ROBERT A. MACHLEDER

69-37 Fleet Street
Forest Hills, NY 11375

February, 2013

Peter L. Malkin, Chairman
Malkin Holdings LLC
60 East 42nd Street
New York, NY 10165

Re: Empire State Realty Trust
"Voluntary Overrides"

Dear Peter:

I am writing as a participant in ESBAssociates (and as your former partner in the Wien law firm) who in 1991 consented to what are now being referred to as the "voluntary overrides" to note my strenuous objection to the inclusion of such "overrides" in the consolidation/third party project as you have designed it and for which Malkin Holdings is now seeking participant approval.

If you succeed in getting the requisite approval the "voluntary overrides" will be triggered and will result in (i) compensation to the "Malkin Holdings group" amounting to more than $300 million in the overall project and, on an individual basis affecting participants in Associates who personally or whose predecessor consented to such "overrides" $34,870 for each full unit, (ii) a 10% truncation of consenting participants' equity ownership interests, (iii) a loss not only of the equity value of the severed interests but of all future allocable distributions and appurtenant voting rights to the severed interests, and (iv) a reallocation of those severed interests to the Malkin Holdings group in the form of fixed equities (stock and/or operating partnership units).

From the frequency with which you have acknowledged this subject in your series of letters to participants and in the conference call you conducted with Tony, it is evident that many participants have questioned and/or objected to this aspect of the pending project. In my conversations with others I have consistently, without exception, heard objections.

I disagree with your contention that your project is a "capital transaction" that triggers the revenue sharing program for which consent was solicited in 1991. I further believe that your conversion of a contingent interest into an asset based ownership interest is entirely without justification. What you now propose was neither intended nor contemplated by myself and others in 1991, and the solicitation documents pursuant to which we gave our consent do not support it. In my opinion your presentation in the prospectus, your explanations and justifications in letters and in your investor phone conference, are in error.

If you feel as strongly about your position as I do about mine, and if you maintain that there will be no change in the existing format of the prospectus, I expect to share my point of view with the participants at large and with the SEC. As a courtesy to you I will not do so until you have had an opportunity to review and consider the analysis and the recommendations that follow.

Twenty two years have passed since I and the vast majority of those who consented acted (some 81% consented to your 1991 request). It is likely that recollections of the precise terms of its solicitation have dimmed. Moreover, in the intervening years many present participants acquired their interest by inheritance, assignment, or in trust and are unaware of the origin and the terms under which the grant of consent that binds their interest was given. I am certain that you are thoroughly familiar with the documentation but I've enclosed for the benefit of others an Exhibit which contains the relevant pages from the original solicitation to provide the context in which my objection arises. Each of us, as appropriate, may refresh a faded recollection or form a fresh appreciation of the issue in reaching a conclusion as to whether your present position is or is not tenable.

In summary, I believe that your inclusion of overrides to compensate the "Malkin Holdings group",

- does violence to the understanding, the intent, the spirit and the express text of the 1991 consent solicitation;

- constitutes a misappropriation of 10% of each consenting participant's equity ownership interest - seizing **$34,870** (in exchange value) of each full ownership unit (Prospectus, p. 263);

- constitutes a misappropriation of each consenting participant's right to **applicable futuredistributions** for so long as the participant and the participant's heirs and assigns continue to hold their now truncated interest (Ibid., p. 65 footnote (1));

- creates a hybrid equity interest with **appurtenantvoting rights** misappropriated from consenters' interests, unjustifiably augmenting the Malkin Holdings group's voting power while diluting not just the voting rights of consenting participants but also diluting the voting strength of the entire participant body, consenting and non-consenting participants alike; and

- violates the predicate upon which consents in 1991 were given individually and voluntarily - namely, that no participant's consent to an "override" could be affected by the decision of any other participant - by now giving the collective body of participants the power to trigger the "override", against my will and the will of others, by voting in favor of the proposals set forth in your prospectus.

As you have crafted the consolidation program and describe it in the prospectus,

"**The Malkin Holdings group will receive** 73,078,153 shares of **Class A common stock, Class B common stock andoperating partnership units** having an exchange value of **$730,781,533**, which they will receive in accordance with the allocation of exchange value based on the Appraisal by the independent valuer. The amounts allocated to the Malkin Holdings group consist of: their interests as participants which will be allocated to them on the same basis as other participants; **their interests as holders of override interests which will be allocated to them in accordance with the subject LLCs' and private entities' organizational documents**; and their interests in the management companies... ."(Prospectus, p. 55; see also p. 104)(emphasis in bold-text added)

While the emphasized "override" language is ambiguous and would appear to apply to the non-voluntary overrides adopted in the original organizational documents (e.g., the 6% override on extra distributions to participants in Associates occasioned by the operating lessee's payments of overage rent), the charts make clear that the reference is to the **"voluntary overrides"** which "voluntary overrides" amount to **$304,352,372**, or approximately **41.6%** of the Malkin Holdings group's compensation in the overall project. (Ibid., pp. 37-38; and see footnote (2) "[T]he override interests included in the table represent a

voluntary capital override, which was voluntarily agreed to by certain participants.")

In the case of Associates, the Malkin Holdings group will receive $182, 625,289 based on the exchange value. Of that amount, **$108,143,382** is attributable to the "**voluntary overrides"** which accounts for **59.2%** of the Malkin Holdings group's compensation from Associates (Ibid., p. 37 first column, and see pp. 88, 267)[1]/ and almost **15%** of the Malkin Holding group's package that it claims in equity ownership interests in the overall consolidation entity.

These "voluntary overrides" have been transformed, as never intended, into equity ownership interests that have been carved out of the equity interests of consenting participants and transferred to the Malkin Holdings group. Referring to the participants, the prospectus reads:

"You will receive a portion of the operating partnership units and common stock allocated to your subject LLC in accordance with your election and with our percentage interest in the subject LLC and the subject LLC's organizational documents, **after taking into account the allocations in respect of the supervisor's override interests**." (Ibid., p. 5)(emphasis in bold-text added)

The Malkin Holdings Contention

You describe the "voluntary override" as follows:

"Voluntary capital transaction override (previously granted) represents a voluntary capital override agreed to by approximately 94% of the participants and documented individually with each participant who granted the override, which provides the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of their original investment. The supervisor will receive distributions on the voluntary capital overrides with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such overrides would comprise approximately 9.14% of the economic value of Empire State Building Associates L.L.C. These voluntary capital overrides were solicited pursuant to consent solicitation statements dated September 13, 1991, September 14, 2001 and June 9, 2008." (Ibid., p. 65 footnote (1))

In my opinion this does not adequately or properly describe the essence of the grants of consent. I believe it is misleading.

Repeatedly you have asserted that the contingent event that now triggers the "voluntary overrides" is the creation of "a capital transaction" in the form of the proposed consolidation. Thus, in the Q & A session you conducted with Tony in the recorded conference call to which Associate's participants were invited, you addressed "the most commonly asked questions" submitted by participants and justified your entitlement to "voluntary overrides" as follows:

[1]/ In the two other publicly registered entities, 60 East 42nd St. Associates and 250 West 57th St. Associates, the "voluntary overrides" granted by their participants account for additional compensation claimed by the Malkin Holdings group in excess of $43 million. (Ibid., p. 85)

"Peter Malkin: The next question: "What is the Malkin's entitlement to these override interests?"

"The Prospectus Consent Solicitation Statement points out that the overrides are written contracts entered into by you, the family member from whom you inherited your interest or the party from whom you acquired your interest when the investment was made or at some point, thereafter. Every one of these agreements is available for inspection.

"The Malkins are entitled to distributions on the override interests out of the proceeds from a capital transaction. **As the REIT will acquire each building in which you are a participant, the proposed consolidation is a capital transaction. The proposed consolidation represents a transfer to a new entity with substantial additional assets, substantial new investors and a new governance structure; in no way, a continuation of the prior entities for the same investors.**" (Transcript filed with the SEC, January 30, 2013) (emphasis in bold-text added)

The proposed project bears not the vaguest resemblance to the trigger events contemplated, intended, understood and embodied in the text of the 1991 "Voluntary Compensation Program".

Further, you wrote in your January 30, 2013 letter to participants attacking as "false" various allegations in a motion objecting to the proposed class action settlement that is now being considered by the court:

"Their motion alleges the Malkins are improperly monetizing the future value of overrides.

- This is false.
- All overrides were applied based on written agreements and signed investor consents, and values were determined in accordance with such agreements and consents based on valuations by Duff & Phelps, the independent valuer."

I regard this rebuttal to be inaccurate, misleading and in fact unresponsive to the issue raised by the motion. You have indeed "monetized," "equitized," "capitalized" (all of these transitive verbs employed by the financial industry would apply) a contingent interest in a specific distribution by converting that contingent right into a fixed ownership asset in the form of stock and/or operating partnership units. This was never contemplated, intended, understood by myself and other consenting participants, nor was it provided for in the documentation of the 1991 "Voluntary Compensation Program".

The Facts

The enclosed Exhibit includes the 4-page September 13, 1991consent solicitation letter you signed, the consent form, and the relevant portions of the Statement accompanying your letter in which were described two proposals for which consents were being solicited: a potential purchase from Prudential of the land and fee title to the Building (which purchase never materialized and was rendered moot), and the "Voluntary Compensation Program".

Your solicitation letter sets out the reason for the voluntary program: namely, that Associates' governing agreement does not provide for the supervisor to share in the net proceeds to Associates from a **sale** or a **financing** of the Empire State Building: also, but not here relevant, that the supervisor does not share in certain reductions of the rent payable to the fee owner under the Master Lease.

The request proceeds to identify **sale** and **financing** of the **property owned by Associates** as the events that would trigger compensation to the supervisor in an amount equal to 10% of "the **net proceeds ... distributed**" to each participant after the participant first received the return of his/her original capital investment.

"In light of the success of Associates' investment, we are requesting that each Participant,***individually and voluntarily***, agrees as follows:

(i) in the event of a sale or financing of any interest of Associates in the Master Lease or in the Empire State Building or the land thereunder, the net proceeds be distributed (a) to each Participant, and amount cumulatively to the Participant's original, or his predecessor in interest's original, capital contribution in Associates and (b) any excess, 90% to the Participants and 10% to WM&B;" (emphasis as it appears in the original document)(Exhibit, Solicitation letter, p. 2)

Nowhere in your solicitation letter does the phrase "capital transaction" appear. Nowhere in the consent form does the phrase "capital transaction" appear.

In the Statement accompanying your solicitation letter the same formulation just quoted from your solicitation letter is restated verbatim at page 3.

It is not until pages 21, 22 and 23 of the 32-page Statement that the phrase "capital transaction" appears, and it makes its appearance in the following passages:

"As noted under 'Modification of Compensation to Wien, Malkin&Bettex,' WM&B is entitled to receive certain supervisory fees and additional compensation, but not to share in net proceeds from any sale by Associates of an interest in the Empire State Building or from any mortgage financing or similar capital transaction, e.g., condemnation (collectively, 'Capital Transactions') .. ." (Exhibit, Statement, p. 21)

* * *

"The Agents ... are requesting that each Participant, ***on an individual and voluntary basis***, execute the Authorization section of the form of Consent and Authorization which is a part of these materials. By executing such Authorization section, the Participant will enter into an agreement with WM&B as follows:

1. The Participant will pay to WM&B (a) 10% of the Net Proceeds from any Capital Transaction after a return to the Participant of such Participant's Remaining Cash Investment; ... ." (Emphasis as set forth in the original document) (Ibid., p. 22)

* * *

"As used herein, the terms: 'Capital Transaction' shall mean any one or more of the following transactions: (I) the original incurrence or refinancing of any indebtedness of Associates or any joint venture in which Associates has an interest, (ii) the sale, exchange, condemnation (or similar eminent domain taking), casualty or other disposition of all or any substantial part of the Property, the Master Lease or Associates' interest in the Property or the Master Lease held through any joint venture in which Associates has an interest, (iii) the liquidation and dissolution of Associates or (iv) any similar transaction or event, the proceeds of which are deemed attributable to capital in accordance with generally accepted tax or accounting principles." (Ibid., p. 23)

My Contention

First, the rules of construction. The elementary rules of construction apply. The consent solicitation, consent form and accompanying Statement were drafted by the supervisor, not by the participants. By and large the participants are non-lawyers. The terms of the consent were not negotiated by those whose consents were solicited or by those who consented. Accordingly, by the applicable rules of construction, the terms of the consent will be strictly and narrowly construed; ambiguity, vagueness and uncertainty will be construed against the supervisor as drafter of the documents; and the meaning of the solicitation will be found in the common understanding of the average investor.

Second, the trigger elements. The transactions consistently referred to in your solicitation letter as trigger

events (and again in the opening pages of the Statement) were **"sale"** and "**mortgage financing"**. The Statement, in a subsequent refinement, adverted to "***similar"*** events such as, condemnation and casualty insurance proceeds. In every event there are three essential common attributes. And all three of those attributes are lacking in your proposed consolidation program. The essential attributes are:

(a) **Proceeds distributed to the participants** from a transaction. In other words, compensation to the supervisor is linked to and measured by the **immediate distribution** to the participants of **netproceeds** produced by a **specific single transaction.** "Proceeds" appears not only in every reference to the sharing of compensation but is defined in detail at page 23 of the Statement. In your proposed consolidation there are no "proceeds" as defined in the 1991 solicitation that will be distributed to participants.

(b) **Specific relationship to the Empire State Building.** The solicitation described a transaction discretely involving Associates' property interest in the Empire State Building, the proceeds of which were specifically and identifiably related exclusively to such property and its value. The solicitation did not contemplate or encompass, nor was it understood by consenting participants, that the trigger event might entail the merger of Associates' property and the blending of its value with a potpourri of other disparate and unrelated properties (which includes an undeveloped piece of land and stand alone retail spaces).

(c) **Arms length transaction**. In each of the instances described in the solicitation the transaction is at arms length with an unrelated party:

(i) a**buyer** in the case of a sale;
(ii) a**mortgage lender** in the case of a mortgage financing;
(iii) the**government** in the case of a partial or total taking by eminent domain; and
(iv) an **insurer** in the case of a property loss recovery.

Your proposed consolidation does not involve an arms length transaction and there is no unrelated party. The entire project was designed by Malkin Holdings, will be assembled by Malkin Holdings and will be controlled by Malkin Holdings. The transaction is a transfer from one Malkin Holdings controlled entity to another Malkin Holdings controlled entity. Malkin Holdings is fraught with an array of conflicts of interest unprecedented in number and unparalleled in significance that run for pages in the prospectus. Those conflicts are compounded in the instant situation by the Malkin Holdings group's claim to the "overrides".

In sum, ***there is no distribution to consenting participants of the net proceeds resulting from a transaction involving an unaffiliated party which proceeds are exclusively identifiable to Associates' interest in the Empire State Building.*** Consequently, the voluntary compensation program, i.e., the "voluntary overrides", is not triggered.

Third, their can be no divestiture of an ownership interest. Your 1991 solicitation was a request for compensation sharing, not for a partial divestiture and reallocation of a participant's equity ownership interest. The documentation expressly refers to a "Voluntary Compensation Program" wherein the consenting participant parts with 10% of distributed proceeds of a capital transaction. But it does not apply only to one transaction, it could apply to any number of successive transactions. Thus, the Statement says that "'Capital Transaction' shall mean any one **or more** of the following transactions... ." (Ibid., p. 23)(emphasis in bold-text added). This statement alone is of critical significance. For example, if there were a series of mortgage financings that resulted in distributions of mortgage proceeds to the participants, there would be a 90/10 sharing of mortgage proceeds with the supervisor on each such occasion. But the

consenting participant would always retain 100% of his/her ownership interest in Associates. Or, posit a mortgage financing with distributable proceeds followed thereafter by a partial condemnation (e.g., the government exercises its power of eminent domain to take the broadcasting tower for national security purposes and such taking is found by the courts to be a valid exercise of such power) resulting in a distributable condemnation award. The distributable proceeds of both events - mortgage proceeds and condemnation award - would be shared 90/10 by the consenting participants with the supervisor. Again, the consenting participants would retain 100% of their equity ownership interests in Associates. Such is not the case with your consolidation "capital transaction". You purport to have the right to acquire 10% of the "consenting" participants' ownership interests and convey such divested equity interests to the Malkin Holdings group in the form of capital assets (stock and/or OPUs). If the "capital transaction" concept as defined above were to operate in accord with your interpretation it would require that in each of the hypothetical successive transactions the consenting participants would have their ownership interests whittled away in 10% increments upon the occurrence of each such event and that truncated portion of the participants' equity interests would accrete to the benefit of the supervisor. If this seems an absurd result, it is. But it follows from your interpretation as to how the voluntary consents apply in the instant proposed consolidation. Your inclusion of "overrides", as woven into the compensation structure of the prospectus, violates the spirt, the common understanding, and the precise text of the 1991 solicitation.

Fourth, "overrides" are not capital assets, have no right to earn distributions, and have no voting rights. The establishment of "overrides" never envisioned, never provided for and never allowed that "overrides" gave the supervisor ownership interests with the right to receive future distributions and appurtenant voting rights. Neither the non-voluntary overrides that originate in the founding agreements nor the voluntary overrides created by subsequent voluntary participant consents granted a contingent right by which the supervisor could acquire ownership interests. Nor was it ever intended that the supervisor should have such rights by reason of its sharing arrangements with participants. Indeed, "overrides" always were and still remain contingent rights that materialize only on the occasions of specifically designated distributions. And the override attaches only to that specific cash distribution. The structure of your consolidation/third party transaction, however, capitalizes contingencies and creates asset based interests (in the case of both the non-voluntary and the voluntary overrides). It awards to the Malkin Holdings group (a) the right to receive on a continuing basis all distributions allocable to the severed portion of what had been the participants equity, and (b) voting rights appurtenant to the receipt of stock (and potential voting rights with respect to OPUs that can be converted into stock). Participants should be aware that under the terms of your present proposals in the prospectus, participants subject to the "override" will lose not only 10% of their ownership interests, with an exchange value for each full unit of $34,870, but will lose the right to receive future distributions attributable to those lost shares as well as their appurtenant voting rights. This is an improper and indefensible confiscation of ownership rights in contravention of all understandings and expectations.

Fifth, the basic concept of 1991 solicitation was set forth in the solicitation letter you signed. The refinements in the Statement accompanying your solicitation letter, were just that - refinements. They did not alter, transform or materially expand the circumstances under which voluntary consents were intended to operate or were understood to operate. Facile recitation of the phrase "capital transaction" without any substantive analytic discussion of that term and how it relates to the narrative and the specifically enumerated contingent conditions in your letter (as well as in the Statement), drives the conclusion that you can not justify your position. Your letter did not say "each Participant, ***individually and voluntarily,*** agrees as follows: (i) in the event of a **capital transaction such as a sale or financing**... ." Nor did the Statement read that way. As any reading of the text of your letter together with the Statement reveals, the phrase **"capital transaction" was inserted and employed as a convenient short-hand descriptive for a narrow band of identified transactions**. **It was not in itself *a* substantive contingent eventor**

***the*substantive event**. Nor was it an elastic bungee cord upon which a semantic gymnast could spring to any contrived "capital" transaction the imagination could conjure and hold it to be encompassed by the text. I believe my recollection is correct, and if so it is interesting to note, that initially your expenditures for "tax and financial services" in connection with putting together your consolidation project were shown for more than a year in the financial statements as ordinary expenditures but subsequently you recharacterized those expenditures as "capital expenditures."

Sixth, the instant solicitation of consents to the consolidation/third party transaction proposals deprives the voluntary consenters of the assurance they were given that their decisions were individual and voluntary. As the documents in the accompanying Exhibit shows, the phrases ***"individually and voluntarily"*** and "***individual and voluntary"*** were always set forth italicized, underscored and in bold text. The point was to emphasize that no other participant or body of participants could influence or determine the outcome of one's personal decision. That assurance has now been compromised. By integrating within an extremely complex set of proposals a presumption that the voluntary consents are triggered, and triggered in ways that substantially and materially reduce the ownership interests of the consenting participants, those consenting participants who, as I, strenuously disagree with this presumption, face the consequence that we will be bound by decisions made by other participants who you have been urging to vote in favor of those proposals.

Finally, I and many others who gave consent in 1991 did so out of respect for Mr. Wien who had passed away only three years before and in appreciation of his having created the investment opportunity and nurtured it for almost 30 years. It was a generous and genuine expression of gratitude. I consented without hesitation or reservation. Participants who signed a consent form gave a gift certificate that had been drafted with very well understood and defined parameters. Now it is being waved at us as if we signed a blank check. The terms of the voluntary compensation program have been distorted and conflated beyond recognition. That voluntary program neither intended nor contemplated the instant proposals, neither was it designed or understood to embrace a project such as the participants now have been asked to approve.

Conclusion and Recommendations

1. I believe that review and analysis of the creation of the "voluntary overrides" juxtaposed with their intended inclusion in your proposed project casts in extreme doubt the legitimacy of such treatment. The "overrides" should be removed entirely from the format of the proposed consolidation/third party transaction proposals and the prospectus and consent forms should be amended accordingly.

2. I fully understand that Malkin Holdings has an interest in the retention and exercise of its contingent interests. I appreciate that Malkin Holdings feels that it is entitled to some special recognition for its services. I suggest that the issue of the voluntary consents be dealt with in the same manner as the "voluntary pro rata reimbursement program for expenses of legal proceedings with former property manager and leasing agent." Accordingly, the voluntary sharing of compensation with Malkin Holdings on a 90/10 basis should be presented to the participants by amendment to the prospectus and by revision of the consent form so that every participant now is informed of the terms and effect of that voluntary program and has an opportunity to decide on a truly ***individual and voluntary*** basis whether or not to consent at this time.

3. In addressing the participants at large I would urge in light of the import of this issue that they (a) examine and reflect on this matter and reach their own conclusions as to the propriety of the treatment and inclusion of "overrides" as asset based interests in the consolidation,

(b) withhold their consents to the pending proposals and withdraw such consents as may have been given if they agree with the explanation of my objection, until this issue has been amicably, fully and satisfactorily resolved,

(c) notify the Securities & Exchange Commission if they feel this issue merits redress by the regulatory agency,

(d) write to Malkin Holdings to express their opinion, and

(e) opt out of the pending consolidated class actions and proposed class action settlement upon any receipt of notice that the court has certified the class and preliminarily approved the settlement, it being my opinion that the proposed settlement does nothing to address the gravity and dimensions of this issue (and many other issues).

4. I would urge the Securities & Exchange Commission to review these objections and take such action as is warranted, including adoption and implementation of recommendations "1" and "2".

Sincerely,

Robert A. Machleder

cc: Participants in Empire State Building Associates

Thomas Kluck, Esq. and Angela McHale, Esq.
Securities & Exchange Commission
100 F Street NE Mail Stop 2010
Washington D.C. 20549

with enclosure