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

MARC POSTELNEK, AS TRUSTEE OF THE MABEL ABRAMSON IRREVOCABLE TRUST #2, individually and on behalf of all others similarly situated, Plaintiff, v. ANTHONY E. MALKIN, PETER L. MALKIN, and MALKIN HOLDINGS LLC, Defendants.	Index No. **SUMMONS**

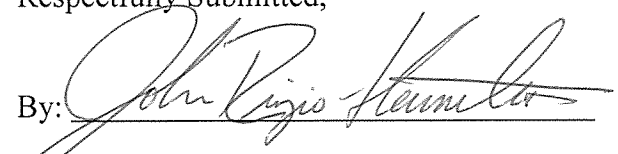
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HERBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue designated is New York County because: (i) a substantial portion of the wrongs complained of, including defendants' primary participation in the wrongful acts, occurred in this County; (ii) two or more of the defendants either reside in or maintain executive offices in this County; and (iii) defendants have received substantial compensation in this County by engaging in numerous activities and conducting business, which had an effect in this County.

Dated: New York, New York
December 24, 2013

Respectfully Submitted,

By: 

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Gerald H. Silk
Salvatore J. Graziano
Mark Lebovitch
John J. Rizio-Hamilton
Jeremy Friedman
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Counsel for Plaintiff and Proposed Lead Counsel for the Class

TO:

MALKIN HOLDINGS LLC
c/o Empire State Realty Trust
One Grand Central Place
60 East 42 Street
New York, NY 10165

ANTHONY E. MALKIN
c/o Empire State Realty Trust
One Grand Central Place
60 East 42 Street
New York, NY 10165

PETER L. MALKIN
c/o Empire State Realty Trust
One Grand Central Place
60 East 42 Street
New York, NY 10165

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Plaintiff Marc Postelnek, as Trustee of the Mabel Abramson Irrevocable Trust #2 ("Plaintiff"), by his attorneys, alleges upon personal knowledge as to his own acts and upon information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. This is a class action lawsuit for breach of fiduciary duty brought on behalf of the passive investors in Empire State Building Associates L.L.C. ("ESBA" and, as to Class members, "Participants"), against the individuals and entity that controlled the Empire State Building, namely, Anthony E. Malkin, Peter L. Malkin and Malkin Holdings LLC (collectively, the "Malkins").

2. As of June 2013, the Malkins were poised to complete a transaction that would provide them with hundreds of millions of dollars in unique and personal benefits not shared with the Participants – namely, the roll-up of the iconic Empire State Building with 17 other Malkin-controlled properties into a consolidated real estate investment trust ("REIT"), which would then issue shares through an initial public offering ("IPO"). Threatening to derail the Malkins' favored deal, beginning in June 2013, numerous interested bidders made premium all-

cash offers for the Empire State Building and ESBA. As described below, the Malkins spurned the all-cash premium offers even though they knew or had reason to know that the prices offered by the bidders were hundreds of millions of dollars greater than the value that the Malkins reasonably could achieve for the Empire State Building through the IPO. By rejecting these offers and proceeding with the public REIT, the Malkins unjustly enriched themselves at the expense of the Participants, whose interests they were required by fiduciary duty to safeguard and promote. This action arises from the Malkins' bad faith response to the premium offers for the Empire State Building and ESBA that they received between June and September 2013.

3. Before the premium offers were presented in June 2013, the Malkins had gone to great lengths to garner the support of 80% of the Participants for the IPO plan – a prerequisite for proceeding with the REIT. Among other things, the Malkins represented to Participants that the Empire State Building was worth in excess of $2.5 billion as of June 30, 2012, implying that each of the Participants' units was worth approximately $330,000 in the planned REIT. By late May 2013, the Malkins had procured the necessary consents from the Participants.

4. However, as noted above, beginning in June 2013, a threatening obstacle emerged: a multitude of premium all-cash offers starting rolling in for the Empire State Building as a whole and the ESBA individually. The ESBA was the specific entity in which the Participants held their interests, and it controlled the fee title and "master lease" to the Empire State Building. As such, it was the most valuable component of the Empire State Building ownership structure.

5. Specifically, between June and September 2013, as many as six prominent real estate developers submitted unsolicited offers for the Empire State Building, with bids topping $2.3 billion. Also, in September 2013, Thor Equities submitted a $1.4 billion offer to acquire

just ESBA. Significantly, the all-cash offer for the ESBA was ***$100 million greater*** than the value allocated to the ESBA by the Malkins' own appraisal.

6. The Malkins knew or had reason to know that these cash offers, if accepted, would derail the proposed REIT and eviscerate their opportunity to enjoy hundreds of millions of dollars of benefits for themselves. Without the prized Empire State Building serving as the anchor, the REIT would not be as financially attractive to investors, and there would not be sufficient demand for a public offering of the Malkins' other properties. If the REIT fell apart, the Malkins would lose the opportunity to collect nearly $150 million in "override" interests that depended on the consummation of the IPO, as well as the opportunity to liquidate their holdings in these other properties at values enhanced by their association with one of the world's trophy skyscrapers.

7. Thus, rather than legitimately entertaining any of these offers, in September 2013, the Malkins flatly rejected the premium all cash offers for the Empire State Building as a whole and the ESBA individually, thereby avoiding an emerging bidding war that would have benefited the Participants but may not have enriched the Malkins as much as the IPO. After rejecting Thor's $1.4 billion offer for ESBA, the Malkins went so far as to publicly state that they "will ***not*** entertain any additional alternatives" – regardless of how much value they offered for the Participants. In other words, rather than seeking to maximize value for the Participants, the Malkins did the exact opposite: they aborted an escalating, all-cash bidding war that was driving the price of the Participants' units upward, far above the value anybody could in good faith expect Participants to receive if the REIT and IPO plan was effectuated.

8. On September 19, the same day that the Malkins rejected Thor's $1.4 billion all cash offer for ESBA, they announced that the REIT shares would be priced in the IPO between $13 and $15. Significantly, the $13 price point resulted in ESBA being valued at approximately

$1.1 billion – or *$300 million less* than Thor's $1.4 billion offer. Moreover, at an IPO price of $13, the Empire State Building in its entirety was valued at $1.89 billion – *over $400 million below* the offers that the Malkins had rejected as inadequate. The difference between the highest offers received by the Malkins for the Empire State Building and the ESBA, and the value of these assets in the IPO, is set forth in the chart below:

	Appraised Value	Value Based On $13 IPO Share Price	Highest Offer	Difference Between Highest Offer and $13 IPO Share Price
Empire State Building	$2.53 billion	$1.89 billion	$2.3 billion	$410 million
ESBA	$1.3 billion	$1.1 billion	$1.4 billion	$300 million

9. The launch of the IPO on October 1, 2013, after the Malkins' rejection of the premium, all-cash offers, confirmed the Malkins' bad faith. That day, the IPO priced at $13 per share, the very bottom of the previously announced range, resulting in valuations far below the offers that the Malkins had rebuffed just weeks prior. On October 8, 2013, the Empire State Building was officially transferred to the Empire State Realty Trust ("ESRT") for $1.89 billion, including a transfer price of $1.1 billion for the ESBA interests, well below Thor's latest offer. Based on the transfer prices, the implied value of the Participants' units in the old ESBA is approximately $240,000, far below the $330,000 that the Malkins had assured the Participants their units were worth under their REIT and IPO plan. The transfer prices of the Empire State Building and ESBA, each of which was hundreds of millions dollars below the all cash offers, leave no doubt that the Participants were materially harmed by the Malkins' refusal to even engage with suitors who were willing to pay a substantial premium.

10. This lawsuit seeks to recover the hundreds of millions of dollars in damages suffered by the Participants as a result of the Malkins' breaches of fiduciary duty, self-dealing,

conflicts of interest, and bad faith conduct in rejecting the all-cash offers for the Empire State Building and ESBA made between June and September 2013.

PARTIES

11. Plaintiff Marc Postelnek, as Trustee of the Mabel Abramson Irrevocable Trust #2 (the "Trust"), was a Participant in ESBA whose units were converted into shares of ESRT upon the consummation of the IPO. Mabel Abramson, the settlor of the Trust, was an original Participant in ESBA and was the grandmother of Plaintiff Postelnek.

12. At all times material hereto, Defendant Malkin Holdings LLC was a New York limited liability company that acted as the supervisor of, and performed various asset management services and routine administration with respect to, the ESBA and certain other of the Malkins' real estate ventures. Malkin Holdings LLC was controlled by its principals, Defendants Peter L. Malkin and Anthony E. Malkin.

13. Defendant Peter L. Malkin was a principal of Malkin Holdings LLC and as such he owed a fiduciary duty to the Participants. Peter Malkin is the father of Anthony Malkin.

14. Defendant Anthony E. Malkin was a principal of Malkin Holdings LLC and as such he owed a fiduciary duty to the Participants. Anthony Malkin is the son of Peter Malkin.

15. "Defendants," as used herein, refers to the Malkins and Malkin Holdings LLC collectively as the context requires.

16. At all relevant times, the Malkins owed to the Participants fiduciary duties of loyalty, fair dealing, due care, and candor. Moreover, as provided in the participation agreements (the "Participation Agreements") between Peter Malkin and his predecessor and the Participants, dated January 1, 1962, and as affirmed in the Consent and Operating Agreement for Empire State Building Associates L.L.C. (the "Consent and Operating Agreement"), dated

September 30, 2001, the Malkins had an obligation to act in good faith in their management of ESBA or otherwise potentially subject themselves to personal liability for their actions.

SUBSTANTIVE ALLEGATIONS

I. The Malkins Acquire Control of The Empire State Building, and Devise a Plan to Enrich Themselves Through the REIT

17. From 1961 until the creation of the REIT, the Empire State Building had a two-tiered ownership structure. ESBA – the entity in which the Participants owned units – controlled the fee title and master lease to the Empire State Building. The sublease to the property, along with management of the building's day-to-day operations, was controlled by another entity called the Empire State Building Company ("ESBC"). The Malkins exerted their managerial control over the Empire State Building through their interests in ESBC.

18. In August 1961, Lawrence A. Wien, his son-in-law Peter Malkin, and Harry B. Helmsley acquired control of the Empire State Building in a syndication deal. To fund a portion of the purchase price, Wien raised $33 million from approximately 2,800 small investors (*i.e.*, the Participants) who paid $10,000 for a single unit in ESBA. Some investors contributed as little as $5,000 for a one-half unit. The rights and duties of Wien, Malkin and the other agents of ESBA and the Participants are set forth in the Participation Agreements, a copy of which is attached hereto as Exhibit A.

19. ESBA held the fee title and controlled the master lease to the Empire State Building. The sublease, along with management of the building's day-to-day operations, was controlled by ESBC. Helmsley and the Malkins owned 63.75% and 23.75% of ESBC, respectively.

20. In 1997, Helmsley died, beginning a nine-year struggle for control of the Empire State Building between (a) Peter and Anthony Malkin and (b) Helmsley's widow Leona and his

former business partners at Helmsley-Spear. In 2006, the Malkins finally wrested control of the management of the Empire State Building from Helmsley-Spear.

21. In August 2007, Leona Helmsley died. Pursuant to the terms of Leona's will, the Helmsley Estate was required to liquidate the estate's interests in the Empire State Building and contribute the proceeds to charity. The direct sale of the Helmsley Estate's interest in the Empire State Building threatened to transform the building's ownership structure and impact the Malkins' control of the property, as well as curtail their ability to extract significant benefits in connection with any large-scale liquidation or disposition.

22. To avoid this threat to their personal fortunes, the Malkins devised an alternative to the liquidation of the Helmsley Estate's interest. Specifically, they determined to contribute the Empire State Building to a REIT that would also contain numerous other Malkin-controlled properties (the "Consolidation"), and then take the REIT public through a public offering. The proposed Consolidation and public offering represented a golden opportunity for the Malkins to appropriate enormous value from the Participants and other investors to themselves, while allowing the Helmsley Estate to monetize its interests in the building.

23. *First*, the Malkins could leverage the Empire State Building's landmark status to boost the value and marketability of their other properties that were to be included in the Consolidation and IPO. In addition to their interests in the Empire State Building, the Malkins controlled a portfolio of other commercial and retail properties in the New York Metro area, including:

a. Manhattan (Broadway) – 1333 Broadway, 1350 Broadway, 1359 Broadway, 501 Seventh Avenue;

b. Manhattan (Grand Central) – One Grand Central Place;

c. Manhattan (Columbus Circle) – 250 West 57th Street;

d. Manhattan (Other) – 10 Union Square East, 1010 Third Avenue, 77 West 55th Street, The Gotham (1542 Third Avenue);

e. Westchester County, New York – 10 Bank Street, 500 Mamaroneck Avenue; and

f. Fairfield County, Connecticut – First Stamford Place, Merritt View, Metro Center, 69-97 Main Street, 103-107 Main Street.

24. All of the above properties were to be rolled into the REIT along with the Empire State Building. Packaging the Malkins' less notable properties with the Empire State Building in a REIT would allow these other properties to siphon off some of the goodwill associated with the iconic 102-story tower. The "halo" effect associated with the roll-up is highlighted by the REIT's name – the Empire State Realty Trust. According to a list of REITs compiled by the National Association of REITs, there is not a single other REIT named after an individual building.

25. Moreover, a Consolidation and IPO would provide the Malkins with liquidity for their otherwise illiquid real estate portfolio. This is because, upon consummation of the IPO, the Malkins' holdings in these 17 different properties would be converted into shares of a publicly-traded REIT. In effect, the Malkins saw an opportunity to liquidate, or "cash out," of all their real estate holdings in one fell swoop.

26. *Second*, the Malkins could benefit from the Consolidation and IPO by allocating hundreds of millions of dollars worth of lucrative "override interests" and management fees to themselves. The override interests were essentially a profit sharing arrangement between the Malkins, the Participants and certain investors in the Malkins' other properties. Pursuant to the override interests, in the event of a sale, disposition or financing of the subject property – which

the Malkins defined to include the IPO – the Malkins were entitled to receive a percentage of the proceeds distributed to each participant in excess of their original capital contribution.

27. In connection with the Consolidation and IPO, the Malkins stood to receive an approximate total of ***$304 million*** in override interests, consisting of $161 million in override interests attributable to the Empire State Building and $143 million in override interests attributable to the other Malkin-controlled properties consolidated into the REIT.

28. In addition to hundreds of millions of dollars in override interests, the Malkins also allocated approximately $15 million of additional value to Malkin Holdings, LLC, Malkin Properties and Malkin Construction Corp. – three management and supervisory companies under their control – in the form of management fees.

29. In connection with the Consolidation and REIT plan, the Malkins retained Duff & Phelps to conduct an appraisal (the "Appraisal") of the Empire State Building and the other properties in the Malkins' portfolio. The Duff & Phelps Appraisal valued the Empire State Building at approximately $2.53 billion as of June 30, 2012. This Appraisal, in turn, yielded a value of $330,000 for each ESBA unit held by the Participants.

30. On January 21, 2013, the Malkins filed the ESRT's Prospectus/Consent Solicitation Statement touting their planned Consolidation and IPO. Based on their Appraisal, they represented to Participants that the Consolidation and IPO was part of a plan to "increase the value of [the Participants'] investment."

II. The Malkins Summarily Reject Multiple All-Cash Offers to Buy the Empire State Building at a Premium to Its Value in the REIT, and Push Forward with the IPO.

31. Following the announcement of the Malkins' plan, five class action lawsuits were filed in New York state court on behalf of long-time ESBA Participants. These lawsuits

alleged that the Malkins breached their fiduciary duties in approving the Consolidation and IPO. On June 25, 2012, these lawsuits were consolidated under the caption *In re Empire State Realty Trust, Inc. Investor Litigation*, Index No. 650607/2012 (the "Consolidated Action").

32. In September 2012, the parties to the Consolidated Action reached a settlement (the "Settlement") pursuant to which defendants funded a $55 million settlement fund and modified the transaction structure, enabling investors to receive their interests in the REIT on a tax-deferred basis. Despite objections from certain Participants, on May 17, 2013, the Court approved the Settlement, in advance of any of the buyout offers that are the subject matter of this litigation.

33. The Malkins then engaged in an aggressive consent solicitation campaign. On May 28, 2013, the Malkins crossed the 80% threshold of Participant support needed to move forward with the Consolidation and IPO plan. Accordingly, by June 2013, it appeared that the Malkins had cleared the last obstacle to enriching themselves through their planned REIT.

34. However, commencing in June 2013, prior to the launch of the IPO and after final approval of the Settlement, numerous developers made all-cash, multi-billion dollar offers to buy the Empire State Building.

35. *First*, as reported by *The Real Deal*, in June 2013, Rubin Schron ("Schron"), the president of Cammeby's International and one of New York City's major property owners, offered $2 billion in cash to buy the Empire State Building. Demonstrating the seriousness of the offer, Schron proposed to make a $50 million non-refundable deposit once the contract was signed, to pay the full broker's fee, and to close the purchase of the property within 90 days of signing. According to Jason Meister, an investment broker at Avison Young representing

Schron, the large non-refundable deposit was intended to signal to the Malkins that Schron was "for real."

36. The Schron offer triggered an all-cash bidding war for one of New York's icons – precisely the type of situation that should have inured greatly to the benefit of the Participants. Indeed, according to the *New York Daily News*, shortly after Schron submitted his unsolicited proposal, an unnamed bidder also emerged, offering $2.1 billion in cash for the Empire State Building. The unnamed buyer was represented by New York real estate executives Joseph Tabak of Princeton Holdings and Philip Pilevsky ("Pilevsky") of Philips International. Pilevsky told the Daily News that the unnamed investor was prepared to wage a bidding war. Specifically, Pilevsky stated "[t]hese people want this asset badly. If they want something, they'll get it."

37. With news of these multi-billion dollar offers swirling in the press, the Malkins were forced to publicly respond. Rather than meaningfully engaging with these bidders and encouraging a series of escalating offers, however, the Malkins released a terse statement. In a June 24, 2013 letter to the Participants, the Malkins stated, in relevant part:

> We received last week two unsolicited bids to purchase the Empire State Building, one for $2.0 billion and one for $2.1 billion. We are reviewing the offers and their terms…. We do not intend to comment until after our review.

38. Real estate investors' enthusiasm for the Empire State Building nevertheless continued to build. After the Malkins' June 24 letter, a third unsolicited offered emerged. According to *The Real Deal*, on June 27, 2013, Thor Equities, one of New York City's largest landlords, offered more than $2.1 billion in cash to buy the Empire State Building.

39. Again, however, instead of meaningfully engaging with these interested bidders and fueling a bidding war to maximize value for the Participants, the Malkins ignored the

bidders in an attempt to run out the clock until they could launch the IPO. Indeed, between June 24 and September 2013, the Malkins remained inappropriately silent on the bids.

40. As the Malkins knew, if they agreed to sell the Empire State Building as a standalone property, their REIT plan, which facilitated the liquidation of certain of the Malkins' other controlled properties, would fall apart. The Empire State Building was unquestionably the prized property in the REIT given its iconic status. It also was the financial engine of the REIT, generating 47.1% of the REIT's pro-forma revenue in 2012. Without the Empire State Building serving as the REIT's anchor, the REIT would not be nearly as financially attractive to investors, and there simply would not be sufficient demand for a public offering of the other Malkin properties.

41. Derailing the REIT would, in turn, prevent the Malkins from realizing all the personal and financial benefits noted above (which were not equally shared by Participants). In particular, if the REIT fell apart, the Malkins would lose their ability to collect lucrative override interests on the other properties that would be consolidated with the Empire State Building. While the Malkins may have been able to collect override interests in connection with a sale of the Empire State Building to a third-party, an additional $143 million in override interests, which was attributable to other Malkin properties, was solely contingent upon consummation of the Consolidation and IPO.

42. Additionally, if the REIT fell apart, the Malkins would need to sell their other properties individually to achieve a comparable level of liquidity. Selling these assets piecemeal would have taken years and required significant additional work. Moreover, it was highly likely that the prices at which the Malkins could sell these buildings individually would be lower than the prices they could garner by packaging the buildings together with iconic

Empire State Building. It was much more lucrative and efficient for the Malkins to package these other properties into the REIT, where they would benefit from the "halo" effect of the Empire State Building, and take it public in a single transaction.

43. By the end of August 2013, the Malkins' stonewalling of the all-cash bidders and lack of transparency triggered an inquiry from the SEC's Division of Corporate Finance. Specifically, on August 30, 2013, the SEC sent a letter to Anthony Malkin stating, among other things:

> We note the recent public information in regards to offers to purchase the Empire State Building and 60 East 42nd Street. Please advise us whether you plan to consider such current offers after the offering and formation transactions. We may have further comment.

44. Despite the Malkins' silence, the offers kept coming for the Empire State Building. According to *The Real Deal*, as of September 3, 2013, as many as six real estate investors had submitted offers for the property, with bids topping $2.3 billion. Industry insiders reported that other New York real estate investors were also interested in bidding on the landmark property.

45. Notwithstanding the growing number of offers, the Malkins steadfastly refused to engage with the Empire State Building's many suitors. On September 6, 2013, the Malkins wrote a letter to the Participants stating:

> As we have previously advised you, Malkin Holdings received indications of interest to purchase the fee and/or operating lease positions of the Empire State Building, as well as one indication of interest to purchase the fee and operating lease positions of One Grand Central Place (60 East 42nd Street) ….
>
> In our review of these indications of interest, we engaged Lazard Freres & Co. LLC as an independent financial advisor. After our review, ***we have concluded that it is in your best interest to proceed with the consolidation and IPO*** as approved by a supermajority of the Participants.

(Emphasis added)

46. The Malkins, however, refused to disclose Lazard's analysis to the public, making it impossible for the Participants to assess the veracity of the Malkins' claims about the offers. Rather, the Malkins again abused their fiduciary duty to prevent Participants from enjoying the benefits of good faith engagement with multiple bidders offering significant premiums.

47. Despite the Malkins' best efforts to dampen interest, the Empire State Building's many suitors were undeterred. They continued to make premium offers for the Empire State Building, specifically noting that their all-cash offers provided a certain return, as opposed to the uncertainty inherent in the performance in the REIT's stock price. Jason Meister, a broker who represented both Schron and Thor Equities in the bidding, noted that:

> [w]e are continuing our efforts as we believe we offer investors the best of both worlds, that is, cash or the chance to remain as investors in the Empire State Building. Furthermore, no one knows where the REIT stock will trade after the lockout period, especially with political uncertainty on the horizon.

48. Jason Meister added that he "would think the investors would be interested in understanding why [according to the Malkins] the REIT was a better alternative."

49. On September 9, 2013, Stephen Meister, Jason Meister's father and a lawyer representing Thor Equities, sent the Malkins a revised offer letter on Thor's behalf. This revised offer was to purchase the largest financial component of the Empire State Building – the fee title and master lease owned by ESBA, the very entity in which the Participants held their interest. Significantly, this offer was to purchase these interests at a premium to the $1.3 billion value assigned to it by the Appraisal. Specifically, the letter stated:

> Enclosed please find a revised offer from an affiliate of Thor Equities ("Thor") offering to purchase fee title to the Empire State

> Building (and the Master Lease) from Empire State Building Associates L.L.C. ("ESBA") for $1.4 billion. ***This offer is materially greater than the allocated portion of the Empire State Building appraised value.***
>
> Given that Thor's offer now well exceeds the exchange value, ... my clients urge Malkin Holdings to give earnest and serious consideration to Thor's offer, as they believe their fiduciary duties compel under the circumstances.

50. The September 9 Thor letter also requested information about Lazard's analysis performed on behalf of the Malkins.

> In all events, my clients hereby demand that you furnish them (by delivering to my office) a copy of the report of Lazard Freres & Co. LLC referenced in the Malkin Holdings' September 6, 2013 Form 8-K.

51. Although Thor's $1.4 billion offer for just ESBA was significantly above the $1.3 billion appraised value of ESBA according to Duff & Phelps, the Malkins dismissed it out of hand. Moreover, the Malkins summarily ended their consideration of any other offers, regardless of how value-enhancing they might be. On September 19, the Malkins filed a Form 8-K with the SEC, attaching as Exhibit 99.1 a copy of their letter of the same date advising ESBA Participants that "we [*i.e.*, the Malkins] are fully committed to effecting the consolidation and IPO transaction, and ***will not entertain any additional alternative***." (Emphasis added).

52. On September 19, 2013, the same day that the Malkins announced they would not consider any value enhancing offers for the Empire State Building, they also announced that the REIT shares would be priced in the IPO between $13 and $15. Significantly, the $13 price point resulted in the Empire State Building being valued at $1.89 billion – or as much as $400 million less than the offers that the Malkins had rejected just 13 days earlier. Moreover, the $13

price point resulted in the ESBA interests being valued at approximately $1.1 billion – or $300 million less than the $1.4 billion all cash offer that the Malkins rebuffed on September 19.

53. According to Green Street Advisors Inc., even at the midpoint of the announced range, the stock would trade at about a 12 percent discount to the value of the component properties, further underscoring the unreasonableness of the Malkins' refusal to open up the process and start an all-out bidding war for the Empire State Building.

54. Under these circumstances, at a bare minimum, the Malkins should have, but did not, meaningfully engage with the bidders, encourage further bids, and request that Duff & Phelps update its Appraisal from the summer of 2012. The Malkins' refusal to meaningfully engage with the cash bidders for the Empire State Building and related ESBA interests, and to instead push forward with their self-interested plan to launch the IPO, evidences a complete disregard for their fiduciary duties and evinces bad faith, for numerous reasons.

55. *First*, at the time that the Malkins rejected the bids, they knew or had reason to know that the bids materially exceeded the value that the Participants would receive in the REIT. Indeed, when the Malkins rejected the $1.4 billion bid for the ESBA interests, they knew full well that this bid exceeded the $1.3 billion value assigned to the ESBA interests by their own Appraisal. Also, the Malkins should have anticipated that the REIT shares could be priced as low as $13 each, a price point that would result in a valuation of just $1.1 billion for the ESBA interests in the REIT – which was 27% less than Thor's cash offer. Similarly, at the time that the Malkins rejected the prior cash offers of as much as $2.3 billion for the entire Empire State Building on September 6, 2013, they were actively working with their investment bankers to determine the price range of the IPO and, at minimum, understood that there was a

significant risk that the IPO would be priced as low as $13 per share, thus yielding a valuation of the entire Empire State Building of $1.89 billion, well below the all-cash bids.

56. *Second*, the Malkins' flat refusal to entertain any additional offers as of September 19, 2013 – no matter how value-enhancing they might be – epitomizes bad faith. Rather than attempting to maximize Participant value, as they were obligated to do, the Malkins told bidders to stay away. Fiduciaries cannot lawfully blind themselves to potentially value creating alternatives.

57. *Third,* at the time they rejected the offers, the Malkins knew or in the proper exercise of their fiduciary obligations should have known that the Appraisal was outdated and inaccurate. Indeed, at that point, the Appraisal was more than a year old. By no later than September 19, 2013, the Malkins knew that the IPO would price as low as $13 per share, implying a value of $1.89 billion for the Empire State Building – or approximately $700 million less than the Appraisal.

58. Despite the Malkins' repeated refusals to even engage with respect to compelling offers, some of the Empire State Building's suitors remained interested. For example, Philip Pilevsky, who represented the unnamed bidder described above, highlighted: "They [the Malkins] seem to want to do their IPO, and they don't care what the bid is. We dropped the effort. If they would do it, we'd do it in a minute."

III. The IPO Launches at $13 Per Share, Confirming that the Malkins Rejected Value-Enhancing Bids to Enrich Themselves Through the IPO

59. On October 1, 2013, the Malkins' two-year quest for a public listing came to fruition. That day, the Malkins priced the REIT at $13 per share – the very bottom of the range – and it began trading on the New York Stock Exchange under the ticker symbol "ESRT." According to transfer records filed with the city of New York, the Empire State Building was

officially transferred to ESRT for $1.89 billion on October 8. That same day, the ESBA interests (*i.e.,* the fee ownership and the master lease), were transferred to the ESRT for approximately $1.1 billion.

60. The $1.89 billion transfer price confirmed that the Malkins' bad faith refusal to legitimately entertain offers for the Empire State Building of as much as $2.3 billion deprived Participants of the opportunity to maximize the profits of their investment. As Jason Meister aptly stated, the IPO forced investors to pay significant transaction costs "for the privilege of getting them hundreds of millions of dollars less than they could have in the open market with virtually no costs."

61. The Malkins' conduct appalled even longtime associates of the family. On October 21, 2013, Robert Machleder, a former law partner of Lawrence Wien – the original organizer of the ESBA and Anthony Malkin's grandfather – sent a letter to the SEC accusing the Malkins of making "a series of ... knowingly false material representations to ESBA participants," and ignoring the fact that the value of the Empire State Building at its anticipated price of $13 to $15 per share was significantly below the $1.4 billion bid Thor Equities submitted for ESBA.

62. By November 4, 2013, ESRT's stock price had increased to $14.05. However, even at this increased price, the implied value of the Participants' units in the old ESBA was under $242,000, over $80,000 below the estimated exchange value of each ESBA unit in the REIT that the Malkins repeatedly cited in their regulatory filings and public statements.

63. Because of the Malkins' selfish desires to effectuate the Consolidation and IPO, the Participants have been deprived of the opportunity to cash out of their investments at the substantial premiums offered for the Empire State Building and the ESBA.

CLASS ACTION ALLEGATIONS

64. Plaintiff brings this action on his 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 ESBA, except Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants, who have been injured from Defendants' actions described more fully herein (the "Class").

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

66. The Class is so numerous that joinder of all members is impracticable. The ESBA had thousands of Participants located throughout the United States.

67. 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 Defendants breached their fiduciary duties owed by them to the Plaintiff and the members of the Class by virtue of their refusal to legitimately entertain premium offers to acquire the Empire State Building and ESBA;

b. Whether Defendants breached their fiduciary duties owed by them to the Plaintiff and the members of the Class by virtue of their continued reliance on an outdated Appraisal;

c. Whether Defendants breached their fiduciary duties owed by them to the Plaintiff and the members of the Class by publicly stating in the midst of a bidding war that they would not entertain offers for the Empire State Building;

d. Whether Defendants breached their fiduciary duties owed by them to the Plaintiff and the members of the Class by pushing forward with the IPO after receiving the premium offers for the Empire State Building and ESBA;

e. Whether Defendants engaged in a plan to enrich themselves at the expense of the Participants;

f. Whether Plaintiff and the other members of the Class have been damaged by the breaches of duty complained of herein; and

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

68. 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.

69. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class.

COUNT 1

Against the Malkins for Breaches of Fiduciary Duty

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

71. The Malkins, acting in concert, violated their fiduciary duties owed to the Participants and put their own personal interests ahead of the interests of the Plaintiff and other Class members, and used their control positions as principals of the supervisor for the purpose of reaping personal benefits at the expense of Plaintiff and the other Class members.

72. The Malkins' bad faith (a) refusal to legitimately entertain premium offers from independent third parties to acquire the Empire State Building and ESBA, (b) continued reliance on an outdated Appraisal, and (c) statement that they would not even entertain offers for the Empire State Building, constitute a breach of their fiduciary duties owed to Plaintiff and the other Class members.

73. As a result of the bad faith actions of the Malkins, Plaintiff and the Class have been damaged in that they have been deprived of the substantial value for their participation interests offered by the suitors over and above that provided by the consummation of the IPO.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

a. Declaring that this action is properly maintainable as a class action;

b. Declaring that the Malkins breached their fiduciary duties and acted in bad faith by refusing to legitimately entertain premium offers to acquire the Empire State Building and ESBA before the consummation of the IPO;

c. Declaring that the Malkins breached their fiduciary duties and acted in bad faith by virtue of their failure to commission an updated appraisal of the Empire State Building in response to multiple premium offers for the property;

d. Declaring that the Malkins breached their fiduciary duties and acted in bad faith by virtue of their public statement that they would not even entertain offers for the Empire State Building;

e. Declaring that the Malkins breached their fiduciary duties and acted in bad faith by virtue of their plan to enrich themselves at the expense of the Participants;

f. Requiring Defendants to compensate Plaintiff and the members of the Class for all losses and damages suffered by them as a result of the acts and transactions complained of herein, together with prejudgment and post judgment interest;

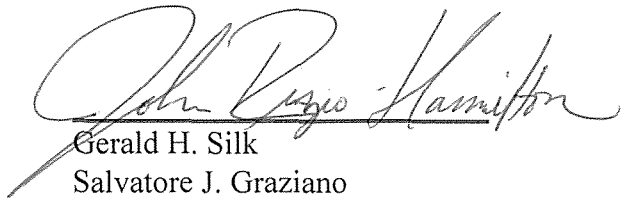
g. Directing the Malkins and ESRT to take all necessary actions to reform and improve ESRT's corporate governance and internal procedures to protect ESRT and its shareholders from a recurrence of the damaging events described herein;

h. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys', accountants', consultants' and experts' fees, and an incentive award to Plaintiff Postelnek for serving as the Class representative; and

i. Granting such other and further relief as may be just and proper.

Dated: December 24, 2013

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP



Gerald H. Silk
Salvatore J. Graziano
Mark Lebovitch
John J. Rizio-Hamilton
Jeremy S. Friedman
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Counsel for Plaintiff and Proposed Lead Counsel for the Class

VERIFICATION TO CLASS ACTION COMPLAINT

STATE OF FLORIDA)
) :SS.
COUNTY OF florida)

I, Marc Postelnek, do hereby depose and say on this 16th day of ~~November~~ December, 2013 that:

1. I am the Trustee of the Mabel Abramson Irrevocable Trust #2, which was a participant in Empire State Building Associates L.L.C. ("ESBA"), and was a unitholder of ESBA at the time of the wrongs complained of in the foregoing Verified Class Action Complaint ("Complaint").

2. I, in my capacity at Trustee of the Mabel Abramson Irrevocable Trust #2, am the plaintiff in this matter.

3. I have read the Complaint and have authorized its filing.

4. The facts alleged in the Complaint are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Marc Postelnek

SWORN TO AND SUBSCRIBED before me, a Notary Public in the State of Florida aforesaid, this 16 day of ~~Nov~~ DEC ember, 2013.

Notary Public

CAROL S. BROWN
Notary Public - State of Florida
My Comm. Expires Aug 4, 2016
Commission # EE 221554
Bonded Through National Notary Assn.

My Commission Expires: 8/04/16

EXHIBIT A

AGREEMENT dated and to be effective as of the 1st day of January, 1962, among PETER L. MALKIN, residing at Summit Ridge Road (no street number), Stamford, Connecticut (herein called the "Agent") and others who by subscribing their names hereto become parties hereto (herein called the "Participants").

W I T N E S S E T H :

WHEREAS, Empire State Building Associates, a partnership (herein called "the partnership") holds a Master Lease of the land and building (herein called the "premises") known as the Empire State Building located at 350 Fifth Avenue, New York, New York, under which Master Lease The Prudential Insurance Company of America is the Lessor; and

WHEREAS, the premises are subject to an Operating Sublease held by Empire State Building Company, as Sublessee; and

WHEREAS, the Agent owns a one-third (1/3) interest in the partnership, which was organized pursuant to an agreement among Lawrence A. Wien, Henry W. Klein and Peter L. Malkin, dated July 11, 1961, and which partnership interest is herein called "The Property"; and

WHEREAS, the parties wish to establish the ownership of The Property and to define their rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. A joint venture is hereby formed for the ownership of The Property. It is acknowledged that for all purposes of this agreement the contribution of each Participant to the

capital of the partnership (herein called "capital contribution") and his fractional interest in The Property are as set forth below opposite his signature.

2. The joint venture shall continue until The Property shall have been disposed of, and shall not be interrupted by the act, bankruptcy, death or dissolution of any Participant, the assignment (whether by operation of law or otherwise) of any interest of any Participant hereunder, the appointment of a successor to the Agent, or any other cause.

3. The Agent shall comply with the terms of the aforementioned partnership agreement, and shall act, without compensation, as agent for the joint venture in the ownership of The Property. Any action taken by him with respect thereto, subject to the terms of this agreement, shall bind the joint venture. Beginning January 1, 1962, the Participants shall share proportionately in all profits and losses arising from the ownership of The Property, and in any liabilities incurred by the Agent in good faith and not in contravention of the terms of this agreement. No Participant shall be personally liable for any liability incurred prior to January 1, 1962. However, the capital of the Participants shall be subject to reduction in proportion to their respective fractional interests on account of any loss or liability incurred at any time by the Agent in connection with the ownership of The Property.

4. The Agent shall not agree to sell, mortgage or transfer The Property or the Master Lease, nor to renew or modify the Master Lease, nor to make or modify any mortgage thereon, nor to make or modify any sublease affecting the premises, nor to convert the partnership to a real estate investment trust, a corporation or any other form of ownership, nor to dispose of any partnership asset in any manner,

without the consent of all of the Participants.

5. This agreement may be modified or amended with the consent of all of the Participants.

6. It is acknowledged that the Agent has the power, as a partner in the partnership, to dissolve the partnership. If he exercises such power without obtaining the prior written consent of all the Participants, he shall be personally liable for any damages sustained by the Participants. Any dissolution of the partnership caused by the act of the Agent shall effect a dissolution of the joint venture.

7. If the consents of Participants owning at least eighty percent (80%) of The Property have been obtained with respect to any matter referred to in paragraphs 4, 5 and 6 hereof, the Agent or his designee (herein called "Purchaser") shall have the right to purchase the interest in The Property of any Participant who has not duly given such consent (and, if the Participant is not an individual, has not furnished evidence of authority for giving such consent) within ten (10) days after the mailing by the Agent of a written request therefor, by certified or registered mail. The price shall be the lesser of (i) the capital contribution of such Participant, less any repayment thereof to the date of the deposit in escrow, described below, or (ii) the value of the interest as a fractional interest in The Property with its rights and obligations as set forth in this agreement rather than as a direct interest in the premises. Such Participant and the Purchaser shall agree on such value, and if they fail to so agree within fifteen (15) days after the sale and transfer of the interest shall be effected as provided in the following subparagraph of this paragraph 7, the dispute as to the value

shall be determined by arbitration in accordance with the provisions of paragraph 12 hereof. Under no circumstances shall the purchase price be less than $100.

The sale and transfer to the Purchaser of the interest of such Participant shall be effected by the deposit in escrow by the Purchaser with Wien, Lane & Klein, Esqs., 60 East 42nd Street, New York, New York, at any time within ninety (90) days after the aforesaid ten day period, of the net amount specified in subsection (i) of this paragraph 7. The Agent is hereby irrevocably appointed attorney-in-fact for such Participant to execute any papers and to take any other action necessary to evidence such sale and transfer. The Purchaser shall then accept the transfer in writing, and shall thereupon be a member of the joint venture with the same rights and obligations as such Participant. If the value referred to in subsection (ii) of this paragraph 7 (herein called the "agreed value") is higher than the amount of the escrow deposit the escrow agent shall promptly mail, by certified or registered mail, a certified check in the amount of such deposit directed to such non-consenting Participant at his last known address. If the agreed value is lower than the amount of the escrow deposit, then the escrow agent shall promptly so mail, by certified or registered mail, a certified check in an amount equal to the agreed value to the Participant, and shall refund the balance of the escrow deposit to the Purchaser.

8. Except as provided in paragraph 6 hereof, the Agent shall not be personally liable for any act performed in good faith on or after January 1, 1962, nor for any obligation arising on or after January 1, 1962, unless due to the Agent's wilful misconduct, gross negligence or unless arising out of any liabilities under the Securities Act of 1933. The

Participants shall indemnify the Agent in proportion to their interests in The Property against any loss or liability to which the Agent may be subjected by reason of acting as Agent hereunder. Such indemnity shall not apply, however, to any loss or liability resulting from obligations incurred prior to January 1, 1962, or resulting from obligations incurred at any time in bad faith or in contravention of the terms of this agreement.

9. A. If the Agent shall desire to terminate his agency, or if he shall be removed as such in the manner provided below, the Agent shall, upon accounting to his successor for all funds which have previously come into his possession, be discharged from all further liability as Agent.

B. The Agent may be removed by the written direction of Participants owning at least three-fourths (3/4) of The Property.

C. In the event of the resignation, removal, death, incompetency or other disability of the Agent during the continuance of the joint venture, the following persons, in the order stated, shall succeed him as a member of the partnership and act as his successor hereunder:

(1) Alvin S. Lane, residing at 5204 Delafield Avenue, Riverdale, New York;

(2) Alvin Silverman, residing at 110 Redwood Drive, Roslyn, New York;

(3) Fred Linden, residing at 390 First Avenue, New York, New York;

(4) Ivan Shapiro, residing at 525 East 86th Street, New York, New York;

(5) Harold L. Strudler, residing at 345 East 52nd Street, New York, New York;

(6) Robert I. Weissmann, residing at 6 Oak Ridge Road, White Plains, New York

(7) Ralph W. Felsten, residing at 36-18 203rd Street, Bayside, New York;

(8) Any person of full age designated in writing by Participants owning at least three-fourths (3/4) of The Property.

Each successor shall have the same rights and obligations as the Agent named herein. Any person who shall be acting as an Agent pursuant to any other agreement relating to a partnership interest in the partnership shall be disqualified from acting as Agent hereunder.

D. Simultaneously with the execution of this agreement, the Agent shall execute an assignment of The Property and of his right, title and interest, if any, in and to the Master Lease, leaving blank the name of the assignee. Such assignment shall be deposited in escrow, together with the original copy of this agreement, with Wien, Lane & Klein, Esqs. Upon the appointment of a successor to the Agent, the name of such successor shall be inserted in the assignment and the escrow shall be released. The successor shall thereupon simultaneously execute an assignment for use by his successor in the same manner.

10. A. The sale or transfer of the interest of any Participant hereunder, except pursuant to paragraph 7 hereof, shall not be valid unless: (1) the transferee is an individual of full age or a trust, corporation, firm or other entity;

(ii) duplicate originals of appropriate written instruments evidencing such sale and transfer are delivered to the Agent for deposit with the original copy of this agreement; (iii) the transferee shall accept the transfer in writing; and (iv) such instruments are delivered to the Agent as he may require to evidence the authority of the transferee to accept the transfer. If the transferee complies with these requirements, he shall be a member of the joint venture with the same rights and obligations as the transferor.

B. No Participant, other than the Agent, shall during his lifetime voluntarily sell or transfer a part of his interest in The Property; provided, however, that a Participant who holds an interest in The Property representing a capital contribution of more than $10,000 may sell or transfer a part interest representing a capital contribution of $10,000, or any larger part interest which is a multiple of an interest representing a capital contribution of $5,000.

11. Any Participant may designate any individual of full age or any trust, corporation, firm or other entity to succeed him, upon his death, as a member of the joint venture. Such designation shall be made in the Last Will and Testament of the deceased Participant, or if not so made, the executor or administrator of the deceased Participant's estate shall make and deliver such designation. In either event, the executor or administrator shall also deliver such other instruments as the Agent may require to evidence the transfer of the deceased Participant's interest to the designee and the authority of the designee to accept such designation. Any such designee shall qualify as a successor by accepting such designation in writing, and shall thereupon be a member of the joint venture with the same rights and obligations as the deceased Participant.

In the event that any Participant dies and no successor for him is qualified within eight (8) months thereafter, the surviving Participants may purchase the interest of the deceased Participant hereunder within ninety (90) days after the Agent receives notice of the expiration of such eight (8) months' period. The surviving Participants desiring to exercise such option to purchase shall share in such purchase in the same proportion as the fractional interest of each bears to their total fractional interests. The price shall be the amount of the capital contribution of the deceased Participant, less any repayment thereof to the date of death, but under no circumstances shall such price be less than $100. The Agent is hereby irrevocably appointed attorney-in-fact for the deceased Participant to execute any papers and to take any other action necessary to evidence such sale and transfer. The purchasing Participants shall accept the transfer in writing, and thereupon, the sale and transfer shall be complete.

12. Any dispute arising out of or regarding this agreement or The Property shall be determined by arbitration in the City of New York, in accordance with the rules of the American Arbitration Association then in effect, and such decision shall be binding upon all of the parties.

13. This agreement shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties.

14. It is understood that the only purpose of the partnership is the ownership of the Master Lease, and it is intended that the partnership at no time operate the premises. In the event of any termination of the Operating Sublease or any subsequent Sublease, the Agent is hereby authorized and directed, and the Agent hereby agrees, to cause the premises to

be resublet immediately to a corporation or other entity wholly owned by the then partners in the partnership. Such new Sublease shall be on the same terms and conditions as the Sublease which had theretofore terminated, except that the term thereof shall be from month to month. In executing the new Sublease, the Sublessee shall be acting for its own account and not as agent for, or on behalf of, the partnership or the Participants. Upon execution of the new Sublease, Agent shall notify all Participants thereof and shall advise the Participants of the reasons for termination of the prior Sublease. The new Sublease shall be cancelled and replaced at such time as the consent to other Sublease arrangements shall be obtained from Participants.

15. This agreement and the joint venture created hereby shall be governed by the laws of the State of New York.

16. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute a single agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Agent	Capital Contribution	Fractional Interest
s/ Peter L. Malkin Peter L. Malkin		
Participants		
[redacted]	$ 2,490,000.00	249/1100
[redacted]	$ 1,660,000.00	166/1100
[redacted]	$ 1,340,000.00	134/1100