

Edgar Filing: Empire State Realty Trust, Inc. - Form 425

Empire State Realty Trust, Inc.

Form 425

March 01, 2013

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Filed by Empire State Realty Trust, Inc.

and Empire State Realty OP, L.P.

Pursuant to Rule 425 under the Securities Act of 1933

Subject Companies: Empire State Realty Trust, Inc.

Commission File No. for Registration Statement

on Form S-4: 333-179486

Empire State Realty OP, L.P.

Commission File No. for Registration Statement

on Form S-4: 333-179486-01

The following is the updated information website of Malkin Holdings LLC concerning Empire State Realty Trust, Inc.

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This website does not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

**NOTIFICATION: IMPORTANT INFORMATION**

Investors in the Companies are urged to review such Registration Statement on Form S-4, the prospectus/consent solicitation statement and other related documents now filed or to be filed with the SEC and available on this website, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at (212) 687-8700 at Malkin Holdings.

Certain links provided in the Letters to Participants section of this website to the Form S-4 link to Amendment No. 6 of the Registration Statement on Form S-4, which was the last amendment filed prior to the SEC declaring the Registration Statement on Form S-4 effective. The prospectus/consent solicitation mailed to participants is in the form of the preliminary prospectus/consent solicitation statement included in Amendment No. 6.

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There are material risks and conflicts of interest associated with the consolidation. You should carefully review the sections entitled Risk Factors and Conflicts of Interest and the more detailed discussion of the tax consequences of the consolidation under the section entitled U.S. Federal Income Tax Considerations in the prospectus/consent solicitation statement which has been filed with the SEC.

### **FORWARD-LOOKING STATEMENTS**

This website contains forward-looking statements. In particular, statements pertaining to the REIT's and the Companies capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, the REIT's unaudited pro forma financial statements and all of its statements regarding anticipated growth in the REIT's portfolio from operations, acquisitions and anticipated market conditions, demographics and results of operations are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, preliminary, approximately, intends, plans, estimates, contemplates, aims, continues, would or anticipates or the negative of these words and phrases or similar words or phrases. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and the company may not be able to realize them. The REIT and the supervisor do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements are: included in this website or set forth in the prospectus/consent solicitation statement under the headings Risk Factors, Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust, Inc. and The Company Business and Properties.

While forward-looking statements reflect the REIT's or the supervisor's, as applicable, good faith beliefs, they are not guarantees of future performance. The REIT and the supervisor disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, of new information, data or methods, future events or other changes after the date of this prospectus, except as required by applicable law. For a further discussion of these and other factors that could impact the REIT's future results, performance or transactions, see the section in the prospectus/consent solicitation statement entitled Risk Factors. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to the REIT (or to third parties making the forward-looking statements).

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I ACKNOWLEDGE THE NOTIFICATION

I Do Not Acknowledge this Notification

You must acknowledge this notification to enter the site and enter your login credentials

Welcome to Malkin Holding LLC's participation information website concerning Empire State Realty Trust, Inc. The content of this site can be accessed only by participants in the following entities: Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. If you do not have a password, please contact [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or call (212) 850-2705.

This website has been created by Malkin Holdings LLC to provide participants with information about the planned consolidation of office and retail properties it supervises into a publicly traded Real Estate Investment Trust (REIT). This website currently contains documents that the REIT and the Companies have filed with the Securities and Exchange Commission (SEC), including the prospectus consent solicitation statement, and letters sent to participants, as well as answers to Frequently Asked Questions (FAQ).

Last updated on February 15th, 2013

Investor Login

Note: You should have received a login. Please contact [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or call (212) 850-2705 with any question or to receive a password.

Password

[            ]

Forgot your password?

LOGIN

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*Please note for security reasons, after 2 hours you will be logged out and must re-enter your password to regain entry to the site.*

Forgot Your Password

Log in

If you do not have a password, please contact [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or call (212) 850-2705.

Password [            ]

Three generations of the Wien and Malkin Family   Peter L. Malkin, Chairman (left), and Anthony E. Malkin, President (right), with portrait of Lawrence A. Wien (1905 -1988).

Home

Welcome

This website has been created by Malkin Holdings LLC to provide participants with information about the planned consolidation of office and retail properties it supervises into a publicly traded real estate investment trust (REIT).

Lawrence A. Wien founded Wien & Malkin in 1929 and has been credited with developing the first flow-through tax treatment real estate syndications ever conducted. Peter L. Malkin is Chairman of Malkin Holdings LLC. He worked with the late Lawrence Wien (his father-in-law) for 30 years in the acquisition, ownership, and operation of real estate, until Mr. Wien's death in 1988. Anthony E. Malkin is President of Malkin Holdings LLC and has been working alongside Peter Malkin since 1989.

The website also contains informational videos in which Peter and Anthony Malkin discuss the proposed consolidation, opportunities to register for conference calls with Peter and Anthony Malkin, instructions on how to fill out your consent form, video tours of properties to be consolidated, other property information, letters sent to participants, answers to Frequently Asked Questions (FAQ), and opportunities to pose questions.

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This website contains the prospectus/consent solicitation through which a vote will be taken on the consolidation of various properties into a REIT, Empire State Realty Trust, Inc. The prospectus/consent solicitation statement has been filed by the REIT and Empire State Realty OP, L.P., its operating partnership.

We look forward to assisting you in your review.

Onward and upward.

Last updated on February 15, 2013

**How to Vote**

How do I vote FOR the consolidation, the third-party portfolio proposal, and the voluntary reimbursement program for litigation and arbitration costs?

The consent form provides boxes for you to enter your vote separately with respect to each of the consolidation proposal, the third-party portfolio proposal, and the voluntary reimbursement program for litigation and arbitration costs. Simply indicate your vote in the applicable box.

The form also provides boxes for you to elect the form of consideration you wish to receive in the consolidation as one or a combination of Class A Stock and/ or Operating Partnership Units with or without Class B Stock. Simply indicate your desired percentage in each case.

[CLICK HERE TO VIEW WHAT A COMPLETED CONSENT FORM WOULD LOOK LIKE.](#)

[CLICK HERE TO VIEW AN INSTRUCTIONAL VIDEO ON HOW TO COMPLETE YOUR CONSENT FORM.](#)

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This sample shows a Consent Form as if completed by an individual U.S. investor (exempt from back-up withholding) who is supporting all the proposals and is electing a 98% TAX-DEFERRED TREATMENT and VOTING securities by electing 100% Operating Partnership Units with Class B Stock.

Investors wanting a 100% tax deferred treatment should instead elect 100% Operating Partnership Units without Class B Stock.

Investors wanting 100% taxable treatment should instead elect only 100% Class A Common Stock.

After you have completed the foregoing voting and election, please submit the consent form as soon as possible (a) by mail to MacKenzie Partners, 105 Madison Avenue, NY, NY 10016 in the postage-paid envelope that came with your mailing or (b) by fax to 212-929-0308, so your participation interest may be promptly voted FOR or AGAINST each proposal.

If you sign and submit your consent form without indicating your vote on either the consolidation proposal or the third-party portfolio proposal, your participation interest will be counted as a vote FOR such proposal.

If you sign and submit your consent form without indicating your vote on the voluntary reimbursement program for litigation and arbitration costs, your participation interest will be counted as a vote that DOES NOT CONSENT TO the proposal.

If you do not submit your consent form or you indicate on your consent form that you ABSTAIN from any proposal, it will have the effect of voting AGAINST such proposal.

Please return your consent form in the prepaid envelope provided to MacKenzie Partners as soon as possible.

### How To Vote Video

[CLICK HERE TO WATCH THE VIDEO <<button>>](#)

#### 1 How to Vote Instructions

This instructional video describes how to complete your consent form.

For more information on how to vote please click here

If you are having difficulty watching the video, you can download the video to watch it.

[Click here to Download the video](#)

There are material risks and conflicts of interest associated with the consolidation. You should carefully review the sections entitled Risk Factors and Conflicts of Interest in the prospectus/consent solicitation which has been filed with and declared effective by the SEC. There can be no assurance that participants will realize the benefits described in the videos, including the potential increase in distributions and capital appreciation. In addition, such prospectus/consent solicitation includes a more detailed discussion of the tax consequences of the consolidation.

We also caution you that this letter contains forward-looking statements. These forward-looking statements, including the potential for more consistent distributions than the status quo, with greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC, and the potential for additional capital appreciation over time, are based on our beliefs and expectations as applicable, which may not be correct. Important factors that could cause such actual results to differ materially from the expectations reflected in these forward-looking statements include those set forth in the prospectus/consent solicitation.

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While we believe that the terms of the consolidation are fair and in the best interests of participants, there can never be any guaranty that the consideration you will receive from the consolidation represents the fair market value of your interests.

This communication shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

Each of the three public entities, Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (the Companies ) and their agents and Malkin Holdings LLC (the Supervisor ), Empire State Realty Trust, Inc. (the REIT ), Empire State Realty OP, L.P., and each officer and director of the Companies, the Supervisor or of the REIT may be deemed to be a participant in the solicitation of consents in connection with the proposed consolidation. The names of such persons and a description of their interests in the Companies and the REIT are set forth, respectively, in each Company s Annual Report on Form 10-K for the year ended December 31, 2011, the REIT s Registration Statement on Form S-4, and the prospectus/consent solicitation which have been filed with the SEC.

Investors in the Companies are urged to review the Registration Statement on Form S-4, the prospectus/consent solicitation and other related documents now filed or to be filed with the SEC, because they contain important information. You can obtain them without charge on the SEC s website at [www.sec.gov](http://www.sec.gov). You can also obtain without charge a copy of the prospectus/consent solicitation and the supplements relating to the individual entities by contacting Ned H. Cohen at 212-687-8700 at Malkin Holdings LLC.

Discussions with Peter and Anthony Malkin

[CLICK HERE TO WATCH VIDEO <<button>>](#)



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### 1 Investment Options

In the proposed consolidation of properties and initial public offering ( IPO ), you have a choice regarding which type of security you would like to receive in exchange for your current investment interest. These options include receiving:

100% Tax Deferred Operating Partnership ( OP ) Units: or

98% Tax Deferred combination of OP Units and Class B Shares in the publicly traded REIT; or

100% taxable Class A Shares in the publicly traded REIT.

In the video linked above, Peter and Anthony Malkin describe the different features of your options to help you make a decision that best meets your objectives.

Should you have additional questions, please e-mail us at [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or please contact Mackenzie at 1-888-410-7850.

Please [click here](#) for disclaimer.

If you are having difficulty watching the video, you can download the video to watch it.

[Click here to Download the video](#)

[CLICK HERE TO WATCH VIDEO <<button>>](#)

### 2 History and Structure

As an investor in a two-tiered entity, you hold an interest in a unique ownership structure.

In this video, Peter and Anthony Malkin provide background on the two-tiered ownership structure of the Empire State Building, One Grand Central Place and 250 West 57th Street.

We believe the history of these unique investment structures is critical to understanding what you currently own and may help you to evaluate the proposed consolidation of properties and initial public offering.

Should you have additional questions, please e-mail us at [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or please contact MacKenzie at 1-888-410-7850.

Please [click here](#) for disclaimer

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[Click here to Download the video](#)

[CLICK HERE TO WATCH VIDEO <<button>>](#)

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3 Process and Properties

Malkin Holdings LLC supervises many office buildings and retail properties in Manhattan, Fairfield County, CT and Westchester County, NY.

In the video linked above, Peter and Anthony Malkin explain why they believe it would be beneficial to combine these properties into a diversified real estate portfolio which will be owned by the REIT.

Should you have additional questions, please e-mail us at [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or please contact MacKenzie at 1-888-410-7850.

Please [click here](#) for disclaimer.

If you are having difficulty watching the video, you can [download the video](#) to watch it.

[Click here](#) to Download the video

CLICK HERE TO WATCH VIDEO <<button>>

4 Why IPO Now

Many investors have asked: Why pursue an IPO? And why now?

In the video linked above, Peter and Anthony Malkin address this question and how they believe investors will benefit.

Should you have additional questions, please e-mail us at [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or please contact MacKenzie at 1-888-410-7850.

Please [click here](#) for disclaimer.

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[Click here](#) to Download the video

CLICK HERE TO WATCH VIDEO <<button>>

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5 Should I Vote For or Against the Proposed Transaction

In the video linked above, Peter and Anthony Malkin discuss key points about the transaction including the benefits of consolidation/ IPO vs. the downside of maintaining the status quo to help you make your voting decision.

Should you have additional questions, please e-mail us at [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com) or please contact Mackenzie at 1-888-410-7850.

Please [click here](#) for disclaimer.

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[Click here](#) to watch the video

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Property Tour Videos

Please view two videos which give you a brief tour of the properties included in the proposed consolidation and IPO.

[CLICK HERE TO WATCH VIDEO <<button>>](#)

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### 1 Manhattan s Premier Pre-War Trophy Portfolio

W&H Properties includes 9 pre-war office buildings. All the properties are located in the most accessible areas of midtown Manhattan. Top to bottom upgrades included new lobbies, elevators, windows, bathrooms, common corridors and upgraded building systems.

If you are having difficulty watching the video, you can download the video to watch it.

[Click here to Download the video](#)

[CLICK HERE TO WATCH VIDEO <<button>>](#)

### 2 Presenting Malkin Properties Premier Property Portfolio

Malkin Properties and its affiliates own and manage office and retail in Manhattan, Westchester, NY and Fairfield, CT. Every Malkin property offers a broad range of services and amenities, including responsive building management, as well as unsurpassed quality, service and convenience with easy access to transportation.

If you are having difficulty watching the video, you can download the video to watch it.

[Click here to Download the video](#)

### Frequently Asked Questions

Note: Terms used but not otherwise defined in these Frequently Asked Questions have the meaning set forth in the prospectus/consent solicitation statement.

Q: What am I being asked to approve?

Q: Will I get taxed on my investment if I vote for the consolidation?

Q: What will happen if we are consolidated?

Q: Will I receive special one-time distributions if there is consolidation/IPO?

Q: What will happen to my distributions if the proposed transaction moves forward?

Q: But what about distributions for investors under the current structure will my distributions decrease?

Q: Why is Malkin Holdings recommending the proposed transaction?

Q: What happens to my interest if the transaction proceeds?

Q: Which type of securities should I choose?

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Q: Who is Malkin Holdings LLC?

Q: What happened to Lawrence A. Wien and Wien & Malkin?

Q: Can't things just stay the way they are?

Q: Could ESBA purchase the Helmsley estate's interest?

Q: Could the ESB become a REIT on its own?

Q: Will ESB investors be shortchanged by combining a marquee property such as ESB with other, less iconic properties?

Q: How do I know the valuations are fair?

Q: What is the status of the ESB turnaround?

Q: What about all these lawsuits that were filed - did the Malkins do something wrong?

Q: What are the override interests?

Q: Why do the Malkins get payment on these interests in the proposed transaction?

Q: When can I sell OP Units or shares of Class A common stock of the REIT after the consolidation and the IPO?

Q: When are OP Units exchangeable for shares of common stock?

Q: What is a REIT, and why will the company elect to be a REIT?

Q: When do you expect the consolidation to be completed?

Q: If I own participation interests in more than one subject LLC, what should I do?

Q: Information in the prospectus/consent solicitation statement is based on a \$10,000 original investment. Where can I find information about my actual original investment?

Q: Is it true that the transaction will cause participants to pay an \$85 million tax bill for the Malkins?

Q: Is MacKenzie the proxy solicitor the same group who has launched the recent tender offer?

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Q: What am I being asked to approve?

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A: Malkin Holdings LLC is asking for your consent to the following three items:

Consolidation: a consolidation of your subject LLC with seventeen other properties and one development site and certain related management companies into one company intended to qualify as a real estate investment trust ( REIT ) for U.S. federal income tax purposes;

Third-party sale: a potential sale or transfer of your subject LLC 's interest to a third party as part of a portfolio transaction of the properties and management companies to be contributed to the REIT if the aggregate consideration is at least 115% of the aggregate exchange value and Malkin Holdings LLC determines that the offer price represents an adequate premium above the value that is expected to be realized over time from the consideration; and

Reimbursement: voluntary pro rata reimbursement to Malkin Holdings LLC and Peter L. Malkin for the prior advances of all costs, plus interest, incurred in connection with litigations and arbitrations with the former property manager and leasing agent. Importantly, each of these proposals is subject to a separate consent. You may approve of one, two, all three or none of these proposals.

Q: Will I get taxed on my investment if I vote for the consolidation?

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A: Not if you choose OP Units, which are expected to be 100% tax-deferred, meaning you only get taxed on the gain on your investment only at the time of a future capital transaction. You also have the option of deferring 98% of your taxes by choosing a combination of OP Units and Class B shares. These are the same options offered to the investors in the private entities and the Malkin family.

Q: What will happen if we are consolidated?

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A: Following the consolidation, if approved, the REIT will be launched as a public company with its Class A common stock and certain of its OP Units expected to be listed on the New York Stock Exchange ( NYSE ).

Q: Will I receive special one-time distributions if there is consolidation/IPO?

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A: Yes, you will receive your share of the following special one-time additional distributions, but only if the consolidation/IPO closes:

distribution equal to your subject LLC 's existing reserves in excess of working capital.

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distribution equal to your subject LLC's share of expenditures relating to the consolidation and IPO, which will be reimbursed to your subject LLC by the REIT out of IPO proceeds.

payment to you of your share of the proceeds of the settlement of the class action, subject to approval of the settlement by the court.

Investors in the subject LLCs will not pay any portion of the class action settlement.

Q: What will happen to my distributions if the proposed transaction moves forward?

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A: We believe you have greater potential for increased distributions as an investor in the REIT than if you stayed with your current interest. We also believe your dividends will be more stable and consistent, because they will be derived from a portfolio of properties rather than just one. In fact, now that the Form S-4 is effective, we have estimated an initial annual distribution per \$10,000 original investment for the initial 12 month period of the REIT as a public company following the initial public offering ( IPO ) (which is based on our estimated cash available for distribution for such period). You can compare this estimated distribution to prior years' distributions. This estimate is based on the calculations and assumptions set forth in the prospectus/ consent solicitation statement, and the REIT cannot assure you that its actual results will be equal or comparable to such estimate.

Q: But what about distributions for investors under the current structure will my distributions decrease?

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A: No, but we believe you have greater potential for increased distributions as an investor in the REIT than if you stayed just with an interest in your subject LLC. In addition, as with the other properties, we believe your REIT distributions will be more stable and consistent, because they will be derived from a portfolio of properties rather than just one.

Q: Why is Malkin Holdings recommending the proposed transaction?

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A: Malkin Holdings believes the proposed transaction represents the best opportunity to enhance the value of your investment. Investors in a publicly-traded REIT will benefit from:

Tax Deferral: as detailed above, you may exchange your current interest for OP Units, which are expected to be 100% tax-deferred, and pay no tax in connection with the transaction. Tax on the gain of your investment would only be incurred at such time as there is a future capital transaction, such as if and when you decide to sell your shares/units.



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**More Consistent Distributions Paid Quarterly With Greater Potential for Increased Distributions:** we believe investors have greater potential for increased distributions following the proposed transaction than as a participant in their subject LLC from improved performance, potential growth from acquisitions and a better capital structure, made possible by the combined balance sheet of all the properties. REITs are also required to distribute at least 90% of their annual REIT taxable income to stockholders, which will result in regular, quarterly dividends.

**Potential for Liquidity at Time of your Choosing:** There is currently no efficient public market where you can sell all or part of your interest. And while there have been some sales over the years, we believe they have been conducted at significant discounts to the true market price. By listing the Class A common stock and OP Units on the NYSE, there will be a true market price available, and investors will be able to see the price of shares or units any time and sell all or part of their interest at a time of their choosing, following an initial lock up period.

**More Efficient Access to Capital:** combining the properties would create a unified balance sheet, providing the REIT with greater and more efficient access to debt and equity capital and borrowings.

**Diversification:** many investors now have an investment in just one property, all your eggs in one basket . Through the consolidation, investors will diversify their holdings across a portfolio of properties. Diversification is one of the first principles of sound investing and will allow for less uncertainty due to developments at any one property.

**Growth Opportunities:** a REIT has substantial opportunities to pursue growth opportunities, such as buying properties which are expected to produce additional value, through better access to debt and equity capital.

**Modern, More Efficient Corporate Governance:** Corporate governance and operations will become more efficient and transparent. The proposed REIT s board of directors will be comprised of six independent directors and one inside director and will be accountable to all investors, including major institutional investors. This eliminates the costly and time-consuming steps under the current structure, which affects the subject LLCs ability to take advantage of favorable opportunities.

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**Greater Transparency:** as an investor in a public company with securities listed on the NYSE, you will have the ability to see quarterly earnings reports and mandated SEC disclosures of material events. You would also enjoy all the protections afforded all public stockholders through SEC, NYSE, and Dodd-Frank rules and regulations.

**Simplified Tax Filing:** instead of a K-1 for each investment, which is often received too late to make an April 15th filing, Class A or B common stockholders will receive one form 1099 and OP Unit holders will receive one form K-1. The REIT will aim to deliver all these forms by March 31st so investors will not have to file returns on extension.

**Allows Sale of Helmsley Interest Without Disruption:** The Helmsley estate holds a veto in the operating lessee of the ESB and large positions in the operating lessees of One Grand Central Place and 250 West 57th Street. If the estate does not have the ability to liquidate its interest through the consolidation and IPO, we expect it to sell its interests to an unknown third party. This means that if the transaction does not proceed, there is the potential that an unknown third party could make decisions that could result in deadlocks over a range of issues, including decisions which could meaningfully reduce the amount available for distribution.

Q: What happens to my interest if the transaction proceeds?

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A: You will have the option to elect to receive Class A common stock in the REIT, OP Units, or a combination of Class B common stock and OP Units.

Q: Which type of securities should I choose?

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A: Malkin Holdings LLC cannot advise you on which securities to choose, but you have a range of options from which to pick, depending on your financial objectives.

OP Units carry full distribution rights but are without voting rights. However, OP Units are expected to be 100% tax deferred, with tax owed on any gain on your investment only at the time of a future capital transaction.

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Class B Shares carry full dividend rights and 50 votes for every Class B Share. Because OP Units do not have voting rights, we are offering the option to receive Class B Shares instead of 2% of the OP Units you otherwise would receive. For example, if you were eligible to receive 100 OP Units, you could instead choose 98 OP Units and 2 Class B Shares thereby receiving the same voting rights as if you chose 100 Class A Shares and deferring 98% of your taxes.

Class A Shares carry full voting and distribution rights, but are taxable at the time of the consolidation.

A more thorough description of the securities from which you can choose is contained at pages 94-96 of the prospectus/consent solicitation statement.

Q: Who is Malkin Holdings LLC?

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A: Malkin Holdings LLC created your investment, is the supervisor of your LLC, has been the supervisor since its creation, and has over 80 years of experience in real estate investment and supervision on behalf of investors. It provides all asset management services for, and supervises the operations of, your subject LLC.

Q: What happened to Lawrence A. Wien and Wien & Malkin?

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A: Malkin Holdings is the same legal entity as Wien & Malkin, having converted to a limited liability company and changed its name to Malkin Holdings in 2009 21 years after the death of Lawrence A. Wien in 1988. It was created by Lawrence A. Wien, and has continued to be controlled and managed by members of the Wien family during that time. Its Chairman, Peter L. Malkin, is Mr. Wien's son-in-law, and was his partner for three decades and participated in structuring and completing the purchase of the ESB with Mr. Wien and Harry B. Helmsley in 1961. Its President, Anthony E. Malkin, is Mr. Wien's grandson, Peter L. Malkin's son, and has been Peter L. Malkin's partner for more than two decades. Anthony E. Malkin with his management team, under the Chairmanship of Peter L. Malkin, is responsible for the renovation, repositioning and/or acquisition of every property in the proposed consolidation and IPO.

Q: Can't things just stay the way they are?

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A: No. Leona Helmsley's estate must sell its interest in ESBA's operating lessee, Empire State Building Company L.L.C. ( ESBC ). This is not an option it is a requirement under the will of Leona Helmsley. The Helmsley estate's interest and the Malkin family's interest hold equal veto rights on decisions made by ESBC. ESBC decisions control property operation and use of cash flow, thus determining the amount of cash available for ESBA distributions. If the consolidation

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is not completed, the Helmsley estate will have to find another way to liquidate its real estate holdings. In that case, the Helmsley estate could sell to a person or group which would then have such veto on decisions by ESBC, thereby creating the potential for stalemate and a resulting impairment of ESBA distributions.

Q: Could ESBA purchase the Helmsley estate's interest?

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A: We do not believe this is realistic. ESBA receives a low basic rent and highly variable overage rent from ESBC to cover costs and to service and repay loans. ESBC is not required to operate in such a way as to maximize cash flow or overage rent payments. Based on our experience in financings (more than \$2.9 billion in financing since Anthony E. Malkin joined Peter L. Malkin at Malkin Holdings in 1989), including three financings for ESB since 2001, we do not believe that ESBA would be able to borrow the necessary amounts to acquire the Helmsley estate's interest. In addition, ESBA would require a new consent from ESBA participants for any financing to buy out the Helmsley estate's interests.

Q: Could the ESB become a REIT on its own?

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A: We do not believe that is realistic or desirable. Any ESB-only REIT would require the consent of ESBC which is controlled by the Malkin family and the Helmsley estate, which have consented only to the consolidation and IPO as currently proposed. We have been advised that a single-asset REIT is not typical, and most potential REIT investors (the great majority of which are institutional investors) would not react favorably to such a REIT. One reason is that a stand-alone REIT would bear many of the same ongoing expenses of a REIT owning a portfolio of properties without the benefit of other properties to share them with. We believe these expenses would make it less attractive to investors and diminish value to ESB investors.

Q: Will ESB investors be shortchanged by combining a marquee property such as ESB with other, less iconic properties?

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A: No. All of the buildings in the proposed consolidation are financially stable, and their relative results and growth prospects were considered when Duff & Phelps, a national independent valuation expert, calculated how much of the exchange value each building would get in connection with the proposed consolidation. For example, ESB represents 34% of the square footage of the total portfolio but is receiving 56% of the exchange value in the proposed transaction. That disproportionate value reflects Duff & Phelps's independent assessment of what is a fair allocation of value for ESB, which takes into account ESB's future growth prospects.

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Q: How do I know the valuations are fair?

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A: To produce the exchange values and render a fairness opinion, Malkin Holdings chose Duff & Phelps based upon its reputation and independence. Duff & Phelps is an internationally recognized firm with an excellent reputation which is well skilled in providing valuation services for a broad variety of real estate firms. Duff & Phelps began by appraising the value of each of the 18 office and retail properties and the development site to be included in the REIT that would be created as part of the consolidation. Then, Duff & Phelps allocated such property's value to each of the present entities holding an interest in that property, based in part on information and representations provided by Malkin Holdings LLC. Valuation materials which Duff & Phelps provided to us or used in connection with the valuations have been filed in Appendices A, B and C to the prospectus/consent solicitation statement which you can review, including the financial projections used by Duff & Phelps in its exchange valuation process for all the properties.

Q: What is the status of the ESB turnaround?

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A: The program is in progress. The lobby has been restored, the observatory largely has been upgraded, and new leases have been concluded for over 1.5 million square feet of office and retail space. However, to complete the comprehensive program for renovation and repositioning of ESB, additional capital of approximately \$185.0 million to \$225.0 million, in addition to the additional costs for tenant improvements and leasing commission, will be required through 2016.

Q: What about all these lawsuits that were filed did the Malkins do something wrong?

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A: No. Virtually all large deals get challenged in court. These claims now have been settled by written agreement with no admission of wrongdoing. In fact, after plaintiffs' counsel reviewed thousands of documents and interviewed many witnesses, the plaintiffs now support the proposed transaction. Investors in the subject LLCs will bear no cost in connection with such settlement and will participate in receiving the settlement proceeds.

Q: What are the override interests?

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A: The Malkin group has from the inception of these entities and/or subsequent investor consents been entitled to share in excess cash distributions through overrides. For example, from overage rent distributions since the time the ESBA investment was created, Malkin Holdings has been the recipient of a 6% override from ESBA, which has been paid from distributions, and 93.99% of ESBA investors have voluntarily consented to a capital override, which provides the Malkin group with a 10% override to Malkin

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Holdings from capital transaction proceeds in excess of a return of capital, for reasons that included giving Malkin Holdings an incentive to manage the building in a way that would maximize capital proceeds and thereby further align the interests of Malkin Holdings with investors. Overrides from excess distributions are also in effect for investors in 60 East 42nd and 250 West 57th based on the original entity documents and/or subsequent investor consents.

Q: Why do the Malkins get payment on these interests in the proposed transaction?

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A: By contract, the Malkins are entitled to distributions on the override interests out of the proceeds from a capital event, which includes any transfer of the property of the subject LLCs. The proposed consolidation is a capital event. In the proposed consolidation and IPO, control of the combined enterprise will be transferred from the supervisor, the Malkin Holdings group, and the Helmsley estate to a board comprised of six independent directors out of a seven-member board of directors. For example, many existing investors in the private entities and the other public entities who currently do not own interests in ESB (44% by aggregate exchange value) will own collectively an indirect interest in ESB and the other properties, and the existing investors in ESBA will own 28% of ESB and each of the other properties, after the consolidation and IPO through their new interests in the publicly-traded REIT, representing a significant transfer of ownership in all the properties. Thus, 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 or the same investors.

Q: When can I sell OP Units or shares of Class A common stock of the REIT after the consolidation and the IPO?

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A: After the closing of the consolidation and the IPO, each participant (except the Malkin Family, whose members are subject to a longer restrictive period in which they cannot sell) will have the ability to sell up to 50% of both the OP Units and Class A or Class B common stock received in the consolidation at any time after the 180th day following the IPO pricing date and the balance of the OP Units and Class A or Class B common stock 12 months after the IPO pricing date. In addition, each participant that receives OP Units may, immediately following the consolidation and the IPO, sell up to approximately 4% of the OP Units issued to him or her (assuming all of the participants in each subject LLC elect to receive OP Units).

Q: When are OP Units exchangeable for shares of common stock?

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A: Beginning 12 months after the completion of the IPO, each holder of OP Units will have the right to require the operating partnership to redeem all or a portion of its OP Units for a cash amount equal to the then-current market value of one share of Class A common stock per OP Unit, or, at the REIT's election, to exchange each such OP Unit for a share of Class A common stock on a one-for-one basis.

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Q: What is a REIT, and why will the company elect to be a REIT?

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A: A REIT is an entity that has elected and qualifies to be taxed as a real estate investment trust under the Internal Revenue Code of 1986. The primary benefit of REIT qualification is that a REIT is generally entitled to a deduction for dividends that it pays and, therefore, is not subject to U.S. federal corporate income tax on the net income distributed to its stockholders. To maintain this status, a REIT must distribute at least 90% of its REIT taxable income each year.

Q: When do you expect the consolidation to be completed?

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A: We plan to complete the consolidation as soon as possible after the receipt of the approval by the required vote of your subject LLC's participants and the approval by the required vote of the other subject LLCs' participants, conditioned on the closing of the IPO. While we are unable to estimate the closing date of the consolidation, by its terms it is required to be completed no later than December 31, 2014.

Q: If I own participation interests in more than one subject LLC, what should I do?

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A: For each subject LLC in which you own a participation interest, in the same mailing in which you received the prospectus/consent solicitation statement you have received a transmittal letter, supplement and consent form which provides for vote with respect to the consolidation proposal and the third-party portfolio proposal. Regardless of how many subject LLCs in which you own a participation interest, you have received a single copy of the prospectus/consent solicitation statement. Participants in each subject LLC will vote separately on whether or not to approve the consolidation. Accordingly, if you hold participation interests in more than one subject LLC, you must complete one consent form for each subject LLC in which you are a participant.

Q: Information in the prospectus/consent solicitation statement is based on a \$10,000 original investment. Where can I find information about my actual original investment?

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A: Information is presented in the prospectus/consent solicitation statement based on a \$10,000 original investment to allow participants to determine the effect on them individually. Information regarding the amount of your actual original investment will be provided on the consent form sent to you.

Q: Is it true that the transaction will cause participants to pay an \$85 million tax bill for the Malkins?

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A: No. No payment to the Malkins would be required upon the consolidation, IPO or a sale to a third-party. The tax protection agreement only requires payment where, following the IPO, the REIT's independent board directors decided to sell (or failed to maintain certain debt with respect to) one or more of four designated assets within a certain time frame. Not only is no such transaction contemplated at this time, but the independent board members will be subject to a fiduciary duty which would require them to determine that the sale was in the best interests of the REIT before any such transaction could occur.

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Q: Is MacKenzie the proxy solicitor the same group who has launched the recent tender offer?

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A: No. The group making the tender offer consists of entities reportedly affiliated with MacKenzie Capital Management in Moraga, California. Such entities are not related to Malkin Holdings or its proxy solicitor MacKenzie Partners, Inc.

**Register For a Conference Call**

Now that the S-4 is effective, we are hosting conference calls for investors to provide information and answer questions on the proposed transaction. There are nearly 4,000 investors involved in this consent process, and three entities for which a vote is to be taken. To make the calls work, there are scheduled separate calls for each investment entity and the number of attendees on each call will necessarily be limited.

We will schedule as many calls as are required for every interested investor to be able to participate. We have set aside several initial dates and times for these calls. If you wish to participate, please select the entity you are invested in below. This will lead to a calendar which will enable you to choose the time(s) most convenient for you and fill in your contact information with the option to submit a question. Once you have done this, you will receive an email with instructions on how to access the call. If none of the available times is convenient for you, or if all calls are filled, please contact MacKenzie at 1-888-410-7850 and we will contact you with new call dates.

Please click on the entity for which you are an investor or advisor to sign up:

Empire State Building Associates L.L.C. <<button>>

60 East 42<sup>nd</sup> St. Associates L.L.C. <<button>>

250 West 57<sup>th</sup> St. Associates L.L.C. <<button>>



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Empire State Building Associates L.L.C. Conference Call Registration

If you are having difficulties scheduling a call, please contact our proxy solicitor MacKenzie Partners L.L.C. at **1-888-410-7850**.

Registration for calls close the prior day at 5 pm EST

60 East 42nd St. Associates L.L.C. Conference Call Registration

If you are having difficulties scheduling a call, please contact our proxy solicitor MacKenzie Partners L.L.C. at 1-888-410-7850.

Registration for calls close the prior day at 5pm EST

250 West 57th St. Associates L.L.C. Conference Call Registration

If you are having difficulties scheduling a call, please contact our proxy solicitor MacKenzie Partners L.L.C. at 1-888-410-7850.

Registration for calls close the prior day at 5pm EST

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Media/News

[Click here to read the 2/15/13 article on Forbes.com about the benefits to investors of the proposed transaction.](#)

[Click here to see Anthony Malkin on Bloomberg TV speak publicly for the first time about the Malkin Holdings proposals.](#)

[Click here to read David Levitt's 1/29/13 Bloomberg article.](#)

[Click here to read Brad Thomas's 1/28/13 TheStreet.com article.](#)

[Click here to read Aaron Elstein's 1/22/13 Crain's New York article.](#)

The links are to articles on web sites created and maintained by someone other than Malkin Holdings. The web sites you are linking to will have legal notices, privacy policies, or other requirements that differ from those of Malkin Holdings, so you may want to review them. We are providing these links for your convenience. Malkin Holdings does not control or guarantee the accuracy, relevance, timeliness, or completeness of those web sites or the articles linked. Certain of these articles refer to values of participation interests, which are based on the exchange values. As described in the prospectus/consent solicitation statement, the exchange value determines the relative value of the consideration to be received in the consolidation and does not represent the fair market value of the consideration. The fair market value of the consideration to be received in the consolidation will be determined based on the IPO price determined in the IPO. Please see the prospectus/consent solicitation statement for more details.

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Properties to be Consolidated

The Empire State Building (350 5th Avenue)

New York, New York

The world's most famous office building, The Empire State Building was built in 1931. It occupies the entire blockfront from 33rd Street to 34th Street on Fifth Avenue, anchoring the east side of the 34th street corridor in midtown Manhattan. The building is also a tourist destination; it offers panoramic views of New York and neighboring states from its world-famous observatories that draw millions of visitors per year. It is located within walking distance of mass public transportation, multiple parking garages, world-class shopping, dining and lodging.

Read More <<button>>

(Please download Adobe Acrobat Reader to view this link)

One Grand Central Place (60 East 42nd Street)

New York, New York

One Grand Central Place, located at 60 East 42nd St., was built in 1930. The building comprises premier office space and lower-level and ground-floor retail space. It is located on 42nd Street, between Park and Madison Avenues, directly across the street from Grand Central Terminal, located within walking distance of multiple parking garages, world-class shopping, dining and lodging.

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250 West 57th Street

New York, New York

Built in 1921, 250 West 57 St. occupies the entire blockfront of 57th Street between Broadway and Eighth Avenue. The building comprises premier office space and ground-floor and lower-level retail space. It is close to Columbus Circle and the new media headquarters concentration in New York City, and is located within walking distance of multiple parking garages, world-class shopping, dining and lodging. Its close proximity to mass transportation includes direct access to numerous subway lines and bus routes.

Read More <<button>>

(Please download Adobe Acrobat Reader to view this link)

First Stamford Place

Stamford, Connecticut

First Stamford Place was built in 1986. The office complex is located in Stamford, Connecticut, adjacent to the Stamford Transportation Center which serves the Metro North commuter line with express service to Grand Central Terminal. Its close proximity to mass transportation at the Stamford Transportation Center includes access to Acela Express, Amtrak and Metro North train services; Connecticut transit buses with local and inter-county service to Westchester County, New York; taxis; and van pool transportation options.

Read More <<button>>

(Please download Adobe Acrobat Reader to view this link)

1333 Broadway

New York, New York

1333 Broadway was built in 1915. It occupies the northwest corner of 35th Street and Broadway. The building comprises premier office space and lower-level, ground-floor and second-floor retail space. It is located between the nearby Times Square and Herald Square transportation hubs, directly across from the Macy's flagship location, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. Its close proximity to mass transportation includes numerous subway lines and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services.

Read More <<button>>

(Please download Adobe Acrobat Reader to view this link)

1359 Broadway

New York, New York

1359 Broadway was built in 1924. The building comprises premier office space and ground-floor retail space. It occupies the northwest corner of 36th Street and Broadway, between the nearby Times Square and Herald Square transportation hubs, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. Its close proximity to mass transportation includes numerous subway lines and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services.

Read More <<button>>

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1350 Broadway

New York, New York

1350 Broadway was built in 1929. The building comprises premier office space and ground-floor retail space. It occupies the entire block amidst Broadway, Sixth Avenue, 35th and 36th Streets. It is between the nearby Times Square and Herald Square transportation hubs, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. Its close proximity to mass transportation includes numerous subway lines; numerous bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services.

Read More <<button>>

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501 Seventh Avenue

New York, New York

Built in 1923, 501 Seventh Avenue occupies the northeast corner of 37th Street and Seventh Avenue. It comprises premier office space, apparel showroom space and ground-floor retail space. The building is located between the Times Square and Herald Square transportation hubs, within close proximity to numerous subway lines and bus routes, within walking distance of multiple parking garages, world-class shopping, dining and lodging.

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### Metro Center

Stamford, Connecticut

Metro Center was built in 1987. The office building is located in Stamford, Connecticut, near the Stamford Transportation Center which serves the Metro North commuter line with express service to Grand Central Terminal. Its close proximity to mass transportation at the Stamford Transportation Center includes access to Acela Express, Amtrak and Metro North train services; Connecticut transit buses with local and inter-county service to Westchester County, New York; taxis; and van pool transportation options. Tenants also have access to a secured structured parking facility within the building.

[Read More <<button>>](#)

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### 10 Union Square

New York, New York

10 Union Square was built in 1988. The retail property is situated on the entire blockfront between 14th and 15th Streets on the east side of Union Square. The ground-floor and lower-level condominium unit, located at the base of a 29-story mixed-use development known as the Zeckendorf Towers, comprises of rentable retail space. Its close proximity to mass transportation includes numerous subway lines, the PATH trains and bus routes, and it is located atop one of the busiest subway stations in New York City.

[Read More <<button>>](#)

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### 1010 Third Avenue

New York, New York

1010 Third Avenue was built in 1963. The retail property is located at the northwest corner of 60th Street and Third Avenue, directly adjacent to Bloomingdale's flagship store, located in the heart of one of Manhattan's Upper East Side's most vibrant office, retail and residential neighborhoods. The three-story condominium unit, located at the base of a 20-story mixed use residential condominium building, comprises retail condominium space and a condominium parking garage unit, and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes.

[Read More <<button>>](#)

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### 77 West 55th Street

New York, New York

77 West 55th Street was built in 1962. The retail property is located at the northeast corner of Sixth Avenue and 55th Street, a well-established 24-hour destination that attracts day-time workers, convenience and destination shoppers, tourists and residents. The ground-floor condominium unit, situated at the base of a 20-story residential condominium building, comprises retail condominium space and a condominium parking garage unit, and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes.

[Read More <<button>>](#)

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## Edgar Filing: Empire State Realty Trust, Inc. - Form 425

500 Mamaroneck Avenue

Harrison, New York

500 Mamaroneck Avenue was built in 1986. The office building is constructed of a mirrored glass curtain wall on 35 landscaped acres in Harrison, New York. Its close proximity to mass transportation includes the Mamaroneck and White Plains train stations, which provide access to Metro North train services. Tenants have access to tenants-only shuttle service to the Mamaroneck train station. Tenants also have access to free on-site parking.

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### 10 Bank Street

White Plains, New York

10 Bank Street was built in 1989. The office building is located in downtown White Plains, New York, immediately adjacent to the White Plains Transportation Center, which serves the Metro North commuter line with express service to Grand Central Terminal. Its close proximity to mass transportation includes the Metro North Commuter Line; the Bee-Line Bus System, providing service to the Port Chester, Metro North Railroad, New Haven Line; taxis; and access to major highways. Tenants also have access to a six-level secured structured parking facility that is connected to the building.

[Read More <<button>>](#)

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### 1542 Third Avenue

New York, New York

1542 Third Avenue was built in 1991. The retail property is located on the west side of Third Avenue between East 86th and 87th Streets and the north side of 86th Street between Lexington and Third Avenues in Manhattan's Upper East Side. The ground-floor retail condominium unit, located at the base of a 25-story luxury residential condominium building, comprises of retail space and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes.

[Read More <<button>>](#)

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### MerrittView (383 Main Avenue)

Norwalk, Connecticut

383 Main Avenue was built in 1985. The office building is located in Norwalk, Connecticut, at the intersection of the Super 7 Expressway and the Merritt Parkway, with immediate access to the Super 7 Expressway, Exits 40A and 40B of the Merritt Parkway and the Metro North Commuter Railroad. Its close proximity to mass transportation includes the South Norwalk Railroad Station and Merritt 7 Station, which provide access to Metro North train services. Tenants have access to a tenants-only shuttle van service to the South Norwalk Transportation Center and Merritt 7 Station. Tenants also have access to free on-site, structured parking on which the building sits.

[Read More <<button>>](#)

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### 69-97 Main Street

Westport, Connecticut

69-97 Main Street was built in 1922. The adjacent retail units are located on Main Street in Westport, Connecticut, one of Fairfield County's most affluent shopping districts with one of the country's highest concentrations of major national, regional and local retail tenants. Its dual entrances provide direct public access to the stores from Main Street and Parker Harding Plaza, a public parking lot directly behind the property, and it is located in close proximity to major highways.

[Read More <<button>>](#)

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103-107 Main Street

Westport, Connecticut

103-107 Main Street was built in 1900. The adjacent retail units are located on Main Street in Westport, Connecticut, one of Fairfield County's most affluent shopping districts with one of the country's highest concentrations of major national, regional and local retail tenants. The single-story structure comprises of high-end retail space and restaurant space and is constructed of brick and masonry. Its dual entrances provide direct public access to the stores from Main Street and Parker Harding Plaza, a public parking lot directly behind the property, and it is located in close proximity to major highways.

Read More <<button>>

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Option Properties

112-122 West 34th Street

New York, New York

112-122 West 34th Street is an office property in midtown Manhattan. The building is in transition from a garment tenant profile. The company's management team believes that, if acquired, 112-122 West 34th Street would be consistent with the company's portfolio composition and strategic direction.

Read More <<button>>

(Please download Adobe Acrobat Reader to view this link)

1400 Broadway

New York, New York

1400 Broadway is an office property in midtown Manhattan. The company's management team believes that, if acquired, 1400 Broadway would be consistent with the company's portfolio composition and strategic direction.

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Letters to Participants

Malkin Holdings LLC has sent several letters to participants since it filed its preliminary Form S-4 with the Securities and Exchange Commission (SEC) on February 13, 2012. These letters, which have also been filed with the SEC, can be found here. Malkin Holdings LLC plans to send additional letters to participants and will post them to this page after they are mailed to participants and filed with the SEC. We believe these letters continue to provide a useful reference at this time, understanding that subsequent letters or filings with the SEC contain updates.

Letter of February 26, 2013: [\(click here to view the link\)](#)

Alerts investors to misinformation provided to them in a mailing by Robert Machleder.

Memorandum referenced in the February 26, 2013 letter to ESBA investors which was provided to Robert Machleder and addresses the factual and legal basis for the voluntary capital overrides. [\(click here to view the memorandum\)](#)

Mailing of February 22, 2013: [\(click here to view the link\)](#)

Provides participants with reprint of an article on forbes.com about the proposed transaction.

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Mailing of February 19, 2013: (click here to view the link)

Two-page flyer with information participants need to vote FOR the transaction. Also included in the mailing is a sample consent form with step-by-step instructions on how to vote.

Mailing of February 13, 2013: (click here to view the link)

Two-page flyer describing what investors stand to gain by voting for the transaction compared to what happens if they vote no or abstain .

Letters of February 6, 2013: (click here to view links below)

Offer participants our view of the strengths of our recommended courses of action as well as our view of the weaknesses if the current ownership structures remain, commonly referred to as the status quo.

Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., and 250 West 57th St. Associates L.L.C. (click here to view the link)

60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. (click here to view the link)  
Mailing of February 4, 2013: (click here to view the link)

Two-page flyer describing the benefits of the transaction and the misstatements found in the motion to intervene in the pending class action settlement.

Letter of January 30, 2013: (click here to view the link)

Addresses what we believe are material misrepresentations made in a recent motion objecting to the class action settlement which we announced in November 2012.

Letter of January 25, 2013: (click here to view the link)

Addresses what we believe are additional material misrepresentations made by the Edelman group.

Letter of January 23, 2013: (click here to view the link)

Describes commemorative Wall of Recognition to be installed at Empire State Building for ESBA investors and how to participate.

Letters of January 21, 2013: (click here to view links below)

Cover letter accompanying the prospectus/consent solicitation which provides an overview of the consolidation and other proposals. Among other important information, the letter includes a discussion of the benefits of the transaction, the documents that are being provided in the mailing, and the different types of consideration available.

Empire State Building Associates L.L.C. (click here to view the link)

60 East 42nd St. Associates L.L.C. (click here to view the link)

250 West 57th St. Associates L.L.C. (click here to view the link)

Letter of January 21, 2013: (click here to view the link)

## Edgar Filing: Empire State Realty Trust, Inc. - Form 425

Informs investors that a website has been launched to help them access information about the transaction.

Letter of January 7, 2013: (click here to view the link)

Informs participants that the SEC has declared the S-4 effective and provides participants with important letter sent by Martin Cowan, in which Mr. Cowan admits that the financial analysis he provided and which was used by Richard Edelman contains inadvertent errors and cannot be relied upon.

Also posted here is a letter sent to ESBA investors by Martin Cowan in which he explains to them why they cannot rely on the financial analysis which he prepared and was used by Richard Edelman. (click here to view the link)

Letter of December 7, 2012: (click here to view the link)

Sets the record straight about a certain individual who had reached out to ESBA participants.

Letter of November 19, 2012: (click here to view the link)

Provides several updates including the settlement of the class action lawsuit, as well as other steps being taken to prepare for potentially becoming a public company.

Letter of November 9: (click here to view the link)

Addresses what we believe are material misrepresentations made by the Edelmanns and persons working with them.

Letter of September 6, 2012: (click here to view the link)

Provides information about the six independent directors who will become members of the Board of Directors of Empire State Realty Trust on the completion of the IPO.

Letters of August 24, 2012: (click here to view links below)

Addresses questions about value allocation.

Letters of August 6, 2012 (click here to view links below):

Q&A addressing issues that have been raised by ESBA investors.

Letters of July 23, 2012 (click here to view links below):

Details the equity interests the Malkin family will receive as part of this transaction.

Letters of July 2, 2012 (click here to view links below):

Informs participants about the new OP Unit structure that would give all participants the option to defer any tax that could be triggered by the proposed consolidation.

Letter of May 31, 2012: (click here to view the link)

Provides details on the Helmsley estate's required sale of its real estate holdings, the potential impact for investors and certain benefits of the proposed consolidation and IPO.

Letter of May 11, 2012: (click here to view the link)

Discusses the history of the two-tier, lessor/lessee ownership structure created for several properties supervised by Malkin Holdings LLC and the role of the supervisor.

Letter of April 4, 2012: (click here to view the link)

## Edgar Filing: Empire State Realty Trust, Inc. - Form 425

Provides an overview of the consolidation and Initial Public Offering (IPO) process.

Letters of February 13, 2012: (click here to view links below):

Informs participants that the preliminary Form S-4 has been filed with the SEC and notifies them of the intention to consolidate properties and form a publicly traded real estate investment trust (REIT).

Letter of March 16, 2012: (click here to view the link)

Stop, Look and Listen letter which explains that participants need not take any action until after the SEC declares the Form S-4 effective.

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Send Us Questions/ Comments

Please let us know what you are thinking, any question you may have, and any way in which we can help you with your review of the important information on this website. We will be back to you promptly. Thank you!

Name

Email

Company

optional

Phone

optional

Question/ Comment

SEND

Our Contact Information

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Contact Info

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This website does not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

## **Table of Contents**

Investors in the Companies are urged to review such Registration Statement on Form S-4, the prospectus/consent solicitation statement, and other related documents now filed or to be filed with the SEC and available on this website, because they contain important information. You can obtain them without charge on the SEC's website at [www.sec.gov](http://www.sec.gov).

There are material risks and conflicts of interest associated with the consolidation. You should carefully review the sections entitled "Risk Factors" and "Conflicts of Interest" in the prospectus/consent solicitation statement which has been filed with the SEC.

### **FORWARD-LOOKING STATEMENTS**

This website contains forward-looking statements. In particular, statements pertaining to the REIT's and the Companies capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, the REIT's unaudited pro forma financial statements and all of its statements regarding anticipated growth in the REIT's portfolio from operations, acquisitions and anticipated market conditions, demographics and results of operations are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties and you should not rely on them as predictions of future events. You can identify forward-looking statements by the use of forward-looking terminology such as believes, expects, may, will, should, seeks, preliminary, approximately, intends, plans, estimates, contemplates, aims, continues, would or anticipates or the negative of these words and phrases or similar words or phrases. Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise and the company may not be able to realize them. The REIT and the supervisor do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements are: included in this website or set forth in the prospectus/consent solicitation statement under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust, Inc." and "The Company Business and Properties."



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While forward-looking statements reflect the REIT's or the supervisor's, as applicable, good faith beliefs, they are not guarantees of future performance. The REIT and the supervisor disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, of new information, data or methods, future events or other changes after the date of this prospectus, except as required by applicable law. For a further discussion of these and other factors that could impact the REIT's future results, performance or transactions, see the section in the prospectus/consent solicitation statement entitled "Risk Factors." You should not place undue reliance on any forward-looking statements, which are based only on information currently available to the REIT (or to third parties making the forward-looking statements).

SEC Filings

Source: <http://www.sec.gov/> | RRS Feed

<b>Filings Description</b>	<b>Date Filed</b>	<b>Size</b>	<b>View</b>
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-072210 (34 Act)	2/25/2013	12 KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-071583 (34 Act)	2/22/2013	81 KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-069502 (34 Act)	2/21/2013	2 MB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-067091 (34 Act)	2/20/2013	855 KB	Documents
425 Prospectuses and communications, business combinations Acc-no:0001193125-13-063177 (34 Act)	2/19/2013	2 MB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-054602 (34 Act)	2/13/2013	676 KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-054526 (34 Act)	2/13/2013	8 KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-048911 (34 Act)	2/11/2013	66 KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-041235 (34 Act)	2/6/2013	122KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-041139 (34 Act)	2/6/2013	63KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-041102 (34 Act)	2/6/2013	88KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-038979 (34 Act)	2/5/2013	2MB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-038964 (34 Act)	2/5/2013	44KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-030197 (34 Act)	1/30/2013	26KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-030073 (34 Act)	1/30/2013	85KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-028440 (34 Act)	1/30/2013	28KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-026342 (34 Act)	1/28/2013	83KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-026315 (34 Act)	1/28/2013	16KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-025050 (34 Act)	1/28/2013	84KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-025022 (34 Act)	1/28/2013	62KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-025012 (34 Act)	1/28/2013	59KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-024992 (34 Act)	1/28/2013	52KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-023355 (34 Act)	1/25/2013	11KB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13- 020812 (34 Act)	1/23/2013	16KB	Documents
424B3 Prospectus [Rule 424(b)(3)] Acc-no: 0001193125-13-020666 (33 Act)	1/23/2013	5MB	Documents
425 Prospectuses and communications, business combinations Acc-no: 0001193125-13-019091 (34 Act)	1/22/2013	2MB	Documents

## Edgar Filing: Empire State Realty Trust, Inc. - Form 425

425	Prospectuses and communications, business combinations Acc-no: 0001193125-13-018458 (34 Act)	1/22/2013	610KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-13-018445 (34 Act)	1/22/2013	236KB	Documents
424B3	Prospectus [Rule 424(b)(3)] Acc-no: 0001193125-13-018290 (33 Act)	1/22/2013	30MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-13-005172 (34 Act)	1/7/2013	15KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-13-003601 (34 Act)	1/4/2013	23KB	Documents
EFFECT	Notice of Effectiveness Acc-no: 999999995-12-003612 (33 Act)	12/21/2012	2KB	Documents
S-4/A	[Amend] Registration of securities, business combinations Acc-no: 0001193125-12-512349 (33 Act)	12/21/2012	36MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-509204 (34 Act)	12/20/2012	12KB	Documents
S-4/A	[Amend] Registration of securities, business combinations Acc-no: 0001193125-12-504011 (33 Act)	12/17/2012	37MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-500137 (34 Act)	11/12/2012	49KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-495258 (34 Act)	12/7/2012	12KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-476259 (34 Act)	11/20/2012	21KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-465449 (34 Act)	11/13/2012	21KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-465218 (34 Act)	11/13/2012	67KB	Documents
S-4/A	[Amend]Registration of securities, business combinations Acc-no: 0001193125-12-449241 (33 Act)	11/2/2012	92MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-383049 (34 Act)	9/6/2012	28KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-368344 (34 Act)	8/24/2012	165KB	Documents
S-4/A	[Amend]Registration of securities, business combinations Acc-no: 0001193125-12-351400 (33 Act)	8/13/2012	35MB	Documents

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<b>Filings</b>	<b>Description</b>	<b>Date Filed</b>	<b>Size</b>	<b>View</b>
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-340845 (34 Act)	8/7/2012	138KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-338044 (34 Act)	8/6/2012	29KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-325720 (34 Act)	7/31/2012	13KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-310470 (34 Act)	7/23/2012	70KB	Documents
S-4/A	[Amend]Registration of securities, business combinations Acc-no: 0001193125-12-293929 (33 Act)	7/3/2012	26MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-292003 (34 Act)	7/2/2012	44KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-255356 (34 Act)	5/31/2012	18KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-228652 (34 Act)	5/11/2012	15KB	Documents
S-4/A	[Amend]Registration of securities, business combinations Acc-no: 0001193125-12-216509 (33 Act)	5/8/2012	16MB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-149786 (34 Act)	4/4/2012	13KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-119407 (34 Act)	3/16/2012	14KB	Documents
425	Prospectuses and communications, business combinations Acc-no: 0001193125-12-059273 (34 Act)	2/14/2012	22KB	Documents
S-4	Registration of securities, business combinations Acc-no: 0001193125-12-054391 (33 Act)	2/13/2012	20MB	Documents

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### Malkin Holdings LLC Privacy Policy

Malkin Holdings LLC knows your privacy is important to you, and we want you to know it is important to us too. We created this Policy to explain the types of information we collect through EmpireStateRealtyTrust.com (the Site ) and the ways in which we will use, disclose and protect this information once it is collected. By visiting our Site, you agree to the terms of this Privacy Policy as they may be amended from time to time.

Here are a few general principles to keep in mind as you read through this Policy:

The Site is owned and operated by Malkin Holdings LLC and contains information about its affiliates and Empire State Realty Trust, Inc., Empire State Realty OP, L.P., Empire State Building Associates L.L.C., 60 East 42nd Street Associates L.L.C. and 250 West 57th Street Associates L.L.C. (referred to collectively in this policy as we, us, our and other similar pronouns).

As our business evolves, this Policy may change, so check back to this page periodically to make sure you understand how your personal information will be treated.

This Policy is incorporated into, and part of, our Terms of Use, which govern your use of our sites as a whole.

This Policy does not apply to information which you may provide to us, or which we may obtain, other than through the Site, such as over the phone, by mail, or in person, or through other web sites maintained by us or our affiliates.

If you are located outside the United States, you should know that the information you provide to us is being transmitted to us and processed in the United States and will be protected subject to this privacy policy and United States laws, which may not be as protective as the laws in your country. By using the Site, you agree to this.

What information is collected on this Site?

#### User-Provided Information

Personal Information is information that can be used to identify you as an individual or allow someone to contact you, as well as information associated with such information. We may collect Personal Information such as your name; e-mail addresses; whether you are a current investor; company name; telephone number; and the content of any messages that you send to us. For example, we collect Personal Information when you submit a comment or question to us using the contact us feature on the Site.

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### Cookies

We use a technology known as cookies in order to allow you to remain logged in during your use of the Site. Cookies will not track your use of the Site, and any information that may be obtained via cookies will not be saved or retained in any way on our server. The cookies we use will expire when you close your browser window.

We will not retain any Site usage information that is linked or linkable in any way to a user's Personal Information or log-in credentials.

By using our Web Site, you consent to our use of the technologies as described above.

How is your information used?

We or one of our service providers may use the information we collect from and about you to perform the following business functions:

enabling users to use our Site and its features

administering the Site

responding to your requests, questions, and concerns

developing new features on the Site

protecting our rights and property

other purposes disclosed when personal information is submitted to us

Do we share Personal Information with others?

Generally, we will not share your information that we collect on the Site with unaffiliated third parties other than sharing with third parties who need your information in order to provide services to or for us.

In addition, we may share your information with third parties (i) when we believe in good faith that disclosure is necessary to protect our rights or property, protect your safety or the safety of others, investigate fraud or respond to a government, judicial or other legal request, or to comply with the law and (ii) in connection with a corporate change or dissolution, including for example a merger, acquisition, reorganization, consolidation, bankruptcy, liquidation, sale of assets or wind down of business.

### Security

While we endeavor to protect the security and integrity of sensitive Personal Information collected via the Site, due to the inherent nature of the Internet as an open global communications vehicle, we cannot guarantee that any information, during transmission through the Internet or while stored on our system or otherwise in our care, will be absolutely safe from intrusion by others, such as hackers.

If you correspond with us by e-mail or using Web forms like a contact us feature on our Site, you should be aware that your transmission might not be secure. A third party could view the information you send in transit by such means. We will have no liability for disclosure of your information due to errors or unauthorized acts of third parties during or after transmission.

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You are responsible for maintaining the strict confidentiality of any log-in information, and you shall be responsible for any activity engaged in by a person to whom you have provided log-in information, whether or not you authorized such activity. Please notify us of any unauthorized use of log-in information or any other breach of security.

If we believe the security of your Personal Information in our care may have been compromised, we may seek to notify you of that development. If a notification is appropriate, we will endeavor to notify you reasonably promptly under the circumstances. If we have your e-mail address, we may notify you by e-mail. You consent to our use of e-mail as a means of such notification.

### Linked-To Web Sites

The Site may contain links that lead to other web sites. We are not responsible for these other sites, and so their posted privacy policies (not this Policy) will govern the collection and use of your information on them. We encourage you to read the privacy statements of each web site visited after leaving the Site to learn about how your information is treated by others.

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We may change this Policy from time to time. When we do, we will let you know by posting the changed Policy on this page with a new "Last Updated" date. In some cases (for example, if we significantly expand our use or sharing of your Personal Information), we may also tell you about changes by additional means, such as by sending an e-mail to the e-mail address we have on file for you. In some cases, we may request your consent to the changes.

### Contact Us

If you have any questions or comments regarding our privacy practices, you may contact us at:

Malkin Holdings LLC

One Grand Central Place

60 East 42nd Street

New York, NY 10165

Telephone: (212) 687-8700

Fax: (212) 983-1385

Email: [inquiries@malkinholdings.com](mailto:inquiries@malkinholdings.com)

Attention: Privacy Policy

Effective Date: February 15, 2013

[Terms of Use](#)

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There are a few rules of conduct that you are required to follow when you use this website:

Do not harvest (or collect) information from the site using an automated software tool or manually on a mass basis (unless we have given you separate written permission to do so). This includes information about Empire State Realty Trust, Inc., Empire State Realty OP, L.P., Empire State Building Associates L.L.C., 60 East 42nd Street Associates L.L.C., 250 West 57th Street Associates L.L.C. or Malkin Holdings, documents and videos available on the site.

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Do not obtain, or attempt to obtain, access to areas of the site or our systems that are not intended for access by you.

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Governing Jurisdiction

ANY DISPUTE WILL BE LITIGATED BY EITHER PARTY IN A COURT OF COMPETENT JURISDICTION ONLY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR, IF SUCH COURT WOULD NOT HAVE JURISDICTION OVER THE MATTER, THEN ONLY IN A NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK. EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THESE COURTS AND AGREES NOT TO COMMENCE ANY LEGAL ACTION UNDER OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS TERMS OF USE IN ANY OTHER COURT OR FORUM. EACH PARTY WAIVES ANY OBJECTION TO THE LAYING OF THE VENUE OF ANY LEGAL ACTION BROUGHT UNDER OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS TERMS OF USE IN THE FEDERAL OR STATE COURTS SITTING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, AND AGREES NOT TO PLEAD OR CLAIM IN SUCH COURTS THAT ANY SUCH ACTION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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Last Updated: February 15, 2013

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

**CONSENT FORM**

Reference is made to the Prospectus/Consent Solicitation Statement and the related Prospectus Supplement and Notice of Consent Solicitation to Participants, each dated January 21, 2013. The undersigned participant in the entity named above (the subject LLC ) hereby votes as set forth below with respect to all participation interests in the subject LLC which the undersigned may be entitled to vote:

*Please check the appropriate box.*

**1. PROPOSED CONSOLIDATION**

**FOR**

**AGAINST**

**ABSTAIN**

The consolidation ( the consolidation ) of the subject LLC into Empire State Realty Trust, Inc. (the company ) as described in the Prospectus/Consent Solicitation Statement and the Supplement referred to below, including the authorization of Malkin Holdings LLC (the supervisor ) to take, on behalf of the subject LLC, any and all actions that are necessary or appropriate to carry out the consolidation. By voting for the consolidation, the undersigned hereby agrees to all the terms of the Contribution Agreement attached as Appendix B to the Prospectus Supplement (the Supplement ) with respect to the subject LLC (the Contribution Agreement ).

**2. ELECTION OF CONSIDERATION IN A CONSOLIDATION**

*NOTE: In the consolidation, as described in the Prospectus/Consent Solicitation Statement:*

*(i) if you elect to receive operating partnership units of Empire State Realty OP, L.P. ( Operating Partnership Units ), it is generally expected that you should be treated as receiving the Operating Partnership Units in a tax-deferred transaction; and*

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(ii) if you elect to receive any Class A common stock of Empire State Realty Trust, Inc. ( Class A Stock ) or Class B common stock of Empire State Realty Trust, Inc. ( Class B Stock ), it is generally expected that you should be treated as receiving such common stock in a taxable transaction.

Participants should read the discussion under the heading *U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation* in the Prospectus/Consent Solicitation Statement for information regarding the tax consequences of the consolidation.

I elect to receive my consideration in a consolidation in the following percentages, which must total 100%:

- (a) % **OPERATING PARTNERSHIP UNITS**, without taking any Class B Stock in place of any such Operating Partnership Units.
  - (b) 100% **OPERATING PARTNERSHIP UNITS with CLASS B STOCK**, on the basis that I will receive one share of Class B Stock (entitling me to 50 votes) in place of one Operating Partnership Unit out of every 50 Operating Partnership Units which I would otherwise receive.
  - (c) % **CLASS A STOCK**
- Items (a), (b), and (c) must total 100%.

To the extent the percentages filled in above total less than 100% or are not filled in at all, the unelected amount will be deemed to be an election for Operating Partnership Units under Item (a).

**3. PROPOSED THIRD-PARTY PORTFOLIO SALE**

**FOR**

**AGAINST**

**ABSTAIN**

Authorization of the supervisor to approve an offer from an unaffiliated third-party to purchase the consolidated portfolio if a definitive agreement is signed by December 31, 2015, and to take on behalf of the subject LLC any and all actions that are necessary or appropriate to carry out the foregoing, on the terms described in the Prospectus/Consent Solicitation Statement and Supplement.

**4. REQUEST FOR VOLUNTARY PRO RATA REIMBURSEMENT FOR LITIGATION AND ARBITRATION COSTS**

**CONSENTS TO**

**DOES NOT CONSENT TO**

**ABSTAIN**



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Voluntary pro rata reimbursement to the supervisor and Peter L. Malkin as described in the Prospectus/Consent Solicitation Statement and Supplement for the prior advances of all costs, plus interest, incurred in connection with litigations and arbitrations with the former property manager and leasing agent of the property in which the subject LLC owns an interest.

\*\*\*\*\*

**THIS CONSENT SOLICITATION IS MADE ON BEHALF OF THE SUPERVISOR, MALKIN HOLDINGS LLC. THE SUPERVISOR RECOMMENDS THAT PARTICIPANTS CONSENT TO EACH OF THE FOREGOING ITEMS.**

**WHAT EACH PARTICIPANT RECEIVES IN THE CONSOLIDATION OR THIRD-PARTY PORTFOLIO SALE WILL BE BASED ON THE ALLOCATION MADE IN ACCORDANCE WITH THE EXCHANGE VALUE SHOWN IN THE PROSPECTUS/CONSENT SOLICITATION AS MADE BY DUFF & PHELPS, LLC (THE INDEPENDENT VALUER ) AND THE ENTERPRISE VALUE DETERMINED IN THE COMPANY S INITIAL PUBLIC OFFERING (THE IPO ) OR SUCH SALE.**

**IF THIS CONSENT FORM IS SIGNED AND RETURNED WITHOUT A CHOICE INDICATED AS TO ITEMS 1 OR 3, THE PARTICIPANT WILL BE DEEMED TO HAVE CONSENTED TO SUCH ITEM. IF THIS CONSENT FORM IS SIGNED AND RETURNED WITHOUT A CHOICE INDICATED AS TO ITEM 4, THE PARTICIPANT WILL BE DEEMED NOT TO HAVE CONSENTED TO SUCH ITEM.**

**IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE IN COMPLETING THIS FORM, PLEASE CALL MACKENZIE PARTNERS, INC. (888-410-7850), WHICH HAS BEEN ENGAGED BY THE SUPERVISOR TO ASSIST IN ANSWERING PARTICIPANT INQUIRIES.**

**PLEASE SIGN, DATE AND PROMPTLY RETURN THIS CONSENT FORM, INCLUDING (1) THE ENCLOSED CERTIFICATE OF NON-FOREIGN STATUS (IF APPLICABLE) AND (2) THE ENCLOSED INTERNAL REVENUE SERVICE FORM W-9 (OR OTHER APPLICABLE FORM), ALL IN THE ENVELOPE PROVIDED. NO POSTAGE IS REQUIRED IF MAILED IN THE U.S. (ALTERNATIVELY, YOU MAY FAX TO 212-929-0308)**

If you own participation interests in more than one group in the subject LLC, your consent applies to all such interests.

This consent form signature page also constitutes the signature page for the Lockup Agreement, the form of which is the exhibit to the Contribution Agreement. This consent form signature page also constitutes the signature page for the Limited Partnership Agreement and Registration Rights Agreement, the forms of which are attached as Appendixes D and E, respectively, to the Supplement. By executing this consent form, you agree to be bound by each such applicable agreement in the form attached to the Contribution Agreement or the Supplement, as applicable, all with the same effect as if you signed that agreement. Execution of this page constitutes execution of each such agreement, and

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the undersigned authorizes this page to be attached as a counterpart signature page for each such agreement.

This consent form must be completed and returned before the expiration date determined by the supervisor.

Date: Month/Day, 2013

Name of Participant:  
Investor ID#:

Original investment: \$  
Exchange Value\*: \$  
Voluntary Reimbursement Share: \$

John Doe  
Signature(s) of Participant or Authorized Signatory

Signature(s) of Participant or Authorized Signatory

Title (if Trust or entity)

Title (if Trust or entity)

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Please sign your name exactly as shown in print above. If there are two or more joint holders, all such holders must sign. If signing as attorney-in-fact, executor, administrator, trustee or guardian, please give your full title. If signing for an entity (corporation, partnership, or limited liability company), please give your full title (officer, partner, or authorized person). If more than one signature is required, this consent form may be executed in separate counterparts.

**\* Exchange value has been derived from the appraisal by the Independent Valuer and does not represent the value of the consideration you will receive in the consolidation, which will be based on the enterprise value determined in connection with the pricing of the IPO. The enterprise value (which is based on the IPO price) will be determined by, among other things, market conditions at the time of pricing of the IPO, the historical and future performance of the company and its portfolio of properties and the market's view of the company's net asset value and other valuation metrics. Today, some REITs' common stock trades at a premium to perceived net asset value and others trade at a discount to perceived net asset value. The market's view of the company's net asset value determined in connection with the IPO could be less than the exchange values determined based on the Appraisal. The Appraisal was undertaken in connection with establishing relative value for the purpose of allocation of interests in the company among contributors of interests in the properties and not to establish the value of shares of common stock in the company upon completion of the IPO. In contrast, the pricing of REIT initial public offerings generally takes into account different factors not considered in the Appraisal, including current conditions in the securities markets, investor preferences and the market's view of the company's management team. Additionally, the Appraisal did not take into account transaction costs for the consolidation and the IPO.**

The supervisor believes that initial public offering pricing for REIT common stock generally is at a discount to the market price for common stock of well-established, publicly-traded REITs, and that the company's IPO pricing will be no different. For this and other reasons, the supervisor expects that the enterprise value at the pricing of the IPO will be lower than the aggregate exchange value at the pricing of the IPO, and such discount at the pricing of the IPO could be material and substantial. This discount cannot be determined until the pricing of the IPO. As the company continues to develop a track record as a public company, the supervisor believes that the company's trading price following the IPO will be based on, among other things, the company's historical and future performance, its performance relative to its peers, market conditions generally and its continued seasoning in the public markets. The company currently intends to pay regular quarterly dividends based on the performance of the company and its portfolio of properties, rather than just one property, and those distributions are required to be at least 90% of annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gains) to maintain its qualification as a REIT. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price.

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**CERTIFICATION OF NON-FOREIGN STATUS (INDIVIDUAL PARTICIPANT)**

Reference is made to the Prospectus/Consent Solicitation Statement and the related Supplement and Notice of Consent Solicitation to Participants, each dated \_\_\_\_\_, 2013 (the Consent Solicitations ).

To inform Empire State Realty OP, L.P. that withholding of tax is not required upon the consummation of the transactions contemplated in the Consent Solicitations, the undersigned hereby certifies the following:

1. My name is John Doe.
2. I am not a nonresident alien for purposes of U.S. federal income taxation;
3. My U.S. taxpayer identifying number (Social Security number) is; and
4. My home address is 123 Circle Lane, City, State, Zip.

I understand that this certificate may be disclosed to the Internal Revenue Service by Empire State Realty OP, L.P. and that any false statement I have made here could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete.

Date: Month/Day, 2013

John Doe  
Signature(s) of Participant

Signature(s) of Participant

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**THIS IRS FORM W-9 MUST BE COMPLETED BY ALL U.S. PERSONS PARTICIPATING IN THE CONSOLIDATION. NON-U.S. PERSONS SHALL COMPLETE THE APPLICABLE IRS FORM W-8. FAILURE TO COMPLETE AND RETURN THIS FORM (OR FOR NON-U.S. PERSONS, THE APPLICABLE IRS FORM W-8) MAY RESULT IN BACKUP WITHHOLDING ON ANY PAYMENTS MADE TO YOU PURSUANT TO THE CONSOLIDATION. ADDITIONAL INSTRUCTIONS ARE AVAILABLE ONLINE AT <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.**

**TAXPAYER S NAME:**

<p><b>SUBSTITUTE</b></p> <p><b>FORM W-9</b></p> <p><b>Department of the</b></p> <p><b>Treasury</b></p> <p><b>Internal Revenue</b></p> <p><b>Service</b></p> <p><b>Payer s Request for</b></p> <p><b>Taxpayer</b></p> <p><b>Identification No.</b></p>	<p>Enter your taxpayer identification number in the appropriate box. For most individuals and sole proprietors, this is your social security number. For other entities, it is your employer identification number. If you do not have a number, see How to Get a TIN in the online instructions, available at:</p>	<p><b>Part I Taxpayer Identification No. For All Accounts</b></p> <p><u>123-45-6789</u></p> <p><i>Social Security Number</i></p> <p><b>OR</b></p> <p>_____</p> <p><i>Employer Identification Number</i></p>	<p><b>Part II For Payees</b></p> <p><b>Exempt From Backup</b></p> <p><b>Withholding, see the</b></p> <p><b>additional instructions</b></p> <p><b>available online at</b></p> <p><b><a href="http://www.irs.gov/pub/irs-pdf/fw9.pdf">http://www.irs.gov/pub/irs-pdf/fw9.pdf</a></b></p>
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Note: If the account is in more than one

name, see the chart in the online instructions

to determine what number to enter.

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Check appropriate box:

Individual/Sole proprietor     C Corporation     S Corporation     Partnership

Trust/Estate     Limited liability company.

Enter tax classification (D = disregarded entity, C = corporation, P = partnership) V \_\_\_\_\_

Other (specify) \_\_\_\_\_

Exempt from Backup Withholding

---

**Part III Certification** Under penalties of perjury, I certify that:

(1) The number shown on this form is my correct taxpayer identification number or I am waiting for a number to be issued to me;

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(2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service ( IRS ) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

(3) I am a U.S. person (including a U.S. resident alien).

**Certification Instructions** You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

**The IRS does not require your consent to any provision of the documents accompanying this form other than the certifications required to avoid backup withholding.**

**SIGNATURE** John Doe

**DATE** Month/Day, 2013

**Table of Contents****The Empire State Building, New York, New York**

Empire State Building Associates L.L.C. acquired a master operating leasehold interest in the Empire State Building through a public partnership in 1961 and acquired the fee title to this property in 2002. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in August 2006. The building comprises premier office space, a concourse, lower lobby, two observatories, broadcasting facilities and ground-floor retail space. It occupies the entire blockfront from 33<sup>rd</sup> Street to 34<sup>th</sup> Street on Fifth Avenue, anchoring the east side of the 34<sup>th</sup> street corridor in midtown Manhattan, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. The Empire State Building was built in 1931. The 102-story building comprises 2,696,316 rentable square feet of office space and 169,215 rentable square feet of retail space (including the observatory and broadcasting operations) and is constructed of concrete, steel, masonry and stone. Its close proximity to mass transportation includes numerous subway lines; and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services. In-building services and amenities include a visitor reception desk, bank equipped with an ATM, FedEx/Kinko's, Starbucks, upscale cocktail lounge and a variety of specialty stores and eat-in or take-out dining facilities within the retail arcade. As part of the company's effort to increase the quality of its tenants, since 2007 the company has embarked on a renovation and repositioning program over time to aggregate smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms and at higher rents. As of September 30, 2012, the building's five largest tenants based on annualized base rent were LF USA, Inc., an affiliate of Li & Fung, a global supply chain management firm; Coty, Inc., a leading global fragrance and beauty company; the Federal Deposit Insurance Corporation; Host Services of New York, a leader in creating dining and shopping concessions for travel venues; and Walgreen Eastern Co., a New York City-based pharmacy. Other tenants include Funaro & Co., an accounting services firm; Kaltex North America, Inc., a subsidiary of the Mexican textiles company Grupo Kaltex; LinkedIn, an online professional network; Noven Pharmaceuticals, Inc., a specialty pharmaceutical company; People's Daily Online USA, an online Chinese newspaper; Taylor Global, Inc., a public relations firm; The Freeh Group, an independent global risk management firm; Turkish Airlines, the national flag carrier of Turkey; and World Monuments Fund, a not-for-profit organization dedicated to preserving and protecting endangered ancient and historic sites around the world.

The Empire State Building offers panoramic views of New York and neighboring states from its world-famous 86<sup>th</sup> and 102<sup>nd</sup> floor observatories that draw millions of visitors per year. For the years ended December 31, 2007 through December 31, 2011, and for the nine months ended September 30, 2012, the number of visitors to the observatories was approximately 3.67 million, 4.03 million, 3.75 million, 4.03 million, 4.06 million and 3.24 million, respectively. For the years ended December 31, 2007 through December 31, 2011, the company increased the average ticket revenue per admission from \$15.47 to \$17.96 and for the nine months ended September 30, 2012, the average ticket revenue per admission was \$19.61. The 86<sup>th</sup> floor observatory has a 360-degree outdoor deck as well as indoor viewing galleries to accommodate guests day and night, all year-round. The 102<sup>nd</sup> floor observatory is entirely indoors and offers a 360-degree view of New York City from 1,250 feet above ground. Observatory visitors enter the building via its main entrance on Fifth Avenue. Visitors proceed directly up dedicated escalators to the second floor and through security to purchase various ticket options at the cashier or to retrieve tickets purchased online at the company's ticket kiosks. While waiting to gain access to the elevators, guests are entertained by a multi-media exhibit on sustainability and energy efficiency, which may be accessed in eight languages and is designed to inform and inspire the visitors. Also on the second floor, guests may purchase multilingual audio tours and viewer maps from the company's licensee and be photographed by the licensee. There is a separately ticketed and independently owned and operated tour simulator under lease operating under the name NY Skyride. Visitors then proceed to one of six elevators to the 80<sup>th</sup> floor, where they are entertained by an exhibit operated by the Skyscraper Museum, The Race to the Top, which chronicles the construction of the building. They then have the opportunity to take one of two elevators or to walk up the stairs to the 86<sup>th</sup> floor observatory, which offers indoor and outdoor viewing areas. From the 86<sup>th</sup> floor, guests who have purchased an additional ticket may take an elevator to the fully

**Malkin Holdings LLC** One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 www.malkinholdings.com



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enclosed 102<sup>nd</sup> floor observatory. Visitors then return first to the 86<sup>th</sup> floor and then to the 80<sup>th</sup> floor where they must exit through Empire: The Store, the official Empire State Building souvenir shop operated by the company's licensee HMS Host. Finally, they take the elevator to the second floor where they have the opportunity to purchase their photograph and ride one of two dedicated escalators to the lobby at the main entrance on Fifth Avenue, where they exit the building; by the end of 2012, they will also have the opportunity to exit through the company's tenant Walgreens, which will shortly expand its ground floor retail space to the 2<sup>nd</sup> floor with direct frontage to the observatory's exit path. The company generated approximately \$68.5 million and \$80.6 million in revenue from its observatory operations for the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively.

The company's observatory business is subject to tourism trends and weather, and therefore does experience some seasonality. Over the past ten years, the number of visitors to the observatory, on average, has been slightly higher in the third quarter and slightly lower in the first quarter of each year. The Empire State Building's observatory has maintained stable performance levels over the past ten years, despite changing competitive dynamics and economic conditions. Total revenue and operating income from the observatory's operations have exhibited positive growth in all but two years from 2001 to 2011 (2001 and 2009), representing a compound annual growth rate for total revenue and operating income (including concessions revenue) of 12.4% and 12.5%, respectively. In addition, the average ticket revenue per admission has increased for each of the 12 years from 2000 to 2011 at a compound annual growth rate of 9.3% and the growth rate during each of those years, on a year over year basis, has never been negative. In the year ended December 31, 2011, the observatory experienced record admissions of over 4.06 million visitors and approximately \$80.6 million of total revenue. The observatory has demonstrated strong performance despite competitive pressures as total revenue and operating income (including concessions revenue) increased by over 25.0% in 2005 and over 11.0% in 2006, despite the opening of the Top of the Rock observation deck at Rockefeller Center in November 2005. The Empire State Building's observatory has also fared well during the recent recession. Despite a 7.0% decrease in the number of visitors as compared to 2008, 2009 admissions were still 2.0% higher than 2007 and the average ticket revenue per admission increased by 6.9% over 2008's record level.

In addition to being a top New York City tourist attraction, the Empire State Building is also the center of the New York Tri-State region's broadcasting operations. During the nine months ended September 30, 2012 and the year ended December 31, 2011, the company's broadcasting licenses and related leased space generated approximately \$15.9 million and \$20.6 million, respectively. Various entities transmit from the company's building setbacks and surfaces and the company's broadcasting mast which rises 230 feet from the ceiling deck of the 103<sup>rd</sup> floor. Over 150 antennae provide a variety of point-to-point radio and data communications services and support delivery of broadcasting signals to cable and satellite systems and directly to television and radio receivers. As of September 30, 2012, 35 television and radio broadcasters were licensed to use the company's broadcasting facilities and served the greater New York metropolitan designated market area, which includes New York, New Jersey and Connecticut. As of September 30, 2012, the company leased approximately 85,812 square feet to broadcasting tenants in the aggregate. Tenants that utilize the company's broadcasting services receive the right to use the broadcasting facilities and also to lease transmitter space in the Empire State Building. In addition, the broadcasting licenses and related leased space are long-term and require that tenants pay substantially all maintenance expenses. The average remaining term of such license fees is approximately 6.6 years. The company's broadcasting tenants, based on annualized broadcasting revenue, include, among others, FOX, CBS, ABC, NBC and WPIX, as well as many of the major radio stations in Manhattan and the greater New York metropolitan area.

Empire State Building Company L.L.C. also licenses the trademarked Empire State Building name and image for movies, television, promotional and advertising purposes and offer portions of the building for rent for private events. The primary benefit of such arrangements is the opportunity to build Empire State Building brand awareness through co-branding with well-respected brands and causes. Empire State Building Company L.L.C. also enters into agreements through its Empire State Building Lighting Partner program, which give selected applicants the privilege of choosing a lighting scheme for the tower on a certain date in exchange for publicity and attention through their organization's networks. The Empire State

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Building has an extensive social media presence including a highly-visited website (on which Empire State Building Company L.L.C. controls ticket sales to the observatories and offers a growing range of tourist-related attraction sales), Facebook page and Twitter account.

The building and certain aspects of its interior are designated landmarks of the New York City Landmarks Preservation Committee. The building was designated as a National Historic Landmark in 1986. In a national survey conducted in 2007, it was rated number one above the White House and the Washington Monument on the List of America's Favorite Architecture according to the American Institute of Architects. The Empire State Building is an Energy Star building and has been awarded LEED EBOM-Gold certification. The Empire State Building's energy retrofit program will result in significant energy cost savings annually and significant expense savings for Empire State Building Company L.L.C.'s tenants, which the supervisor believes has enhanced its desirability to prospective tenants. Empire State Building Company L.L.C. recently entered into a two-year contract to purchase wind power to provide 100% of the Empire State Building's energy. The Empire State Building is the recipient of numerous awards. In 2012, the Empire State Building won the U.S. Environmental Protection Agency: 2011-2012 Green Power Leadership Award and the LEED Interior Design and Construction Gold for the pre-built spaces on floors 53 and 75. The Building Owners and Managers Association of Greater New York, Inc., or BOMA, and BOMA Mid-Atlantic Region named the Empire State Building as the 2011 Regional TOBY award Winner for Middle Atlantic Regional Outstanding Building of the Year and as the 2009-2010 Pinnacle Award winner for the Historical Building of the Year, honoring a commitment to the preservation of historical integrity while taking full advantage of the improvements of the modern era.

Additionally, in 2010, the Empire State Building won the MASTerworks Best Restoration award from the Municipal Arts Society for the restoration of a historically significant commercial, residential or institutional building and/or publicly accessible lobby; the National Trust for Historic Preservation National Preservation Honor Award recognizing the efforts of individuals, nonprofit organizations, public agencies and corporations whose skill and determination have given new meaning to their communities through preservation; the Preservation League of New York State Project's Excellence in Historic Preservation Award celebrating the outstanding leadership of public officials and individuals in the field of preservation; and the New York Landmarks and Conservancy's Lucy G. Moses Preservation Award for outstanding preservation efforts. Prior to 2010, the Sustainable Buildings Industry Council awarded the Empire State Building the 2009 Beyond Green High Performance Building Award recognizing the exceptional contributions its members make to sustainability across the United States.

Since the supervisor gained full control of the day-to-day management of the Empire State Building in August 2006, Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. have invested a total of approximately \$157.9 million through the restoration and renovation program at the property through September 30, 2012. The company currently estimates that between \$185.0 million and \$225.0 million of additional capital is needed to complete this renovation program, which the company expects to complete substantially by the end of 2016. These estimates are based on the supervisor's current budgets (which do not include tenant improvement and leasing commission costs) and are subject to change. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of re-leasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

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	Completed	In Process	To Be Completed
Lobby restoration and upgrade	x		
Renovate 2 <sup>nd</sup> floor observatory ticketing area	x		
Renovate 86 <sup>th</sup> floor observatory	x		
Observatory exhibits	x		
Energy efficiency retrofits including			
- building automated controls	x		
- chiller plant retrofit	x		
- window retrofits	x		
- radiator barriers	x		
Lower level reconfiguration and new building office	x		
Renovate 102 <sup>nd</sup> floor observatory		x	
Renovate and provide cooling to public corridors		x	
Renovate public bathrooms		x	
Elevator modernization		x	
Elevator shaft wall repairs		x	
Exterior waterproofing and roofs		x	
Electrical power and distribution		x	
Building wide sprinklers to comply with Local Law 26		x	
Additional energy efficiency retrofits including new air handling units, heat exchangers, steam turbine retrofits		x	
Tower lighting replacement		x	
Security system enhancements		x	
Temporary exterior construction hoist		x	
Enhancement to observatory exhibit			x
New tenants-only conference center			x
New tenants-only fitness center			x

The observatory and broadcasting businesses at the Empire State Building are subject to competition from existing observatories and broadcasting space and others that may be constructed in the future. In addition, competition from observatory and broadcasting operations in the new property currently under construction at One World Trade Center and, to a lesser extent, from the existing observatory at Rockefeller Center and the existing broadcasting facility at Four Times Square, could have a negative impact on revenues from the company's broadcasting and observatory operations. The company's broadcast television and radio licensees face competition from advances in technologies and alternative methods of content delivery in their respective industries, as well as from changes in consumer behavior driven by new technologies and methods of content delivery, which may reduce the demand for over-the-air broadcast licenses in the future. New government regulations affecting broadcasters, including the implementation of the FCC's National Broadband Plan, or the Plan, might also affect the company's results of operations by reducing the demand for broadcast licenses.

*Empire State Building Primary Tenants*

The following table summarizes information regarding the primary tenants of the Empire State Building as of September 30, 2012:

**Malkin Holdings LLC** One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 www.malkinholdings.com

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Tenant	Principal Nature of Business	Lease Expiration	Date of Earliest Termination Option	Renewal Options	Total Leased Square Feet	Percent of		Annualized Base Rent Per Square Foot	
						Property Square Feet <sup>(1)</sup>	Annualized Base Rent <sup>(2)</sup>		
LF USA <sup>(3)</sup>	Fashion	Oct. 2028		1 x 7 years or 2 x 5 years	494,219	17.2%	\$ 19,274,541	22.6%	\$ 39.00
Coty, Inc. <sup>(4)</sup>	Cosmetics	Jan. 2030		1 x 5 years	194,281	6.8%	\$ 8,853,502	10.4%	\$ 45.57
Federal Deposit Insurance Corporation	Government	Jan. 2020	2/1/2015	1 x 5 years	121,879	4.3%	\$ 5,489,847	6.4%	\$ 45.04
Host Services of New York	Retail store	May 2020			6,180	0.2%	\$ 5,091,190	6.0%	\$ 823.82
Walgreen Eastern Co.	Retail store	Sept. 2027 <sup>(5)</sup>			23,842	0.8%	\$ 1,800,000	2.1%	\$ 75.50
LinkedIn <sup>(6)</sup>	Internet networking business	May 2018	6/1/2016		31,742	1.1%	\$ 1,237,938	1.5%	\$ 39.00
Skanska USA Building	Engineering	Mar. 2024		1 x 5 years	25,057	0.9%	\$ 1,219,550	1.4%	\$ 48.67
Manhattan Professional Group	Tax professionals	Aug. 2026			25,611	0.9%	\$ 1,180,264	1.4%	\$ 46.08
Bank of America	Bank	Apr. 2015		1 x 5 years	14,234	0.5%	\$ 1,152,577	1.3%	\$ 80.97
Taylor Global	Public relations	Jul. 2018			25,744	0.9%	\$ 1,119,105	1.3%	\$ 43.47
<b>Total/Weighted Average</b>					<b>962,789</b>	<b>33.6%</b>	<b>\$ 46,418,514</b>	<b>54.4%</b>	<b>\$ 48.21</b>

- (1) Excludes (i) 106,187 rentable square feet attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.
- (2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements and free rent with respect to leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$9,771,896. Total annualized base rent, net of abatements and free rent is \$75,582,540.
- (3) In January 2011 and November 2011, LF USA signed two leases that increased their total square footage at the Empire State Building to 482,399 square feet and 588,944 square feet, respectively. As of September 30, 2012, 494,219 square feet of these two leases has commenced.
- (4) Coty signed an amendment to their lease in April 2012 (which is not reflected in the above table) for an additional 118,792 square feet that increased their total square footage at the Empire State Building to 313,073 square feet.
- (5) The lease will expire 15 years and four months following substantial completion of certain expansion space pursuant to the First Lease Modification and Extension Agreement, as of August 15, 2011, between Empire State Building Company L.L.C. and Walgreen Eastern Co., Inc.
- (6) LinkedIn signed an amendment to their lease in June 2012 (which is not reflected in the above table) for an additional 10,396 square feet that increased their total square footage at the Empire State Building to 42,138 square feet.

*Empire State Building Lease Expirations*

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The following table sets forth the lease expirations for leases in place at the Empire State Building as of September 30, 2012 and for each of the ten full calendar years beginning with the year ending December 31, 2013 and thereafter. Unless otherwise stated in the footnotes, the information set forth in this table assumes that tenants exercise no renewal options or early termination rights. As of September 30, 2012, the weighted average remaining lease term for the property was nine years and five months.

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Year of Lease Expiration <sup>(1)</sup>	Number of Leases Expiring	Square Footage of Leases Expiring <sup>(2)</sup>	Percent of Property Square Feet	Annualized Base Rent <sup>(3)</sup>	Percent of Property Annualized Base Rent <sup>(4)</sup>	Annualized Base Rent Per Leased Square Foot
Available		671,138	23.4%	\$		\$
Signed leases not commenced	9	232,601	8.1%	\$		\$
Month-to-month leases	1	1,887	0.1%	\$ 18,450	0.0%	\$ 9.78
2012 (October 1, 2012 to December 31, 2012) <sup>(5)</sup>	21	44,121	1.5%	\$ 1,414,623	1.7%	\$ 32.06
2013	55	137,126	4.8%	\$ 5,024,887	5.9%	\$ 36.64
2014	40	148,600	5.2%	\$ 4,600,527	5.4%	\$ 30.96
2015	33	170,191	5.9%	\$ 6,742,491	7.9%	\$ 39.62
2016	16	93,076	3.2%	\$ 3,065,062	3.6%	\$ 32.93
2017	19	61,663	2.2%	\$ 2,706,693	3.2%	\$ 43.89
2018	26	135,254	4.7%	\$ 5,741,377	6.7%	\$ 42.45
2019	8	42,860	1.5%	\$ 2,773,171	3.2%	\$ 64.70
2020	22	234,854	8.2%	\$ 14,669,439	17.2%	\$ 62.46
2021	10	66,526	2.3%	\$ 2,710,481	3.2%	\$ 40.74
2022	7	35,945	1.3%	\$ 1,709,130	2.0%	\$ 47.55
Thereafter	14	789,689	27.6%	\$ 34,178,104	40.0%	\$ 43.28
<b>Total/Weighted Average</b>	<b>281</b>	<b>2,865,531</b>	<b>100.0%</b>	<b>\$ 85,354,436</b>	<b>100.0%</b>	<b>\$ 43.51</b>

(1) Excludes broadcasting licenses and observatory operations.

(2) Office property measurements are based on the Real Estate Board of New York measurement standards; retail property measurements are based on useable square feet. Excludes (i) 106,187 rentable square feet attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.

(3) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements and free rent with respect to leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$9,771,896. Total annualized base rent, net of abatements and free rent is \$75,582,540.

(4) Represents the percentage of annualized base rent of office and ground-floor retail leases at the Empire State Building.

(5) Does not include any leases which expired in September 2012.

*Empire State Building Percent Leased and Base Rent*

The following table sets forth the percent leased, annualized base rent per leased square foot and net effective base rent per leased square foot for the Empire State Building as of the dates indicated below:

Date	Percentage Leased <sup>(1),(2)</sup>	Annualized Base Rent per Leased Square Foot <sup>(3)</sup>	Net Effective Annual Base Rent per Leased Square Foot <sup>(4)</sup>
September 30, 2012	68.5%	\$ 43.51	\$ 43.80
December 31, 2011	67.6%	\$ 39.75	\$ 39.37
December 31, 2010	66.2%	\$ 35.68	\$ 35.04
December 31, 2009	68.5%	\$ 34.95	\$ 34.10
December 31, 2008	69.0%	\$ 32.41	\$ 31.82
December 31, 2007	70.2%	\$ 27.96	\$ 27.29

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- (1) Based on leases commenced as of the dates indicated above and calculated as rentable square feet less available square feet divided by rentable square feet.
- (2) As part of the company's effort to increase the credit quality of its tenants, the company has been aggregating smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms and at higher rents. As a result, percent leased has decreased from December 31, 2007 through September 30, 2012.
- (3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements and free rent)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.
- (4) Net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

The Empire State Building and improvements to the property are being depreciated on a straight-line basis over their estimated useful lives of 39 years. The current real estate tax rate for the Empire State Building is \$101.52 per \$1,000 of assessed value. Real estate taxes for the years ended December 31, 2011 and 2010 were \$30,009,908 and \$27,664,886, respectively. In the opinion of the company's management, the Empire State Building is adequately covered by insurance.

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**One Grand Central Place, New York, New York**

60 East 42<sup>nd</sup> St. Associates L.L.C. made a convertible mortgage on One Grand Central Place in 1954 through a public partnership and subsequently acquired fee title to the property in 1958. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in November 2002. The building comprises premier office space and lower-level and ground-floor retail space. It is located on 42<sup>nd</sup> Street, between Park and Madison Avenues, directly across the street from Grand Central Terminal, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. One Grand Central Place was built in 1930. The 55-story building comprises 1,181,327 rentable square feet of office space and 68,005 rentable square feet of retail space and is constructed of concrete, steel and masonry. Its close proximity to mass transportation includes numerous subway lines and bus routes; Grand Central Terminal; and the Times Square Shuttle. In-building services and amenities include on-site building management office; 24/7 attended lobby; a multi-media conference center; messenger center for the exclusive use of building tenants; a visitor center for convenient and efficient access for building visitors; bank, newsstand and dining facilities; and additional conveniences in the building's retail arcade. As part of the company's effort to increase the quality of its tenants, the company has embarked on a renovation and repositioning program over time to aggregate smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms and at higher rents. The company has implemented a program to pre-build modern office suites with efficient layouts which are leased to higher credit-quality tenants for longer lease terms. As of September 30, 2012, the building's five largest third-party tenants based on annualized base rent were JP Morgan Chase Bank, a global financial services firm; Bank of America, N.A., a global financial services firm; Charles Schwab & Co., Inc., a retail brokerage service provider; Sunbelt Beverage Co., a wine and spirits wholesaler; and Stark Business Solutions, a builder of premium office suites.

One Grand Central Place was the recipient of the BOMA 2010 Pinnacle Award for the Operating Building of the Year, in recognition of outstanding operations including energy management, emergency preparedness, environmental compliance, community impact, tenant relations, operational standards, training excellence and overall attractiveness, and in 2007, BOMA named One Grand Central Place as the Pinnacle Award winner for the Historical Building of the Year award, honoring a commitment to the preservation of historical integrity while taking full advantage of the improvements of the modern era.

Since the supervisor gained full control of the day-to-day management of One Grand Central Place in November 2002, 60 East 42<sup>nd</sup> St. Associates L.L.C. and Lincoln Building Associates L.L.C. have invested approximately \$29.7 million through the restoration and renovation program at the property through September 30, 2012. The company expects to complete the renovation program by 2013. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of re-leasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

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	Completed	In Process	To Be Completed
Lobby restoration and upgrade	x		
Renovate and provide cooling to public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Elevator modernization	x		
New tenants only conference center	x		
Visitors center	x		
Roof replacements	x		
Restore façade	x		
Replace fire alarm system	x		
Additional roof replacements		x	
Building wide sprinklers to comply with Local Law 26		x	
Energy efficient retrofits		x	
Additional bathrooms to be upgraded			x

One Grand Central Place is subject to competition from a large number of other existing office properties and new office properties that may be constructed in the future.

*One Grand Central Place Primary Tenants*

The following table summarizes information regarding the primary tenants of One Grand Central Place as of September 30, 2012:

Tenant	Principal Nature of Business	Lease Expiration	Date of Earliest Termination Option	Renewal Options	Total Leased Square Feet	Percent of Property Square Feet <sup>(1)</sup>	Annualized Base Rent <sup>(2)</sup>	Percent of Property Annualized Rent	Annualized Base Rent per Leased Square Foot
JP Morgan Chase Bank	Bank	Dec. 2027		1 x 5 years	21,683	1.7%	\$ 2,215,315	4.6%	\$ 102.17
Bank of America, N.A.	Bank	Apr. 2017		1 x 5 years	14,127	1.1%	\$ 1,457,500	3.0%	\$ 103.17
Charles Schwab & Co., Inc.	Retail broker	May 2021		1 x 5 years	10,702	0.9%	\$ 1,287,300	2.7%	\$ 120.29
Sunbelt Beverage Co., LLC	Wine & spirits wholesaler	Aug. 2023			28,594	2.3%	\$ 1,243,517	2.6%	\$ 43.49
Stark Business Solution	Office suites	Oct. 2021		1 x 5 years	26,199	2.1%	\$ 1,116,781	2.3%	\$ 42.63
Schoeman, Updike & Kaufman, LLP	Law firm	Oct. 2012			24,493	2.0%	\$ 1,071,417	2.2%	\$ 43.74
Haver Analytics, Inc.	Economic & financial database	Apr. 2018- July 2022			15,852	1.3%	\$ 1,020,771	2.1%	\$ 64.39
Pine Brook Road Partners, LLC	Private equity firm	Sept. 2021 Apr. 2021	1/15/2015 <sup>(3)</sup>	1 x 5 years	17,825 17,614	1.4% 1.4%	\$ 937,376 \$ 704,560	1.9% 1.5%	\$ 52.59 \$ 40.00

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Special Funds Conservation	Defends special disability fund & workers comp cases		1 x 5 years						
Gibbs & Soell Inc.	Public relations	Nov. 2019	1 x 5 years	12,724	1.0%	\$ 699,820	1.5%	\$ 55.00	
<b>Total/Weighted Average</b>				<b>189,813</b>	<b>15.2%</b>	<b>\$ 11,754,356</b>	<b>24.4%</b>	<b>\$ 61.93</b>	

- (1) Excludes 34,808 rentable square feet attributable to building management use and tenant amenities.
- (2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements and free rent with respect to leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$481,376. Total annualized base rent, net of abatements and free rent is \$47,782,228.
- (3) Termination option applies only to 5,201 rentable square feet.

**Malkin Holdings LLC** One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 www.malkinholdings.com

**Table of Contents***One Grand Central Place Lease Expirations*

The following table sets forth the lease expirations for leases in place at One Grand Central Place as of September 30, 2012 and for each of the ten full calendar years beginning with the year ending December 31, 2013 and thereafter. Unless otherwise stated in the footnotes, the information set forth in this table assumes that tenants exercise no renewal options or early termination rights. As of September 30, 2012, the weighted average remaining lease term for the property was five years.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Leases Expiring <sup>(1)</sup>	Percent of Property Square Feet	Annualized Base Rent <sup>(2)</sup>	Percent of Property Annualized Rent <sup>(3)</sup>	Annualized Base Rent per Leased Square Foot
Available		244,001	19.5%	\$		\$
Signed leases not commenced	1	7,723	0.6%	\$		\$
Month-to-month leases	2			\$ 4,800	0.0%	\$
2012 (October 1, 2012 to December 31, 2012) <sup>(4)</sup>	27	95,896	7.7%	\$ 3,947,640	8.2%	\$ 41.17
2013	75	125,159	10.0%	\$ 5,808,169	12.0%	\$ 46.41
2014	55	113,441	9.1%	\$ 5,249,172	10.9%	\$ 46.27
2015	70	156,762	12.6%	\$ 6,702,874	13.9%	\$ 42.76
2016	18	48,041	3.8%	\$ 2,073,747	4.3%	\$ 43.17
2017	25	110,998	8.9%	\$ 5,836,992	12.1%	\$ 52.59
2018	7	28,204	2.3%	\$ 1,612,001	3.3%	\$ 57.16
2019	6	46,004	3.7%	\$ 2,126,689	4.4%	\$ 46.23
2020	9	42,634	3.4%	\$ 2,117,045	4.4%	\$ 49.66
2021	10	107,819	8.6%	\$ 5,905,458	12.2%	\$ 54.77
2022	7	45,253	3.6%	\$ 2,116,581	4.4%	\$ 46.77
Thereafter	5	77,397	6.2%	\$ 4,762,435	9.9%	\$ 61.53
<b>Total/Weighted Average</b>	<b>317</b>	<b>1,249,332</b>	<b>100.0%</b>	<b>\$ 48,263,603</b>	<b>100.0%</b>	<b>\$ 48.38</b>

(1) Office property measurements are based on the Real Estate Board of New York measurement standards; retail property measurements are based on useable square feet. Excludes 34,808 rentable square feet attributable to building management use and tenant amenities.

(2) Annualized base rent is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements and free rent with respect to leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$481,376. Total annualized base rent, net of abatements and free rent is \$47,782,228.

(3) Represents the percentage of annualized base rent of office and ground-floor retail leases at One Grand Central Place.

(4) Includes one lease that expired during September 2012 representing 609 rentable square feet and \$20,706 of annualized base rent.

*One Grand Central Place Percent Leased and Base Rent*

The following table sets forth the percent leased, annualized base rent per leased square foot and net effective base rent per leased square foot for One Grand Central Place as of the dates indicated below:

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<b>Date</b>	<b>Percentage Leased<sup>(1),(2)</sup></b>	<b>Annualized Base Rent per Leased Square Foot<sup>(3)</sup></b>	<b>Net Effective Annual Base Rent per Leased Square Foot<sup>(4)</sup></b>
September 30, 2012	79.9%	\$ 48.38	\$ 47.67
December 31, 2011	79.6%	\$ 47.58	\$ 47.36
December 31, 2010	80.4%	\$ 46.34	\$ 46.11
December 31, 2009	76.8%	\$ 45.06	\$ 44.82
December 31, 2008	81.4%	\$ 43.84	\$ 43.13
December 31, 2007	83.3%	\$ 39.70	\$ 39.45

(1) Based on leases commenced as of the dates indicated above and calculated as rentable square feet less available square feet divided by rentable square feet.

(2) As part of the company's effort to increase the credit quality of its tenants, the company has been aggregating smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms at higher rents. As a result, percent leased has decreased from December 31, 2007 through September 30, 2012.

(3) Annualized base rent per leased square foot is calculated by dividing (i) base rental payments (defined as cash base rent (before abatements)) for the month ended as of the dates indicated above multiplied by 12, by (ii) square footage under commenced leases as of the dates indicated above.

(4) Net effective annual base rent per leased square foot represents (i) the contractual base rent for leases in place as of the dates indicated above, calculated on a straight-line basis to amortize free rent periods and abatements, but without regard to tenant improvement allowances and leasing commissions, divided by (ii) square footage under commenced leases as of the same date.

One Grand Central Place and improvements to the property are being depreciated on a straight-line basis over their estimated useful lives of 39 years. The current real estate tax rate for One Grand Central Place is \$101.52 per \$1,000 of assessed value. Real estate taxes for the years ended December 31, 2011 and December 31, 2010 were \$10,928,078 and \$10,594,397, respectively. In the opinion of the company's management, One Grand Central Place is adequately covered by insurance.

**Malkin Holdings LLC** One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 www.malkinholdings.com

**Table of Contents****250 West 57th Street, New York, New York**

250 West 57<sup>th</sup> St. Associates L.L.C. acquired fee title to 250 West 57<sup>th</sup> Street through a public partnership in 1953. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in November 2002. The building comprises premier office space and ground-floor and lower-level retail space. It occupies the entire blockfront of 57<sup>th</sup> Street between Broadway and Eighth Avenue, close to Columbus Circle and the new media headquarters concentration in New York City, including Time Warner, Random House and Hearst Corporation, and is located within walking distance of multiple parking garages, world-class shopping, dining and lodging. 250 West 57<sup>th</sup> Street was built in 1921. The 26-story building comprises 476,574 rentable square feet of office space and 52,247 rentable square feet of retail space and is constructed of concrete, steel, masonry and terra cotta. Its close proximity to mass transportation includes direct access to numerous subway lines and bus routes. In-building services and amenities include on-site building management office; concierge desk; 24/7 attended lobby; specialty retail stores; a drug store; and a barber shop. As part of the company's effort to increase the quality of its tenants, the company has embarked on a renovation and repositioning program over time to aggregate smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms and at higher rents. The company has implemented a program to pre-build modern office suites with efficient layouts which are leased to higher credit-quality tenants for longer lease terms. As of September 30, 2012, the building's five largest tenants based on annualized base rent were The TJX Companies, Inc., a discount retailer of apparel and home fashions; Duane Reade, a New York-based pharmacy chain owned by Walgreen Co.; Perseus Group, a publishing company; the Gap, Inc., a specialty retailer offering clothing, accessories and personal care products; and N.S. Bienstock, Inc., a leading talent agency.

Since the supervisor gained full control of the day-to-day management of 250 West 57<sup>th</sup> Street in November 2002, 250 West 57<sup>th</sup> St. Associates L.L.C. and Fisk Building Associates L.L.C. have invested approximately \$34.7 million through the restoration and renovation program at the property through September 30, 2012. The company expects to complete the renovation program by 2013. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of re-leasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

	<b>Completed</b>	<b>In Process</b>	<b>To Be Completed</b>
Lobby renovation	x		
Renovate public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Chiller replacement	x		
Electrical upgrades	x		
Replace fire alarm system	x		
Upgrade finishes in public corridors		x	
Restore façade		x	
Building wide sprinklers to comply with Local Law 26		x	
Energy efficiency retrofits		x	
Freight elevator modernization		x	
New cooling tower			x

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**First Stamford Place, Stamford, Connecticut**

One of the private entities acquired fee title in First Stamford Place in 2001. The office complex is located in Stamford, Connecticut, adjacent to the Stamford Transportation Center which serves the Metro North commuter line with express service to Grand Central Terminal. First Stamford Place was built in 1986. The complex consists of three mirrored glass and precast concrete office buildings, integrated in a campus environment and comprises 785,945 rentable square feet of office space. Its close proximity to mass transportation at the Stamford Transportation Center includes access to Acela Express Amtrak and Metro North train services; Connecticut transit buses with local and inter-county service to Westchester County, New York; taxis; and van pool transportation options. In-building services and amenities include on-site building management offices; concierge; full-time security; structured parking garage; a tenants-only conference center; tenants-only fitness center; dining facility; a privately operated day-care center in a leased space that can accommodate 96 children; an outdoor landscaped seating area; courier and express mail drop boxes; auto spa; barber shop; sundry shop; ATM; a tenants-only shuttle van service to and from the Stamford Transportation Center and downtown shopping areas; and there is a Hilton Hotel within the campus. Tenants also have access to a secured structured parking facility with approximately 1,770 parking spaces upon which the complex sits. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Legg Mason, an asset management firm; Odyssey America Reinsurance Corporation, an underwriter of reinsurance and specialty insurance; Thomson Reuters, a publishing and information services company; Elizabeth Arden, Inc., a global prestige beauty, cosmetics and fragrance company; and Citibank N.A., a global banking and financial services organization.

First Stamford Place is the recipient of an award from The Building Owners and Managers Association of Southern Connecticut, or BOMA Southern Connecticut, which named First Stamford Place as the 2003 winner of The Outstanding Building of the Year, or TOBY, award in the Suburban Mid-Rise Office Park subcategory, honoring the best of the best in commercial buildings.

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**Table of Contents****1333 Broadway, New York, New York**

One of the private entities acquired fee title to 1333 Broadway through a private partnership in 1979. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in August 2006. The building comprises premier office space and lower-level, ground-floor and second-floor retail space. It occupies the northwest corner of 35<sup>th</sup> Street and Broadway, between the nearby Times Square and Herald Square transportation hubs, directly across from the Macy's flagship location, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. 1333 Broadway was built in 1915. The 12-story building comprises 302,277 rentable square feet of office space and 50,063 rentable square feet of retail space and is constructed of concrete, steel, masonry and stone. Its close proximity to mass transportation includes numerous subway lines and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services. In-building services and amenities include a 24/7 attended lobby. As of September 30, 2012, the building's five largest tenants based on annualized base rent were LF USA, Inc., an affiliate of Li & Fung, a global supply chain management firm; Aetna Life Insurance Company, one of the nation's leading providers of insurance and employee benefits; OCE-USA Holding, Inc., a global leader in digital document management and delivery technology; Gerber Childrenswear LLC, a leading marketer of infant and toddler apparel; and New York Outdoor, an outdoor billboard advertising company.

1333 Broadway recently earned the federal government's Energy Star designation, signifying that it ranks among the best of the nation's commercial buildings in terms of energy efficiency.

Since the supervisor gained full control of the day-to-day management of 1333 Broadway in August 2006, the private entity has invested approximately \$25.0 million through its restoration and renovation program at the property through September 30, 2012. The company expects to complete its renovation program by 2013. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of releasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

	<b>Completed</b>	<b>In Process</b>	<b>To Be Completed</b>
Lobby renovation	x		
Elevator modernization	x		
Renovate public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Restore façade	x		
Roof replacement	x		
Sidewalk and structural vault replacement	x		
Replace fire alarm system	x		
Energy efficiency retrofits		x	

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**Table of Contents****1359 Broadway, New York, New York**

One of the private entities acquired fee title to 1359 Broadway through a private partnership in 1953. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in May 2003. The building comprises premier office space and ground-floor retail space. It occupies the northwest corner of 36<sup>th</sup> Street and Broadway, between the nearby Times Square and Herald Square transportation hubs, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. 1359 Broadway was built in 1924. The 22-story building comprises 441,022 rentable square feet of office space and 27,618 rentable square feet of retail space and is constructed of concrete, steel, masonry and stone. Its close proximity to mass transportation includes numerous subway lines and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services. In-building services and amenities include 24/7 attended lobby; a bank; lobby newsstand; dining facilities; and a UPS store. As of September 30, 2012, the building's five largest tenants based on annualized base rent were LF USA, Inc., an affiliate of Li & Fung, a global supply chain management firm; Actimize, Inc., a leading worldwide provider of financial crime, risk and compliance solutions; IPREO Holdings LLC, a leading global provider of market intelligence, deal execution platforms and investor communication tools; Redeemer Presbyterian Church, an orthodox Protestant church; and The Conference for Jewish Material Claims Against Germany, an aid organization for victims of Nazism.

1359 Broadway is the recipient of BOMA 2007 Pinnacle Award for the Renovated Building of the Year, for undergoing modernization through restoration, renovation, expansion and/or conversion. Additionally, in 2007, 1359 Broadway won the Fashion Center Property Improvement Award in the Lobby Renovation category.

Since the supervisor gained full control of the day-to-day management of 1359 Broadway in May 2003, the private entity has invested approximately \$23.9 million through its restoration and renovation program at the property through September 30, 2012. The company's renovation program at this property is substantially complete, except for further planned improvements shown in the below chart. The timing of implementation of the company's improvement program is dependent on various factors including the overall scale of the program, existing tenant lease expiration dates that may interfere with the company's ability to execute certain work until existing tenants vacate or can be relocated, and the prior need to obtain consents of participants to complete financings to fund improvement programs or fund improvements from cash flow. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

	Completed	In Process	To Be Completed
Lobby renovation	x		
Elevator modernization	x		
Renovate public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Restore façade	x		
New sidewalk	x		
Structural vault restoration	x		
Roof replacement	x		
Storefront replacement	x		
Electric service upgrade and distribution	x		
Replace fire alarm system	x		
Energy efficiency measures		x	
Remaining storefront replacement			x

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**Table of Contents****1350 Broadway, New York, New York**

One of the private entities acquired a long-term leasehold in the land underlying 1350 Broadway and the improvements in 1965 pursuant to a ground lease with a remaining term, including unilateral extension rights available to the company, of approximately 39 years, expiring on July 31, 2050. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in August 2006. The building comprises premier office space and ground-floor retail space. It occupies the entire block amidst Broadway, Sixth Avenue, 35<sup>th</sup> and 36<sup>th</sup> Streets, between the nearby Times Square and Herald Square transportation hubs, located within walking distance of multiple parking garages, world-class shopping, dining and lodging. 1350 Broadway was built in 1929. The 26-story building comprises 368,323 rentable square feet of office space and 30,895 rentable square feet of retail space and is constructed of concrete, steel, masonry and stone. Its close proximity to mass transportation includes numerous subway lines; numerous bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services. In-building services and amenities include on-site building management office; 24/7 attended lobby; a bank; FedEx/Kinko's; Duane Reade (a division of Walgreen Co.); Starbucks; and a hair salon. As part of the company's effort to increase the quality of its tenants, the company has embarked on a renovation and repositioning program over time to aggregate smaller office spaces to facilitate re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms and at higher rents. The company has implemented a program to pre-build modern office suites with efficient layouts which are leased to higher credit-quality tenants for longer lease terms. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Duane Reade, a New York-based pharmacy chain owned by Walgreen Co.; Sovereign Bank, one of the largest banks in the northeastern United States; HSBC, one of the largest banking and financial services organizations in the world; Tarter Krinsky & Drogin LLP, a full-service law firm; and E-Dialog Inc., a provider of e-mail marketing solutions.

1350 Broadway is the recipient of the BOMA 2011 Pinnacle Award winner of the Operating Building of the Year award in the 250,000 - 499,999 Square Feet subcategory, in recognition of outstanding operations including energy management, emergency preparedness, environmental compliance, community impact, tenant relations, operational standards, training excellence and overall attractiveness.

Since the supervisor gained full control of the day-to-day management of 1350 Broadway in August 2006, the private entity has invested approximately \$22.9 million through its restoration and renovation program at the property through September 30, 2012. The company expects to complete its renovation program by 2013. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of releasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

	Completed	In Process	To Be Completed
Lobby renovation	x		
Freight elevator modernization	x		
New passenger elevator cabs	x		
Renovate public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Restore façade	x		
Replace roofs	x		
New sidewalks and structural vaults	x		
Replace fire alarm system	x		
New chiller		x	
Automated building controls		x	
Energy efficiency retrofit		x	

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**501 Seventh Avenue, New York, New York**

One of the private entities acquired fee title to 501 Seventh Avenue through a private partnership in 1950. The supervisor removed the prior managing and leasing agent and gained full control of the day-to-day management of the property in November 2002. The building comprises premier office space, apparel showroom space and ground-floor retail space. It occupies the northeast corner of 37<sup>th</sup> Street and Seventh Avenue, between the Times Square and Herald Square transportation hubs, within walking distance of multiple parking garages, world-class shopping, dining and lodging. 501 Seventh Avenue was built in 1923. The 18-story building comprises 441,203 rentable square feet of office space and 35,502 rentable square feet of retail space and is constructed of concrete, steel, masonry and stone. Its close proximity to mass transportation includes numerous subway lines and bus routes; Pennsylvania Station; Grand Central Terminal; the Port Authority Bus Terminal; and PATH train services. In-building services and amenities include on-site building management office; a lobby newsstand; dining facilities; and 24/7 attended lobby. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Warnaco, Inc., a global apparel leader; Local Initiatives Support Corporation, the largest community development support organization in the country; Carolina Herrera Ltd., an international design firm; Office of Alcohol and Substance Abuse Services, an organization that plans, develops and regulates the state's system of chemical dependence and gambling treatment agencies; and Chipotle Mexican Grill, Inc., an operator of Mexican fast food restaurants.

501 Seventh Avenue is the recipient of the BOMA 2006 Pinnacle Award for the Renovated Building of the Year, for undergoing modernization through restoration, renovation, expansion and/or conversion, and in 2005, BOMA named 501 Seventh Avenue as the Pinnacle Award winner of the Operating Building of the Year award, in recognition of outstanding operations including energy management, emergency preparedness, environmental compliance, community impact, tenant relations, operational standards, training excellence and overall attractiveness.

Since the supervisor gained full control of the day-to-day management of 501 Seventh Avenue in November 2002, the private entity has invested approximately \$47.1 million through its restoration and renovation program at the property through September 30, 2012. The company expects to complete its renovation program by 2013. The company's renovation program at the property has taken substantial time to design and implement due to many factors, including the overall scale of the program, the market timing of re-leasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain consents of participants to complete financings. The following table summarizes the status of major improvements the company has completed, those that are currently in process, and those that the company expects to complete in the future:

	Completed	In Process	To Be Completed
Lobby renovation	x		
New elevator cabs	x		
Renovate public corridors	x		
Renovate public bathrooms	x		
New windows	x		
Restore façade	x		
New cooling tower and distribution	x		
New sidewalks	x		
New electrical distribution	x		
Replace fire alarm system	x		
Energy efficiency retrofits		x	
Elevator modernization		x	
Cooling tower expansion			x

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**Metro Center, Stamford, Connecticut**

One of the private entities acquired fee title in Metro Center in 1984. The office building is located in Stamford, Connecticut, near the Stamford Transportation Center which serves the Metro North commuter line with express service to Grand Central Terminal. Metro Center was built in 1987. The eight-story office building comprises 275,758 rentable square feet of office space and is constructed of concrete, steel and masonry. Its close proximity to mass transportation at the Stamford Transportation Center includes access to Acela Express, Amtrak and Metro North train services; Connecticut transit buses with local and inter-county service to Westchester County, New York; taxis; and van pool transportation options. In-building services and amenities include on-site building management offices; concierge; full-time security; structured parking garage; tenants-only conference center; tenants-only fitness center; dining facility; on-site auto rental agencies; a sundry shop; ATM; and a tenants-only shuttle van service to and from downtown shopping areas. Tenants also have access to a secured structured parking facility within the building. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Thomson Reuters, a provider of intellectual property and regulatory information; Jefferies Group, a global securities and investment banking group; Torm USA LLC, a sea transport shipping company; Columbus Circle Investors, an institutional equity investment manager; and Media Networks Inc., a division of Time-Warner that provides local advertisers access to national magazines.

Metro Center is the recipient of the 2007 BOMA Mid-Atlantic Conference TOBY award, honoring the best of the best in commercial buildings. Additionally, in 2006 and 1998, Metro Center won TOBY awards from BOMA Southern Connecticut. Metro Center recently earned the federal government's Energy Star designation, signifying that it ranks among the best of the nation's commercial buildings in terms of energy efficiency.

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**10 Union Square, New York, New York**

One of the private entities acquired a condominium interest in 10 Union Square in 1996. The retail property is situated on the entire block-front between 14<sup>th</sup> and 15<sup>th</sup> Streets on the east side of Union Square. 10 Union Square was built in 1988. The ground-floor and lower-level condominium unit, located at the base of a 29-story mixed-use development known as the Zeckendorf Towers, comprises 58,005 rentable square feet of retail space. Its close proximity to mass transportation includes numerous subway lines, the PATH trains and bus routes, and it is located atop one of the busiest subway stations in New York City. As of September 30, 2012, the property's five largest tenants based on annualized base rent were A&P, a metro New York area supermarket, which filed for bankruptcy on December 10, 2010 but has affirmed its lease and is current on rental payments; Panera Bread, a bread bakery-café; Best Buy Mobile, an electronics retailer; Starbucks, a coffee company; and Chipotle Mexican Grill, Inc., an operator of Mexican fast food restaurants.

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**1010 Third Avenue, New York, New York**

The supervisor acquired a condominium interest in 1010 Third Avenue in 1998. The retail property is located at the northwest corner of 60<sup>th</sup> Street and Third Avenue, directly adjacent to Bloomingdale's flagship store, located in the heart of one of Manhattan's Upper East Side's most vibrant office, retail and residential neighborhoods. 1010 Third Avenue was built in 1963. The three-story condominium unit, located at the base of a 20-story mixed use residential condominium building, comprises 44,662 rentable square feet of retail condominium space and a 34-space condominium parking garage unit, and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes. As of September 30, 2012, the property's tenants were Ethan Allen, a manufacturer and retailer of home furnishings; and Quik Park, a leading operator of parking facilities throughout the New York metro area.

Significant work was completed at 1010 Third Avenue following its acquisition as part of a long term strategy to convert the entire property to retail space, included conversion of the second and third-floor office space into retail space, obtaining city approvals for a required loading zone that involved the relocation of a city bus stop and prior no-standing zone, and engineering to install a tenant escalator to provide street-level access to the second floor. All required zoning approvals were obtained as part of a subsequent effort to convert all of the remaining office space into retail space and to consolidate the entire first, second and third floors for occupancy by large retailers.

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**77 West 55th Street, New York, New York**

One of the private entities acquired a condominium interest in 77 West 55<sup>th</sup> Street in 1998. The retail property is located at the northeast corner of Sixth Avenue and 55<sup>th</sup> Street, a well established 24-hour destination that attracts day-time workers, convenience and destination shoppers, tourists and residents. 77 West 55<sup>th</sup> Street was built in 1962. The ground-floor condominium unit, situated at the base of a 20-story residential condominium building, comprises 24,102 rentable square feet of retail condominium space and a 61-space condominium parking garage unit, and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes. As of September 30, 2012, the property's tenants were Tapps Supermarkets Inc., a gourmet foods supermarket; Bank of America, a financial services leader; and Quik Park, a leading operator of parking facilities throughout the New York metro area.

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**500 Mamaroneck Avenue, Harrison, New York**

One of the private entities acquired fee title in 500 Mamaroneck Avenue in 1999. The office building is located 1 <sup>1</sup>/<sub>4</sub> miles north of I-95 at Exit 18B West and <sup>3</sup>/<sub>4</sub> miles to the Mamaroneck train station. 500 Mamaroneck Avenue was built in 1986. The five-story building comprises 289,711 rentable square feet of office space and is constructed of a mirrored glass curtain wall on 35 landscaped acres in Harrison, New York. Its close proximity to mass transportation includes the Mamaroneck and White Plains train stations, which provide access to Metro North train services. In-building services and amenities include on-site management; concierge; full-time security; tenants-only executive conference center; tenants-only fitness center; a dining facility; an ATM; and a tenants-only shuttle service to the Mamaroneck train station. Tenants also have access to free on-site parking. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Mariner Investment Group, Inc., an alternative investment management firm; O'Connor Davies Munns & Dobbins, an accounting and consulting firm; GFK NOP LLC, a market research company; Universal Remote Control, a manufacturer of wireless remote control devices; and Stark Business Solutions, a manufacturer of shared office suites.

500 Mamaroneck Avenue is the recipient of the 2002 BOMA Westchester County TOBY award, honoring the best of the best in commercial buildings. Additionally, in 1999, 500 Mamaroneck Avenue won the Owner/Investor Acquisition of the Year Award from the Connecticut & Suburban New York chapter of the Commercial Real Estate Development Association, or NAIOP, awarded to the developer that best exemplifies leadership and innovation in the commercial real estate market. 500 Mamaroneck Avenue recently earned the federal government's Energy Star designation, signifying that it ranks among the best of the nation's commercial buildings in terms of energy efficiency.

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**10 Bank Street, White Plains, New York**

One of the private entities acquired fee title interest in 10 Bank Street in 1999. The office building is located in downtown White Plains, New York, immediately adjacent to the White Plains Transportation Center, which serves the Metro North commuter line with express service to Grand Central Terminal. 10 Bank Street was built in 1989. The 12-story building comprises 228,994 rentable square feet of office space and is constructed of concrete with a glass façade. Its close proximity to mass transportation includes the Metro North Commuter Line; the Bee-Line Bus System, providing service to the Port Chester, Metro North Railroad, New Haven Line; taxis; and access to major highways. In-building services and amenities include on-site building management; concierge; on-site dining; full-time security; and an ATM. Tenants also have access to a six-level secured structured parking facility that is connected to the building. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Addison Wesley Longman, Inc., an educational publishing services company; Fifth Street Capital, Inc., a buyout financing firm; Eckert Seamans Cherin & Mellott, LLC, a law firm; Rockwood Capital, LLC, a private real estate investment firm; and Marubeni Specialty, a global distributor of specialty chemicals.

10 Bank Street is the recipient of the 2011 Building Owners and Managers Association of Westchester County, or BOMA Westchester County, TOBY award for Best Green Initiatives and the 2000 and 2005 TOBY award for Office Building of the Year, honoring the best of the best in commercial buildings. Additionally, in 1999, 10 Bank Street won the Owner/Investor Acquisition of the Year award from the Connecticut & Suburban New York chapter of the Commercial Real Estate Development Association, or NAIOP, awarded to the developer that best exemplifies leadership and innovation in the commercial real estate market. 10 Bank Street recently earned the federal government's Energy Star designation, signifying that it ranks among the best of the nation's commercial buildings in terms of energy efficiency.

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**1542 Third Avenue, New York, New York**

One of the private entities acquired a condominium interest in 1542 Third Avenue in 1999. The retail property is located on the west side of Third Avenue between East 86<sup>th</sup> and 87<sup>th</sup> Streets and the north side of 86<sup>th</sup> Street between Lexington and Third Avenues in Manhattan's Upper East Side. 1542 Third Avenue was built in 1991. The ground-floor retail condominium unit, located at the base of a 25-story luxury residential condominium building, comprises 56,250 rentable square feet of retail space and is constructed of brick. Its close proximity to mass transportation includes numerous subway lines and bus routes. As of September 30, 2012, the property's tenants were Sprint, a provider of wireless and wireline communications services; Loews Orpheum Cinemas, a movie exhibition company; and Payless Shoesource, a specialty family footwear retailer.

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**383 Main Avenue, Norwalk, Connecticut**

One of the private entities acquired fee title in 383 Main Avenue in 1994. The office building is located in Norwalk, Connecticut, at the intersection of the Super 7 Expressway and the Merritt Parkway, with immediate access to the Super 7 Expressway, Exits 40A and 40B of the Merritt Parkway and the Metro North Commuter Railroad. 383 Main Avenue was built in 1985. The eight-story building comprises 259,856 rentable square feet of office space and is constructed of glass, steel and brick. Its close proximity to mass transportation includes the South Norwalk Railroad Station and Merritt 7 Station, which provide access to Metro North train services. In-building services and amenities include on-site building management; full-time security and concierge; 24-hour attended access; tenants-only fitness center; tenants-only conference center; dining facilities; an ATM; and a tenants-only shuttle van service to the South Norwalk Transportation Center and Merritt 7 Station. Tenants also have access to free on-site parking, structured parking on which the building sits. As of September 30, 2012, the building's five largest tenants based on annualized base rent were Reed Elsevier, Inc., a provider of professional information solutions; CIT Inc., a lending, leasing and advisory services provider; Nestle Holdings, Inc. a nutrition, health and wellness company; SAP America, Inc., a provider of business management software; and The Fairfield County Community Foundation, a foundation that supports Fairfield County, Connecticut.

383 Main Avenue is the recipient of an award from BOMA Southern Connecticut, which named 383 Main Avenue as the 1999 winner of the TOBY award, honoring the best of the best in commercial buildings. 383 Main Avenue recently earned the federal government's Energy Star designation, signifying that it ranks among the best of the nation's commercial buildings in terms of energy efficiency.

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**69-97 Main Street, Westport, Connecticut**

One of the private entities acquired fee title to 69-97 Main Street in 2003. The adjacent retail units are located on Main Street in Westport, Connecticut, one of Fairfield County's most affluent shopping districts with one of the country's highest concentrations of major national, regional and local retail tenants. 69-97 Main Street was built in 1922. The single-story structure comprises 17,103 rentable square feet of high-end retail space and is constructed of brick and masonry. Its dual entrances provide direct public access to the stores from Main Street and Parker Harding Plaza, a public parking lot directly behind the property, and it is located in close proximity to major highways. As of September 30, 2012, the property's tenants were Lululemon, a manufacturer of technical athletic apparel; Nike, an athletic footwear and apparel company that recently signed a ten-year lease for approximately 5,400 square feet; Theory, a high-fashion clothier that also recently signed a ten-year lease for approximately 2,600 square feet; Allen Edmonds, a men's shoe store; and Ann Taylor, a leading specialty retailer for women's clothing.

**Malkin Holdings LLC** One Grand Central Place 60 East 42nd Street New York, NY 10165 T (212) 687-8700 F (212) 986-7679 [www.malkinholdings.com](http://www.malkinholdings.com)

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**Exhibit R**

**103-107 Main Street, Westport, Connecticut**

One of the private entities acquired fee title in 103-107 Main Street in 2006. The adjacent retail units are located on Main Street in Westport, Connecticut, one of Fairfield County's most affluent shopping districts with one of the country's highest concentrations of major national, regional and local retail tenants. 103-107 Main Street was built in 1900. The single-story structure comprises 4,330 rentable square feet of high-end retail space and restaurant space and is constructed of brick and masonry. Its dual entrances provide direct public access to the stores from Main Street and Parker Harding Plaza, a public parking lot directly behind the property, and it is located in close proximity to major highways. As of September 30, 2012, the property's tenants were Kate Spade, a global accessories and clothing brand; Westport Pizzeria & Restaurant, a restaurant; and Francois du Pont Jewelers, a jewelry retailer.

The company is contemplating performing work at 103-107 Main Street, which would include the potential consolidation of three inefficiently demised retail spaces into one or two retail spaces.

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### Description of Option Properties

The company's option properties consist of 112-122 West 34<sup>th</sup> Street, an office property in midtown Manhattan that was 86.8% leased as of September 30, 2012 and that encompasses approximately 745,713 rentable square feet (inclusive of the retail space on the ground, first and lower floors), and 1400 Broadway, an office property in midtown Manhattan that was 78.2% leased as of September 30, 2012 (or 82.2% giving effect to leases signed but not yet commenced as of that date) and that encompasses approximately 890,510 rentable square feet (inclusive of the retail space on the ground floor). The company's management team believes that, if acquired, 112-122 West 34<sup>th</sup> Street and 1400 Broadway would be consistent with the company's portfolio composition and strategic direction. 112-122 West 34<sup>th</sup> Street and 1400 Broadway will not be contributed to the company in the consolidation due to the ongoing litigation related to these properties, but the company has entered into agreements granting the company the option to acquire the interests in the option properties following the resolution of the ongoing litigation. The purchase price for each of the option properties will be based on an appraisal by independent third parties, unless the company and the owners of the properties, with the consent of the Helmsley estate, agree to a negotiated price, and unless the litigation related to these properties is resolved prior to the closing of the consolidation, in which case investors in the entities owning the option properties will receive consideration in connection with the consolidation on the same basis as participants in other entities contributing properties in connection with the consolidation. The company has agreed that Anthony E. Malkin, the company's Chairman, Chief Executive Officer and President, will not participate in the negotiations and valuation process on the company's behalf. One or more of the company's independent directors will lead the appraisal or negotiation process on the company's behalf and a majority of the company's independent directors must approve the price and terms of the acquisition of interests in each of the company's option properties. The purchase price is payable in a combination of cash, shares of the company's common stock and operating partnership units, but the Helmsley estate will have the right to elect to receive all cash. The Helmsley estate is estimated to receive 28.1% and 23.7% of the aggregate consideration for 112-122 West 34<sup>th</sup> Street and 1400 Broadway, respectively. The Malkin Group is estimated to receive 14.6% and 10.3% of the aggregate consideration for 112-122 West 34<sup>th</sup> Street and 1400 Broadway, respectively, if all of the options are exercised pursuant to override interests held by it. These estimated percentages are based on valuations of the option properties that were conducted by the independent valuer and are subject to change. The company's option expires on the later of (i) 12 months after the company receives notice of a settlement or a final, non-appealable judgment in relation to certain ongoing litigation with respect to the properties or (ii) six months after the completion of the independent valuation described above, but in no event later than seven years from the completion of the IPO.

The interests held by private entities supervised by the supervisor in the company's option properties, 112-122 West 34<sup>th</sup> Street and 1400 Broadway, are fee (in the case of a portion of the 112-122 West 34<sup>th</sup> Street property), long-term leaseholds (in the case of both of the option properties) and sub-leasehold or sub-subleasehold (in the case of 112-122 West 34<sup>th</sup> Street only) in the land and the improvements. Each of the Malkin Holdings group and the Helmsley estate owns interests in such private entities. Based on the exchange values the option properties would have had, calculated in accordance with the methodology used to derive the exchange values for the subject LLCs and the private entities, the Malkin Holdings group would receive consideration having an aggregate value of \$77,600,811 in respect of its participation interests and overrides in the entities which own the option properties, and the Helmsley estate would receive consideration having an aggregate value of \$160,160,461 in respect of its participation interests in such entities. Pursuant to management agreements with the owner of the long-term leasehold interest (in the case of 1400 Broadway) and the owner of the long-term sub-leasehold interest or sub-subleasehold interest, as applicable, in the case of 112-122 West 34<sup>th</sup> Street, the company will be designated as the asset and property manager for the option properties and the company will receive a management fee for services rendered under the agreements.

112-122 West 34<sup>th</sup> Street, one of the option properties, is in transition from a garment tenant profile. 112-122 West 34<sup>th</sup> Street is the recipient of BOMA 2012 Pinnacle Award for the Renovated Building of the Year. Its major tenants include the corporate headquarters of Aeropostale Inc. and Venator Group, Inc.,

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Regus Plc, Kahn Lucas Lancaster, Inc., Carr Business Systems (a division of Xerox), a variety of services firms and retail tenancy includes Foot Locker, Billabong, and FedEx/Kinko s. 1400 Broadway, the other option property, is in transition from a garment tenant profile. Its major tenants include Kohl s Corporation, Men s Wearhouse, VeriFone Systems, Burlington Coat Factory, LLC, Hatch Mott Macdonald, and a variety of services firms.

Presented below is an overview of the properties for which the company entered into option agreements:

<b>Property</b>	<b>Location</b>	<b>Type of Property</b>	<b>Rentable Square Feet<sup>(1)</sup></b>	<b>Percentage Ownership Subject to Option Agreement</b>
112-122 West 34 <sup>th</sup> Street	Manhattan	Office/Retail	741,487	100%
1400 Broadway	Manhattan	Office/Retail	886,815	100%
<b>Total</b>			<b>1,628,302</b>	

(1) Based on the Real Estate Board of New York measurement standards.

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Documents which are linked to in letters on website

1. Consent and Operating Agreement of Empire State Building Associates L.L.C., dated as of September 30, 2001, and amendments\*
2. Consent and Operating Agreement of 60 East 42nd Street Associates L.L.C., dated as of November 28, 2001 and amendments\*
3. Consent and Operating Agreement of 250 West 57th Street Associates L.L.C., dated as of November 30, 2001, and amendments\*
4. Form of Participating Agreement of Empire State Building Associates L.L.C., dated January 1, 1962\*
5. Form of Participating Agreement of 60 East 42nd Street Associates L.L.C., dated September 25, 1958\*
6. Form of Participating Agreement of 250 West 57th Street, dated September 30, 1953\*
7. Form of Lease between 60 East 42nd Street and Lincoln Building Associates L.L.C., dated October 1, 1958, and amendments\*
8. Lease between 250 West 57th Street and Fisk Building Associates L.L.C., dated September 30, 1957 and amendments\*
9. Sublease dated December 27, 1961, between Empire State Building Company and Empire State Building, and modifications\*
10. Consent and Operating Agreement of Empire State Building Company L.L.C. dated December 17, 2001, and amendments \*\*
11. Partnership Agreement of Lincoln Building Associates L.L.C. dated June 14, 1954, and amendments, and Consent and Operating Agreement of Lincoln Building Associates L.L.C. dated November 1, 2002\*\*
12. Participating Agreement dated August 1, 1988 of Fisk Building Associates L.L.C., and amendments \*\*
13. Participating Agreement of Empire State Building Company L.L.C. dated April 2, 1971, and amendments, and 1273 Realty Co. Partnership Agreement dated January 2, 1973\*\*
14. Participating Agreement of Fisk Building Associates L.L.C. dated August 1, 1988\*\*
15. Empire State Building Associates L.L.C. s prospectus, dated as of December 21, 2012\*\*
16. 60 East 42 Street Associates L.L.C. s prospectus, dated as of December 21, 2012 \*\*
17. 250 West 57th Street Associates L.L.C. s prospectus, dated as of December 21, 2012 \*\*
18. 250 West 57th Street Associates L.L.C. s consent solicitation statement regarding voluntary override\*
19. 60 East 42nd Street Associate L.L.C. s consent solicitation statement regarding override \*\*
20. Empire State Building Associates L.L.C. s consent solicitation statement regarding voluntary override\*
21. Last Will and Testament of Leona M. Helmsley, dated as of July 15, 2005\*\*
22. Memorandum referenced in the February 26, 2013 letter to ESBA investors\*\*

\* previously on file with the Securities and Exchange Commission

\*\* Included as part of this filing

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Documents which are linked to in Media/News page on website

1. Transcripts of Anthony Malkin's interview, dated January 29, 2013, with Betty Liu of Bloomberg\*
2. Bloomberg article, dated January 29, 2013, by David Levitt\*\*
3. TheStreet.com article, dated January 28, 2013, by Brad Thomas\*\*
4. Crain's New York article, dated January 22, 2013, by Aaron Elstein\*\*
5. Forbes.com article, dated February 15, 2013, by Brad Thomas\*\*

\* previously on file with the Securities and Exchange Commission

\*\* Included as part of this filing



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**Documents referenced in links from letters on website**

**that are not filed with the Securities and Exchange**

**Commission**

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**Empire State Building Company L.L.C.**

Participating Agreements & 1273 Realty Co. Partnership Agreement

1. Participating Agreement dated April 2, 1971 with Lawrence A. Wien as Agent, as assigned to Peter L. Malkin
2. Participating Agreement dated July 2, 1971 with Lawrence A. Wien as Agent, as assigned to Peter L. Malkin
- 2a. Sub-Participating Agreement dated July 2, 1971 with Peter L. Malkin as Agent (with respect to item 2)
3. 1273 Realty Co. Partnership Agreement dated January 2, 1973 with Lawrence A. Wien as Managing Partner, as assigned to Peter L. Malkin

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**PARTICIPATING AGREEMENT**

AGREEMENT, dated the 2nd day of April, 1971, between LAWRENCE A. WIEN, residing at \_\_\_\_\_ (hereinafter called the Agent ), and \_\_\_\_\_, residing at \_\_\_\_\_; \_\_\_\_\_ residing at \_\_\_\_\_ residing at \_\_\_\_\_; \_\_\_\_\_ residing at \_\_\_\_\_; \_\_\_\_\_, residing at \_\_\_\_\_, \_\_\_\_\_ residing at \_\_\_\_\_ \_\_\_\_\_ residing at \_\_\_\_\_; \_\_\_\_\_, residing at \_\_\_\_\_; \_\_\_\_\_, residing at \_\_\_\_\_; and \_\_\_\_\_, residing at \_\_\_\_\_ (hereinafter called Participants ).

**WITNESSETH:**

WHEREAS, Lawrence A. Wien, \_\_\_\_\_ and \_\_\_\_\_ are the parties to a partnership agreement dated this date (hereinafter called the Partnership Agreement ) forming the partnership known as Empire State Building Company, which partnership is the holder of the Operating Sublease of the Empire State Building and the underlying land and as such holder operates said Building; and

WHEREAS, Lawrence A. Wien owns a partnership interest in excess of 10% in Empire State Building Company; and

WHEREAS, said partnership interest of Lawrence A. Wien includes all of the rights referred to in Section 50 of the Partnership Law of the State of New York, namely (a) rights in specific partnership property, (b) interest in the partnership and (c) rights to participate in the management (the rights and interest referred to in (a) and (b) above being hereinafter called economic interests , the rights referred to in (c) being hereinafter called Management Rights , and both the economic interests and the Management Rights together being herein called a partnership interest ); and

WHEREAS, the Agent holds 10% of the economic interests in the partnership (which 10% is hereinafter called the Economic Interest ) for the benefit of the Participants; and

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WHEREAS, Lawrence A. Wien holds the Management Rights for his own account and the Participants shall have no interest in same, except that transfers of 10% of the Management Rights shall be made only in accordance with the provisions of paragraph 14 below; and

WHEREAS, the parties hereto desire to establish the ownership of the Economic Interest and to define their rights and obligations with respect thereto;

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

1. A joint venture is hereby formed for the ownership of the Economic Interest. The office of the joint venture and its books and records shall be maintained at the office of Wien, Lane & Malkin, or its successors, 60 East 42nd Street, New York, New York.
2. The initial capital contribution of each Participant is set forth below opposite his signature. The fractional interest (hereinafter called Participation ) of each Participant in the Economic Interest is set forth below opposite his signature.
3. Each Participant, in proportion to his Participation, shall be liable for all losses of the partnership allocable to the Economic Interest.
4. (a) Cash flow from operations for any calendar year, to the extent distributed to the Agent by reason of his holding the Economic Interest, shall be distributed in the following order of priority:
  - (i) An amount to each Participant in proportion to his Participation until he has received for that calendar year an amount equal to 14% (except that for 1971 the amount shall be equal to three-fourths of 14%) of his average unrecovered capital contributions ;
  - (ii) if the distributions of such cash flow to Participants for any calendar year are less than the amounts provided in the immediately preceding subdivision (i), then, there shall be distributed to each Participant in proportion to his Participation amounts from the balance of such cash flow until any such accumulated deficiency shall have been recouped;
  - (iii) an amount to Lawrence A. Wien (personally and not as Agent) equal to 25% of the balance of such cash flow; and

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(iv) the remainder of such cash flow to each Participant in proportion to his Participation.

(b) Net capital proceeds and distributions in liquidation, whether in cash or in kind, to the extent distributed to the Agent by reason of his holding the Economic Interest, shall be distributed in the following order of priority:

(i) Repayments to the Participants of their then unrecovered capital contributions;

(ii) an amount to Lawrence A. Wien (personally and not as Agent) equal to 25% of the balance; and

(iii) the remainder to each Participant in proportion to his Participation.

(c) The term cash flow from operations shall mean all profit (other than any net capital proceeds and distributions in liquidation) after the payment from profit of all expenses and charges relating to the operation of the Building, including periodic payments of mortgage amortization and payments for capital improvements or payments on loans for capital improvements, but without reduction for depreciation of capital improvements or of leasehold cost.

(d) The term unrecovered capital contributions of a Participant shall mean the aggregate of his capital contributions, as reduced by the aggregate capital returned to him pursuant to subdivision (b) of this paragraph 4 and as increased or reduced in accordance with any increase or reduction in his Participation pursuant to paragraph 12; the term average unrecovered capital contributions shall mean the average daily balance during the calendar year of the said capital contributions as so adjusted.

(e) The term net capital proceeds shall include the net cash received from a condemnation of all or part of the land or Building, or from the mortgaging of or refinancing of any mortgage on the Operating Sublease, or from a sale of the Operating Sublease and the fair market value of any other property (including a purchase money mortgage or leaseback) received from such sale.

5. With respect to the partnership's taxable income or loss for any year applicable to the Economic Interest,

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(a) gross ordinary income equal to the amount distributable by the Agent under paragraph 4 (a) (iii) shall be allocated to Lawrence A. Wien;

(b) in the event gain is realized as a result of a transaction described in paragraph 4(e), the net gain therefrom shall be allocated to Lawrence A. Wien but not in excess of the amount distributable to him under paragraph 4(b)(ii); if such gain consists of more than one category of income, the amount allocated under this sentence shall consist of a pro rata portion of the net gain in each category; and

(c) the remainder of the partnership income, loss, credits and other items shall be allocated to each Participant in proportion to his Participation.

6. The joint venture shall continue until the Economic Interest shall have been disposed of, and shall not be affected by the act, bankruptcy, death, legal disability or dissolution of any Participant, the assignment (whether by operation of law or otherwise) of any Participation, the appointment of a successor to the Agent, or any other cause, except as provided in paragraph 13.

7. The Agent shall not be personally liable for any act performed in good faith. The Participants hereby indemnify and agree to save harmless the Agent, in proportion to their Participations, against any loss or liability to which the Agent may be subjected by reason of his holding the Economic Interest as their agent. Such indemnity shall not apply, however, to any loss or liability resulting from obligations incurred by the Agent acting at any time in bad faith.

8. The Participants shall have no right to interfere or participate in the management or administration of the partnership business or affairs. The Participants hold hereunder only 10% of the economic interests. Lawrence A. Wien holds the Management Rights for his own account.

The Participants shall be bound by all decisions made and actions taken under the Partnership Agreement by the holders of the Management Rights. The Participants hereby expressly authorize and empower the Agent to execute and deliver on their behalf as their agent and attorney-in-fact any instruments relating to the Economic Interest in connection with any of such decisions and actions.

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9. No transfer of a Participation may be made hereunder unless the transferee expressly assumes in writing his pro rata share of the transferor's liability for additional capital contributions as required hereunder and expressly agrees to subject his Participation to reduction for failure to meet calls as set forth hereunder.

10. Each Participant agrees that he shall not transfer a Participation unless (a) the transfer complies with all provisions of this agreement, (b) the transferee is an individual of full age or a trust, corporation, firm or other legal entity, (c) duplicate originals of appropriate written instruments evidencing such sale or transfer are delivered to the Agent for deposit with the original copy of this agreement, (d) the transferee shall accept the transfer and agree in writing to be bound by the terms of this agreement and all the actions theretofore taken hereunder and (e) such other instruments are delivered to the Agent as he may require to evidence the authority of the transferor to deliver and of the transferee to accept the transfer. Upon compliance with these requirements and subject to the following conditions, the transferee shall be a member of the joint venture with the same rights and obligations as the transferor.

No transfer of a Participation shall be made on or after May 1, 1971 without the prior written consent of the Agent, excepting however, that the following transactions are permitted without such consent:

- (a) Any designation made pursuant to paragraph 11.
- (b) In the event of the legal disability of any individual Participant, his Participation may be transferred to his legal representatives.
- (c) Any individual Participant may transfer his Participation to any member of his family.
- (d) Any individual Participant may transfer his Participation to a corporation of which he is the sole stockholder or to a trust in which he or a member of his family is the sole beneficiary.
- (e) Any corporate Participant having a sole individual stockholder may transfer its Participation to such stockholder.
- (f) Any Participant may assign his Participation to any other Participant.

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The term "transfer" as used herein shall include any assignment, pledge or other disposition or hypothecation, whether in whole or in part. The term "family" as used herein shall include only (i) the Participant's parents, grandparents, siblings and issue, and spouses and issue of any of the foregoing and (ii) the Participant's spouse and parents of said spouse.

The transfer or issuance of any stock of any corporate Participant, however accomplished, shall be deemed an assignment of the corporate Participant's Participation, with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

The transfer or issuance of any interest in any partnership Participant, however accomplished, shall be deemed an assignment of the partnership Participant's Participation, with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

11. Any individual Participant may designate any individual of full age, a trust, corporation, firm or other legal entity to succeed him upon his death as a member of the joint venture. Such designation shall be made by an appropriate instrument in writing. If no such designation has been made by the deceased party, the executor of his will or administrator of his estate may make such designation. Any such designee shall accept such designation in writing, including the assumptions and agreements required by paragraphs 9 and 10(d), and shall thereupon be a member of the joint venture with the same rights and obligations as formerly possessed by the deceased Participant.

12. If any capital contribution is required to be made by the partners under the Partnership Agreement, each Participant shall be obligated to contribute to the partnership his proportionate share of the amount of the contribution required to be made by the Agent by reason of his holding the Economic Interest. The request for a capital contribution shall be made by the Agent by a notice in writing to the Participants, and each Participant shall, no later than ten days after the mailing of the notice, contribute his proportionate share. Each Participant agrees to pay his share of any call for additional capital contributions. If any Participant (Defaulting Participant) shall fail to pay his share of any such call within ten days after the mailing of a notice in writing by the Agent to the Participant, then the other Participants (Contributing Participants) shall be privileged but not obligated to commit all or a portion of the capital



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contribution which the Defaulting Participant was obligated to make. If any amount shall remain uncommitted by the Contributing Participants, then they shall have the right to admit new Participants to provide any portion of the uncommitted capital contribution. Upon such contribution, the Participation of the Defaulting Participant shall be reduced to a fraction equal to one-half of the fraction, the numerator of which is equal to the total of (i) his initial capital contribution and (ii) the amount of any additional capital contributions made him; and the denominator of which is equal to the total of (i) the aggregate capital contributions theretofore made by all participants and (ii) the aggregate additional capital contributions then being made by the Contributing Participants and the new Participants.

Because the Defaulting Participant has failed to contribute his share of the call, the other Participants will have been put at hazard with respect to their entire investment and will be obliged to seek funds to make up the default of the Defaulting Participant. The damage which the Contributing Participants will suffer, at times and under circumstances now impossible to foresee, and the extent of the hazard to their entire investment are impossible to predict. For these reasons, and in view of the fact that this is a mutually binding agreement covering all Participants, each of whom may suffer or benefit from any such default, it is agreed that the Participation of the Defaulting Participant shall be reduced as set forth in this paragraph.

To the extent that the Participation of the Defaulting Participant is reduced as aforesaid, the Participations of the Contributing Participants will be increased in proportion to their additional contributions and appropriate Participations assigned to said new Participants.

Each Defaulting Participant is hereby deemed to have irrevocably authorized and empowered the Agent to execute and deliver on behalf of the Defaulting Participant, as his agent and attorney-in-fact, any documents necessary to effectuate or evidence the aforesaid reduction of Participation and the increase of Participation of the Contributing Participants and the assignment of Participations to new Participants.

13. It is acknowledged that the Agent has the legal power as a partner in the partnership to dissolve the partnership. Upon any dissolution of the partnership, this joint venture shall be dissolved and any cash or other property receive in liquidation of the partnership by the Agent by reason of his holding the Economic Interest shall be forthwith distributed by him in accordance with the provisions of paragraph 4(b).

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It is acknowledged that each of the Participants has the power to terminate the agency hereunder and withdraw from this joint venture, but the Participants do hereby agree that they shall not exercise such power without the prior unanimous written consent of all Participants. If any Participant exercises such power in contravention of the foregoing sentence, he shall be personally liable for any damage sustained by the other parties in accordance with Section 69 of the Partnership Law of the State of New York (as presently in force). Upon the termination of the agency and withdrawal of such Participant, the other Participants agree to enter into a new Participating Agreement containing terms identical to those herein, except for the Participant who exercised the power to terminate and withdraw. The withdrawing Participant shall be entitled, to a direct assignment from the Agent of his fractional interest in the Economic Interest, subject however, to Lawrence A. Wien's right to 25% of the amounts distributable in accordance with subdivisions 4(a)(iii) and 4(b)(ii), to the Participant's obligation for his share of any call for additional capital contributions under paragraph 12, to the reduction specified in paragraph 12 in the event of failure to make capital contributions and to the provisions of paragraphs 3, 15 and 16.

14. (a) If the Agent shall desire at any time to terminate his agency, upon accounting to his successor named below for all funds which shall previously have come into his possession, he shall be discharged from all further responsibility as Agent hereunder.

(b) In the event of a vacancy in the office of the Agent, whether by resignation, disqualification, death or any other cause, the following persons in the order stated shall succeed him as Agent hereunder:

1. Peter L. Malkin, residing at \_\_\_\_\_
2. Alvin S. Lane, residing at \_\_\_\_\_;
3. Alvin Silverman, residing at \_\_\_\_\_;
4. Fred Linden, residing at \_\_\_\_\_;
5. Ivan Shapiro, residing at \_\_\_\_\_;
6. Robert I. Weissmann, residing at \_\_\_\_\_;
7. Robert W. Gelfman, residing at \_\_\_\_\_;

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- 8. Ralph W. Felsten, residing at \_\_\_\_\_;
- 9. Stanley Katzman, residing at \_\_\_\_\_;
- 10. Jack Adelman, residing at \_\_\_\_\_;
- 11. William J. Lippman, residing at \_\_\_\_\_;
- 12. Martin B. Cowan, residing at \_\_\_\_\_;
- 13. John L. Loehr, residing at \_\_\_\_\_
- 14. Any person of full age designated in writing by Participants owning at least 80% in interest.

Each successor shall hold the Economic Interest and shall have the same rights and obligations with respect thereto as the Agent named herein. Each successor shall also succeed to 10% of the Management Rights and shall hold the same for his own account and shall have the same rights and obligations with respect thereto as Lawrence A. Wien. A person shall be disqualified from acting as Agent hereunder in the event that (i) he ceases to be a member of the firm of Wien, Lane & Malkin or its successors or (ii) he does not promptly acquire or he ceases to hold at least a 1/100th Participation hereunder or an economic interest at least equivalent to that amount.

(c) Lawrence A. Wien does hereby agree that when he ceases to be the Agent hereunder, whether by reason of his death or any other cause, he shall sell (or if he is deceased his personal representative shall sell) to his successor Agent a 1/100th Participation hereunder or an equivalent economic interest, at a price of \$18,000. Each person who becomes a successor Agent hereunder, by accepting such agency, shall be deemed to have agreed that he and his personal representatives are similarly bound, when he ceases to be the Agent, to sell said 1/100th Participation or equivalent economic interest to his successor Agent, at the same price of \$18,000.

(d) Simultaneously with the execution of this agreement, the Agent shall execute an assignment of the Economic Interest and an assignment of 10% of the Management Rights, leaving blank the name of the assignee. Such assignments shall be deposited in escrow, together with a duplicate original copy of this agreement, with Wien, Lane & Malkin or its successors. Upon the qualification of a successor, his name shall be inserted in the assignments and the escrow shall be released. The successor shall simultaneously execute and deliver assignments for the use of his successor in the same manner.

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(e) Lawrence A. Wien's rights to the amounts distributable to him under subdivisions 4(a)(iii) and 4 (b)(ii) are personal to him and separate and apart from his capacity as Agent hereunder. Said rights to said amounts shall be freely transferable by him at any time in whole or in part. As to 10% of the Management Rights, same shall be transferred only in accordance with subdivision (b) of this paragraph and the balance of his Management Rights are personal to him and shall be freely transferable by him at any time in whole or in part.

15. This agreement and the rights of the Participants herein shall at all times be subject to the terms and conditions of the Partnership Agreement. Any transferee of any Participation, or part thereof, shall take and hold same subject to the terms and provisions of this agreement and the Partnership Agreement.

16. Any dispute arising out of or regarding this agreement or the Economic Interest, 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 on all of the parties.

17. This agreement shall for all purposes, including, but not limited to, dissolution of this joint venture, be governed by the Partnership Law of the State of New York to the same extent as if this joint venture were a general partnership.

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

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

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

/s/ LAWRENCE A. WIEN, personally and  
Lawrence A. Wien,

personally and as Agent

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Participant	Participation	Initial Capital Contribution
	1/10	\$ 180,000
	1/10	180,000
	1/10	180,000
	1/10	180,000
	1/10	180,000
	1/10	180,000
	1/10	180,000
	1/10	180,000
	10/10	\$ 1,800,000

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EMPIRE STATE BUILDING COMPANY

Photostatic Copy

of

PARTICIPATING AGREEMENT

LAWRENCE A. WIEN, Agent

Dated: April 2, 1971

WIEN, LANE & MALKIN

ATTORNEYS AT LAW

LINCOLN BUILDING

60 EAST 42<sup>ND</sup> STREET

NEW YORK, N.Y. 10017

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**PARTICIPATING AGREEMENT**

AGREEMENT, dated the 2nd day of July, 1971, between LAWRENCE A. WIEN, residing at \_\_\_\_\_ (hereinafter called the Agent ), and \_\_\_\_\_ residing at \_\_\_\_\_, residing at \_\_\_\_\_; \_\_\_\_\_ residing at \_\_\_\_\_, having an office at \_\_\_\_\_ and \_\_\_\_\_, residing at \_\_\_\_\_ (hereinafter called Participants ).

**WITNESSETH:**

WHEREAS, Lawrence A. Wien, \_\_\_\_\_ and \_\_\_\_\_ are the parties to a partnership agreement dated April 2, 1971 (hereinafter called the Partnership Agreement ) forming the partnership known as Empire State Building Company, which partnership is the holder of the Operating Sublease of the Empire State Building and the underlying land and as such holder operates said Building; and

WHEREAS, Lawrence A. Wien owns a partnership interest in excess of 5% in Empire State Building Company; and

WHEREAS, said partnership interest of Lawrence A. Wien includes all of the rights referred to in Section 50 of the Partnership Law of the State of New York, namely (a) rights in specific partnership property, (b) interest in the partnership and (c) rights to participate in the management (the rights and interest referred to in (a) and (b) above being hereinafter called economic interests , the rights referred to in (c) being hereinafter called Management Rights , and both the economic interests and the Management Rights together being herein called a partnership interest ); and

WHEREAS, the Agent holds 5% of the economic interests in the partnership (which 5% is hereinafter called the Economic Interest ) for the benefit of the Participants; and

WHEREAS, Lawrence A. Wien holds the Management Rights for his own account and the Participants shall have no interest in same, except that transfers of 5% of the Management Rights shall be made only in accordance with the provisions of paragraph 14 below; and

WHEREAS, the parties hereto desire to establish the ownership of the Economic Interest and to define their rights and obligations with respect thereto;

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

1. A joint venture is hereby formed for the ownership of the Economic Interest. The Office of the joint venture and its books and records shall be maintained at the office of Wien, Lane & Malkin, or its successors, 60 East 42nd Street, New York, New York.
2. The initial capital contribution of each Participant is set forth below opposite his signature. The fractional interest (hereinafter called Participation ) of each Participant in the Economic Interest is set forth below opposite his signature.
3. Each Participant, in proportion to his Participation, shall be liable for all losses of the partnership allocable to the Economic Interest.
4. (a) Cash flow from operations for any calendar year, to the extent distributed to the Agent by reason of his holding the Economic Interest, shall be distributed in the following order of priority:
  - (i) An amount to each Participant in proportion to his Participation until he has received for that calendar year an amount equal to 14% (except that for 1971 the amount shall be equal to one-half of 14%) of his average unrecovered capital contributions ;
  - (ii) if the distributions of such cash flow to Participants for any calendar year are less than the amounts provided in the immediately preceding subdivision (i), then, there shall be distributed to each Participant in proportion to his Participation amounts from the balance of such cash flow until any such accumulated deficiency shall have been recouped;
  - (iii) an amount to Lawrence A. Wien (personally and not as Agent) equal to 25% of the balance of such cash flow; and
  - (iv) the remainder of such cash flow to each Participant in proportion to his Participation.
- (b) Net capital proceeds and distributions in liquidation, whether in cash or in kind, to the extent distributed to the Agent by reason of his holding the Economic Interest, shall be distributed in the following order of priority:
  - (i) Repayments to the Participants of their then unrecovered capital contributions;



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(ii) an amount to Lawrence A. Wien (personally and not as Agent) equal to 25% of the balance; and

(iii) the remainder to each Participant in proportion to his Participation.

(c) The term **cash flow from operations** shall mean all profit (other than any net capital proceeds and distributions in liquidation) after the payment from pro fit of all expenses and charges relating to the operation of the Building, including periodic payments of mortgage amortization and payments for capital improvements or payments on loans for capital improvements, but without reduction for depreciation of capital improvements or of leasehold costs.

(d) The term **unrecovered capital contributions** of a participant shall mean the aggregate of his capital contributions, as reduced by the aggregate capital returned to him pursuant to subdivision (b) of this paragraph 4 and as increased or reduced in accordance with any increase or reduction in his Participation pursuant to paragraph 12; the term **average unrecovered capital contributions** shall mean the average daily balance during the calendar year of the said capital contributions as so adjusted.

(e) The term **net capital proceeds** shall include the net cash received from a condemnation of all or part of the land or Building, or from the mortgaging of or refinancing of any mortgage on the Operating Sublease, or from a sale of the Operating, Sublease and the fair market value of any other property (including a purchase money mortgage or leaseback) received from such sale.

5. With respect to the partnership's taxable income or loss for any year applicable to the Economic Interest,

(a) gross ordinary income equal to the amount distributable by the Agent under paragraph 4(a)(iii) shall be allocated to Lawrence A. Wien;

(b) in the event gain is realized as a result of a transaction described in paragraph 4(e), the net gain therefrom shall be allocated to Lawrence A. Wien but not in excess of the amount distributable to him under paragraph 4(b)(ii); if such gain consists of more than one category of income, the amount allocated under this sentence shall consist of a pro rata portion of the net gain in each category; and

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(c) the remainder of the partnership income, loss, credits and other items shall be allocated to each Participant in proportion to his Participation.

6. The joint venture shall continue until the Economic Interest shall have been disposed of, and shall not be affected by the act, bankruptcy, death, legal disability or dissolution of any Participant, the assignment (whether by operation of law or otherwise) of any Participation, the appointment of a successor to the Agent, or any other cause, except as provided in paragraph 13.

7. The Agent shall not be personally liable for any act performed in good faith. The Participants hereby indemnify and agree to save harmless the Agent, in proportion to their Participations, against any loss or liability to which the Agent may be subjected by reason of his holding the Economic Interest as their agent. Such indemnity shall not apply, however, to any loss or liability resulting from obligations incurred by the Agent acting at any time in bad faith.

8. The Participants shall have no right to interfere or participate in the management or administration of the partnership business or affairs. The Participants hold hereunder only the Economic Interest. Lawrence A. Wien holds the Management Rights for his own account.

The Participants shall be bound by all decisions made and actions taken (including, but without limitation, sale, modification or mortgaging of the Operating Sublease) under the Partnership Agreement by the holders of the Management Rights. The Participants hereby expressly authorize and empower the Agent to execute and deliver on their behalf as their agent and attorney-in-fact any instruments relating to the Economic Interest in connection with any of such decisions and actions.

9. No transfer of a Participation may be made hereunder unless the transferee expressly assumes in writing his pro rata share of the transferor's liability for additional capital contributions as required hereunder and expressly agrees to subject his Participation to reduction for failure to meet calls as set forth hereunder.

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10. Each Participant agrees that he shall not transfer a Participation unless (a) the transfer complies with all provisions of this agreement, (b) the transferee is an individual of full age or a trust, corporation, firm or other legal entity, (c) duplicate originals of appropriate written instruments evidencing such sale or transfer are delivered to the Agent for deposit with the original copy of this agreement, (d) the transferee shall accept the transfer and agree in writing to be bound by the terms of this agreement and all the actions theretofore taken hereunder and (e) such other instruments are delivered to the Agent as he may require to evidence the authority of the transferor to deliver and of the transferee to accept the transfer. Upon compliance with these requirements and subject to the following conditions, the transferee shall be a member of the joint venture with the same rights and obligations as the transferor.

No transfer of a Participation shall be made on or after August 1, 1971 without the prior written consent of the Agent, excepting however, that the following trans- actions are permitted without such consent:

- (a) Any designation made pursuant to paragraph 11.
- (b) In the event of the legal disability of any individual participant, his Participation may be transferred to his legal representatives.
- (c) Any individual Participant may transfer his Participation to any member of his family.
- (d) Any individual Participant may transfer his Participation to a corporation of which he is the sole stockholder or to a trust in which he or a member of his family is the sole beneficiary.
- (e) Any corporate Participant having a sole individual stockholder may transfer its Participation to such stockholder.
- (f) Any Participant may assign his Participation to any other participant.

The term "transfer" as used herein shall include any assignment, pledge or other disposition or hypothecation, whether in whole or in part. The term "family" as used herein shall include only (i) the Participant's parents, grandparents, siblings and issue, and spouses and issue of any of the foregoing and (ii) the Participant's spouse and parents of said spouse.

The transfer or issuance of any stock of any corporate Participant, however accomplished, shall be deemed an assignment of the corporate Participant's Participation with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

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The transfer or issuance of any interest in any partnership Participant, however accomplished, shall be deemed an assignment of the partnership Participant's Participation, with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

11. Any individual Participant may designate any individual of full age, a trust, corporation, firm or other legal entity to succeed him upon his death as a member of the joint venture. Such designation shall be made by an appropriate instrument in writing. If no such designation has been made by the deceased party, the executor of his will or administrator of his estate may make such designation. Any such designee shall accept such designation in writing, including the assumptions and agreements required by paragraphs 9 and 10(d), and shall thereupon be a member of the joint venture with the same rights and obligations as formerly possessed by the deceased Participant.

12. If any capital contribution is required to be made by the partners under the Partnership Agreement, each Participant shall be obligated to contribute to the partnership his proportionate share of the amount of the contribution required to be made by the Agent by reason of his holding the Economic Interest. The request for a capital contribution shall be made by the Agent by a notice in writing to the Participants, and each Participant shall, no later than ten days after the mailing of the notice, contribute his proportionate share. Each Participant agrees to pay his share of any call for additional capital contributions. If any Participant (Defaulting Participant) shall fail to pay his share of any such call within ten days after the mailing of a notice in writing by the Agent to the Participant, then the other Participants (Contributing Participants) shall be privileged but not obligated to commit all or a portion of the capital contribution which the Defaulting Participant was obligated to make. If any amount shall remain uncommitted by the Contributing Participants, then they shall have the right to admit new Participants to provide any portion of the uncommitted capital contribution. Upon such contribution, the Participation of the Defaulting Participant shall be reduced to a fraction equal to one-half of the fraction, the numerator of which is equal to the total of (i) his initial capital contribution and (ii) the amount of any additional capital contributions made him; and the denominator of which is equal to the total of (i) the aggregate capital contributions theretofore made by all Participants and (ii) the aggregate additional capital contributions then being made by the Contributing Participants and the new Participants.

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Because the Defaulting Participant has failed to contribute his share of the call, the other Participants will have been put at hazard with respect to their entire investment and will be obliged to seek funds to make up the default of the Defaulting Participant. The damage which the Contributing Participants will suffer, at times and under circumstances now impossible to foresee, and the extent of the hazard to their entire investment are impossible to predict. For these reasons, and in view of the fact that this is a mutually binding agreement covering all Participants, each of whom may suffer or benefit from any such default, it is agreed that the Participation of the Defaulting Participant shall be reduced as set forth in this paragraph.

To the extent that the Participation of the Defaulting Participant is reduced as aforesaid, the Participations of the Contributing Participants will be increased in proportion to their additional contributions and appropriate Participations assigned to said new Participants.

Each Defaulting Participant is hereby deemed to have irrevocably authorized and empowered the Agent to execute and deliver on behalf of the Defaulting Participant, as his agent and attorney-in-fact, any documents necessary to effectuate or evidence the aforesaid reduction of Participation and the increase of Participation of the Contributing Participants and the assignment of Participations to new Participants.

13. It is acknowledged that the Agent has the legal power as a partner in the partnership to dissolve the partnership. Upon any dissolution of the partnership, this joint venture shall be dissolved and any cash or other property received in liquidation of the partnership by the Agent by reason of his holding the Economic Interest shall be forthwith distributed by him in accordance with the provisions of paragraph 4(b).

It is acknowledged that each of the Participants has the power to terminate the agency hereunder and withdraw from this joint venture, but the Participants do hereby agree that they shall not exercise such power without the prior unanimous written consent of all Participants. If any Participant exercises such power in contravention of the foregoing sentence, he shall be personally liable for any damage sustained by the other parties in accordance with Section 69 of the Partnership Law of the State of New York (as presently in force). Upon the termination of

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the agency and withdrawal of such Participant, the other Participants agree to enter into a new Participating Agreement containing terms identical to those herein, except for the Participant who exercised the power to terminate and withdraw. The withdrawing Participant shall be entitled to a direct assignment from the Agent of his fractional interest in the Economic Interest, subject however, to Lawrence A. Wien's right to 25% of the amounts distributable in accordance with subdivisions 4(a)(iii) and 4(b)(ii), to the Participant's obligation for his share of any call for additional capital contributions under paragraph 12, to the reduction specified in paragraph 12 in the event of failure to make capital contributions and to the provisions of paragraphs 8, 15 and 16.

It is understood that the said direct assignment to the withdrawing Participant shall be only an assignment of a profits interest as described in Section 53 of the Partnership Law of the State of New York (as presently in force), in that it shall merely entitle the withdrawing Participant to receive in accordance with his contract the profits to which the assignor would otherwise be entitled and the withdrawing Participant shall not be entitled to interfere in the management or administration of the partnership business or affairs nor to require any information or account of partnership transactions nor to inspect the partnership books; and in case of a dissolution of the partnership, the withdrawing Participant shall be entitled to receive his share of the assignor's profits interest as aforesaid and may require an account from the date only of the last account agreed to by all the partners.

14. (a) If the Agent shall desire at any time to terminate his agency, upon accounting to his successor named below for all funds which shall previously have come into his possession, he shall be discharged from all further responsibility as Agent hereunder.

(b) In the event of a vacancy in the office of the Agent, whether by resignation, disqualification, death or any other cause, the following persons in the order stated shall succeed him as Agent hereunder:

1. Peter L. Malkin, residing at \_\_\_\_\_;
2. Alvin S. Lane, residing at \_\_\_\_\_
3. Alvin Silverman, residing at \_\_\_\_\_
4. Fred Linden, residing at \_\_\_\_\_

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5. Ivan Shapiro, residing at \_\_\_\_\_
6. Robert I. Weissmann, residing at \_\_\_\_\_;
7. Robert W. Gelfman, residing at \_\_\_\_\_
8. Ralph W. Felsten, residing at \_\_\_\_\_
9. Stanley Katzman residing at \_\_\_\_\_
10. Jack Adelman, residing at \_\_\_\_\_
11. William J. Lippman, residing at \_\_\_\_\_
12. Martin B. Cowan, residing at \_\_\_\_\_
13. John L. Loehr, residing at \_\_\_\_\_
14. Any person of full age designated in writing by participants owning at least 80% in interest.

Each successor shall hold the Economic Interest and shall have the same rights and obligations with respect thereto as the Agent named herein. Each successor shall also succeed to 5% of the Management Rights and shall hold the same for his own account and shall have the same rights and obligations with respect thereto as Lawrence A. Wien. A person shall be disqualified from acting as Agent hereunder in the event that (i) he ceases to be a member of the firm of Wien, Lane & Malkin or its successors or (ii) he does not promptly acquire or he ceases to hold at least at 1/100th Participation hereunder or an economic interest at last equivalent to that amount.

(c) Lawrence A. Wien does hereby agree that when he ceases to be the Agent hereunder, whether by reason of his death or any other cause, he shall sell (or if he is deceased his personal representative shall sell) to his successor Agent a 1/100th Participation hereunder or an equivalent economic interest (if such successor does not already own such an interest), at a price equal to ten times the cash flow from operations for the preceding calendar year multiplied by 1/20th of 1%, but in no event shall the price be less than \$100. Each person who becomes a successor Agent hereunder, by accepting such agency, shall be deemed to have agreed that he and his personal representatives are similarly bound, when he ceases to be the Agent, to sell said 1/100th Participation or equivalent economic interest to his successor Agent (if such successor does not already own such an interest), at a price equal to ten times the cash flow from operations for the preceding calendar year multiplied by 1/20th of 1%, but in no event shall the price be less than \$100.

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(d) Simultaneously with the execution of this agreement, the Agent shall execute an assignment of the Economic Interest and an assignment of 5% of the Management Rights, leaving blank the name of the assignee. Such assignments shall be deposited in escrow, together with a duplicate original copy of this agreement, with Wien, Lane & Malkin or its successors. Upon the qualification of a successor, his name shall be inserted in the assignments and the escrow shall be released. The successor shall simultaneously execute and deliver assignments for the use of his successor in the same manner.

(e) Lawrence A. Wien's rights to the amounts distributable to him under subdivisions 4(a)(iii) and 4(b)(ii) are personal to him and separate and apart from his capacity as Agent hereunder. Said rights to said amounts shall be freely transferable by him at any time in whole or in part. As to 5% of the Management Rights, same shall be transferred only in accordance with subdivision (b) of this paragraph. The balance of his Management Rights are personal to him.

15. This agreement and the rights of the Participants herein shall at all times be subject to the terms and conditions of the Partnership Agreement, a copy of which has been received and examined by the Participants. Any transferee of any Participation, or part thereof, shall take and hold same subject to the terms and provisions of this agreement and the Partnership Agreement.

16. Any dispute arising out of or regarding this agreement or the Economic Interest, 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 on all of the parties.

17. This agreement shall for all purposes, including, but not limited to, dissolution of this joint venture, be governed by the Partnership Law of the State of New York to the same extent as if this joint venture were a general partnership.



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

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

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

/s/ Lawrence A. Wien  
Lawrence A. Wien, personally and as Agent

Participant	Participation	Initial Capital Contribution
	1/5	\$ 180,000
	1/5	180,000
	1/5	180,000
	1/5	180,000
	1/5	180,000
		\$ 900,000

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EMPIRE STATE BUILDING COMPANY

PARTICIPATING AGREEMENT

LAWRENCE A. WIEN, Agent

Dated: July 2, 1971

(Conformed copy)

WIEN, LANE & MALKIN

ATTORNEYS AT LAW

LINCOLN BUILDING

60 EAST 42<sup>ND</sup> STREET

NEW YORK, N.Y. 10017

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**SUB-PARTICIPATING AGREEMENT**

AGREEMENT, dated the 2nd day of July, 1971, between Peter L. Malkin, residing at \_\_\_\_\_ (hereinafter called Malkin ), and \_\_\_\_\_ residing at \_\_\_\_\_, residing at: \_\_\_\_\_, \_\_\_\_\_ residing at \_\_\_\_\_ residing at \_\_\_\_\_ residing at \_\_\_\_\_ residing at \_\_\_\_\_, residing at \_\_\_\_\_ residing at \_\_\_\_\_, residing at \_\_\_\_\_ residing at \_\_\_\_\_ and \_\_\_\_\_ residing at \_\_\_\_\_ (hereinafter called Sub-Participants ).

**WITNESSETH:**

WHEREAS; Lawrence A. Wien, \_\_\_\_\_ and \_\_\_\_\_ are the parties to a partnership agreement dated April 2, 1971 (hereinafter called the Partnership Agreement ) forming the partnership known as Empire State Building Company, which partnership is the holder of the Operating Sublease of the Empire State Building and the underlying land and as such holder operates said Building; and

WHEREAS, by Participating Agreement, dated July 2, 1971, among Lawrence A. Wien, as Agent, and Malkin and others, as Participants, Lawrence A. Wien acknowledged that he holds 5% of the economic interests in said partnership as Agent for the benefit of the Participants, which 5% is therein called the Economic Interest ; and

WHEREAS, copies of the Participating Agreement and Partnership Agreement have been received; examined and approved by the parties hereto and said agreements are hereby incorporated herein in reference and made a part hereof, and

WHEREAS, Malkin holds a 1/5th Participation in said Economic Interest, which Malkin hereby acknowledges that he holds for the benefit of the Sub-Participants hereunder; and

WHEREAS, the subject matter of the within agreement is limited solely to said 1/5th of said Economic Interest (which 1/5th is hereinafter called the Investment ) and

WHEREAS, the parties hereto desire to establish the ownership of the Sub-Participation and to define their rights and obligations with respect thereto;

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

1. A joint venture is hereby formed for the ownership of the Sub-Participation. The office of the joint venture and its books and records shall be maintained at the office of Wien, Lane & Malkin, or its successors, 60 East 42nd Street, New York, New York.
2. The initial capital contribution of each Sub-Participant is set forth below opposite his signature. The fractional interest (hereinafter called Sub-Participation ) of each Sub-Participant in the Investment is set forth below opposite his signature.
3. Each Sub-Participant, in proportion to his Sub-Participation, shall be liable for all losses of the partnership allocable to the Investment.
4. (a) With respect to cash flow from operations distributed to Malkin pursuant to the Participating Agreement each Sub-Participant shall be entitled to his share of the 14% per annum cumulative amount on his average unrecovered capital contribution, as defined and determined by the provisions of paragraph 4 of the Participating Agreement, and to the balance in proportion to his Sub-Participation.  
  
(b) With respect to net capital proceeds and distributions in liquidation distributed to Malkin pursuant to the Participating Agreement, each Sub-Participant shall be entitled to his share of repayment of unrecovered capital contributions, as defined and determined by paragraph 4 of the Participating Agreement, and to the balance of such proceeds in proportion to his Sub-Participation.
5. With respect to the partnership's income, loss, credits, and other items for any year for tax purposes allocable to Malkin under the Participating Agreement, same shall be allocated to and reported by each Sub-Participant in proportion to his Sub-Participation.
6. The joint venture shall continue until the Investment shall have been disposed of, and shall not be affected by the act, bankruptcy, death, legal disability or dissolution of any Sub-Participant, the assignment (whether by operation of law or otherwise) of any Sub-Participation, the appointment of a successor to Malkin, or any other cause, except as provided in paragraph 13.

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7. Malkin shall not be personally liable for any act performed in good faith. The Sub-Participants hereby indemnify and agree to save harmless Malkin, in proportion to their Sub-Participations, against any loss or liability to which Malkin may be subjected by reason of his holding the Investment as their agent. Such indemnity shall not apply, however, to any loss or liability resulting from obligations incurred by Malkin acting at any time in bad faith.

8. The Sub-Participants shall have no right to interfere or participate in the management or administration of the partnership business or affairs. The Sub-Participants' only interest is in the Investment. Lawrence A. Wien holds the Management Rights for his own account.

The Sub-Participants shall be bound by all decisions made and actions taken (including, but without limitation, sale, modification or mortgaging of the Operating Sublease) under the Partnership Agreement by the holders of the Management Rights. The Sub-Participants hereby expressly authorize and empower Malkin to execute and deliver on their behalf as their agent and attorney-in-fact any instruments relating to the Investment in connection with any of such decisions and actions.

9. No transfer of a Sub-Participation may be made hereunder unless the transferee expressly assumes in writing his pro rata share of the transferor's liability for additional capital contributions as required hereunder and by the Participating Agreement and expressly agrees to subject his Sub-Participation to reduction for failure to meet calls as set forth hereunder and under the Participating Agreement.

10. The transfer of a Sub-Participation shall not be valid unless (a) the transfer complies with all provisions of this agreement, (b) the transferee is an individual of full age or a trust, corporation, firm or other legal entity, (c) duplicate originals of appropriate written instruments evidencing such sale or transfer are delivered to Malkin for deposit with the original copy of this agreement, (d) the transferee shall accept the transfer and agree in writing to be bound by the terms of this agreement and all the actions theretofore taken hereunder and (e) such other instruments are delivered to Malkin as he may require to evidence the authority of the transferor to deliver and of the transferee to accept the transfer. Upon compliance with these requirements and subject to the following conditions, the transferee shall be a member of the joint venture with the same rights and obligations as the transferor. Any purported transfer which fails to comply with the terms of this paragraph 10 shall be deemed null and void.

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No transfer of a Sub-Participation shall be made without the prior written consent of Malkin, excepting however, that the following transactions are permitted without such consent:

- (a) Any designation made pursuant to paragraph 11.
- (b) In the event of the legal disability of any individual Sub-Participant, his Sub-Participation may be transferred to his legal representatives.
- (c) Any individual Sub-Participant may transfer his Sub-Participation to any member of his family.
- (d) Any individual Sub-Participant may transfer his Sub-Participation to a corporation of which he is the sole stockholder or to a trust in which he or a member of his family is the sole beneficiary.
- (e) Any corporate Sub-Participant having a sole individual stockholder may transfer its Sub-Participation to such stockholder.
- (f) Any Sub-Participant may assign his Sub-Participation to any other Sub-Participant.

The term transfer as used herein shall include any assignment, pledge or other disposition or hypothecation, whether in whole or in part. The term family as used herein shall include only (i) the Sub-Participant's parents, grandparents, siblings and issue, and spouses and issue of any of the foregoing and (ii) the Sub-Participant's spouse and parents of said spouse.

The transfer or issuance of any stock of any corporate Sub-Participant, however accomplished, shall be deemed an assignment of the corporate Sub-Participant's Sub-Participation, with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

The transfer or issuance of any interest in any partnership Sub-Participant, however accomplished, shall be deemed an assignment of the partnership Sub-Participant's Sub-Participation, with the exception, however, of any transfer resulting by reason of death, bankruptcy or legal disability.

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11. Any individual Sub-Participant may designate any individual of full age, a trust, corporation, firm or other legal entity to succeed him upon his death as a member of the joint venture. Such designation shall be made by an appropriate instrument in writing. If no such-designation has been made by the deceased party, the executor of his will or administrator of his estate may make such designation. Any such designee shall accept such designation in writing, including the assumptions and agreements required by paragraphs 9 and 10(d), and shall thereupon be a member of the joint venture with the same rights and obligations as formerly possessed by the deceased Sub-Participant.

12. If any additional capital contribution is required to be made by Malkin under the Participation Agreement by reason of his holding the Investment, each Sub-Participant shall be obligated to contribute his share thereof in proportion to his Sub-Participation. The request for an additional capital contribution shall be made by Malkin by a notice in writing to the Sub-Participants, and each Sub-Participant shall, no later than ten days after the mailing of the notice, contribute his proportionate share. Each Sub-Participant agrees to pay his share of any call for additional capital contributions. If any Sub-Participant (Defaulting Sub-Participant) shall fail to pay his share of any such call within ten days after the mailing of a notice in writing by Malkin to the Sub-Participant, then the other Sub-Participants (Contributing Sub-Participants) shall be privileged but not obligated to commit all or a portion of the capital contribution which the Defaulting Sub-Participant was obligated to make. If any amount shall remain uncommitted by the Contributing Sub-Participants, then they shall have the right to admit new sub-Participants to provide any portion of the uncommitted capital contribution. Upon such contribution, the Sub-Participation of the Defaulting Sub-Participant shall be reduced to a fraction equal to one-half of the fraction, the numerator of which is equal to the total of (i) his initial capital contribution and (ii) the amount of any additional capital contributions made him; and the denominator of which is equal to the total of (i) the aggregate capital contributions theretofore made by all Sub-Participants and (ii) the aggregate additional capital contributions then being made by the Contributing Sub-Participants and the new Sub-Participants.

Because the Defaulting Sub-Participant has failed to contribute his share of the call, the other Sub-Participants will have been put at hazard with respect to their entire investment and will be obliged to seek funds to make up the default of the Defaulting Sub-Participant. The damage which the Contributing Sub-Participants will suffer, at times and under circumstances

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now impossible to foresee, and the extent of the hazard to their entire investment are impossible to predict. For these reasons, and in view of the fact that this is a mutually binding agreement covering all Sub-Participants, each of whom may suffer or benefit from any such default, it is agreed that the Sub-Participation of the Defaulting Sub-Participant shall be reduced as set forth in this paragraph.

To the extent that the Sub-Participation of the Defaulting Sub-Participant is reduced as aforesaid, the Sub-Participations of the Contributing Sub-Participants will be increased in proportion to their additional contributions and appropriate Sub-Participations assigned to said new Sub-Participants.

Each Defaulting Sub-Participant is hereby deemed to have irrevocably authorized and empowered Malkin to execute and deliver on behalf of the Defaulting Sub-Participant, as his agent and attorney-in-fact, any documents necessary to effectuate or evidence the aforesaid reduction of Sub-Participation and the increase of Sub-Participation of the Contributing Sub-Participants and the assignment of Sub-Participations to new Sub-Participants.

13. The Agent under the Participating Agreement has the legal power as a partner in the partnership to dissolve the partnership. Upon any dissolution of the partnership, this joint venture shall be dissolved and any cash or other property received in liquidation of the partnership by Malkin by reason of his holding the Investment shall be forthwith distributed by him in accordance with the provisions of paragraph 4(b) above.

Each of the Sub-Participants has the power to terminate the agency hereunder and withdraw from this joint venture, but the Sub-Participants do hereby agree that they shall not exercise such power without the prior unanimous written consent of all Sub-Participants. If any Sub-Participant exercises such power in contravention of the foregoing sentence, he shall be personally liable for any damage sustained by the other parties in accordance with Section 69 of the Partnership Law of the State of New York (as presently in force). Upon the termination of the agency and withdrawal of such Sub-Participant, the other Sub-Participants agree to enter into a new Sub-Participating agreement containing terms identical to those herein, except for the Sub-Participant who exercised the power to terminate and withdraw. The withdrawing Sub-Participant shall be entitled to a direct assignment from Malkin of his fractional interest in the Investment, subject however, to Lawrence A. Wien's right to the amounts distributable in



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accordance with subdivisions 4(a)(iii) and 4(b)(ii) of the Participating Agreement, to the Sub-Participant's obligation for his share of any call for additional capital contributions under paragraph 12 above, to the reduction specified in paragraph 12 above in the event of failure to make capital contributions and to the provisions of paragraphs 8, 15 and 16.

It is understood that the said direct assignment to the withdrawing Sub-Participant shall be only an assignment of a profits interest as described in section 53 of the Partnership Law of the State of New York (as presently in force), in that it shall merely entitle the withdrawing Sub-Participant to receive in accordance with his contract the profits to which the assignor would otherwise be entitled and the withdrawing Sub-Participant shall not be entitled to interfere in the management or administration of the partnership business or affairs nor to require any information or account of partnership transactions nor to inspect the partnership books; and in case of a dissolution of the partnership, the withdrawing Sub-Participant shall be entitled to receive his share of the assignor's profits interest as aforesaid and may require an account from the date only of the last account agreed to by all the partners.

14. (a) If Malkin shall desire at any time to terminate his agency, upon accounting to his successor named below for all funds which shall previously have come into his possession, he shall be discharged from all further responsibility as agent hereunder.

(b) In the event of a vacancy in the office of the agent, whether by resignation, disqualification, death or any other cause, the following persons in the order stated shall succeed him as agent hereunder.

1. Alvin S. Lane, residing at \_\_\_\_\_;
2. Alvin Silverman, residing at \_\_\_\_\_
3. Fred Linden, residing at \_\_\_\_\_
4. Ivan Shapiro, residing at \_\_\_\_\_
5. Robert I. Weissmann, residing at \_\_\_\_\_
6. Robert W. Gelfman, residing at \_\_\_\_\_
7. Ralph W. Felsten, residing at \_\_\_\_\_
8. Stanley Katzman, residing at \_\_\_\_\_

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- 9. Jack Adelman, residing at \_\_\_\_\_
- 10. William J. Lippman, residing at \_\_\_\_\_
- 11. Martin B. Cowan, residing at \_\_\_\_\_
- 12. John L. Loehr, residing at \_\_\_\_\_ and \_\_\_\_\_
- 13. Any person of full age designated in writing by Sub-Participants owning at least 80% in interest.

Each successor shall hold the investment and shall have the same rights and obligations with respect thereto as the agent named herein. A person shall be disqualified from acting as agent hereunder in the event that (i) he ceases to be a member of the firm of Wien, Lane & Malkin or its successors or (ii) he does not promptly acquire or he ceases to hold at least a 1/20th Sub-Participation hereunder or an economic interest at least equivalent to that amount.

(c) Malkin does hereby agree that when he ceases to be the agent hereunder, whether by reason of his death or any other cause, he shall sell (or if he is deceased his personal representative shall sell) to his successor agent a 1/20th Sub-Participation hereunder or an equivalent economic interest (if such successor does not already own such an interest), at a price equal to ten times the cash flow from operations for the preceding calendar year multiplied by 1/20th of 1%, but in no event shall the price be less than \$100. Each person who becomes a successor agent hereunder, by accepting such agency, shall be deemed to have agreed that he and his personal representatives are similarly bound, when he ceases to be the agent, to sell said 1/20th Sub-Participation or equivalent economic interest to his successor agent (if such successor does not already own such an interest), at a price equal to ten times the cash flow from operations for the preceding calendar year multiplied by 1/20th of 1%, but in no event shall the price be less than \$100.

(d) Simultaneously with the execution of this agreement, Malkin shall execute an assignment of the Investment, leaving blank the name of the assignee. Such assignments shall be deposited in escrow, together with a duplicate original copy of this agreement, with Wien, Lane & Malkin or its successors. Upon the qualification of a successor, his name shall be inserted in the assignment and the escrow shall be released. The successor shall simultaneously execute and deliver an assignment for the use of his successor in the same manner.

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15. This agreement and the rights of the Sub-Participants herein shall at all times be subject to the terms and conditions of the Partnership agreement and the Participating Agreement, copies of which have been received and examined by the Sub-Participants. Any transferee of any Sub-Participation, or part thereof, shall take and hold same subject to the terms and provisions of this agreement and the aforesaid agreements.

16. Any dispute arising out of or regarding this agreement or the Investment, 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 on all of the parties.

17. This agreement shall for all purposes, including, but not limited to, dissolution of this joint venture, be governed by the Partnership Law of the State of New York to the same extent as if this joint venture were a general partnership.

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

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

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

/s/ Peter L. Malkin  
Peter L. Malkin, as agent

Sub-Participant	Sub-Participation	Initial Capital Contribution
	80/180	\$ 80,000
	15/180	15,000

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EMPIRE STATE BUILDING COMPANY

SUB-PARTICIPATING AGREEMENT

PETER L. MALKIN, Agent

Dated: July 2, 1971

WIEN, LANE & MALKIN

ATTORNEYS AT LAW

LINCOLN BUILDING

60 EAST 42<sup>ND</sup> STREET

NEW YORK, N.Y. 10017

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**PARTNERSHIP AGREEMENT**

AGREEMENT dated the 2nd day of January, 1973, among LAWRENCE A. WIEN, residing at \_\_\_\_\_, \_\_\_\_\_ (hereinafter called Wien ), \_\_\_\_\_ with offices at \_\_\_\_\_ (hereinafter called \_\_\_\_\_ and \_\_\_\_\_ , a \_\_\_\_\_ with offices at \_\_\_\_\_ residing at \_\_\_\_\_; \_\_\_\_\_ residing at \_\_\_\_\_; \_\_\_\_\_ residing at \_\_\_\_\_, residing at \_\_\_\_\_, residing at \_\_\_\_\_; residing at \_\_\_\_\_, residing at \_\_\_\_\_ hereinafter called the Partners ).

**WITNESSETH:**

WHEREAS, Wien, \_\_\_\_\_ and \_\_\_\_\_ are co-partners of the partnership known as Empire State Building Company (hereinafter called Company ); and

WHEREAS, Company holds the operating sublease of the Empire State Building and underlying land and is the operator of said Building; and

WHEREAS, Wien owns a 15.21875% partnership interest in Company (of which 15% is subject to two prior joint venture agreements dated April 2, 1971 and July 2, 1971 respectively); and

WHEREAS, LAW Realty owns an 8.53125% partnership interest in Company and desires to sell to the Partners an 8.3125% partnership interest in Company retaining a 0.21875% partnership interest in Company (both of which partnership interests in Company, together with the 0.21875% interest owned by Wien not subject to said two prior joint venture agreements, are hereinafter together called the Property ); and

WHEREAS, Wien and LAW Realty desire to enter into a partnership with the Partners on the terms and conditions set forth below;

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

1. The parties hereby form a partnership to be known as 1273 Realty Co. (hereinafter called the Partnership ). The office of the partnership shall be in care of Wien, Lane & Malkin, or its successors, 60 East 42nd Street, New York, New York. Said firm of Wien, Lane & Malkin, or its successors, shall maintain the books and records of the Partnership and shall supervise the operation of the Partnership.
2. LAW Realty hereby sells and transfers to each of the Partners that portion of the Property set forth below opposite the Partner's signature in the column entitled Partnership Interest . Each Partner shall pay to LAW Realty the amount set forth opposite his signature in the column entitled Cash Payment to LAW Realty . Simultaneously herewith, each of the Partners hereby contributes his respective portion of the Property, and Wien and LAW Realty hereby contribute their remaining shares of the Property, to this Partnership, so that the Partnership will hold the entire Property. The fractional interest (hereinafter called the Partnership Interest ) of each member of the Partnership is set forth in the last column opposite his signature.

The term Member as used hereinafter, shall be deemed to include all of the Partners and, unless they are expressly excluded, Wien and LAW Realty.

3. Each Member, in proportion to his Partnership Interest, shall be liable for all losses, and responsible for meeting any calls, of the Partnership (including its share of the losses and calls of Company).

4. (a) Cash flow from operations for any calendar year, to the extent distributed by Company to the Partnership, shall be distributed in the following order of priority:

(i) There shall be distributed to each Member, in proportion to his Partnership Interest, an amount equal to 10% per year of his average unrecovered capital contributions ;

(ii) If the cumulative distributions of cash flow to Members, under this subdivision (ii) and under subdivision (i), and under subdivision (ii) of subparagraph (b), below, for all prior years and the current year are less than the 10% provided by subdivision (i), then, there shall be distributed to each Member, in proportion to his Partnership Interest, the balance, if any, of such cash flow, but only until such deficiency shall have been eliminated;

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(iii) The balance, if any, shall be distributed as follows:

(A) 45% to the Members, in proportion to their Partnership Interests;

(B) 10% times a fraction equal to the Partnership Interests held by Members other than Wien and LAW Realty divided by the total number of Partnership Interests outstanding, to Wien, Lane & Malkin and its successors (for this purpose, Partnership Interests acquired for value from Wien or LAW Realty or their successors shall not be deemed, held by Wien or LAW Realty); and

(C) The remainder to Wien.

(b) Net capital proceeds and distributions in liquidation, whether in cash or in kind, shall be distributed, as soon as available, in the following order of priority:

(i) Repayments to the Members of their then unrecovered capital contributions;

(ii) If the cumulative distributions of cash flow to Members under subdivisions (i) and (ii) of subparagraph (a) for all prior years and the current year are less than the 10% per year provided in said subdivision (a)(i), then there shall be distributed to each Member, in proportion to his Partnership Interest, the balance, if any, of such Net capital proceeds or distributions in liquidation, until such deficiency shall have been eliminated.

(iii) The balance of such amounts, if any, shall be distributed as follows:

(A) 45% to the Members, in proportion to their Partnership Interests;

(B) 10% times a fraction equal to the Partnership Interests held by Members other than Wien and LAW Realty divided by the total number of Partnership Interests outstanding, to Wien, Lane & Malkin and its successors (for this purpose, Partnership Interests acquired for value from Wien or LAW Realty or their successors shall not be deemed held by Wien or LAW Realty); and

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(C) The remainder to Wien.

(c) The term "cash flow from operations" shall mean that portion of Company's cash profits (other than any net capital proceeds and distributions in liquidation) after the payment of all expenses and charges relating to the operation of its properties, including periodic payments of mortgage amortization and payments for capital improvements (or payments on loans for capital improvements), paid out of such cash profits, and without reduction for depreciation or amortization of capital improvements or leasehold costs, that is allocable to and distributed to the Partnership under the partnership agreement of Company.

All distributions of cash flow from operations for any period ending on or before December 31, 1972 shall belong to and be paid 97.5% to LAW Realty, and 2.5% to Wien, personally, and not to the Partnership or its Members. In determining the cash flow from operations for the various periods, items billed or received in a subsequent year, but applicable to a prior year, shall be allocated to the prior year, including, without limitation, escalation rents from tenants and license fees from cleaning contractors.

(d) The term "unrecovered capital contributions" of Members shall mean (i) the fair market value of their original capital contributions, which, for Wien and LAW Realty shall be deemed to be \$39,375 each for their respective .21875% Partnership Interests, and, for the other Members, shall be the amount paid to LAW Realty in accordance with the provisions of paragraph 2, above; (ii) plus any calls satisfied by a Member, (iii) less the aggregate capital returned to a Member pursuant to subdivisions (i) or (iii)(A) of subparagraph 4(b) and (iv) increased or reduced in accordance with any increase or reduction in his Partnership Interest pursuant to paragraph 12, below, provided, however, that no reduction pursuant to (iii) or (iv) shall exceed the unrecovered capital contribution balance immediately prior to such reduction. The term "average unrecovered capital contributions" shall mean the average daily balance during the calendar year of the said unrecovered capital contributions, as so adjusted.

(e) The term "net capital proceeds" shall include the net cash received by the Partnership as a result of (i) a condemnation of all or part of the property of Company, (ii) a recovery of casualty insurance proceeds in excess of the sums used to rebuild, repair, replace or



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restore; (iii) the mortgaging of or refinancing of any mortgage on the property of Company, (iv) a sale of the property of Company and the fair market value of any other property (including a purchase money mortgage or leaseback) received from such sale, (v) the liquidation of Company and (vi) the sale or hypothecation of the Property.

5. The Partnership's income, gains, losses, deductions, credits and other items entering into the computation of taxable income or income taxes shall be allocated as follows:

(a) gross ordinary income equal to the amounts distributable to Wien and to Wien, Lane & Malkin under subparagraphs 4(a)(iii)(B) and (C) shall be allocated to Wien;

(b) in the event gain is realized as a result of a transaction described in paragraph 4(e), the net gain therefrom shall be allocated to Wien, but not in excess of the amount distributable to Wien and to Wien, Lane & Malkin under subdivisions (B) and (C) of sub-paragraph 4(b)(iii); if such gain consists of more than one category of income, the amount allocated under this sentence shall consist of a pro rata portion of the net gain in each category;

(c) Wien shall be allocated any deduction allowable to the Partnership on account of amounts paid (or deemed paid) to Wien, Lane & Malkin, including any additional depreciation or any deduction allowable under section 83(h) of the Internal Revenue Code; and

(d) Any increase or decrease in depreciation or amortization or in any gain or loss attributable to the adjustment to basis under Section 743 of the Internal Revenue Code as a result of their purchase of interests in the Property shall be allocated to the Partners in proportion to their respective interests. If further adjustments under Section 743 occur as a result of subsequent transactions or events, the increase or decrease in depreciation or amortization attributable to such adjustments, shall be allocated to the persons who hold or have acquired the Partnership Interest generating the adjustment.

(e) Notwithstanding (a) through (c), above, depreciation, gain or loss with respect to property contributed to the Partnership by a Member shall be allocated among the Members so as to take account of the variation between the basis of the property to the Partnership and its fair market value at the time of contribution, in accordance with Section 704(c)(2) of the Internal Revenue Code and the Treasury Department Regulations thereunder.

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(f) the remainder of the Partnership income, gains, losses, credits and other items shall be allocated to each Member in proportion to his Partnership Interest.

6. The Partnership shall continue until Company is liquidated or the Property shall otherwise have been disposed of, and shall not be affected by the act, bankruptcy, death, legal disability or dissolution of any Member, the assignment (whether by operation of law or otherwise), of any Partnership Interest, or any other cause, except as provided in paragraph 13.

7. It is agreed that the Property may, at the discretion of the Managing Partner, be held in the name of the Managing Partner, as agent for the Partnership. The Managing Partner shall not be personally liable for any act performed as agent in good faith. The Partnership and the Members hereby agree to indemnify and save harmless the Managing Partner, in proportion to their Partnership Interests, against any loss or liability to which he may be subjected by reason of his holding the Property as agent. Such indemnity shall not apply, however, to any loss or liability resulting from obligations incurred by the Managing Partner acting at any time in bad faith.

8. Except as provided in paragraph 14, below, Wien shall be the Managing Partner of the Partnership and, in such capacity, shall have the exclusive right to manage and operate the Partnership, and to make all decisions on its behalf, including the exclusive right to exercise the Partnership's voting and management rights in Company; the other Members shall have no right to interfere or participate in the management or administration of the business or affairs of either Company or of the Partnership, and shall be bound by all decisions made and actions taken (including, but without limitation, sale, modification or mortgaging of the Operating Sublease of Associates) by the Managing Partner and by Associates. The Members hereby expressly authorize and empower the Managing Partner to execute and deliver on their behalf and as their agent and attorney-in-fact any instruments relating to the Property in connection with any of such decisions and actions.

9. No transfer of a Partnership Interest may be made hereunder unless the transferee expressly assumes in writing his pro rata share of the transferor's liability for additional capital contributions as required hereunder and expressly agrees to subject his Partnership Interest to reduction for failure to meet calls as set forth hereunder, and the requirements of paragraph 10 and 11 are met.

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10. Each Member agrees that he shall not transfer a Partnership Interest unless (a) the transfer complies with all provisions of this agreement, (b) the transferee is an individual of full age or a trust, corporation, firm or other legal entity, (c) duplicate originals of appropriate written instruments evidencing such transfer are delivered to the Managing Partner for deposit with the original copy of this agreement, (d) the transferee shall accept the transfer and agree in writing to be bound by the terms of this agreement and all the actions theretofore taken hereunder and (e) such other instruments are delivered to the Managing Partner as he may require to evidence the authority of the transferor to deliver and of the transferee to accept the transfer. Upon compliance with these requirements and subject to the following conditions, the transferee shall be a Member of the Partnership with the same rights and obligations as the transferor.

No transfer of a Partnership Interest shall be made without the prior written consent of the Managing Partner and any purported transfer without such consent shall be null and void, excepting however, that the following transactions are permitted without such consent:

- (a) Any designation made pursuant to paragraph 11.
- (b) In the event of the legal disability of any individual Member, his Partnership Interest may be transferred to his legal representatives.
- (c) Any individual Member may transfer his Partnership Interest to any member of his family.
- (d) Any individual Member may transfer his Partnership Interest to a corporation of which he is the sole stockholder or to a trust in which he or members of his family are the sole beneficiaries.
- (e) Any corporate Member having a sole individual stockholder may transfer its Partnership Interest to such stockholder.
- (f) Any Member may transfer his Partnership Interest to any other Member.
- (g) Wien may transfer his Partnership Interest to anyone at any time, except as limited by paragraph 14(b) and (c) hereof.

The term transfer as used herein shall include any assignment, pledge or other disposition or hypothecation, whether in whole or in part. The term family as used herein shall include only (i) the Member's parents, grandparents, siblings and issue, and spouses and issue of any of the foregoing and (ii) the Member's spouse and parents of said spouse.

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The transfer or issuance of any stock of any corporate Member, however accomplished, shall be deemed a transfer of the corporate Member's Partnership Interest, with the exception, however, of any transfer resulting by reason of death or of operation of law.

The transfer or issuance of any interest in any Member who is a partnership, however accomplished, shall be deemed a transfer of such Member's Partnership Interest in this Partnership, with the exception, however, of any transfer resulting by reason of death or of operation of law.

In no event, and notwithstanding anything in this agreement to the contrary any sale, exchange or other transfer shall be null and void if, together with prior transfers during the preceeding 12 months, it would result in the termination of the Partnership within the meaning of Section 708(b)(1)(B) of the Internal Revenue Code. Wien shall at all times retain a 1% Partnership Interest, which shall be transferred only in accordance with paragraph 14(b) and (c) hereof.

11. Any individual Member may designate any individual of full age, a trust, corporation, firm or other legal entity to succeed him upon his death as a Member of the Partnership. Such designation shall be made by an appropriate instrument in writing. If no such designation has been made by the deceased party, the executor of his will or administrator of his estate may make such designation. Any such designee shall accept such designation in writing, including the assumptions and agreements required by paragraphs 9 and 10(d), and shall thereupon be a Member of the Partnership with the same rights and obligations as formerly possessed by the deceased Member.

12. If any capital contribution is required to be made by the partners under the partnership agreement of Company, each Member shall be obligated to contribute to the Partnership his proportionate share of the amount of the contribution required to be made by the Partnership. The request for a capital contribution shall be made by the Managing Partner by a notice in writing to the Members, and each Member shall, no later than ten days after the mailing of the notice, contribute his proportionate share. Each Member agrees to pay his share of any call for additional capital contributions. If any Member (Defaulting Member) shall fail to pay his

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share of any such call within ten days after the mailing of the notice, then the other Members (Contributing Members) shall be privileged, but not obligated, to contribute all or a portion of the capital contribution which the Defaulting Member was obligated to make. If any amount shall remain uncommitted by the Contributing Members, then they shall have the right to admit new Members to provide any portion of the uncommitted capital contribution. Upon any such contribution, the Partnership Interest of the Defaulting Member shall be reduced to a percentage equal to one-half of a fraction the numerator of which is equal to his unrecovered capital contribution and the denominator of which is equal to the aggregate unrecovered capital contributions of all Members including the capital contributions then being made by the Contributing Members and any new Members.

Notwithstanding anything in this agreement contained to the contrary, as to the 1% Partnership Interest of Wien referred to in the last sentence of paragraph 10, if the holder thereof becomes a Defaulting Member, each person named in the list below to succeed to a vacancy in the office of the Managing Partner shall in the order of the listing have the first option to pay the share of any call against said 1% Partnership Interest on behalf of said Defaulting Member, and if any such successor does pay such capital call he shall become a Member as provided herein, and, he shall succeed Wien as the holder of the 1% Partnership Interest and in addition he shall succeed to Wien's rights under paragraph 7 as Managing Partner. If none of such successors pays the share of the call as aforesaid, then all of the remaining Members shall have the right to decide, by a vote of a majority in interest, who shall be the successor Managing Partner and holder of the 1% Partnership Interest.

Because the Defaulting Member has failed to contribute his share of the call, the other Members will have been put at hazard with respect to their entire investment and will be obliged to seek funds to make up the default of the Defaulting Member. The damage which the Contributing Members will suffer, at times and under circumstances now impossible to foresee, and the extent of the hazard to their entire investment are impossible to predict. For these reasons, and in view of the fact that this is a mutually binding agreement covering all Members, each of whom may suffer or benefit from any such default, it is agreed that the Partnership Interest of the Defaulting Member shall be reduced as set forth in this paragraph.

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To the extent that the Partnership Interest of the Defaulting Member is reduced as aforesaid, the Partnership Interests of the Contributing Members will be increased in proportion to their additional contributions and appropriate Partnership Interests assigned to said new Members.

Each Defaulting Member is hereby deemed to have irrevocably authorized and empowered the Managing Partner to execute and deliver on behalf of the Defaulting Member, as his agent and attorney-in-fact, any documents necessary to effectuate or evidence the aforesaid reduction of Partnership Interest and the increase of Partnership Interest of the Contributing Members and the assignment of Partnership Interests to new Members.

13. It is acknowledged that the Managing Partner has the legal power as a partner in Company to dissolve Company, subject to the provisions of the partnership agreement of Company. Upon any dissolution of Company, this Partnership shall be dissolved and any cash or other property received in liquidation of Company shall be forthwith distributed in accordance with the provisions of paragraph 4(b).

It is acknowledged that each of the Members has the power to dissolve and withdraw from this Partnership, but the Members do hereby agree that they shall not exercise such power without the prior written consent of all Members and of the Managing Partner. If any Member exercises such power in contravention of the foregoing sentence, he shall be personally liable for any damage sustained by the other parties in accordance with Section 69 of the Partnership Law of the State of New York (as presently in force). Upon the dissolution of the Partnership and withdrawal of such Member, the other Members agree to enter into a new Partnership agreement containing terms identical to those herein, except for the Member who exercised the power to terminate and withdraw. The withdrawing Member shall be entitled to a direct assignment from the partnership of his fractional interest in the Property, subject however, to the prior rights of Wien and Wien, Lane & Malkin to the amounts distributable in accordance with subdivisions 4(a)(iii)(B) and (C) and 4(b)(iii)(B) and (C), to the Member's obligation for his share of any call for additional capital contributions under paragraph 12, to the reduction specified in paragraph 12 in the event of failure to make capital contributions and to the provisions of paragraphs 8, 15 and 16.

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It is understood that the said direct assignment to the withdrawing Member shall be only an assignment of a profits interest as described in Section 53 of the Partnership Law of the State of New York (as presently in force), in that it shall merely entitle the withdrawing Member to receive in accordance with his contract the profits to which the assignor would otherwise be entitled and the withdrawing Member shall not be entitled to interfere in the management or administration of the business or affairs of either Company or the Partnership, nor to require any information or account of the transactions of either, nor to inspect the books of either; and in case of a dissolution of Company, the withdrawing Member shall be entitled to receive his share of the assignor's profits (and capital) interest as aforesaid, and may require an account from the date only of the last account agreed to by all the partners in Company or by the Members, as the case may be.

14. (a) If the Managing Partner shall elect at any time to terminate his activities as Managing Partner, or if he should cease acting as Managing Partner as a result of his resignation, disqualification, death or any other reason, the following persons in the order stated shall succeed him as Managing Partner hereunder;

1. Peter L. Malkin, residing at \_\_\_\_\_;
2. Alvin S. Lane, residing at \_\_\_\_\_;
3. Alvin Silverman, residing at \_\_\_\_\_
4. Fred Linden, residing at \_\_\_\_\_
5. Ivan Shapiro, residing at \_\_\_\_\_;
6. Robert I. Weissmann, residing at \_\_\_\_\_
7. Robert W. Gelfman, residing at \_\_\_\_\_
8. William J. Lippman, residing at \_\_\_\_\_;
9. Ralph W. Felsten, residing at \_\_\_\_\_
10. Stanley Katzman, residing at \_\_\_\_\_;
11. Jack Adelman, residing at 200 \_\_\_\_\_;
12. Martin B. Cowan, residing at \_\_\_\_\_;

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13. John L. Loehr, residing at \_\_\_\_\_

14. Martin D. Newman, residing at \_\_\_\_\_;

15. C. Michael Spero, residing at \_\_\_\_\_;

16. Any person of full age designated in writing by Members owning in the aggregate more than 50% in interest hereunder.

(b) Each successor shall be a Member and Managing Partner, and shall have the same rights and obligations with respect thereto as Wien. A person shall be disqualified from acting as Managing Partner hereunder in the event that (i) except in the case of a person designated under subdivision 16, above, he ceases to be a member of the firm of Wien, Lane & Malkin or its successors or (ii) he does not promptly acquire or he ceases to hold at least a 1% Partnership Interest hereunder or an economic interest at least equivalent to that amount.

(c) Wien hereby agrees that, when he ceases to be the Managing Partner hereunder, whether by reason of his death or any other cause, he shall sell (or if he is deceased, his personal representative shall sell) to the person designated to succeed him as Managing Partner, a 1% Partnership Interest hereunder or an equivalent economic interest (if such successor does not already own such an interest), at a price equal to the amount determined by multiplying 1% of the average of the Cash flow from operations for the three preceding calendar years by the factor set forth below (but in no event shall the total price be less than \$100):

	The multiplier shall be the factor listed on the corresponding line below, plus, in the case of a sale on or after January 5, 2056, an additional amount equal to (i) 1/365th of the difference between such factor and the factor listed immediately above it, times (ii) the number of full calendar days between the date of sale and the following January 5th
If the sale occurs on or after January 5th of the year listed below, but before the following January 5th	
1972-2015	8.3333
2016	8.3240
2017	8.3229
2018	8.3217
2019	8.3203
2020	8.3187
2021	8.3170
2022	8.3150



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2023	8.3128
2024	8.3103
2025	8.3076
2026	8.3045
2027	8.3010
2028	8.2972
2029	8.2928
2030	8.2880
2031	8.2825
2032	8.2764
2033	8.2696
2034	8.2619
2035	8.2534
2036	8.2438
2037	8.2330
2038	8.2210
2039	8.2075
2040	8.1924
2041	8.1755
2042	8.1566
2043	8.1354
2044	8.1116
2045	8.0850
2046	8.0552
2047	8.0218
2048	7.9844
2049	7.9426
2050	7.8957
2051	7.8431
2052	7.7843
2053	7.7184
2054	7.6446
2055	7.5620
2056	7.4694
2057	7.3658
2058	7.2497
2059	7.1196
2060	6.9740
2061	6.8109
2062	6.6282
2063	6.4235
2064	6.1944
2065	5.9377
2066	5.6502
2067	5.3282
2068	4.9676
2069	4.5638
2070	4.1114
2071	3.6048
2072	3.0373
2073	2.4018
2074	1.6901
2075	0.8929
2076	0.0000

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Each person who becomes a successor Managing Partner hereunder, by accepting such position, shall be deemed to have agreed that he and his personal representatives are similarly bound, when he ceases to be the Managing Partner, to sell said 1% Partnership Interest or equivalent economic interest to his successor as Managing Agent (if such successor does not already own such an interest), at a price to be determined in the same manner (but by reference to the appropriate factor at that time).

(d) If at any time, the Managing Partner exercises the right specified in paragraph 7, above, to hold the property as agent for the Partnership, he shall immediately execute an assignment of the Property, leaving blank the name of the assignee. Such assignment shall be deposited in escrow, together with a duplicate original copy of this agreement, with Wien, Lane & Malkin or its successors. Upon the qualification of a successor Managing Partner, if he also elects to hold the Property as agent, his name shall be inserted in the assignment and the escrow shall be released. The successor shall simultaneously execute and deliver an assignment in escrow for the use of his successor in the same manner. If the successor does not so elect, the Partnership shall be inserted in the assignment and the escrow shall be terminated.

(e) Wien's rights to the amounts distributable to him under subdivisions 4(a)(iii)(C) and 4(b)(ii)(C) shall be freely transferable by him at any time in whole or in part. Although the holder of such rights may be a Member of the Partnership, such interest shall not be deemed a Partnership Interest as that term is used throughout this agreement, and the holder thereof shall not exercise any voting or management rights in the Partnership.

15. This agreement and the rights of the Members herein shall at all times be subject to the terms and conditions of the partnership agreement of Company. Any transferee of any Partnership Interest, or part thereof, shall take and hold same subject to the terms and provisions of this agreement and said partnership agreement of Company.

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16. 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 on all of the parties.

17. This agreement shall for all purposes, including but not limited to, dissolution of this Partnership be governed by the Partnership Law of the State of New York.

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

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

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

MEMBERS	CASH PAYMENT TO LAW REALTY	PERCENTAGE INTEREST IN COMPANY CONTRIBUTED TO CAPITAL	PARTNERSHIP INTEREST
	\$ 540,000	3%	34.29%
	\$ 180,000	1%	11.43%
	\$ 180,000	1%	11.43%
	\$ 180,000	1%	11.43%
	\$ 180,000	1%	11.43%
	\$ 90,000	0.5%	5.71%
	\$ 90,000	0.5%	5.71%
	\$ 56,250	0.3125%	3.57%
Subtotal	\$ 1,496,250	8.3125%	95%

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<u>/s/ Lawrence A. Wien</u>			
Lawrence A. Wien, as			
Member and as			
Managing Partner	-0-	0.21875%	2.5%
LAW Realty Operations Inc.,			
as Assignor and Member			
By: <u>/s/ Peter L. Malkin</u>	-0-	0.21875%	2.5%
Total	\$ 1,496,250	8.75000%	100%

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1273 REALTY CO.  
(Relating to Empire  
State Building Company)

Certified Copy of  
Partnership Agreement  
Dated: January 2, 1973

WIEN, LANE & MALKIN  
ATTORNEYS AT LAW  
LINCOLN BUILDING  
60 EAST 42<sup>ND</sup> STREET  
NEW YORK, N.Y. 10017

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**Fisk Building Associates L.L.C.**

Peter L. Malkin (Current Agent)

Participating Agreement dated August 1, 1988 with Peter L. Malkin as agent

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**PARTICIPATING AGREEMENT**

AGREEMENT, made as of August 1, 1988, among PETES L. MALKIN, residing at 21 Bobolink Lane, Greenwich, Connecticut ( Agent ) and each of the other parties (individually a Participant or collectively the Participants ) executing this Agreement on the signature pages hereof.

**WITNESSETH:**

WHEREAS, Fisk Building Associates, a New York partnership (the Master Partnership ) owns a net lease of and operates the Fisk Building at 250 West 57th Street, New York, New York, and

WHEREAS, the Master Partnership was organized pursuant to a certain agreement dated May 1, 1954 among Harry B. Helmsley and others as amended by agreement dated June 27, 1960, copies of which are annexed hereto as Exhibit A-1 and A-2, respectively, and made a part hereof; said agreement as so amended is hereinafter called the Master Partnership Agreement , and

WHEREAS, by Assignment and Agreement dated August 1, 1988 between Lawrence A. Wien and the Agent, a copy of which is annexed hereto as Exhibit B and made a part hereof, the parties thereto formed a joint venture (the Underlying Joint Venture ) to acquire a 45% interest in the Master Partnership, and

WHEREAS, the Agent holds an interest in the Underlying Joint Venture, subject to the conditions contained in said Assignment and Agreement (which Underlying Joint Venture interest is hereinafter 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.

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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. The parties acknowledge that each Participant's original capital contribution and joint venture interest hereunder are as set forth opposite his or her signature at the end of this Agreement.
2. This joint venture shall continue until The Property shall have been disposed of and shall not be interrupted or terminated by the act, bankruptcy, death, legal disability or dissolution of any Participant, the assignment (whether by operation of law or otherwise) of any interest of any Participant, the appointment of a successor to the Agent or any other cause.
3. The Agent shall comply with the terms of the Underlying Joint Venture Agreement and of the Master Partnership Agreement and shall act, without compensation, as Agent for this joint venture in the ownership of The Property. Any action taken by his or her with respect thereto, subject to the terms of this Agreement, shall bind this joint venture. The Participants shall share in proportion to their joint venture interests 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.
4. The office of this joint venture shall be maintained at Wien, Malkin & Bettex, 60 East 42nd Street, New York, New York, or such other address as the Participants may hereafter designate. Said firm shall maintain the books and records of this joint venture and shall supervise the operation of this Agreement.
5. The Agent, as a member of the Underlying Joint Venture and with respect to the 45% interest in the Master Partnership, shall not agree or consent to any of the following matters, which are deemed to be major decisions of policy affecting the Participants, without the prior



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written consent of either (i) Participants owning at least a majority in interest hereunder or (ii) Participants owning interests hereunder which together with interests held by consenting partners in KSIF Partners and interests held by consenting master partners in the Master Partnership total at least the percentage required for action on said matters under the Master Partnership Agreement:

- a. Sale, transfer or mortgaging of The Property.
- b. Sale, transfer or mortgaging of the net lease.
- c. Modification, extension or prepayment of any mortgage on the net lease.
- d. Modification of the net lease.
- e. Making or modification of any sublease of all or substantially all of the premises.
- f. Modification of the Underlying Joint Venture Agreement or of the Master Partnership Agreement.
- g. Termination of the employment of Wien, Malkin & Bettex or of Helmsley-Spear, Inc. or any change in the compensation of either of such firms or the hiring or termination of any substitute firm and the fixing or change of its compensation.
- h. Disposition in any manner of any substantial asset of the Underlying Joint Venture or of the Master Partnership,
- i. Taking any step to change the existing method of operation of the Underlying Joint Venture or of the Master Partnership.

Such consent shall be deemed conclusively granted by any Participant who fails to give written notice of objection within ten days after receipt of a notice from the Agent soliciting his or her consent. The Agent is hereby authorized to give any consent on behalf of a deceased Participant until a representative or successor for the deceased has been qualified to act on his or her behalf and has given the Agent written notice of such qualification together with evidence thereof reasonably satisfactory to the Agent.

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6. It is acknowledged that the Agent has the power as a member of the Underlying Joint Venture and of the Master Partnership to dissolve either or both. If he or she exercises such power without obtaining the prior written consent of Participants owning at least a majority in interest hereunder, he or she shall be personally liable for any damages sustained by the Participants. Any dissolution of the Underlying Joint Venture or of the Master Partnership caused by the act of the Agent shall effect a dissolution of this joint venture.

7. Except as provided in the preceding paragraph, the Agent shall not be personally liable for any act performed in good faith. The Participants shall indemnify the Agent in proportion to their joint venture interests 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 at any time as a result of the Agent's bad faith or in contravention of the terms of this Agreement.

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

b. While Peter L. Malkin is serving as the Agent hereunder, he may be removed as such Agent by the written direction of Participants owning at least 75% in interest hereunder. Thereafter, the Agent may be removed by the written direction of Participants owning at least a majority in interest hereunder.

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c. Except as otherwise provided in this paragraph 8, in the event of a vacancy for any reason in the office of the Agent the following persons, in the order listed, shall succeed him or her as a member of the Underlying Joint Venture and of the Master Partnership and act as his or her successor hereunder, with the same rights and obligations of the Agent named herein:

1. Donald A. Bettex, residing at \_\_\_\_\_
2. Alvin Silverman, residing at \_\_\_\_\_
3. Robert I. Weissmann, residing at \_\_\_\_\_
4. Ralph W. Eelsten, residing at \_\_\_\_\_
5. C. Michael Spero, residing at \_\_\_\_\_
6. Martin D. Newman, residing at \_\_\_\_\_
7. Melvyn H. Harper, residing at \_\_\_\_\_
8. Stanley Katzman, residing at \_\_\_\_\_
9. John L. Loehr, residing at \_\_\_\_\_
10. Robert A. Machleder, residing at \_\_\_\_\_
11. Mitchell J. Nelson, residing at \_\_\_\_\_
12. Thomas N. Keltner, Jr., residing at \_\_\_\_\_
13. Lanny A. Oppenheim, residing at \_\_\_\_\_
14. Robert D. Schachat, residing at \_\_\_\_\_
15. Richard A. Shapiro, residing at \_\_\_\_\_
16. Eli R. Mattioli, residing at \_\_\_\_\_
17. Ellen T. Graff, residing at \_\_\_\_\_
18. Jannet L. Gurian, residing at \_\_\_\_\_

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19. Any person of full age designated in writing by Participants owning at least a majority in interest hereunder.

d. Simultaneously with the execution of this Agreement, the Agent shall execute assignments of all his right, title and interest in and to the Underlying Joint Venture and in and to the 45% interest in the Master Partnership leaving blank the names of the assignees. Such assignments shall be deposited in escrow, together with the original copy of this Agreement, with Wien, Malkin & Bettex. Upon the appointment of a successor to the Agent, the name of such successor shall be inserted in the assignments as the assignee, and the escrow shall be released. The successor shall thereupon similarly execute assignments for use by his or her successor in the same manner.

e. Notwithstanding anything to the contrary contained in this paragraph 8, the Agent or any designated successor agent who is a member of the firm of Wien, Malkin & Bettex may, while serving as Agent, modify the succession by designating any different order or adding additional names of individuals who are then members of said firm, and any person who ceases to be a member of said firm shall be disqualified from becoming an Agent or continuing to act as Agent hereunder.

9. The sale or transfer of any interest of any Participant shall not be valid unless:

a. the transferee is an individual of full age or a legal entity;

b. duplicate originals of appropriate writ ten instruments evidencing such sale or transfer are delivered to the Agent for deposit with the original copy of this Agreement;

c. the transferee shall accept the transfer in writing; and

d. such instruments are delivered to the Agent as the attorneys for the joint venture may require to evidence the authority of the transferor to deliver and of the transferee to accept the transfer. If the transferee complies with these requirements, he or she shall be a member of this joint venture with the same rights and obligations as the transferor.

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Notwithstanding any of the foregoing provisions of this paragraph 9, no transfer of a joint venture interest hereunder shall be made if such transfer would (i) result in a termination of this joint venture or of the Underlying Joint Venture or of the Master Partnership under the provisions of the Internal Revenue Code of 1986, as amended, or (ii) violate any provision of the Securities Act of 1933, as amended, or any other applicable securities law and, if so attempted, such transfer shall be void ab initio and shall not bind this joint venture or the Underlying Joint Venture or the Master Partnership. In making a determination of these issues, the Agent in his or her discretion may require the transferor to furnish, at the transferor's expense, an opinion of counsel passing on these issues.

10. Any Participant may designate any individual of full age or legal entity to succeed him or her, upon his or her death, as a member of this 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 his or her Estate shall make and deliver such designation. In either event, the executor or administrator shall also deliver such other instruments as the attorneys for this joint venture may require to evidence the transfer of the deceased'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 this joint venture with the same rights and obligations as the deceased.

In the event that any Participant dies and no representative or successor for him or her is qualified within eight months thereafter, the Agent or his or her designee may purchase the interest of the deceased within ninety days after the Agent receives notice of the expiration of the

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eight-month period. The price shall be the amount of the capital contributions of the deceased, less any repayment thereof to the date of death, but under no circumstances less than \$100. The Agent is hereby irrevocably appointed attorney-in-fact for the deceased to execute any papers and to take any other action necessary to evidence such sale and transfer. The purchaser shall accept the transfer in writing and thereupon the sale and transfer shall be complete.

11. If any capital contribution is hereafter required to be made by the partners in the Master Partnership, each Participant shall be obligated to contribute to this joint venture his or her proportionate share of the amount of the contribution required to be made by the Agent by reason of his holding The Property. The request for a capital contribution shall be made by the Agent by a notice in writing to the Participants, and each Participant shall, no later than fifteen days after the mailing of the notice, contribute his or her proportionate share.

If any Participant ( Defaulting Participant ) shall fail to pay his or her share of any such call within fifteen days after the mailing of a notice in writing by the Agent to the Participant, then the Agent shall have the option (a) to proceed directly against the Defaulting Participant to recover the unpaid call together with reasonable attorney's fees and interest at the highest lawful rate or (b) to offer to the other Participants ( Contributing Participants ) the right to contribute all or a portion of said call. The election of the option under (a) or (b) shall not be exclusive of each other and the Agent may at any time both proceed directly as aforesaid and offer as aforesaid.

If the Agent elects to offer said right to the Contributing Participants, then they shall be privileged but not obligated to commit to contribute all or a portion of the capital contribution which the Defaulting Participant is obligated to make. If any amount shall remain uncommitted by the Contributing Participants, then the Agent shall have the right to admit new Participants to

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provide any portion of the uncommitted capital contribution. Upon such contributions, the joint venture interest of the Defaulting Participant shall be deemed automatically reduced to a fraction equal to one half of the fraction, the numerator of which is equal to the total of (i) his or her initial capital contribution and (ii) the amount of any additional capital contributions made by him or her, and the denominator of which is equal to the total of (i) the aggregate capital contributions theretofore made by all Participants and (ii) the aggregate, additional capital contributions then being made by the Contributing Participants and the new Participants, if any. After three defaults by a Defaulting Participant, his or her joint venture interest shall be deemed automatically reduced to zero and said Defaulting Participant shall have no further interest or rights hereunder.

Because the Defaulting Participant has failed to contribute his or her share of the call, the other Participants will have been put at hazard with respect to their entire investment and will be obliged to seek funds to make up the default of the Defaulting Participant. The damage which the Contributing Participants will suffer, at times and under circumstances now impossible to foresee, and the extent of the hazard to their entire investment are impossible to predict. For these reasons, and in view of the fact that this is a mutually binding agreement covering all Participants, each of whom may suffer or benefit from any such default, it is agreed that the joint venture interest of the Defaulting Participant shall be reduced as set forth in this paragraph.

To the extent that the joint venture interest of the Defaulting Participant is reduced as aforesaid, the joint venture interests of the Contributing Participants shall be deemed automatically increased in proportion to their additional contributions and appropriate joint venture interests shall be assigned to said new Participants.

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Each Defaulting Participant is hereby deemed to have irrevocably authorized and empowered the Agent to execute and deliver on behalf of the Defaulting Participant, as his or her agent and attorney-in-fact, any documents necessary to evidence or effectuate the aforesaid reductions of joint venture interests and increases of joint venture interests of the Contributing Participants and the assignment of joint venture interests to new Participants.

Each Participant hereby pledges and assigns his or her joint venture interest as security for the performance of his or her obligations hereunder and does hereby grant to the Agent all rights available to a secured party under the Uniform Commercial Code of the State of New York and the comparable laws of his or her state of residence and agrees, upon request, to deliver to the Agent a duly executed financing statement and any other document which the Agent may reasonably request with respect thereto. This collateral pledge is given as security for the performance of each Participant's obligation to pay calls. However, resort to this collateral pledge is optional on the part of the Agent and the Agent may proceed directly against the Defaulting Participant to recover the unpaid call together with attorney's fees and interest as aforesaid, with or without resort to the Collateral.

Whether the Agent elects to proceed directly or to offer the right to contribute as aforesaid or to do both, the Agent is hereby authorized to make interim borrowings on behalf of this joint venture of the necessary funds to pay the amount of the unpaid call to the Master Partnership; provided that any funds thereafter distributable to the Defaulting Participant, generated by transfer of the Defaulting Participant's interest or generated by foreclosure of said collateral pledge shall be applied first in reduction of the principal and interest of such borrowing.



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Upon withdrawal of a Participant from this joint venture, he or she shall remain obligated for any unsatisfied capital call made up to the date of withdrawal, but shall have no liability for capital calls made after such date. An unsatisfied capital call shall mean any amount remaining unpaid or uncommitted for or not paid as a result of the foreclosure of said collateral pledge.

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 for all purposes, including but not limited to dissolution of this joint venture, be governed by the Partnership Law of the State of New York, as presently in force, to the same extent as if this joint venture were a general partnership.

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

/s/ Peter L. Malkin  
Peter L. Malkin, as Agent

Participants	Original capital contributions	Joint venture interests
	\$ 37,500	1.2500%
	37,500	1.2500%
	100,000	3.3333%

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PROSPECTUS

**WLKP REALTY CORP.**

and

**60 EAST 42nd ST. ASSOCIATES**

**PARTICIPATIONS**

in

**\$7,000,000 Ten Year 12% Convertible Second Mortgage**

**on Lincoln Building**

**To Be Dated December 1, 1954**

The Mortgage will provide for the automatic conversion of the Participations, on or after April 1, 1959, into proportionate interests\* in the ownership of the property in the event that the existing first mortgage on the Lincoln Building is refinanced upon the terms described in this Prospectus.

PRICE PER PARTICIPATION: \$10,000 minimum or any multiple thereof

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Price to Public	Underwriting Commissions	Proceeds to Corporation**
<b>Total</b>	<b>\$ 7,000,000</b>	<b>None</b>	<b>\$ 7,000,000</b>
<b>Per minimum unit</b>	<b>10,000</b>	<b>None</b>	<b>10,000</b>

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\* For description of such interests, see page 10.

\*\* Before payment of expenses of offering, etc. See Use of Proceeds , page 8.

The date of this Prospectus is July 2, 1954

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**REGISTRATION STATEMENT**

A Registration Statement has been filed with the Securities and Exchange Commission, Washington, D.C., by WLKP Realty Corp. and by 60 East 42nd St. Associates and the individual members thereof, as Co-Registrants, for the Participations offered hereunder.

This Prospectus does not contain all of the information set forth in the Registration Statement, certain items of which are omitted or included in condensed form as permitted by the Rules and Regulations of the Commission. Statements contained herein as to the contents of any contract or other document are not necessarily complete, and in each instance reference is hereby made to the copy of such contract or other document filed as an Exhibit to the Registration Statement, each such statement being qualified in all respects by such reference.

Copies of the Registration Statement may be obtained from the Commission on payment of the prescribed charges.

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**I.**

**GENERAL NATURE OF THE OFFERING**

WLKP Realty Corp. (the Corporation) owns the land and buildings located at 60 East 42nd Street and 301 Madison Avenue, New York City, herein called the Lincoln Building. It purchased the property on March 31, 1954, for \$23,000,000 (\$7,000,000 in cash and a first mortgage of \$16,000,000), and also expended the further sum of \$290,000 for commissions, fees and other expenses. In addition, it is now engaged in reconstructing the top floor, so as to create a 54th and a 55th floor, at an estimated cost of \$200,000.

The Corporation proposes to place a \$7,000,000 Ten Year 12% Convertible Second Mortgage on the property, under a Mortgage Indenture (the Indenture) to be executed on December 1, 1954, with Trade Bank and Trust Company as Trustee, and is hereby offering Participations in the said Mortgage. The Indenture will provide that the holders of Participations will have no right to procure a deficiency judgment in the event of default in the payment of interest or principal, but will be limited to foreclosure of the Mortgage itself.

The Participations will be automatically converted into interests in the ownership of the Lincoln Building, on or after April 1, 1959, in the event that the present first mortgage is refinanced as described below.

60 East 42nd St. Associates (Associates), a joint venture among Lawrence A. Wien, Harry B. Helmsley, Alvin S. Lane, Henry W. Klein, William F. Purcell, Alvin Silverman and Fred Linden (the Agents) has been formed to hold title upon such conversion. The ownership interest of each participant will be evidenced by a Participating Agreement with one of the Agents. Each Participating Agreement will include the purchasers of \$1,000,000 face amount of Participations. The Participating Agreements will be executed as of the time the Participations are originally delivered, but the Agreements will not become effective until title is transferred to Associates.

After execution of the Indenture, the Corporation will dissolve and convey its assets to Lincoln Building Associates (LBA), a partnership consisting of the Corporation's shareholders. LBA will then own the Lincoln Building, subject to all mortgages thereon.

**II.**

**TERMS OF THE OFFERING**

1. The offering is being made by the Corporation, through its officers and directors. No dealers will be employed.
2. Subscriptions will be taken only from persons of full age, not shown by the subscription to be acting in a representative capacity.
3. Each subscription shall be for the sum of \$10,000, or a multiple thereof.

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4. A deposit of not more than 25 per cent of the price may be required with any subscription. All deposits will be held by Wien, Lane, Klein & Purcell, 350 Fifth Avenue, New York City, in Special Account. Deposits will be repaid to subscribers, without interest, if the entire offering is not subscribed for by December 1, 1954.
5. Each subscription will be payable in full at the office of Wien, Lane, Klein & Purcell, upon demand, at any time after the entire issue has been subscribed for.
6. The date for final payment, fixed by the demand from Wien, Lane, Klein & Purcell, may not be later than December 1, 1954.

**III.**

**THE LINCOLN BUILDING**

**1. Description.** The Lincoln Building, one of New York City's largest skyscrapers, stands diagonally opposite Grand Central Station. Erected in 1930, it occupies more than an acre of ground, with a frontage of 181.6 feet on East 42nd Street, 179.9 feet on East 41st Street, and 73.9 feet on Madison Avenue. Entrances to the building are located on all three streets. In addition, there is an underground entrance from the building to the I.R.T. subway and to Grand Central Station. The building is of fire-proof brick construction, is 678 feet high, and presently contains 53 floors. The 53rd floor is in the process of being altered to create a 54th and a 55th floor. Upon completion of this alteration the building will have a volume of approximately 14,200,000 cubic feet, with a gross floor area of approximately 1,170,000 square feet and a net rentable area of approximately 836,000 square feet. It contains 27 Otis electric passenger elevators, and 3 Otis electric freight elevators. The building is in excellent condition, and not in need of any significant repairs or alterations. Ground floor tenants include branches of Chase National Bank of the City of New York, Industrial Bank of Commerce, The Horn & Hardart Company, Bond Stores Incorporated, and Western Union Telegraph Company. The tenants on other floors include insurance companies, industrial firms, accountants, attorneys, and a wide variety of executive organizations. The assessed valuation of the property is \$19,800,000, of which \$7,240,000 is for the land, and \$12,560,000 for the buildings.

**2. Rental Statistics as of June 1, 1954.\*** On this date, all store space was rented. The only vacant office space was as follows:

Suite No.	Approximate Net Sq. Ft.	Rental	Comment
620	1,800	\$ 9,900	Leased from July 1, 1954 at \$9,900. Former tenant paid \$4,560.
1357	550	3,300	Former tenant paid \$2,519, vacated on April 30, 1954.
4500	1,526	10,800	Former tenant paid \$9,000, vacated on April 30, 1954.

\* The prior owner operated the Lincoln Building from June 1, 1950 to March 31, 1954. Registrants are informed that during such period the premises were fully occupied (except for temporary but insignificant vacancies) until October 31, 1953, when the 53rd floor was vacated. As noted above, this floor has already been leased by the Corporation.

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Suite No.	Approximate Net Sq. Ft.	Rental	Comment
615	320	900	Storage area only.
1151	357	1,200	Storage area only.
53rd floor	8,000	40,000	Leased to Dwight-Helmsley, Inc. at \$40,000 for its own use, and as the office of the building. Lease to commence on completion of alterations.
54th floor	6,500	45,000	In process of erection.
55th floor	6,500	45,000	In process of erection.

On June 1, 1954, the annual rental for occupied space was \$3,434,093.74, as follows:

	Number	Area	Average Rate Per Sq. Ft.	Total Rent
Tenants under lease	313	742,693 Sq. Ft.	\$ 4.32	\$ 3,211,585.30
**Statutory tenants	105	67,900 Sq. Ft.	3.28	222,508.44
<b>Total tenants</b>	<b>418</b>	<b>810,593 Sq. Ft.</b>	<b>4.24</b>	<b>3,434,093.74</b>

In addition, the estimated annual overage percentage rental was \$25,968, the amount received for 1953. The annual rental value of the unoccupied space listed above was \$156,100. The gross rental value was \$3,616,161.74 a year.

Moreover, present leases provide for the following increases:

Space	Tenant	Annual Increase	Effective
7th floor	Indemnity Insurance Company of North America.	\$ 4,265	5/1/55
2810	Allentown Portland Cement Co.	100	5/1/55
3217	J. M. Loudon, Inc.	100	5/1/55
Store and			
Basement	The Horn & Hardart Company	3,000	3/1/56
646-8	Chatham Properties, Inc.	250	5/1/56
663-5	Francis K. Decker	826	5/1/57
		860 (add 1.)	5/1/58

On June 1, 1954 the following lease expiration schedule applied:

Year	Number of Leases Expiring	% of Total No. of Leases	Gross Rent	% of Gross Rental Value*
1955	105	33.55	\$ 881,929.31	24.39
1956	93	29.71	731,358.52	20.23
1957	56	17.89	330,938.00	9.15
1958	47	15.02	912,195.07	25.23
1959	5	1.59	72,230.40	2.00
1960	3	.96	101,800.00	2.82
1961	3	.96	39,500.00	1.09
1967	1	.32	141,634.00	3.92
	313		\$ 3,211,585.30	

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- \*\* Tenants who continue to occupy their premises after expiration of their leases, only by virtue of the provisions of the New York State Emergency Commercial and Business Space Rent Control Laws.
- \* The percentage figures do not total 100%. This results from the fact that the dollar amounts were not compared with the total rent from units under lease, but rather with the gross rental value of all units, including units subject to statutory tenancies, estimated annual average percentage rental and annual rental value of unoccupied space.



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**3. Present Mortgages.**

A. First Mortgage. The original amount of the first mortgage placed on the property on March 31, 1954, was \$16,000,000. It is owned in equal shares by The Prudential Insurance Company of America and Aetna Life Insurance Company. It matures April 1, 1969.

This mortgage bears interest at the rate of  $4\frac{1}{8}$  per cent per annum for the first three years,  $4\frac{5}{8}$  per cent per annum for the next three years, and  $4\frac{1}{2}$  per cent per annum thereafter. The principal indebtedness is amortized \$320,000 the first year, \$335,000 the second year, and \$345,000 the third year. After the third year constant monthly payments totaling \$980,000 a year will be applied first to the payment of interest, and the balance to principal. At maturity, the balance of the mortgage will be \$10,246,292.19.

The first mortgage provides that the principal shall become due, at the option of the mortgagee, if there are more than 25 separate interests in the ownership or leasehold of the property in existence at the same time, or if any such interests are not matters of official record. However, the mortgage can be prepaid on or after April 1, 1959. A prepayment penalty of  $2\frac{1}{2}$  per cent of the then unpaid principal balance is required during the year commencing April 1, 1959. Thereafter, the penalty declines  $\frac{1}{2}$  per cent a year. It is intended that on or after April 1, 1959, a new first mortgage will be obtained which will be free of the above-described restrictions.

B. Second Mortgage. This temporary mortgage in the sum of \$3,500,000 was placed on the property on March 31, 1954. It is held by 1903 Corporation of 285 Madison Avenue, New York City. It bears interest of 1 per cent monthly and matures on March 30, 1955. It may be prepaid on November 30, 1954, upon payment of a 2 per cent penalty.

C. Third Mortgage. This temporary mortgage in the sum of \$3,000,000 was placed on the property on March 31, 1954. It is held by Lawrence A. Wien. It bears interest at the rate of 10 per cent per annum, and matures on April 1, 1955. It may be prepaid at the end of any month, without penalty.

**4. Projected Operating Summary for One Year Commencing December 1, 1954.**

A certified statement of the operation of the building by the Corporation during April, 1954 appears at page 22 hereof. The following projection is an estimate only. Unless otherwise specified, the figures used are those of the prior owner for the fiscal year ended October 31, 1953.

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<b>Income</b>		
<sup>a</sup> Rent	\$ 3,512,566.00	
Electricity	176,326.00	
Miscellaneous	112,359.00	\$ 3,801,251.00*
<b>Expenses</b>		
Fuel and water	\$ 54,354.00	
Electricity	155,478.00	
<sup>b</sup> Insurance	33,800.00	
Miscellaneous supplies	81,515.00	
Maintenance	123,312.00	
<sup>c</sup> Payroll	620,165.00	
<sup>d</sup> Realty taxes	742,500.00	
<sup>e</sup> Management fees	45,762.00	
<sup>f</sup> Legal fees	48,000.00	1,904,886.00
<b>Anticipated Operating Profit</b>		<b>\$ 1,896,365.00</b>
Less: First Mortgage Interest and Amortization		974,910.00
<b>Net Operating Profit Available for \$840,000 Interest on Second Mortgage</b>		<b>921,455.00</b>

The new 54th and 55th floors are expected to be ready for occupancy about November 15, 1954. They will be offered for lease on or about August 1, 1954. If they are rented at the proposed rate, they will produce additional net income of approximately \$89,000 per annum.

- <sup>a</sup> This includes the June 1, 1954 rental for occupied space, the estimated overage percentage rental of \$25,968, an adjustment for the increases of May 1, 1955 in existing leases, and occupancy of the vacant space already leased under leases effective before December 1, 1954. No other rent increases are included.
- \* The Registrants do not have access to complete or certified operating figures of the prior owner. Such figures as are available show that the prior owner had a gross income from the building of \$3,470,925 for the fiscal year ended October 31, 1951, \$3,632,790 for the fiscal year ended October 31, 1952, and \$3,682,575 for the fiscal year ended October 31, 1953.
- <sup>b</sup> This is the annual cost of insurance presently in effect.
- <sup>c</sup> This is the current weekly payroll of \$11,484.54, multiplied by 54, to allow for average vacations of two weeks, and includes the Corporation's contributions for social security, unemployment insurance, etc.
- <sup>d</sup> This is computed on the current assessment of \$19,800,000 with an estimated tax rate of \$3.75, as compared with the current tax rate of \$3.70.
- <sup>e</sup> This is computed at full New York Real Estate Board rates.
- <sup>f</sup> This is fixed by agreement.

**Table of Contents****IV.****USE OF PROCEEDS**

The proceeds of the offering will be used as follows:

1. To pay the existing second mortgage	\$ 3,500,000.00
2. To pay the existing third mortgage	3,000,000.00
3. To pay the prepayment penalty on the existing second mortgage.	70,000.00
4. To pay expenses relating to the new mortgage and to the issuance and distribution of the Participations	250,000.00
5. To the corporation, as a partial return of its investment	180,000.00
 Total	 \$ 7,000,000.00

**V.****THE NEW CONVERTIBLE SECOND MORTGAGE****AND PARTICIPATIONS THEREIN**

**1. General Description.** The new \$7,000,000 ten year convertible second mortgage will be evidenced by a written Indenture given to Trade Bank and Trust Company, as Trustee for participants. The mortgage will be subordinate only to the first mortgage, which on December 1, 1954, will have been reduced to \$15,786,666.64.

The Indenture will provide for the issuance of Participations totalling \$7,000,000, in multiples of \$10,000, representing interests in the mortgage and in the obligation secured thereby. Participations will entitle holders to interest at the rate of 12 per cent a year, payable monthly commencing January 1, 1955. The Participations will mature and become payable in full on December 1, 1964, unless converted into interests in the ownership of the property prior to that date. No payments on account of principal will be required before maturity. If the first mortgage is not refinanced as described herein, the principal balance thereof on December 1, 1964 will be \$12,285,810.73. The funds to repay the second mortgage of \$7,000,000 on its due date can only be derived through refinancing, or the sale of the property, or voluntary contributions by the members of LBA. The availability of such funds will depend upon the value of the property at that time.

**2. Participation Certificates.** Each purchaser will receive a Participation certificate evidencing his proportionate interest. The Participations will be dated December 1, 1954, and will be in registered form, signed by the Corporation and authenticated by the Trustee. They will incorporate by reference all provisions of the Indenture and will acknowledge that the Indenture sets forth all the rights and obligations of the holders. A Participation will be transferable by the holder only on the registry books, to an individual of full age, not shown in the instrument of transfer to be acting in a representative capacity. Upon the death of a holder of a Participation, any individual of full age designated in such decedent's will or by his executor or administrator (but not shown by such designation to be acting in a representative capacity) may succeed to the Participation. If no such individual qualifies, the surviving holders of Participations may purchase the Participation of the decedent proportionately at the original cost, less any capital repaid thereon.

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**3. Events of Default Under the Mortgage Indenture.** The Indenture will provide that the only remedy of the Trustee or of the participants in case of default will be foreclosure, except that if the owners fail to perform certain acts referred to under (c) below in connection with the refinancing of the fi