SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SUSAN BANDLER, Plaintiff, vs. EMPIRE STATE REALITY TRUST, INC. ANTHONY E. MALKIN, PETER L. MALKIN, ESTATE OF LEONA M. HELMSLEY, EMPIRE STATE REALITY OP, L.P, MALKIN HOLDINGS L.L.C., MALKIN PROPERTIES, L.L.C., MALKIN PROPERTIES OF NEW YORK, L.L.C., MALKIN PROPERTIES OF CONNECTICUT, INC., AND MALKIN CONSTRUCTION CORP., Defendants.	Index No. Date Purchased: **SUMMONS** Plaintiff designated the County of New York as the place of trial. Basis of venue is Defendants' place of business

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of the answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: New York, New York
March 12, 2012

LABATON SUCHAROW LLP

/s/ Lawrence A. Sucharow

Lawrence A. Sucharow
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
lsucharow@labaton.com
jsternberg@labaton.com

CHIMICLES & TIKELLIS LLP

One Haverford Centre
361 W. Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633

Attorneys for Plaintiff

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Plaintiff, by her attorneys, alleges upon personal knowledge as to her own acts and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a class action lawsuit brought on behalf of the "Participants", who are the passive investors in (a) Empire State Building Associates L.L.C.; 60 East 42nd St. Associates L.L.C; and 250 West 5th St. Associates L.L.C. (the "Public LLCs"), and (b) Marlboro Building Associates, L.L.C.; 1350 Broadway Associates L.L.C.; 112 West 34th Street Associates L.L.C.; and 1400 Broadway Associates L.L.C (together, the "Private Entities"); all of which were initially formed between 1953 and 1969 for the purpose of acquiring and operating certain real property, including the Empire State Building as well as several other properties in New York and Connecticut, against Anthony E. Malkin, Peter L. Malkin, and Malkin Holdings L.L.C. (the "Supervisor") (together with Anthony and Peter Malkin, the "Malkin Defendants"); Malkin

Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., and Malkin Construction Corp. (the "Management Defendants"); and the Helmsley estate (collectively, "Defendants"). Defendants Empire State Realty Trust, Inc. (the "Company" or "Empire REIT") and Empire State Realty OP, L.P., together are referred to herein as the "REIT Defendants".

2. This action arises out of the Malkin Defendants' scheme to convert their interests and the equity interests owned by the Participants in the Private Entities and the Public LLCs into cash or interests in Empire REIT through a one-sided, unfair "roll up" transaction (the "Proposed Transaction"). The Malkin Defendants, either by ownership and/or by management control, control all of the entities to be merged into Empire REIT. Pursuant to the Proposed Transaction, the Public Entities and the Private Entities, together with other entities controlled by the Malkin Defendants, will be merged into the newly formed Empire REIT, which is to be operated as a Real Estate Investment Trust that will be listed on the New York Stock Exchange. The Malkin Defendants, who unilaterally and without consulting the Participants set the terms of the Proposed Transaction, will receive an unjustified and unearned payday of hundreds of millions of dollars upon consummation of the Proposed Transaction, and by virtue of the 50:1 "super voting" stock that they will receive in the Proposed Transaction, will control Empire REIT.

3. The Proposed Transaction's terms and conditions are unfair to Plaintiff and other Participants, *inter alia*, because: (1) it provides excessive and unfair "override" interests to the Malkin Defendants; (2) the "fifty/fifty" allocation of value in each property between the Public LLCs (as the property owners) and the property manager entities is the result of an undisclosed and self-serving valuation process, performed by the Malkin Defendants, that undervalues the Public LLCs Participants' interests in the Proposed Transaction; (3) the Participants' interests in

the LLCs' other assets, including substantial amounts of cash, are unaccounted for and undervalued to the detriment to the Participants; (4) the Malkin Defendants' change to their "supervisory fees" – instituted in 2010 in anticipation of a transaction like the Proposed Transaction - resulted in a substantial increase in the amount of fees they received and was instituted primarily for the purpose of allocating value in the Proposed Transaction, to the detriment of the Participants; and (5) it provides for an improper allocation of almost $16 million to the Supervisor and Management Companies, all of which are controlled by the Malkin Defendants.

4. Under the terms of the Proposed Transaction, Plaintiff and other Participants will be entitled to receive cash, Operating Partnership Units[1], or Class A common stock in Empire State Realty Trust, Inc., the resulting REIT. The Malkin Defendants and their affiliates will receive primarily Class B common stock, which will have 50 votes for each share instead of the single vote allocated to each share of Class A common stock. This will give the Malkin Defendants effective voting control over Empire REIT.

5. The Malkin Defendants instituted several measures to ensure that they were allocated more value and control in Empire REIT than what they were entitled to. For example, the purported "independent" valuation firm was retained and directed exclusively by the Malkin Defendants and was directed by them on how to allocate value among the various merged entities.

[1] Operating Partnership Units are defined as limited partnership interests in Empire State Realty OP, L.P., which will be a subsidiary of Empire REIT.

6. Further, the Malkin Defendants failed to consider reasonable alternatives to the Proposed Transaction, which were potentially more beneficial to the Participants but less likely to be economically beneficial to the Defendants.

7. Finally, Defendants seek to consummate this Proposed Transaction through self-interested consent solicitations that fail to provide the Participants with material information sufficient to allow them to make informed decisions regarding whether to support the Proposed Transaction. The terms of the Proposed Transaction, as set forth in the preliminary Form S-4 Registration Statement (filed with the SEC on February 13, 2012) (the "Registration Statement") and the Consent Solicitations mailed to the Participants (the "Consent Solicitations"), are often confusing and obfuscated. What is apparent, however, is that the Malkin Defendants availed themselves of every opportunity to benefit from the Proposed Transaction at the direct expense of the Participants, including Plaintiff.

8. Although portrayed as "the culmination of efforts by the company's controlling Malkin family to simplify control of its sprawling real estate holdings" the transaction, whatever other benefits it may achieve, is structured to provide unwarranted economic benefits to the Defendants at the expense of the public investors, to eliminate any ability of the public investors to exercise any influence over their investment, and to vest complete control of the Company in the Malkin Defendants.

9. The Malkin Defendants do not deny the self-interested and one-sided nature of the Proposed Transaction. Indeed, the Registration Statement concedes that the Defendants are self-interested and that the Participants had no role in the process:

> [Defendants] ***did not retain an independent representative to represent the participants***. No group of participants was empowered to negotiate the terms and conditions of the consolidation or to determine what procedures should be in place

> to safeguard the rights and interests of the participants. ***If a representative or representatives had been retained for the participants, the terms of the consolidation might have been different and, possibly, more favorable to the participants***.

(Emphasis added).

10. In fact, Defendants made no attempt to remedy this biased transaction by consulting with the Participants, and have failed and refused to retain a representative to advocate on behalf of the Participants.

11. Instead, in violation of their fiduciary duty to the Participants, Defendants unilaterally agreed to the Proposed Transaction on behalf of the Private Entities and Public LLCs, and have sought the Participants' consent without providing them the information necessary to make an informed decision, and without considering possible alternatives to the Proposed Transaction, including alternatives that would have been more favorable to the Participants. Further, the Proposed Transaction provides for a series of improper allocations to Defendants at the expense of the Participants which are likely to deprive the Participants of hundreds of millions of dollars in value.

12. Because the Proposed Transaction is the result of an unfair process, results in the denial to the Participants of important information regarding the value of their interest in the Private Entities and Public LLCs, results in a transfer of a portion of the equity of the Participants to their fiduciaries without consideration and without required disclosures, and does not provide for adequate value for Participants, it is patently unfair to Participants. Therefore, Plaintiff is seeking to obtain monetary compensation and/or equitable relief arising from Defendants' breaches of their fiduciary duties of highest good faith, fairness, loyalty, due care and candor to the Participants and the aiding and abetting of such breaches of fiduciary duties.

13. The Management Defendants and the Helmsley Estate aided and abetted the Malkin Defendants in their breaches of fiduciary duty by negotiating and agreeing to the terms of this one-sided transaction, which benefits the Management Defendants and the Helmsley Estate at the expense of the Participants in the Public LLCs and the Private Entities.

PARTIES & MATERIAL ENTITIES

14. Plaintiff Susan Bandler is a Participant in Empire State Building Associates L.L.C.

15. The Public LLCs, as well as the Private Entities, are each organized in the State of New York, and each has its principal offices located at 60 East 42nd Street, New York, New York. The Public LLCs are un-listed, publicly-registered limited liability companies originally formed as partnerships by principals of the Supervisor from 1953 to 1961. The principals of the Supervisor during this period consisted of Lawrence A. Wien, until his death in 1988, members of his law firm, and, beginning in 1958, Defendant Peter L. Malkin. Defendant Anthony E. Malkin joined as a principal in 1989. Each subject LLC was formed to acquire the fee title or long-term ground lease interest in an office property located in Manhattan and to lease the property to an operating lessee, which operates the property. As lessor, each subject LLC receives from its operating lessee fixed base rent and overage rent. Malkin Holdings L.L.C. and the Malkin Defendants provide supervisory and other services for each Public LLC.

16. Marlboro Building Associates LLC was originally formed as a joint venture on April 16, 1953 between Helmsley, Wien and others, and was converted to a limited liability company in January 2002. In 1953, after raising an aggregate of $1,800,000 in a private placement, the private entity acquired fee title to 1359 Broadway and the land thereunder, located at 1359 Broadway, New York, New York.

17. 1350 Broadway Associates LLC was originally formed as a partnership on July 7, 1965, between Lawrence A. Wien and Harry B. Helmsley, and was converted to a limited liability company in March 2002. On July 30, 1965, Wien and Helmsley entered into a sub-participation agreement in which Wien agreed to act as Agent on behalf of other Participants, who contributed funds to the partnership. In 1965, after raising an aggregate of $1,100,000 in a private placement, the private entity acquired a long-term ground lease interest in 1350 Broadway, New York, New York.

18. 112 West 34th Street Company LLC was originally formed as a partnership on April 28, 1967 between Wien, Helmsley, and Irving Schneider, and was converted to a limited liability company in February 2003. In 1967, after raising an aggregate of $300,000 in a private placement, the private entity entered into an operating lease interest for 112-122 West 34th Street, located at 112-122 West 34th Street, New York, New York. On June 1, 1967, Wien, Helmsley and Schneider entered into a sub-participation agreement with several Sub-Participants. The Sub-Participants contributed an investment to the Partnership. The operating lessor is ground lessee of 112-120 West 34th Street and fee owner of 122 West 34th Street.

19. 1400 Broadway Associates LLC was originally formed as a partnership on January 10, 1969 between Wien and Helmsley, and was converted to a limited liability company in November 2002. In 1969, after raising an aggregate of $1,000,000 in a private placement, the private entity acquired a long-term ground lease interest in 1400 Broadway, New York, New York. Also on January 10, 1969, Wien and Helmsley entered into a participation agreement which created a joint venture by which several Participants acquired an interest in the property.

20. The Defendant REIT was incorporated in Maryland in 2011. Should the Proposed Transaction be consummated, the Company will combine all the properties of the LLCs,

Defendant Malkin Holdings LLC, and other entities into the Company, which is then intended to qualify as a REIT for U.S. federal income tax purposes. In addition, the Registration Statement, when declared effective, provides for an initial public offering of Company stock which will be listed on the New York Stock Exchange.

21. Defendant Empire State Realty OP, L.P. (the "Operating Partnership") is a Delaware limited partnership. Should the Proposed Transaction be consummated, the Operating Partnership will, directly or indirectly, hold substantially all of the Company's assets. The Company will be the sole general partner of the Operating Partnership. Certain Participants may also receive units in the Operating Partnership (in lieu of REIT common stock) as part of their compensation should the Proposed Transaction be consummated.

22. Defendant Malkin Holdings L.L.C. ("Malkin Holdings" or the "Supervisor") is a New York limited liability company that acts as the supervisor of, and performs various asset management services and routine administration with respect to the Public LLCs and certain of the Private Entities. It is controlled by its principals, Defendants Peter L. Malkin and Anthony E. Malkin.

23. Defendant Malkin Properties, L.L.C. is a New York limited liability company that serves as the manager and leasing agent to certain of the Public LLCs and Private Entities. It is controlled by Defendants Peter L. Malkin and Anthony E. Malkin.

24. Defendant Malkin Properties of New York, L.L.C. is a New York limited liability company that serves as the manager and leasing agent to certain of the Private Entities. It is controlled by Defendants Peter L. Malkin and Anthony E. Malkin.

25. Defendant Malkin Properties of Connecticut, Inc. is a Connecticut corporation that serves as the manger and leasing agent to certain of the Private Entities in the State of Connecticut. It is controlled by Defendants Peter L. Malkin and Anthony E. Malkin.

26. Defendant Malkin Construction Corp. is a Connecticut corporation that is a general contractor and provides construction services to the Connecticut Private Entities and other third parties. It is controlled by Defendants Peter L. Malkin and Anthony E. Malkin.

27. Defendant Anthony E. Malkin is a principal of Malkin Holdings L.L.C., the Supervisor, and as such he owes a fiduciary duty to the Participants.

28. Defendant Peter L. Malkin is a principal of Malkin Holdings L.L.C., the Supervisor, and as such he owes a fiduciary duty to the Participants.

29. The Wien Group is a voting group that consists of each of the lineal descendants and certain relatives of Lawrence A. Wien, including Peter L. Malkin and Anthony E. Malkin (including spouses of such descendants), any estates of the foregoing, any trusts now or hereafter established for the benefit of any of the foregoing, or any corporation, partnership, limited liability company, or other legal entity controlled by Anthony E. Malkin for the benefit of any of the foregoing. The Wien Group owns participation interests in the Public LLCs and Private Entities and has advised that it will vote in favor of the Proposed Transaction.

30. Defendant Estate of Leona M. Helmsley ("Helmsley Estate") owns an interest in several of the Public LLCs and Private Entities. The Helmsley Estate has entered into a separate contribution agreement pursuant to which it has exercised the cash option as to all of the operating partnership units issuable to it in the consolidation.

31. At all relevant times, Defendant Malkin Holdings LLC, as Supervisor of the LLCs, and Defendants Anthony Malkin and Peter Malkin, as principals of Supervisor owed and

owe to the Participants fiduciary duties of loyalty, fair dealing, due care, and candor, as well as the contractual duties set forth in each of the Public LLCs' and Private Entities' participation agreements.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on her own behalf and as a class action pursuant to New York Civil Practice Law and Rules § 901 on behalf of all the Participants in the Public LLCs and the Private Entities, (except Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants), who will be threatened with injury arising from Defendants' actions as are described more fully below (the "Class").

33. This action is properly maintainable as a class action.

34. The Class is so numerous that joinder of all members is impracticable. The Public LLCs and Private Entities have thousands of Participants located throughout the United States.

35. There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting any individual members. The common questions include, inter alia, the following:

(a) Whether one or more of the Defendants has engaged in a plan and scheme to enrich themselves at the expense of the Participants;

(b) Whether the Defendants have breached their fiduciary duties owed by them to Plaintiff and members of the Class and/or aided and abetted such breaches of fiduciary duties by virtue of their participation and/or acquiescence and by their other conduct complained of herein;

(c) Whether the consideration to be paid for the Participants' interests in the Company pursuant to the Proposed Transaction is fair and reasonable;

(d) Whether the Defendants have failed to fully disclose the method by which the values of the various entities were determined by Defendants in calculating the consideration to be provided to Plaintiff and each Class member;

(e) Whether certain Defendants have allocated excessive "override" interests to entities which they control;

(f) Whether certain Defendants have allocated excessive fees to be paid to management companies which Defendants or certain of the Defendants control;

(g) Whether Plaintiff and other members of the Class will be irreparably damaged by the transaction complained of herein; and

(h) Whether Defendants are liable to Plaintiff and the Class and, if so, what measure of damages is proper.

(i) Whether Peter Malkin, Anthony Malkin, Malkin Holdings, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., and Malkin Properties of Connecticut, Inc. should be removed as supervisors of the Public LLCs, the Private Entities and Empire REIT and should be removed as fiduciaries and precluded from serving as fiduciaries for investors in the Public LLCs, the Private Entities and Empire REIT.

36. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

37. The Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

SUBSTANTIVE ALLEGATIONS

The Proposed Transaction

38. On November 29, 2011, Defendant Malkin Holdings, L.L.C. -the Supervisor - caused Empire State Building Associates L.L.C. to file with the SEC a Form 8-K announcing that the Supervisor had "embarked on a course of action that could result in [Empire State Building Associates L.L.C.] becoming part of a newly formed public REIT. [Empire State Building Associates L.L.C.] for legal reasons is not in a position to disclose more information until documents are filed with the [SEC], which ... could occur in approximately three months."

39. On or about December 9, 2011, the Participants in the respective Private Entities each received from Defendant Malkin Holdings a Notice of Consent Solicitation (the "Private CSs Solicitations") for each of the Private Entities in which they are Participants, as well as a Draft Prospectus/Consent Solicitation Statement ("Draft Prospectus") for the Public LLCs. The Registration Statement for the shares of the Company is substantively identical to the Draft Prospectus.

40. The Registration Statement sets forth the terms of the Proposed Transaction, by which Defendants seek to consolidate both the Private Entities and the Public LLCs into a corporation (the Company), a REIT, and then issue stock for that REIT in an initial public offering (the "IPO"). The Registration Statement also includes a Consent Solicitation directed at the Public LLC Participants (the "Public CS") seeking their approval of the Proposed Transaction.

41. Specifically, the Registration Statement states that the Malkin Defendants

> intend to combine the properties of the subject LLCs [i.e., the Public LLCs] and private entities and the assets and operations of the supervisor and other management companies into [the Company], which is intended to elect and qualify to be taxed as a REIT for U.S. federal income tax purposes. The closing of the consolidation will occur simultaneously with the closing of an IPO of the company's Class A common stock. If the consolidation is approved by the three subject LLCs [i.e., the Public LLCs] the company acquires the properties from each of the private entities and the company acquires the management companies, the company will own 12 office properties encompassing approximately 7.7 million rentable square feet of office space, which were approximately 79.6% leased as of June 30, 2011 (or 82.7% giving effect to leases signed but not yet commenced as of that date).

42. If the Proposed Transaction is consummated, Participants in the Public LLCs will receive shares of Class A common stock in the Company, or alternatively have the option to receive cash for a currently unknown percent of the shares of Class A common stock they would have otherwise received.

43. The amount of Class A common stock that each Public LLC Participant will receive will vary. The Draft Prospectus states that each Participant's shares of common stock will be determined by first calculating "exchange values" for that Participant's LLC(s) and Private Entities, which are the appraised values of the interests in the properties owned by each of the subject LLCs, as determined and adjusted by the independent valuer, and approved by the Supervisor.

44. Following calculation of the exchange values, in order to allocate the shares of Class A common stock, the supervisor:

> arbitrarily assigned a hypothetical $10 per share exchange value for illustrative purposes. The independent valuer allocated to each subject LLC a number of shares of Class A common stock equal to the exchange value of its assets divided by $10.

45. According to the Registration Statement, the closing of the Proposed Transaction is conditioned only on the approval of the Participants in Empire State Building Associates, L.L.C. Nevertheless, given that the other Public LLCs represent a significant portion of the exchange value, anticipated cash flow, and net income of the Company, the failure of another Public LLC to approve the Proposed Transaction may prevent the Transaction from closing.

46. As for the Private Entity Participants:

> The consideration for [each] private entity's property interests will be determined based on an appraisal of the private entity's interest in the property by independent third parties, unless the private entity, with the consent of the Helmsley estate, and the company agree to the amount of consideration. The consideration will be set by two independent valuers, one selected on behalf of the private entity and one selected by the Company... ***The valuer selected on behalf of the private entity will be selected by Peter L. Malkin and Anthony E. Malkin and approved by the Helmsley estate.***

(Emphasis added).

47. Therefore, both "independent" valuers will in fact be chosen by the Malkin Defendants.

48. The exchange values of the Private Entities were determined based on the appraisal by the "independent" valuer.

49. The Consent Solicitations further state that "[t]he number of operating partnership units, Class A common stock, Class B common stock or cash, as applicable, that will be allocated to the private entity will be determined based on the average of the closing price on the NYSE ...."

50. According to the Private CSs, each Private Entity has been given an exchange value by the "independent" valuer, and each Private Entity Participant will be entitled to receive a portion of the Operating Partnership units allocated to the Private Entity based on the percentage of participation interests held by the Participant in the Private Entity and the terms of

that Private Entity's organization documents. However, those Consent Solicitations purport to give the Malkin Defendants authority to revise the terms of the Private Entity Participants' equity conversions as the Malkin Defendants deem appropriate, without the consent or participation of the Private Entity Participants or any representative thereof.

51. The Registration Statement provides that if Participants holding 80% of the interest of any of the three Participating Groups in the Empire State Building Associates L.L.C. approve the transaction, the agents may purchase on behalf of that LLC the participation interests of the Participants who do not approve such action, for a minimal purchase price that would be substantially below the exchange value of the Participants' interests. Thus, this Public CS is inherently coercive.

52. Likewise, if Participants holding 90% of the interest in any of the seven participating groups in 60 East 42nd Street Associates L.L.C. or 250 West 57th Street Associates L.L.C. approve the transaction, the agents may purchase on behalf of that particular LLC the participation interests of the Participants who do not approve such action, for a minimal purchase price that would be substantially below the exchange value of the Participants' interests. This provision is likewise coercive.

53. The Consent Solicitations for certain of the Private Entities, including Marlboro Building Associates and 1400 Broadway Associates, contain similar provisions by which Participants who fail to approve the Proposed Transaction risk being bought out for minimal value. Further, Participants in 1350 Broadway Associates, who fail to approve the Proposed Transaction will not have any right to be paid the appraised value of their participation interest. These provisions of the Public LLCs and certain of the Private Entities render the voting process coercive and therefore invalid.

54. The precise percentage of Participants in each particular Private Entity that must consent to the Proposed Transaction in order for it to be consummated varies depending on the organizational documents of each Entity. The Wien Group and/or Helmsley Estate has either majority or near-majority voting control for each of these entities.

55. The Consent Solicitations also ask the Participants to approve an alternative transaction process. The alternative transaction would be the sale or contribution of the Public LLCs' and Private Entities' property interest as part of a sale or contribution of the properties owned by the Public LLCs and the private entities as a portfolio to a third party. This third-party portfolio transaction would be undertaken only if the Malkin Defendants determined that the offer price includes what the Malkin Defendants believe is an adequate premium above the value that is expected to be realized over time from the Proposed Transaction. This alternative transaction is also fundamentally unfair to the Participants insofar as it provides the Malkin Defendants with the sole and exclusive authority to determine whether a third party offer is "adequate" and does not permit the Participants to play a role in determining the adequacy of any possible consideration in a third party offer. This conflicted, after-the-fact, and impossibly vague process is completely inadequate to assure fairness to the Participants.

56. According to the Registration Statement, the Helmsley Estate has entered into a separate contribution agreement pursuant to which it has exercised the cash option as to all of the operating partnership units issuable to it in the consolidation and elected to receive Class A common stock if there is insufficient available cash.

57. Likewise, the Wien Group owns participation interests in the Public LLCs and Private Entities and has advised that it will vote in favor of the Proposed Transaction.

58. As set forth below the Proposed Transaction was not structured in the best interests of Plaintiff and other Class members. Instead, this Proposed Transaction was the result of a one-sided process, engineered and orchestrated by the Defendants and designed to benefit Defendants at every possible turn to the direct detriment of Plaintiff and the other passive investors.

The Proposed Transaction Is Being Accomplished Pursuant to an Improper and Unfair Process

59. As set forth herein, the process by which the Proposed Transaction was devised had none of the indicia required by the Courts to ensure fairness to the Participants. The Malkin Defendants controlled each aspect of the process, in which they are completely self-interested. There was no attempt to market any of the subject properties; rather, the process was designed to consolidate the Malkin Defendants' holdings and cash out the Helmsley Estate. The Malkin Defendants designed the valuation process and controlled the information and allocation process by which the supposedly independent valuation firm appraised the properties and allocated value to the various entities. Then they retained the same firm to opine that the valuations and allocations were fair to all the Participants.

60. No independent committee was formed to ensure a fair process to the Participants. Defendants did not permit any Participant or representative thereof to participate in any part of this process. In December 2011, having received their Consent Solicitations, Participants in the Private Entities requested disclosure of the underlying appraisals and additional information about the allocation process, which request was refused by the Malkin Defendants. The Private Entity Participants were given approximately three weeks to review and analyze approximately a thousand of pages of documents during the holiday season (this time was extended by 10 days for certain Participants). Moreover, Defendants already controlled most of the votes they needed

by virtue of their equity interests in the Private Entities. As set forth herein, the voting process was inherently coercive.

61. Moreover, because of Defendants' decision to conduct the Consent Solicitations either immediately prior to or contemporaneous with the IPO, and to condition the consummation of the Proposed Transaction on the consummation of the IPO, none of the Participants can know the true value of the shares or units they will receive, as such will be finally determined by the underwriters and the market.

The Defendants Breached their Fiduciary Duty to the Participants in Utilizing an Inadequately Disclosed and One-Sided Valuation Method

62. Defendants' self-interested and one-sided valuation process undervalued the Public LLCs and Private Entities.

63. The valuation process was far from independent, even though the Defendants claim in the Registration Statement that the "exchange value of your subject LLC and the other subject LLCs, the private entities and the management companies is ... based on independent appraisals by Duff & Phelps, LLC," a purportedly "independent valuer."

64. First, the "independent valuer" assigned valuation figures based exclusively on data and information provided by the Supervisor. Indeed, Duff & Phelps did not conduct any truly independent research into the financial information of the Public LLCs and other various entities.

65. Acting on Defendants' instructions, Duff & Phelps did not run a discounted cash flow analysis based on the applicable management and/or lease agreements to determine the value of the Management Defendants (although they did such analyses in performing the underlying appraisals). They, instead, followed the Supervisor's instruction that the supposed "original intent" of the participants in the Public LLCs was to split value of the property 50/50

between the Public LLC and the Management Defendant that served as the operating lessee, despite the fact that the Public LLC's value pursuant to a discounted cash flow analysis would be much greater than the management company's - owned by the Wien Group, including the Malkin Defendants - value.

66. With respect to the properties associated with the Public LLCs, Duff & Phelps first determined the market value of the land and building by using a discounted cash flow technique. Duff & Phelps then deduced the present value of the fixed rent payment.

67. After that, the allocated exchange value was allocated as follows:

> 50% to the property owner [the public LLC] and 50% to the operating lessee [the private management entity] in a two tier entity instead of being allocated in accordance with discounted cash flow ***based on representations of the supervisor as to the original intent to treat the two tier entities as equivalent to a joint venture and the historical treatment of the two tier entities in this manner.*** **The supervisor has represented that historically, agreements have been entered into to share capital expenditure and financing costs and the operating leases have been extended in connection therewith. As a result the allocated exchange value has been allocated equally to the property owner and the operating lessee, rather than in proportion to discounted cash flow*, which would have resulted in a higher allocation to the property owner, which, in the case of Empire State Building Associates LLC would have been significantly higher.***

(Emphasis added).

68. In other words, the Malkin Defendants admit in the Registration Statement that, rather than apply a discounted cash flow analysis, they instructed their "independent" valuer to allocate the value of the Empire State Building and the two other Public LLC's properties evenly between the Public LLC (the Empire State Building Associates LLC) and the operating lessee (the Empire State Building Company LLC), resulting in a valuation of the Public LLC that is "significantly" less than it would be under a discounted cash flow analysis.

69. In doing so, Defendants have structured the transaction to benefit their own interests at the expense of the Public LLC class members.

70. The reason for this form of allocation is crystal clear. The Wien Group owns approximately 95% of the operating companies, but less than 10% of the Public LLCs. Therefore, by allocating 50% of the value of the properties to the operating lessees, in which they hold a large majority interests, the Malkin Defendants effectively allocated to themselves an interest in the properties that rightfully should be allocated to the Public LLC Participants.

71. The Malkin Defendants' reference to some purported "original intent" as justification for this inequitable allocation scheme rings hollow. The Registration Statement does not identify the context of this "original intent," the parties to this "intent," nor the specifics of the "intent." The Draft Prospectus provides no factual basis for the 50/50 split.

72. Indeed, the Registration Statement and Consent Solicitations do not disclose the terms of the applicable management, operating and/or lease agreement, nor the relevant terms of the Public LLCs' or Private Entities' organizational documents.

73. The lack of transparency and confusing disclosures in the valuation and allocation process raise questions as to whether all of the assets of the LLCs have been accounted for and properly valued, in particular the substantial amount of cash held by the LLCs that is now being diverted to Empire REIT and within the control of the Malkin Defendants.

74. None of the subject Consent Solicitations contain the Duff & Phelps appraisals or allocation computations, except for incomplete summary descriptions of the process, which provide inadequate information upon which to make a reasonable informed decision on whether to consent to the Proposed Transaction.

The Defendants Breached Their Fiduciary Duty to the Participants by Allocating Excessive Override Interests to Themselves.

75. In addition to utilizing a one-sided valuation process that fails to allocate to the Participants the fair value of their interest in the Proposed Transaction, the Malkin Defendants have also allocated to themselves $328,548,448 of "override interests" at the direct expense of both the Public LLCs and Private Entities.

76. These "override interests" are excess management fees, which "override" the terms of the operating leases and/or management agreements and thereby provide the Supervisor and its affiliates with fees in excess of that to which they are contractually entitled. Apparently, the Supervisor and its affiliates believe that they are entitled to bonuses.

77. In the context of the present allocation, the additional $328 million of value flowing to the Supervisor and affiliates reflects the present value of ***future*** overrides to which they feel entitled.

78. Some of these override interest allocations are purportedly "voluntary" in that the Participants in the applicable entity were previously given the choice of whether to accept such charges, on a current basis, with respect to their individual interests.

79. In its section titled "Conflict of Interests and Benefits to the Supervisor and its Affiliates," the Registration Statement sets forth the override interests that the Malkin Defendants will receive under the terms of the Proposed Transaction.

80. These "override interests" are

> rights to receive a portion of distributions in excess of a base amount distributable to participants in the subject LLCs and the private entities, which they are entitled to receive and will be allocated to them in accordance with the subject LLCs' and private entities' organizational documents ....

81. All of these "override" allocations, including the "voluntary" portions, are improper. In effect, the Malkin Defendants have elected to pay themselves for their ***future***, and as of yet unaccomplished, property management work. Meanwhile, they will also be receiving substantial compensation for their roles as executives and managers in Empire REIT. Moreover, affiliates of the Malkin Defendants will enter into ***additional*** property management agreements upon terms which are not disclosed, to be determined by the Malkin Defendants, to perform numerous services that will not be performed internally by Empire REIT. Accordingly, allocation of future override interests reflects a double charge to the Participants.

The Defendants Breached Their Fiduciary Duty to the Participants With Respect to the Change in the Supervisory Fees and their Use in the Determination of Allocable Value.

82. In addition to allocating excessive override interests to themselves, the Malkin Defendants increased the amount of their "supervisory fees" – a change instituted in 2010 in anticipation of the Proposed Transaction - which resulted in a substantial bump in their allocated value in the Proposed Transaction. This was done to the detriment of the Participants.

83. Prior to July 1, 2010 the Supervisory Fees paid to the Malkin Defendants were equal to $40,000, $100,000 and $24,000 per annum, for 250 West 57th St. Associates LLC, Empire State Building Associates LLC and 60 East 42nd St. Associates LLC, respectively. As of July 1, 2010, the Supervisory Fees were substantially increased to $102,000, $725,000 and $180,000 per year *plus* an annual adjustment for inflation after July 1, 2010.

84. These substantial changes to the Supervisory Fees were done in the midst of discussions with respect to the formulation of the Proposed Transaction. Specifically, by July 1, 2010, the Malkin Defendants had:

(a) met with the executors of the Helmsley estate to discuss the merits of a consolidation and public offering of several properties, including the subject LLCs.

(b) investigated the feasibility of a consolidation transaction and IPO which would be formed in connection with the consolidation

(c) interviewed and retained counsel, accountants, investment bankers and a valuation firm to assist in the process of evaluating a consolidation and IPO and implementing the transactions

85. The Supervisory Fees are an adjustment to the allocated exchange value to the Participants. Therefore, without full disclosure to, or knowledge and understanding by the Participants, the change to the Supervisory Fees effectively diverts value from the Participants to the Malkin Defendants in the Proposed Transaction.

86. This conduct further evidences how the process, directed by the Malkin Defendants at each turn, was structured throughout to result in a Proposed Transaction that was more favorable to the Malkin Defendants to the detriment of the Participants.

The Defendants Breached Their Fiduciary Duty to Plaintiff and the Class by Allocating to Themselves $16 million in Asset Management Fees And By Improperly Imposing Retroactive Increases And Duplicative Tax and Planning Fees

87. The Malkin Defendants further breached their fiduciary duty to the Plaintiff and other Class members by allocating to management and supervisory companies under their control nearly $16 million of value in the Proposed Transaction.

88. According to the Registration Statement, the total combined exchange value for Malkin Holdings, L.L.C., Malkin Properties and Malkin Construction Corp. (the Supervisory and Management Companies) was $15,921,278.

89. These allocations reflect the future value of the asset management fees (which are in addition to the property management fees) that were instituted at the time syndication of certain of the Private Entities. The applicable participation agreements set these fees at a certain amount per year. However, by letter notices dated December 9, 2011, the Malkin Defendants

arbitrarily increased these fees, retroactive to July 1, 2010, to provide themselves cost-of-living increases retroactive to the formation of these entities in the 1960s. Thus, the valuation of these fees is based on the future cash flow of these improperly inflated fees. This is not only contrary to the applicable participation agreements, but is also double compensation for services for which the Malkin Defendants will be paid by Empire REIT.

90. These allocations of value are excessive and inherently unfair. The Malkin Defendants own the Supervisory and Management Companies. This is yet another example of self-dealing at the Participants' expense.

91. Similarly, in August 2010, the Malkin Defendants began to pay themselves and affiliates "tax and financial planning fees" over and above their asset management fees. These fees are improper in that they were imposed unilaterally and because tax and financial planning work is supposed to be included in any asset management services, for which the Malkin Defendants were already being compensated. These fees have been imposed on each of the Public LLCs and Private Entities. Private Entity Participants have requested the details of and justification for these fees, which has been refused by the Malkin Defendants.

92. In addition, these retroactively increased asset management fees and improperly imposed tax and financial planning fees are currently being collected. These improper impositions of fees have further suppressed the valuations of the Private Entities and Public LLCs by reducing their net income. Moreover, they have damaged the Participants in that they are being paid from the Private Entities' and Public LLCs' cash accounts, which rightfully belong to the Participants pursuant to their pro rata interests.

Defendants Prepared For The Proposed Transaction In a Manner Designed to Create Benefits For Themselves At The Expense of the Participants

93. The Proposed Transaction is unfair to the Participants also because of the timing of the transaction and the inclusion of certain poorly performing properties in Empire REIT. For the last few years, distributions for the Participants have been depressed as a result of the capital improvement programs undertaken by Defendants. Accordingly, the Participants have sacrificed their income from these investments and will not see the returns from their sacrifice. Instead, the benefits will go to Empire REIT, a massive public corporation whose share value will be determined by the market. The Participants have utterly no assurance that Empire REIT will generate sufficient dividends or appreciation to compensate for this loss.

94. In addition, certain of the properties being contributed to Empire REIT -which are currently majority or fully owned by Defendants --are in poor financial position and will threaten to drag down the financial performance of Empire REIT. For example, the Registration Statement states that the total appraised value of the First Stamford Place property is $258 million, yet it has a total exchange value of only $13.25 million. Although, as usual, the Registration Statement does not explain the conversion computation, it appears that this property is burdened by debt and/or poor occupancy conditions, problems that will now belong to Empire REIT shareholders. Of course, as with all aspects of this transaction, the Participants were given no opportunity for input into the portfolio to be included in Empire REIT.

95. By reason of the foregoing, Peter Malkin, Anthony Malkin, Malkin Holdings, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, Inc. should be removed as supervisors of the Public LLCs, the Private Entities and Empire REIT and should be removed as fiduciaries and precluded from serving as fiduciaries for investors in the Public LLCs, the Private Entities and Empire REIT.

COUNT I
AGAINST THE MALKIN DEFENDANTS FOR BREACHES OF FIDUCIARY DUTIES

96. Plaintiff realleges and incorporates each and every paragraph above as though fully set forth herein.

97. The Malkin Defendants, acting in concert, have violated their fiduciary duties owed to the Public LLC and Private Entity Participants and put their own personal interests ahead of the interests of Plaintiff and other Class members, and have used their control positions as principals of the supervisor for the purpose of reaping personal gain for themselves at the expense of Plaintiff and other Class members.

98. These tactics pursued by the Malkin Defendants are, and will continue to be, wrongful, unfair and harmful to the Participants in the Public LLCs and Private Entities, and are an attempt by the Malkin Defendants to benefit and aggrandize their personal positions, interests and finances at the expense of and to the detriment of Plaintiff and the other Class members. These maneuvers by the Malkin Defendants will deny members of the Class their right to vote for or against the Proposed Transaction on the basis of a proxy statement which accurately values their interests in the resulting company and which does not allocate excessive fees to the Defendants.

99. In contemplating, planning, and effectuating the foregoing specified acts and in pursuing and structuring the Proposed Transaction, the Malkin Defendants are not acting in good faith toward Plaintiff and the Class, and have breached, and are breaching, their fiduciary duties to Plaintiff and the Class.

100. Because the Malkin Defendants, as the Supervisor of the Public LLCs and Private Entities, are solely responsible for and control the administration of the Participants' interests in the Public LLCs and Private Entities, and because the Malkin Defendants are in possession of

private corporate information concerning the Public LLCs' and Private Entities' businesses and future prospects, there exists an imbalance and disparity of knowledge and economic power between the Malkin Defendants and the Participants which makes it inherently unfair to the Participants.

101. By reason of the foregoing acts, practices and course of conduct, the Malkin Defendants have breached their obligations to ensure entire fairness to the class, as to both process and value, and failed to use the required care and diligence in the exercise of their fiduciary obligations owed to the Participants.

102. As a result of the actions of the Malkin Defendants, Plaintiff and the Class have been and will be damaged in that they will not receive the fair value of their interests in the Proposed Transaction.

103. Unless enjoined by this Court, the Malkin Defendants will continue to breach their fiduciary duties owed to Plaintiff and the Class, all to the irreparable harm of the Class for which Plaintiff and the other members of the Class have no adequate remedy at law.

104. By reason of the foregoing, Peter Malkin, Anthony Malkin, Malkin Holdings, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, Inc. should be removed as supervisors of the Public LLCs, the Private Entities and Empire REIT and should be removed as fiduciaries and precluded from serving as fiduciaries for investors in the Public LLCs, the Private Entities and Empire REIT.

COUNT II
AGAINST DEFENDANTS FOR AIDING AND ABETTING THE MALKIN DEFENDANT'S BREACH OF FIDUCIARY DUTY

105. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

106. Defendants Malkin Holdings LLC, Malkin Properties LLC, Malkin Properties of New York LLC, Malkin Properties of Connecticut Inc., Malkin Construction Corp., Anthony E. Malkin, Peter L. Malkin and Helmsley Estate aided and abetted the Malkin Defendants in breaching their fiduciary duties owed to the Participants, including Plaintiff and the members of the Class.

107. The Malkin Defendants owed to Plaintiff and the members of the Class certain fiduciary duties as fully set out herein.

108. By committing the acts alleged herein, the Malkin Defendants breached their fiduciary duties owed to Plaintiff and the members of the Class.

109. Defendants Malkin Holdings LLC, Malkin Properties LLC, Malkin Properties of New York LLC, Malkin Properties of Connecticut Inc., Malkin Construction Corp., Anthony E. Malkin, Peter L. Malkin and Helmsley Estate colluded in or aided and abetted the Malkin Defendants' breaches of fiduciary duties, and were active and knowing participants in the Malkin Defendants' breaches of fiduciary duties owed to Plaintiff and the members of the Class.

110. Defendants participated in the breaches of the fiduciary duties by the Malkin Defendants for the purpose of advancing their own interests. Defendants obtained and will obtain both direct and indirect benefits from colluding in or aiding and abetting the Malkin Defendants' breaches. The Wien Group and the Helmsley Estate will benefit from the Proposed Transaction because they stand to receive excessive amounts for their interests in the Proposed Transaction and benefits not available to Participants in the Public LLCs and private entities.

111. By reason of the foregoing, Peter Malkin, Anthony Malkin, Malkin Holdings, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, Inc. should be removed as supervisors of the Public LLCs, the Private Entities and

Empire REIT and should be removed as fiduciaries and precluded from serving as fiduciaries for investors in the Public LLCs, the Private Entities and Empire REIT.

112. Plaintiff and the members of the Class shall be irreparably injured as a direct and proximate result of the aforementioned acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

(a) declaring that this action may be maintained as a class action;

(b) declaring that the Proposed Transaction is unfair, unjust and inequitable to plaintiff and the other members of the Class;

(c) preliminarily and permanently enjoining the Defendants from taking any steps necessary to accomplish or implement the Proposed Transaction via a process that is not fair and equitable;

(d) removing Peter Malkin, Anthony Malkin, Malkin Holdings, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, Inc. as supervisors and/or fiduciaries of the Public LLCs, the Private Entities and Empire REIT and precluding them from serving as fiduciaries for investors in the Public LLCs, the Private Entities and/or Empire REIT;

(e) requiring Defendants to compensate Plaintiff and the members of the Class for all losses and damages suffered and to be suffered by them as a result of the acts and transactions complained of herein and the breaches of fiduciary duty, together with prejudgment and post judgment interest;

(f) awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys, accountants', and experts' fees; and

(g) granting such other and further relief as may be just and proper.

Dated: March 12, 2012

LABATON SUCHAROW LLP

By: /s/ Lawrence A. Sucharow
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
lsucharow@labaton.com
jsternberg@labaton.com

CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 W. Lancaster Avenue
Haverford, Pennsylvania 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633
kimdonaldson@chimicles.com

Attorneys for Plaintiff