consolidate the liens of each of the mortgages so that the same shall together constitute a valid single first mortgage lien covering the Premises and the Leasehold Estate (hereinafter referred to as the "Mortgage") and securing payment of the principal indebtedness of \$60,500,000.00 and interest thereon as aforesaid, to be paid as hereinafter provided; and

WHEREAS, the Mortgagor and the Mortgagee further desire to modify and extend the time and manner of payment of the principal sum of \$60,500,000.00 with interest, as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties and the sum of One and 00/100 (\$1.00) Dollar to each party by the other in hand paid, the receipt of which is hereby acknowledged, and for the purpose of carrying out the intentions above expressed, the Mortgagor and the Mortgagee hereby covenant and agree as follows:

I. The liens of the two (2) mortgages hereinbefore described are hereby modified, spread and consolidated so that the same shall and now do constitute a valid single first Mortgage on the Premises, the Leasehold Estate and Improvements, securing the principal sum of \$60,500,000.00 and interest.

TOGETHER WITH:

- (A) all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining the Premises;
- (B) (a) all appurtenances to the Mortgaged Property, as hereinafter defined;
 - (b) to the extent owned by the Mortgagor, all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by the Mortgagor or in which the Mortgagor has or shall have an interest, now or hereafter located upon the Mortgaged Property or appurtenances thereto and usable in connection with the Mortgaged Property (the "Equipment"), and the right, title and interest of the Mortgagor in and to any of the Equipment which may be subject to any security agreements (as defined in Subdivision (1)(l) of Section 9-105 of the Uniform Commercial Code of New York) superior in lien to the lien of the Mortgage;
 - (c) all awards or payments, including interest thereon, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of said right) or for any other injury to or decrease in the value of the Mortgaged Property, to the extent of Mortgagor's interest therein;
 - (d) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into (the "Leases") and the right to receive and apply the rents, issues and profits of the Mortgaged Property (the "Rents") to the payment of the Debt, to the extent of Mortgagor's interest therein;
 - (e) all proceeds of any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof in reduction of the Debt, for damage to the Mortgaged Property, to the extent of Mortgagor's interest therein; and
 - (f) the right, in the name and on behalf of the Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Mortgagee in the Mortgaged Property.

The Premises, the Leasehold Estate, the Improvements and the Equipment together with the property, rights and interests stated in Paragraphs (A) and (B) above are herein collectively called the "Mortgaged Property".

II. The liens of the two (2) mortgages, as so consolidated, shall be deemed and construed from the date hereof to run concurrently as one Mortgage and constitute a valid single first lien upon all of the said Premises hereinbefore described and the Leasehold Estate to the full amount of \$60,500,000.00, payable with interest as hereinafter provided, with the same force and effect as if the Mortgagee was the holder of a single note and a single first mortgage made and executed by the Mortgagor herein covering all of the Mortgaged Property and securing payment of the principal sum with interest as aforesaid (the "Debt").

III. (A) The Mortgagee hereby modifies and extends the time for the payment of the principal indebtedness of \$60,500,000.00 secured by the notes and the Mortgage and this Agreement upon the terms and conditions hereinafter set forth, so that the same shall be payable with monthly payments of interest only in arrears at the rate of six and one half (6.50%) percent per annum, commencing on May 1, 2002 and monthly thereafter on the first day of each month (the "Debit Date") to and until May 1, 2012 when the balance of principal then remaining unpaid shall become due and payable with interest. Interest shall be calculated on the basis of a 360-day year and collected on the basis of the actual number of days elapsed.

(B) Until the Debt has been repaid in full, the Mortgagor agrees to maintain an interest-bearing, money market account (account #9774002332) with the Mortgagee (the "MMA Fund Account"). The Mortgagor has deposited the sum of \$2,000,000.00 into the MMA Fund Account on the date hereof, and will deposit an additional \$2,000,000.00 into such account on or before April 17 of each calendar year until such time as the Debt has been repaid in full. The Mortgagor hereby unconditionally and irrevocably authorizes the Mortgagee to automatically transfer the sum of \$166,666.67 from the MMA Fund Account to the Deposit Account (as hereinafter defined) on the last business day of each month, commencing May 31, 2002, until the Debt has been repaid in full. Mortgagor unconditionally warrants and represents to Mortgagee that it shall, until the Debt has been repaid in full, maintain sufficient funds in the MMA Fund Account to make the transfers required by this paragraph III (B).

(C) Until the Debt has been repaid in full, the Mortgagor agrees to maintain its Deposit Account (account # 9774002340) with the Mortgagee (the "Deposit Account"). The Mortgagor hereby unconditionally and irrevocably authorizes the Mortgagee to automatically debit from the Deposit Account any and all payments due hereunder. The Mortgagor unconditionally warrants and represents to Mortgagee that it shall, until the Debt has been repaid in full, maintain sufficient funds in the Deposit Account to pay any and all payments due hereunder.

(D) Any interest earned on the amounts deposited in the MMA Fund Account and/or the Deposit Account shall be the property of the Mortgagor, and may be withdrawn by the Mortgagor for the Mortgagor's use at any time and from time to time for so long as no Event of Default (as hereinafter defined) has occurred and is continuing hereunder. Upon repayment of the Debt in full, any balance remaining in the MMA Fund Account or the Deposit Account shall be immediately available to the Mortgagor (subject to the Mortgagee's ordinary requirements regarding the clearance of checks).

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IV. The Mortgagor does hereby covenant and agree to pay the principal sum and interest at the times and in the manner hereinabove set forth and, except as permitted hereunder, the principal not before the maturity thereof as the same is hereby extended, and to comply with all the other terms and provisions hereof and to perform all of the covenants and conditions of the notes and mortgages as herein modified.

V. The security of the notes and Mortgage shall not be impaired by anything herein contained, but the terms, provisions, covenants and conditions of this Agreement shall control and prevail over any and all of the terms, provisions, covenants and conditions of the notes and Mortgage.

VI. The Mortgagor hereby represents, covenants and agrees that the Mortgagor is now the owner in fee simple and leasehold title of the Premises hereinabove described and that the lien of the mortgages as herein modified, spread and consolidated (such mortgages being sometimes referred to herein as the "Mortgage") constitutes a valid first mortgage lien upon the Mortgaged Property to the full extent of \$60,500,000.00 and interest as hereinabove stated, and that there are no offsets or defenses to the notes, the Mortgage and this Agreement nor to the indebtedness secured thereby nor to any part thereof.

VII. This Agreement and all of its terms and provisions heretofore and hereinafter set forth shall bind and inure to the benefit of the parties hereto and their successors and assigns and any lawful holder of the Mortgage.

VIII. The Mortgagor covenants and warrants with the Mortgagee that:

1. The Mortgagor will pay the Debt as hereinabove provided. Mortgagor hereby consents to the execution and delivery of this Agreement and all of the other documents executed in connection herewith.

2. The Fee Owner warrants the fee title to the Premises and the Leasehold Owner warrants leasehold title to the Premises. The Mortgagor warrants that the Lease and the Sublease (as hereinafter defined) are in full force and effect.

3. The Mortgagor will keep the Mortgaged Property insured against loss or damage by fire with extended coverage, flood insurance, terrorism/war risk insurance (to the extent available to the Mortgagor at commercially reasonable rates, as determined by the Mortgagor in its reasonable discretion, which are comparable to premiums per dollar of fire insurance coverage, in an amount not less than the principal amount of the Debt) and such other hazards as the Mortgagee shall from time to time require in amounts approved by the Mortgagee and shall pay the premiums for such insurance as same become due and payable. All policies of insurance (the "Policies") shall be issued by an insurer reasonably acceptable to the Mortgagee and shall contain the standard New York mortgagee clause endorsement naming the Mortgagee loss payee and additional insured. The Mortgagor will assign and deliver the Policies to the Mortgagee. Not later than fifteen (15) days prior to the expiration date of each of the Policies the Mortgagor will deliver to the Mortgagee satisfactory evidence of the renewal of each of the Policies. If the

Mortgaged Property is partially damaged by fire or other casualty, the Mortgagee shall make 75% of the net insurance proceeds received by the Mortgagee in connection with such damage available to the Mortgagor in order to restore the Mortgaged Property, provided that: (i) the net insurance proceeds are sufficient, in the opinion of the Mortgagee, to fully restore the Mortgaged Property or, if such proceeds are insufficient to fully restore the Mortgaged Property, the Mortgagor shall have deposited with the Mortgagee cash in an amount equal to the difference between the reasonably estimated cost of restoring the Mortgaged Property and the amount of the net insurance proceeds; (ii) the Mortgagor is not then in default under the terms of this Agreement; and (iii) in the opinion of the Mortgagee the Mortgaged Property can be fully restored within twelve (12) months from the occurrence of such damage. The remaining 25% of the net insurance proceeds shall be released to the Mortgagor once the renovation or restoration is completed and the damaged space is rented at a rental acceptable to the Mortgagee. The Mortgagee will hold all insurance proceeds in an interest-bearing money market account. The interest earned thereon shall be the property of the Mortgagor and shall be disbursed to the Mortgagor in the manner and for the purposes that insurance proceeds are to be disbursed pursuant to this paragraph 3. In the event insurance proceeds are made available to repair or restore the Mortgaged Property in accordance with the foregoing, the Mortgagor shall retain an architect, at its sole cost and expense (whose fees shall be paid out of the insurance proceeds), who shall submit plans and specifications to the Mortgagee for the repair or restoration of the Mortgaged Property (indicating that such repair or restoration can be completed within the period provided for herein) and a budget itemizing the projected costs of such repair or restoration. Such plans and specifications and the budget are subject to the Mortgagee's prior written approval. Prior to the commencement of any repair or restoration the Mortgagor shall obtain, at its sole cost and expense, all necessary permits and approvals therefor. The Mortgagee shall periodically disburse 75% of such net insurance proceeds to pay for work completed or materials installed pursuant to the approved plans and specifications and budget. The expenses incurred by the Mortgagor (including, without limitation, architect's and attorney's fees and all "soft" and "hard" costs in connection with such restoration) shall be paid by the Mortgagor to the extent that 75% of the net insurance proceeds are insufficient to pay for such expenses. The Mortgagee shall not at any time be required to disburse any insurance proceeds to the Mortgagor if the undisbursed balance of such net insurance proceeds is, in the opinion of the Mortgagee, insufficient to timely complete the restoration of the Mortgaged Property free and clear of all liens in accordance with the aforesaid plans and specifications and budget. The Mortgagor agrees to post such bonds, obtain such guaranteed maximum price general contractor agreement and/or enter into such other agreements and arrangements as the Mortgagee may require to insure lien-free completion of such repairs or restoration by the end of the period contemplated herein. In the event the Mortgaged Property is damaged to a greater extent than set forth above, in the opinion of the Mortgagee, any sums paid to the Mortgagee by any insurer may be retained and applied by the Mortgagee toward payment of the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper or, at the discretion of the Mortgagee, the same may be paid, either in whole or in part, to the Mortgagor for such purposes as the Mortgagee shall designate. If the Mortgagee shall receive and retain such insurance money, the lien of the Mortgage shall be reduced only by the amount thereof received after expenses of collection and retained by the Mortgagee and actually applied by the Mortgagee in reduction of the Debt. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the

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insurance of buildings against loss by fire shall not apply to this Agreement. The Mortgagee shall be entitled, in the event of other insurance and contribution between the insurers, to receive from the insurance moneys to be paid such an amount as would have been payable under the policy or policies held for the benefit of the Mortgagee in case there had been no contribution.

Notwithstanding anything contained in this paragraph 3 to the contrary, in the event of a casualty loss covered by this Section 3, all insurance proceeds up to the sum of \$1,000,000.00 shall be paid directly to the Mortgagor as trustee on account of the repair of the casualty to the Mortgaged Premises. Said funds shall be paid by the Mortgagor to the contractors/subcontractors on account of said work which shall be performed in accordance with applicable municipal codes and the provisions of this Agreement.

Notwithstanding anything contained in this paragraph 3 to the contrary, provided that no Event of Default shall have occurred and be continuing, the proceeds of any rent loss or business interruption insurance will be paid to the Mortgagor.

4. The Mortgagor will pay all taxes, assessments, water rates, sewer rents and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Mortgaged Property (the "Taxes") as same become due and payable. The Mortgagor will deliver to the Mortgagee, within thirty (30) days after such Taxes are due and payable, a receipted tax bill, evidencing that the Taxes have been paid.

5. The Mortgagor, in addition to the payments of interest and principal or both payable pursuant hereto, will pay to the Mortgagee on each payment date an amount (the "Escrow Fund") which would be sufficient to pay the real estate taxes payable, or estimated by the Mortgagee to be payable, during the ensuing twelve (12) months from the date of calculation, divided by the number of installments due during the period ending one (1) month prior to the date any such real estate tax is payable. The Escrow Fund and the payments of interest or principal or both payable pursuant hereto shall be added together and shall be paid as an aggregate sum by the Mortgagor to the Mortgagee (the "Installments"). The Mortgagee will apply the Escrow Fund to payments required to be made by the Mortgagor pursuant to Paragraph 4 hereof. If the amount of the Escrow Fund shall exceed the amounts due pursuant to Paragraph 4 hereof, the Mortgagee shall in its discretion: (a) return any excess to the Mortgagor; (b) credit such excess against the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper; or (c) credit such excess against future payments to be made to the Escrow Fund. In allocating such excess the Mortgagee may deal with the person shown on the records of the Mortgagee to be the owner of the Mortgaged Property. If the Escrow Fund is not sufficient to pay the real estate taxes, the Mortgagor shall pay to the Mortgagee, upon request, an amount which the Mortgagee shall estimate as sufficient to make up the deficiency, in default whereof the Mortgagee may apply any sums in its hands to the payment of the following items in any order in its uncontrolled discretion:

- (i) Taxes;
- (ii) Interest on the principal;

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- (iii) Amortization of the principal;
- (iv) Late charges payable pursuant to the provisions hereof.

Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional collateral security for the Debt and shall not bear interest.

Notwithstanding anything contained in this paragraph 5, and provided that no Event of Default shall have occurred and be continuing, the provisions of this paragraph 5 shall be waived for so long as the payment of the Taxes continues to be the obligation of the subtenant under that certain Agreement of Sublease dated December 27, 1961 between Empire State Building Associates, as sublandlord, and Lawrence A. Wien, Harry B. Helmsley, Martin Wiener Realty Corporation and Parempco Inc., Joint Venturers associated under the name Empire State Building Company, as tenants, and recorded December 27, 1961 in Liber 5173 Page 155 in the office of the City Register of the County of New York, which sublease was partially assigned by Parempco Inc. to Lawrence A. Wien and Harry B. Helmsley by Assignment of Sublease dated February 1, 1963 and recorded July 10, 1963 in Liber 5239 Page 122 in the office of the City Register of the County of New York; which sublease was further partially assigned by Lawrence A. Wien to Wico Trading Corporation by Assignment of Sublease dated June 30, 1964 and recorded July 22, 1964 in Liber 5287 Page 238; which sublease was modified by First Modification of Sublease between Empire State Building Associates and Lawrence A. Wien, Harry B. Helmsley, Wico Trading Corporation and Martin Wiener Realty Corporation, Joint Venturers associated under the name of Empire State Building Company dated February 15, 1965 and recorded February 15, 1965 in Liber 5315 Page 1 in the office of the City Register of the County of New York; which sublease was made subject to the provisions of that certain Assignment of Disbursement Rights made by Lawrence A. Wien, Harry S. Helmsley, Wico Trading Corporation and Martin Wiener Realty Corporation, Joint Venturers Associated Under the name of Empire State Building Associates and Empire State Building Associates to Morgan Guaranty Trust Company of New York dated February 15, 1965 and recorded February 15, 1965 in Liber 5315 Page 23 in the office of the City Register of the County of New York; which sublease was further partially assigned from Lawrence A. Wien to William C. Warren, as Trustee under a certain Trust Agreement dated December 12, 1967 for the benefit of Columbia University, dated as of December 31, 1967 and recorded April 1, 1971 in Reel 200 Page 1123 in the office of the City Register of the County of New York; which sublease was further partially assigned by Martin Wiener Realty Corporation to Martin Wiener by Assignment of Interest in Sublease dated as of December 31, 1968 and recorded April 1, 1971 in Reel 200 Page 1126 in the office of the City Register of the County of New York; which sublease was further partially assigned by William C. Warren, as Trustee under a certain Trust Agreement dated December 12, 1967 for the benefit of Columbia University to Lawrence A. Wien by Assignment of Interest in Sublease dated as of December 1, 1970 and recorded April 1, 1971 in Reel 200 Page 1130; which sublease was further partially assigned by Samford G. Bluestein, Joan Konner, Benjamin Nadel and Lawrence A. Wien, as executors of the estate of Martin Wiener, deceased, to Martin Wiener Associates by Assignment of Interest in Sublease dated June 25, 1970 and recorded April 1, 1971 in Reel 200 Page 1133 in the office of the City Register of the County of New York; which sublease was further partially assigned by Wico Trading Corporation to Harry B. Helmsley by Assignment of Sublease dated August 2, 1969 and recorded April 1, 1971 in Reel

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200 Page 1496 in the office of the City Register of the County of New York; which sublease was further assigned by Lawrence A. Wien, Harry B. Helmsley and Martin Wiener Associates, Joint Venturers associated under the name Empire State Building Company to Empire State Building Company by Assignment and Assumption of Sublease dated as of April 2, 1971 and recorded April 8, 1971 in Reel 201 Page 556 (all of the foregoing are hereinafter collectively referred to as the "Sublease") provided that the Mortgagee shall receive a receipted tax bill evidencing the payment of such Taxes, within thirty (30) days of the last day that such Taxes may be paid without penalty or interest.

6. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by the Mortgagee to the discharge of the Debt and the Mortgagee shall not be limited to the interest paid on the award by the condemning authority, but shall be entitled to receive out of the award interest on the principal at the rate herein provided. The Mortgagee shall make the proceeds of such award available for the restoration of the Mortgaged Property pursuant to the provisions of paragraph 3 hereof, and any remaining proceeds after the completion of such restoration may be applied by the Mortgagee to the discharge of the Debt whether or not then due and payable. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the notes shall have been sought, recovered or denied, to receive said net award or payment or a portion thereof sufficient to pay the Debt, whichever is less.

7. The Mortgagee has the right to enter the Mortgaged Property for the purpose of enforcing its interests set forth in Paragraph I.(B)(d) hereof. Nevertheless, subject to the terms of this Paragraph 7, the Mortgagee waives the right to enter the Mortgaged Property for the purpose of collecting the Rents and grants the Mortgagor the right to collect, use and enjoy the Rents, and until the Mortgagee shall enter the Mortgaged Property to enforce its rights under this Agreement as set forth in Paragraph I.(B)(d) hereof, the Mortgagor shall have all rights to enforce the lessor's rights under all Leases and other agreements referenced in said Paragraph I.(B)(d). The Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in the payment of the Debt. The right of the Mortgagor to collect the Rents may be revoked by the Mortgagee upon the occurrence of any Event of Default by giving notice of such revocation to the Mortgagor. Following such notice the Mortgagee may enter upon the Mortgaged Property, collect, retain and apply the Rents toward payment of the Debt in such priority and proportions as the Mortgagee in its discretion shall deem proper.

The Mortgagor shall not, without the consent of the Mortgagee, make or suffer to be made any Leases or cancel or modify any Leases or accept prepayments of installments of Rents for a period of more than (1) month in advance or further assign the whole or any part of the Rents. No Lease (except for the Sublease) covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee, except sub-leases entered into by the subtenant pursuant to the Sublease, which shall be valid and binding without the consent of the Mortgagee. Notwithstanding anything contained in this paragraph 7 to the contrary, the Mortgagor shall have the right to cancel or terminate the

Sublease in accordance with its terms in the event of a material monetary default thereunder. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. With respect to the Sublease (and any lease hereafter entered into by the Mortgagor with the consent of the Mortgagee), the Mortgagor will: (a) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (b) promptly send to the Mortgagee copies of all notices of default which it shall send or receive thereunder; and (c) enforce all of the terms, covenants and conditions contained therein upon the lessee's part to be performed, short of termination thereof. In addition to the rights which the Mortgagee may have hereunder, in the event of any default under this Agreement, the Mortgagee, at its option, may require the Mortgagor to pay monthly in advance to the Mortgagee, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in the possession of the Mortgagor. Upon default in any such payment the Mortgagor will vacate and surrender possession of the Mortgaged Property to the Mortgagee or to such receiver and in default thereof the Mortgagor may be evicted by summary proceedings or otherwise.

8. The Mortgagor will cause the Mortgaged Property to be maintained in good condition and repair. Subject to the rights of the subtenant under the Sublease, the Improvements and the Equipment shall not be removed, demolished or altered (except for normal replacement of the Equipment) without the consent of the Mortgagee. The Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property or the use thereof and shall promptly repair, replace or rebuild (the "Work") any part of the Mortgaged Property which may be destroyed by any casualty or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Paragraph 6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. If such casualty shall be covered by the Policies, the Mortgagor's obligation to do the Work shall be contingent upon the Mortgagee's paying to the Mortgagor the proceeds of the Policies, or such portion thereof as shall be necessary, upon completion of the Work to the Mortgagee's satisfaction.

9. The Debt will, at the option of the Mortgagee, become immediately due and payable in the event that the Mortgagor shall, without the prior written consent of the Mortgagee, (a) permit the Mortgaged Property or any part thereof or any interest therein to be sold, transferred or conveyed to any other person or entity, or (b) sell, transfer or convey the Mortgaged Property or any part thereof or any interest therein, which shall include but not be limited to (i) where the Mortgagor is a corporation, the sale or transfer of any of the outstanding shares of the corporation or the dilution of the present stockholding or corporate control by issuance of new or treasury stock or by conversion of any non-voting stock or other securities to voting stock, or (ii) where the Mortgagor is a partnership, the transfer of any of the interests in the Mortgagor, or the withdrawal, resignation or retirement of the general partner, or (iii) where the Mortgagor is a limited liability company, a transfer of any of the interests in the Mortgagor.

Notwithstanding the foregoing, transfers of membership interests in the Mortgagor will be permitted without the consent of the Mortgagee, on prior written notice to the Mortgagee,

provided that Peter L. Malkin and/or Anthony Malkin and/or their controlled affiliates shall continue to have substantial and active participation in the management of the Mortgagor (as determined by the Mortgagee in its reasonable discretion).

10. After request by the Mortgagee, the Mortgagor, within ten (10) days and at its expense, will furnish to the Mortgagee a statement, duly acknowledged and certified, setting forth the amount of the Debt, the rate of interest thereon, the date Installments were last paid, the offsets or defenses thereto, if any, and that this Agreement has not been modified or, if modified, giving particulars of such modification.

11. Any notice, demand, statement, request or consent made hereunder shall be in writing and will be deemed given when postmarked, addressed and mailed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as the Mortgagor or the Mortgagee, as the case may be, shall designate in writing in the manner hereinabove set forth.

12. If the Mortgage is foreclosed, the Mortgaged Property or any interest therein may, at the discretion of the Mortgagee, be sold in one or more parcels and in any order or manner.

13. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on the notes, the Mortgage, the Debt or this Agreement, the Mortgagor will pay such tax with interest and penalties thereon, if any. In the event that the Mortgagee shall be advised by counsel chosen by it that the payment of such tax or interest and penalties by the Mortgagor would be unlawful, taxable to the Mortgagee or unenforceable or would provide the basis for a defense of usury, then and in that event the Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

14. If at any time the United States of America, any state thereof or any subdivision of any such state shall require revenue or other stamps to be affixed to the notes, the Mortgage or this Agreement, or shall impose any other tax or charge on the same, the Mortgagor will pay for the same with interest and penalties thereon, if any.

15. The Mortgagee and its agents will have the right to enter and inspect the Mortgaged Property at all reasonable times.

16. The Mortgagor will keep adequate books and records of account in accordance with generally accepted accounting practices consistently applied and will furnish the Mortgagee with annual accounting statements (including an annual certified "rent roll" if applicable) within one hundred twenty (120) days after the end of each calendar year, in form satisfactory to the Mortgagee, which shall disclose in reasonable detail all earnings and expenses with respect to the operation of the Mortgaged Property, certified by independent certified public accountants of recognized standing satisfactory to the Mortgagee. In addition, the Mortgagor will submit to the Mortgagee copies of any operating statements or the like when the Mortgagor is required to submit such information to any administrative or regulatory authority or agency having jurisdiction. In addition to but not in lieu of any other remedies available to the Mortgagee, upon

the Mortgagor's failure to supply to the Mortgagee the records and/or other information required by this Paragraph 16 and until such records and/or information are furnished, interest payable hereunder shall be at the rate of 24% per annum or the maximum rate allowed to be charged by law, whichever is lower. The Mortgagor shall also provide the Mortgagee with a copy of the annual overage rent report under the Sublease and any information included therein within ten (10) days of Mortgagor's receipt of same.

17. The Mortgagor will observe and perform each and every term to be observed or performed by the Mortgagor pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Mortgaged Property.

18. The Debt will become due at the option of the Mortgagee upon any one or more of the following events (each an "Event of Default"):

- (a) if any Installment when due;
- (b) if any of the Taxes are not paid when the same are due and payable;
- (c) if the Policies are not kept in full force and effect or if the Policies are not assigned and delivered to the Mortgagee upon request;
- (d) if the Mortgagor does not furnish a statement, in the manner provided herein, of the amount of the Debt and the offsets or defenses thereto, if any;
- (e) if without the consent of the Mortgagee any Improvement or the Equipment (except for normal replacement of the Equipment) is removed, demolished or altered or if the Mortgaged Property is not kept in good condition and repair;
- (f) if any Leases are made, cancelled or modified or if any of the Rents are prepaid for a period of more than one (1) month in advance or if any of the Rents are assigned without the consent of the Mortgagee, except as otherwise provided herein;
- (g) if material any representation or warranty of the Mortgagor or of any person (a "guarantor") guaranteeing payment of the Debt or any portion thereof or the performance by the Mortgagor of any of the terms of the notes, the Mortgage or this Agreement, made herein or in any such guaranty or in any certificate, report, financial statement or other instrument furnished in connection with the making of the notes, the Mortgage, this Agreement or any such guaranty, shall prove false or misleading in any material respect;
- (h) if the Mortgagor or any guarantor shall make an assignment for the benefit of creditors;
- (i) if a receiver, liquidator or trustee of the Mortgagor or of any guarantor shall be appointed or if the Mortgagor or any guarantor shall be adjudicated a bankrupt or insolvent or if any petition for bankruptcy, reorganization or arrangement pursuant to the Federal

Bankruptcy Code or any similar federal or state statute shall be filed by or against the Mortgagor or any guarantor or if any proceeding for the dissolution or liquidation of the Mortgagor or of any guarantor shall be instituted and, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by the Mortgagor or such guarantor, upon the same not being discharged, stayed or dismissed within one hundred twenty (120) days;

(j) if the Mortgagor does not reimburse the Mortgagee upon demand for all expenses incurred in remedying any default of the Mortgagor hereunder or in appearing in, defending or bringing any action or proceeding to protect the Mortgagee's interest in the Mortgaged Property, including reasonable attorneys' fees, with interest as provided herein;

(k) if for fifteen (15) days after notice from the Mortgagee the Mortgagor shall continue to be in default under any other covenant of the Mortgage hereunder;

(l) if, after a default thereunder, the Mortgagee elects to enforce its rights under the notes or any instrument which may be held by the Mortgagee as additional security for the Debt;

(m) if the Mortgagor shall be in default under any other mortgage covering any part of the Mortgaged Property whether it is superior or inferior in lien to the Mortgage;

(n) if the Mortgaged Property becomes subject to (i) any tax lien which is superior to the lien of the Mortgage, other than a lien for local real estate taxes and assessments not due and payable, or (ii) any mechanic's, materialman's or other lien which is or is asserted to be superior to the lien of the Mortgage and such lien shall remain undischarged for sixty (60) days;

(o) if the Mortgagor fails to promptly cure any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property;

(p) if the Mortgagor shall convey or lease any air development rights with respect to the Mortgaged Property, inasmuch as the Mortgagor agrees that such sale or lease would conclusively impair the Mortgagee's security;

(q) if the Mortgaged Property is encumbered by any mortgage lien other than the lien of the Mortgage, provided, however, that the Mortgagor shall be permitted to further encumber the Mortgaged Property provided that (i) the aggregate of all debt of the Mortgagor (both secured and unsecured) shall not exceed fifty (50%) percent of the fair market value of the Mortgagor's assets and (ii) the holder of any such subordinate indebtedness shall enter into a subordination agreement with the Mortgagee, in form and substance satisfactory to the Mortgagee and its counsel in all respects in the exercise of reasonable discretion;

(r) if at any time prior to the date the Debt is repaid in full, the debt service coverage ratio of the Mortgaged Property shall be less than 2.0:1, which shall be determined by dividing the aggregate net operating income (including overage rent and all other income, but

excluding depreciation) of the Mortgagor for each full calendar year by the aggregate of all monthly payments due pursuant to this Agreement during such calendar year.

Notwithstanding anything contained herein to the contrary, except for items 18(a) and 18(b), the Mortgagee shall give Mortgagor thirty (30) days written notice of non-monetary defaults prior to accelerating the Mortgage. In the event the default is of the nature that cannot be cured within thirty (30) days and Mortgagor commences to cure same and diligently continues such cure to completion, same shall not constitute a default and Mortgagor shall have additional reasonable period of time in which to cure. If any such obligations of the Mortgagor (other than items 18(b) and 18(c), with which the Mortgagor shall be required to comply immediately upon any default with respect thereto by the subtenant under the Sublease) are obligations of the subtenant under the Sublease, no Event of Default shall occur as a result of Mortgagor's nonperformance thereof, provided that (i) the Sublease shall continue to be in full force and effect, (ii) the Mortgagor shall diligently pursue its remedies for such nonperformance under the Sublease and (iii) no substantial risk of forfeiture of the Mortgaged Property shall accrue as a result of such non-performance.

Upon the occurrence of any one of the foregoing events set forth in this Paragraph 18 and upon the Mortgagee exercising its option to declare the Debt immediately due and payable by reason thereof, the Mortgagor will pay, from the date of that event, interest at the rate of 24% per annum (the "Default Rate").

19. If the Mortgagor fails to make any payment or to do any act as herein provided, the Mortgagee may, but without any obligation to do so and upon reasonable notice to or demand on the Mortgagor (except where immediate action is required to avert a loss or forfeiture) and without releasing the Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as the Mortgagee may deem necessary to protect the security hereof, the Mortgagee being authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend or bring any action or proceeding to protect its interests in the Mortgaged Property or to foreclose the Mortgage or collect the Debt. The cost and expense thereof (including attorneys' fees), with interest as provided in this paragraph, shall be due from Mortgagor upon demand made by the Mortgagee. All such costs and expenses incurred by the Mortgagee in remedying such default or in appearing in, defending or bringing any such action or proceeding shall be paid with interest at the Default Rate for the period after notice from the Mortgagee that such cost or expense was incurred to the date of payment to the Mortgagee. All such costs and expenses incurred by the Mortgagee pursuant to the terms hereof, with interest, shall be deemed to be secured by the Mortgage.

20. Mortgagor will pay a charge of four (4%) percent of any amount which cannot be debited from its account due to insufficient balances on the Debit Date, as liquidated damages for failure to make timely payment and such late charge shall be secured by the Mortgage.

21. In any action to foreclose the Mortgage the Mortgagee shall be entitled to the appointment of a receiver without notice.

22. The failure of the Mortgagee to insist upon strict performance of any term of the notes, the Mortgage or this Agreement shall not be deemed to be a waiver of any term of the notes, the Mortgage or this Agreement. The Mortgagor shall not be relieved of the Mortgagor's obligations hereunder by reason of (a) the failure of the Mortgagee to comply with any request of the Mortgagor or any guarantor to take any action to foreclose the Mortgage or otherwise enforce any of the provisions thereof, of the notes or of this Agreement, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (c) any agreement or stipulation by the Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the notes, the Mortgage or this Agreement. The Mortgagee may resort for the payment of the Debt to any other security held by the Mortgagee in such order and manner as the Mortgagee, in its discretion, may elect. The Mortgagee may take action to recover the Debt or any portion thereof or to enforce any covenant hereof without prejudice to the right of the Mortgagee thereafter to foreclose the Mortgage. The rights of the Mortgagee under the Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

23. If the Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

24. The terms of the notes, the Mortgage and this Agreement shall be construed by the laws of the State of New York, except as herein expressly provided to the contrary.

25. This Agreement is both a real property mortgage and a security agreement. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property.

The Mortgagor will, at the request of the Mortgagee, deliver to the Mortgagee any and all further instruments which the Mortgagee shall require in order to further secure and perfect the lien of the Mortgage. The Mortgagee is authorized and empowered to file financing statements, as required by the Uniform Commercial Code, to perfect its lien against the foregoing types of personal property without first obtaining the signature of the Mortgagor on the financing statements.

26. The Mortgagor (and the undersigned representative of the Mortgagor, if any) has full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of the notes, the Mortgage and of this Agreement on the Mortgagor's part to be performed.

27. The Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Mortgagor, which Mortgagee, in its discretion, feels should be brought to protect its interests in the Mortgaged Property.

28. If any term, covenant or condition of the notes, the Mortgage or this Agreement is held to be invalid, illegal or unenforceable in any respect, the notes, the Mortgage and this Agreement shall be construed without such provision.

29. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

30. If the Mortgagor is a corporation, the execution and delivery of this Agreement has been duly authorized by the board of directors of the Mortgagor and there is no requirement under its certificate of incorporation or its by-laws for consent of shareholders to this transaction; or if the Mortgagor is a partnership, the execution and delivery of this Agreement has been duly authorized by the partners of the Mortgagor pursuant to its partnership agreement; or if the Mortgagor is a limited liability company, the execution and delivery of this Agreement has been duly authorized in accordance with its operating agreement.

31. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Agreement shall be used interchangeably in singular or plural form. The word "Mortgagor" shall mean "each Mortgagor and/or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein". The word "Mortgagee" shall mean "the Mortgagee or any subsequent holder of the notes". The word "notes" shall mean "the notes or any other evidence of indebtedness secured by the Mortgage". The word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority or other entity. The words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein. The word "Debt" shall mean the principal with interest thereon and all other sums due pursuant to this Agreement and secured by the Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns and pronouns shall include the plural and vice versa.

32. This Agreement cannot be changed orally but only in writing by the person to be charged.

33. Intentionally omitted.

34. (A) Privileges, if any, to pay all or any part of the Debt, except as may be contained herein, are hereby terminated with the same force and effect as if they had never been granted.

(B) Provided that the Mortgagor is not in default of any of the terms and conditions of this Agreement, upon giving ten (10) days prior written notice to the Mortgagee of its intention to do so the Mortgagor shall have the privilege of prepaying the Debt in multiples of \$100,000.00, with interest computed to the last day of the month in which any prepayment is made, provided that, if the prepayment is made between the date of this Agreement and the date that is one hundred eighteen (118) months from the date of this Agreement (the "Yield

Maintenance Period"), in addition to the prepayment of principal, the Mortgagor pays to the Mortgagee a prepayment charge equal to the greater of subparagraphs (i) and (ii) below:

- (i) 1.0% of the unpaid principal balance of the Debt; or
- (ii) the product obtained by multiplying:
 - (A) the amount of principal being prepaid,
 - by
 - (B) the excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,
 - by
 - (C) the Present Value Factor.

For purposes of subparagraph (ii), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the annual interest rate of this Note, expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Lender of collateral or security to a portion of the principal balance, the date of such application; and in any other case, the date on which Lender accelerates the unpaid principal balance of this Note.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate as of the date 5 Business Days before the Prepayment Date, on the 4.8750% U.S. Treasury Security due February, 2012, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security used to determine the Assumed Reinvestment Rate, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security specified above with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and term to the Treasury Security used to determine the Assumed Reinvestment Rate. The selection of an alternate security pursuant to this Paragraph shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1 - \left(\frac{1}{1 + ARR} \right)^n}{ARR}$$

n = number of months remaining in Yield Maintenance Period

ARR = Assumed Reinvestment Rate

(C) Notwithstanding the above, Mortgagor shall have the right to prepay the entire Unpaid Principal Balance of the Mortgage without penalty during the period from March 1, 2012 through and including May 1, 2012.

(D) Any partial prepayment made hereunder shall be applied in inverse order of maturity and shall not result in any reduction or deferment in the monthly payments required hereunder.

35. If following the occurrence of any default under this Agreement and an exercise by the Mortgagee of its option to declare the Debt immediately due and payable the Mortgagor shall tender payment of an amount sufficient to satisfy the entire Debt at any time prior to a foreclosure sale of the Mortgaged Property and if at the time of such tender prepayment of the principal is not permitted by this Agreement, the Mortgagor shall, in addition to the entire Debt, also pay to the Mortgagee a sum equal to interest which would have accrued on the Debt at the Default Rate from the date the Mortgagee exercises such option to the date the Mortgagor tenders payment of the Debt and thereafter at the Default Rate to the maturity date and a prepayment charge equal to the prepayment charge which would have been payable as of the first day of the period during which prepayment would have been permitted. If at the time of such tender prepayment of principal is permitted by this Agreement, such tender by the Mortgagor shall be deemed to be a voluntary prepayment of principal and the Mortgagor shall, in addition to the entire Debt, also pay to the Mortgagee the applicable prepayment charge as set forth in Paragraph 34 of this Agreement.

36. The Mortgagor hereby agrees that upon its failure to pay the Debt on the maturity date the Mortgagor will pay to the Mortgagee interest on the then unpaid principal at the Default Rate from the maturity date and until the actual receipt and collection of the Debt by the Mortgagee. This charge shall be added to the principal and shall be deemed to be part of the Debt. This paragraph, however, shall not be construed as an agreement or privilege to extend the Mortgage, nor as a waiver of any other right or remedy accruing to the Mortgagee by reason of any such default.

37. In the event that this Agreement covers two (2) or more unconsolidated mortgages, then, in that case, all such mortgages are hereby consolidated as a joint and single lien on the Mortgaged Property in the sum of \$60,500,000.00.

38. The Mortgagor hereby waives the right to assert a counterclaim other than a compulsory counterclaim in any action or proceeding brought against it by the Mortgagee and waives trial by jury in any action or proceeding brought by either party hereto against the other or in any counterclaim asserted by the Mortgagee against the Mortgagor on any matters whatsoever arising out of or in any way connected with this Agreement or the Debt.

39. This Agreement is subject to the express condition that at no time shall the Mortgagor be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject the Mortgagee to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Agreement the Mortgagor is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of such maximum rate, the rate of interest under this Agreement shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments toward the reduction of principal and not to the interest due hereunder.

40. The Mortgagor hereby represents and warrants to the Mortgagee that, to the best of Mortgagor's knowledge and belief, and except as otherwise set forth in that certain Phase I Environmental Assessment of the Mortgaged Property dated March 8, 2002 prepared by Merritt Engineering Consultants P.C., the Mortgaged Property and the use thereof are and have been in full compliance with all federal, state and local laws, ordinances, rules and regulations regarding hazardous and toxic materials, and the Mortgagor hereby indemnifies and holds the Mortgagee free of and harmless from and against any and all claims, demands, damages or liabilities the Mortgagee may incur with regard thereto.

41. Except for (i) the obligations of the Mortgagor under the provisions of Paragraph 40 of this Agreement, (ii) any acts or omissions constituting fraud or misrepresentation by the Mortgagor in connection with applying for the loan evidenced by the Notes and secured by the Mortgage and this Agreement or in supplying information or documentation to the Mortgagee subsequent to the date hereof, (iii) the fraudulent misappropriation or misapplication of the Rents collected at the Mortgaged Property, (iv) liability for rental or other income generated from the Mortgaged Property received by the Mortgagor after default beyond applicable notice, grace and/or cure periods, if any, under this Agreement which is not applied to the Mortgaged Property (except that payments made to affiliates of the Mortgagor for amounts accrued in prior years, or in amounts which are in excess of then-market rates shall not be considered applied to the Mortgaged Property), or (v) deliberate waste, the liability of the Mortgagor, its permitted successors or assigns, under this Agreement or the notes or the Mortgage executed in connection with this Agreement is hereby strictly limited to the interest of the Mortgagor, its permitted successors or assigns, in the Mortgaged Property and any judgment in favor of the Mortgagee shall be satisfied only against the Mortgaged Property. Any judgment in favor of the Mortgagee by reason of any of the items set forth in clauses (i) through (v) of this Paragraph 41 may also be enforced against and collected out of the other assets of the Mortgagor as well as the Mortgaged Property. No judgment arising out of this Agreement may be satisfied against any asset of any member of the Mortgagor, and the Mortgagee shall neither seek, demand nor be entitled to obtain a deficiency judgment.

42. Mortgagee may, either with or without entry or taking possession of the mortgaged property as provided in this Consolidation and Extension Agreement or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action for foreclosure of these mortgages, sell the mortgaged property or any part thereof pursuant to any procedures provided by applicable law, including, without limitation, the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto), and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law.

43. The Mortgagee shall have the right (but not the obligation) to apply partial payments on account of principal, interest, tax escrow installments or tax arrears as it shall determine in its sole discretion.

44. In the event that, through foreclosure, deed in lieu of foreclosure, or otherwise, the Mortgagee or any successor or assign of the Mortgagee shall obtain title to the Premises and the Leasehold Estate, same shall not merge, and it is the intention of the Mortgagor and the Mortgagee that same shall remain separate and distinct.

45. Notwithstanding anything contained in this Agreement to the contrary, the maximum amount of principal indebtedness secured by the Mortgage at the time of the execution hereof or which under any contingency may be secured by the Mortgage at any time hereafter is \$60,500,000.00 plus (a) taxes, charges or assessments which may be imposed by law on the Mortgaged Property, (b) premiums on insurance policies covering the Mortgaged Property, (c) expenses incurred in upholding the lien of the Mortgage, including, but not limited to, (i) the expenses of any litigation to prosecute or defend the right and lien created by the Mortgage, (ii) any amount, cost or charge to which the Mortgagee becomes subrogated, upon payment, whether under recognized principals of law or equity or under express statutory authority, and (iii) interest at the default rate or the regular interest rate, as applicable.

REEL 3500 PG 0852

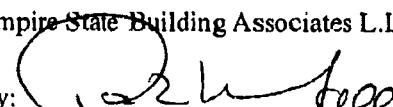
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

EMPIRE STATE BUILDING ASSOCIATES L.L.C.

By: 
Peter L. Malkin, Member

EMPIRE STATE LAND ASSOCIATES L.L.C.

By: Empire State Building Associates L.L.C., Sole Member

By: 
Peter L. Malkin, Member

NORTH FORK BANK

By: 
George M. Klett, Executive Vice President

REEL 3500 P00854

SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of 34th Street with the westerly side of 5th Avenue;

THENCE southerly along the westerly side of 5th Avenue 197 feet 6 inches to the northerly side of 33rd Street;

THENCE westerly along the northerly side of 33rd Street 500 feet;

THENCE northerly and parallel with the westerly side of 5th Avenue 98 feet 9 inches to the middle line of the block;

THENCE easterly and parallel with the northerly side of 33rd Street, 75 feet;

THENCE again northerly and parallel with the westerly side of 5th Avenue and part of the distance through a party wall 98 feet 9 inches to the southerly side of 34th Street;

THENCE easterly along the southerly side of 34th Street 425 feet to the corner aforesaid, the point or place of BEGINNING.

Said premises known as: 350 Fifth Avenue, New York, N.Y.

REEL 3500 PG 0855

SCHEDULE B

1. Mortgage and Security Agreement dated June 28, 1994 in the principal amount of \$11,700,000.00 made by Trump Empire State Partners to Principal Mutual Life Insurance Company and recorded July 1, 1994 in Reel 2111 Page 2049 in the Office of the City Register, New York County;

Mortgage Tax Paid: \$321,750.00

Which mortgage was assigned by Principal Mutual Life Insurance Company to North Fork Bank by Assignment of Mortgage dated as of April 9, 2002 and intended to be recorded in the Office of the City Register, New York County;

Which mortgage has an unpaid principal balance on the date hereof of \$11,700,000.00;

which mortgage was spread to encumber the Leasehold Estate in the Mortgaged Property by Spreader Agreement dated as of April 17, 2002 made by and between Empire State Building Associates L.L.C. and Empire State Land Associates L.L.C. to North Fork Bank and intended to be recorded immediately prior hereto in the Office of the City Register, New York County

2. Mortgage dated as of April 17, 2002 made by Empire State Building Associates L.L.C. and Empire State Land Associates L.L.C. to North Fork Bank in the principal sum of \$48,800,000.00 and intended to be recorded immediately prior hereto in the Office of the City Register, New York County;

Mortgage Tax Paid: \$1,342,000.00.

REEL 3500 PG 0856

Consolidation and Extension Agreement

**EMPIRE STATE BUILDING ASSOCIATES L.L.C. and
EMPIRE STATE LAND ASSOCIATES L.L.C.**

- with -

NORTH FORK BANK

Premises: 350 Fifth Avenue, New York, New York

The within premises lie in
Section 3, Block 835, Lot 41
in New York County

Record and Return To:
North Fork Bank
275 Broadhollow Road
Melville, New York 11747

Attention: Louis J. Rosado, Vice President