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

STEVEN L. KEENHOLTZ, M.D., individually and on behalf of all others similarly situated, Plaintiff, v. PETER L. MALKIN, ANTHONY E. MALKIN, and MALKIN HOLDINGS LLC, Defendants.	Index No. _____ **SUMMONS** Plaintiff designates the County of New York as the place of trial Basis of venue is defendants' place of business.

TO THE ABOVE NAMED DEFENDANTS:

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

Dated: January 14, 2014

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STEVEN L. KEENHOLTZ, M.D., individually and on behalf of all others similarly situated, Plaintiff, v. PETER L. MALKIN, ANTHONY E. MALKIN, and MALKIN HOLDINGS LLC, Defendants.	Index No. _____ **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

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

SUMMARY OF THE ACTION

1. Plaintiff Steven Keenholtz, M.D., brings this action on behalf of himself and all other public investors (the "Participants") in Empire State Building Associates, L.L.C. ("Empire") against Peter L. Malkin, Anthony E. Malkin, and Malkin Holdings L.L.C. (collectively, the "Malkins") for breaches of fiduciary duty in connection with the Participants' interests in the Empire State Building (the "Building").

2. The Empire State Building is an American icon. A 102-story skyscraper, it was the tallest building in the world from its completion in 1931 until it was surpassed by the World Trade Center in 1970. It is currently the tallest building in New York City. As the Chicago Tribune wrote in an October 2, 2013 story, the Empire State Building is "arguably the most famous building in the world."

3. As of November 2011, Empire owned fee title and the master lease to the Empire State Building. The Malkins controlled Empire as its members and acted for

Empire in a nominal and fiduciary capacity on behalf of Participants. The Malkins also held a 23.75% stake in a separate entity called Empire State Building Company L.L.C. (the "Operating Company"), which both leased the Empire State Building from Empire and managed the Building's day-to-day operations. The majority of shares in the Operating Company (approximately 63.75%) were held by the estate of Leona Helmsley (the "Estate"). Pursuant to the terms of Ms. Helmsley's will, the Estate was required to liquidate its holdings in the Operating Company. And in 2011, the Estate announced that it was ready to sell.

4. If the Estate had sold its interest in the Operating Company to an outside buyer, the Malkins would have lost effective control over one of the world's most famous (and lucrative) properties. Instead, the Malkins set out to maintain control over the Empire State Building and transfer significant value from the Building's unrivaled brand to other, unrelated, Malkin-controlled properties.

5. To wit, the Malkins proposed a transaction to consolidate Empire, the Operating Company, and 17 other Malkin-controlled properties (the "Other Malkin Properties") into a real estate investment trust ("REIT") called Empire State Realty Trust, which would then issue shares through an initial public offering. This was the "Malkin Plan."

6. By leveraging the prestige of the Empire State Building, this transaction would allow the Malkins to liquidate the Other Malkin Properties in a single stroke. The Malkin Plan would also trigger payments to the Malkins of management fees and "override interests"—percentage-of-proceeds payments due upon sale or disposition—for both the Empire State Building and certain of the Other Malkin Properties. If the Other

Malkin Properties were not included in the IPO, the Malkins would have to sell those properties in order to receive override payments.

7. Several lawsuits were filed, challenging the Malkin Plan's valuation method and certain other aspects of the proposal, including one such lawsuit by Plaintiff Dr. Keenholtz. In June 2012, those actions were consolidated before this Court as *In re Empire State Realty Trust, Inc. Investor Litigation*, Index No. 650607/2012. In September 2012, the parties agreed to a settlement of the claims raised in the consolidated action for no less than $55 million in cash and other remedial measures.

8. But even after a settlement was reached, the Malkin Plan still required the consent of Participants representing 80% of Empire units. To obtain this consent, the Malkins improperly threatened the Participants that, if the Malkin Plan was rejected, they would take actions to reduce or eliminate the Empire State Building's operating income, a large portion of which was due to Empire under the terms of its lease agreement with the Operating Company.[1]

9. In June 2013, a new threat to the Malkin Plan emerged: intense interest from multiple outsider buyers who made all-cash offers to purchase the Empire State Building. Most notably, Thor Equities twice offered to buy Empire alone (in one instance, to purchase fee title and the master lease from Empire) for more than the value at which Empire had been appraised by the Malkins' investment bank, Duff & Phelps Corporation. The value that Empire owners were projected to receive from the IPO was, in turn, even less than the value at which Empire had been appraised. Moreover, the Thor

[1] Empire was entitled to "overage rent," defined as 50% of annual operating income over $1 million.

Equities offer would not have required the Participants to pay the significant transaction costs associated with an IPO.

10. Without the Empire State Building as the crown jewel, the Malkin Plan had no hope of success. A REIT consisting of only the Other Malkin Properties would not have been nearly as marketable and there would have been insufficient investor appetite for an IPO. The Malkins would, thus, have been unable to liquidate the Other Malkin Properties. They would have lost out on tens of millions of dollars in the additional "override" interests that they stood to realize from those properties if the IPO was completed. And they would have lost their flagship property.

11. In breach of their fiduciary duties, the Malkins acted to enrich themselves at the expense of the Participants. The Malkins flatly refused to engage with any of the potential buyers or to solicit other bids. They rejected all bids—including the Thor Equities bid that would have guaranteed Empire participants $100 million more than the appraisal value (which was, in turn, greater than the projected IPO value). Demonstrating that the Malkins were determined to complete the IPO at all costs, they also rejected another greater-than-appraisal-value bid for One Grand Central Place, one of the Other Malkin Properties.[2]

12. As one potential buyer, Philip Pilevsky, told Bloomberg on September 18, 2013: the Malkins "***seem to want to do their IPO, and they don't care what the bid is***."

13. Indeed, the Malkins actively sought to squelch new offers. Just one day after Pilevsky's interview, the Malkins filed a Form 8-K with the SEC, attaching a letter

[2] Plaintiff was not an investor in the entity that owned One Grand Central Place and does not raise a claim for breach of fiduciary duty based on the Malkins' refusal of that offer. Rather, the Malkins' conduct with respect to the One Grand Central Place offer is evidence of their improper all-or-nothing strategy.

sent to Participants stating that the Malkins would "***not entertain any additional alternative.***" On the same day, they announced that the IPO would price REIT shares between $13 and $15 – meaning an implied value for the Empire State Building as low as $1.89 billion (over $200 million *less* than the $2.1 billion bid that the Pilevsky group was offering to raise even further). Ultimately, the IPO did launch at the $13 price.

14. This suit seeks to recover hundreds of millions in damages that the Malkins inflicted on Participants through their breaches of fiduciary duty in improperly coercing Participants' consents and in rejecting all-cash offers for the Empire State Building made between June 2013 and October 2013.

PARTIES AND INTERESTED ENTITIES

15. Until the consummation of the IPO, Plaintiff Dr. Steven Keenholtz was a holder of a Participation unit of Empire State Building Associates, L.L.C.. His interest was converted into operating partnership units in Empire State Realty OP, L.P. on or about October 7, 2013, upon completion of the consolidation and IPO.

16. Defendant Malkin Holdings L.L.C. is a limited liability company organized under New York law, which acted as a supervisor for Empire and as a member of Empire through its General Counsel Thomas N. Keltner, Jr. Malkin Holdings L.L.C. owed fiduciary duties to Empire investors.

17. Defendant Anthony E. Malkin is a principal of Malkin Holdings L.L.C., was a member of Empire, and owed fiduciary duties to Empire investors. Defendant Anthony Malkin controls Malkin Holdings.

18. Defendant Peter L. Malkin is a principal of Malkin Holdings L.L.C., was a member of Empire, and owed fiduciary duties to Empire investors. Defendant Peter Malkin controls Malkin Holdings.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this action pursuant to Section 7 of Article VI of the New York State Constitution.

20. This Court has personal jurisdiction over the Defendants pursuant to C.P.L.R. §§ 301 and 302.

21. Venue is proper in this District pursuant to C.P.L.R. § 503 because one or more of the parties resides in this county. Defendants reside or have their principal place of business in this county and many of the alleged acts and transactions occurred in substantial part within New York County, New York.

22. Plaintiff brings this action as a class action pursuant to New York Civil Practice Law and Rules 901 on behalf of all the investors in Empire State Building Associates, L.L.C. except Defendants and any person, corporation, firm, trust, or other entity related to or affiliated with any of the Defendants, who will or may be liable for injury arising from Defendants' actions as described more fully herein (the "Class").

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

24. A class action is superior to other available methods of fair and efficient adjudication of this controversy.

25. The Class is so numerous that joinder of all members is impracticable. The class consists of over 2,500 individual investors in Empire who are located throughout the United States.

26. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, but not limited to:

a. whether the Defendants fulfilled their fiduciary duties to the Plaintiff and the Class;

b. whether Defendants breached their fiduciary duties to members of the Class;

c. whether Defendants had a duty to maximize the value of Empire;

d. whether Defendants in fact maximized the value of Empire;

e. whether Defendants were obligated to attempt to obtain the best price for Empire;

f. whether Defendants in fact attempted to obtain the best price for Empire;

g. whether Defendants unjustly enriched themselves at the expense of Plaintiff and the Class; and

h. the proper amount of damages suffered by the Class.

27. Plaintiff's claims and defenses are typical of the claims and defenses of other class members and Plaintiff has no interests that are antagonistic or adverse to the interest of other class members. Plaintiff will fairly and adequately protect the interest of the Class.

28. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

29. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

30. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members or substantially impair or impede their ability to protect their interests.

SUBSTANTIVE ALLEGATIONS

EMPIRE AND THE OPERATING COMPANY ARE FORMED

31. Empire was originally organized on July 11, 1961 for the purpose of acquiring the 114-year Master Lease of the Empire State Building. Empire was organized as a general partnership consisting of Lawrence Wien (Peter Malkin's father and Anthony Malkin's grandfather), Henry Klein and Peter Malkin, each with a one-third interest. On December 27, 1961, Empire acquired the Master Lease, the Building and the ground lease to the land underneath it, for a total cost of $68 million.

32. There were three different sources of financing for the acquisition:

i. the syndicate raised $29 million through a sale-and-leaseback deal for the Building with The Prudential Insurance Company of America which owned the land at the time and was the lessor on the ground lease;

ii. the three partners raised roughly $26 million by selling participation units in their interests in Empire to the public for $10,000 per full unit (the "Participations");[3]

iii. Empire secured a leasehold mortgage for the remainder.

33. After organizing Empire, Wien then established the Operating Company, as a partnership between himself and Harry B. Helmsley. The Operating Company was to sublease from Empire and manage the Building in exchange for a net rent (approximately $5.59 million by 2013) as well as an "overage rent" of 50% of annual operating profits over $1 million.

34. Due to liability concerns in the wake of the September 11 attacks, Empire converted from a general partnership to a limited liability company under New York law and became known as Empire State Building Associates L.L.C., on October 1, 2001. The conversion did not change any aspect of the assets and operations of Empire other than to allegedly protect its investors from future liability to a third party.

35. 41. On April 17, 2002, through a wholly owned limited liability company (Empire State Land Associates L.L.C.), Empire acquired the fee title to the Empire State Building, and the land thereunder for $57.5 million, and a $60.5 million mortgage. Empire continued to use the Operating Company to operate the Building.

36. At all relevant periods, Empire's members were Peter Malkin, Anthony Malkin and Thomas N. Keltner, Jr., agent of and General Counsel to Malkin Holdings L.L.C., all of whom were acting in a nominal and fiduciary capacity on behalf of the

[3] Fractional units were also offered at proportionate purchase prices. Dr. Keenholtz owned a full unit that originated from this initial offering.

Participants. In exercising control over Empire, the Malkins were subject to fiduciary duties owed to the Participants.

THE IMPENDING HELMSLEY LIQUIDATION THREATENS THE MALKINS' CONTROL OVER THE EMPIRE STATE BUILDING

37. When Harry Helmlsey died in 1996, his 63.75% interest in the Operating Company passed to his widow, Leona Helmsley. A nine-year struggle for control ensued, with the Malkins emerging victorious in August 2006.

38. When Leona Helmsley died in 2007, her interest passed to her estate. The Malkins were the next largest owner (holding 23.75%) and thus, remained able to effectively control the Operating Company and, through the Operating Company, the Building itself.

39. Upon assuming control of the Operating Company, the Malkins moved swiftly to remake the Empire State Building in their image. As described by an October 5, 2008 story in The New York Times, the Malkins presided over a "sweeping $550 million makeover [to] modernize the building's aging infrastructure ... and convert its rabbit-warren floors into gleaming new spaces" in a "dramatic departure from the old Empire State aesthetic."

40. The Malkins basked in the reflected glory of the Empire State Building. In a glowing article published by Real Estate New York in its May/June 2009 issue, Mr. Malkin boasted that "the Empire State Building has become the flagship of our brand in New York." Former President Bill Clinton joined Anthony Malkin for a news conference at the Empire State Building announcing a green retro-fit. A couple of years later, Mr. Malkin was invited to speak at Harvard University where he spoke about the "restored

grandeur" of the Building and proclaimed that the Malkin-led makeover had transformed the Building into a "21st century trophy."

41. In 2011, however, the Malkins faced the prospect of losing control of their flagship. The Helmsley Estate made it known that – as required by Ms. Helmsley's will – it was actively seeking to liquidate its majority stake in the Operating Company.

42. If the Malkins wanted to maintain effective control over their trophy property – which they did – they had to prevent the Helmsley Estate from selling a controlling interest in the Operating Company to another buyer (or buyers). The Malkins announced a plan that would prevent this from happening.

THE MALKINS ANNOUNCE THEIR PLAN

43. On November 29, 2011, Empire filed a Form 8-K with the Securities and Exchange Commission ("SEC") stating that:

> Malkin Holdings LLC, the supervisor of [Empire] has embarked on a course of action that could result in [Empire] becoming part of a newly formed public REIT.

44. In February 2012, the Malkins announced the details of the Malkin Plan. They proposed to consolidate Empire, the Operating Company, and the Other Malkin Properties into a single REIT (Empire Realty Trust), which they would then take public through an initial public offering ("IPO") of shares. Participants' shares in the REIT would be converted into common stock.

45. Under the Malkin Plan, the Malkins stood to realize unique personal benefits, unavailable to Participants. They would realize the following benefits *only* if the Empire State Building was rolled up into a REIT with the Other Malkin Properties and was not sold on its own to another buyer.

46. *First*, an IPO would allow the Malkins to liquidate their interests in the Other Malkin Properties in a single stroke without need for laborious one-by-one negotiations.

47. *Second*, an IPO of the Other Malkin Properties would trigger over $100 million in override payments to the Malkins for the Other Malkin Properties.[4] Specifically, as set forth in the January 21, 2013 Consent Solicitation, the Malkins stood to receive override payments in the IPO for:

a. 60 East 42nd St Associates (override interest of 9.97% of exchange value);

b. 250 West 57th Associates (override interest of 7.49% of exchange value);

c. Lincoln Building Associates L.L.C. (override interest of 10% of exchange value); and

d. Fisk Building Associates L.L.C. (override interest of 21.07% of exchange value).

48. *Finally*, the IPO would allow the Malkins to maintain control of the "flagship of [their] brand" and enjoy the immense reputational benefits associated with controlling the Empire State Building.

49. The Malkin Plan would require the Malkins to obtain consent from Participants representing 80% of Empire units, pursuant to the original Participation agreement, which provided that:

> If the consents of Participants owning at least eighty per cent (80%) of The Property have been obtained ... the Agent ... shall have the right to purchase the interest in The Property of any Participant who has not duly given such consent [*i.e.*, consent for conversion to a REIT].

[4] The Malkins also stood to receive override payments for the Empire State Building, but they would receive these in the event of an IPO or a sale to a private party.

50. Soon after the Malkin Plan was announced, several lawsuits were filed, challenging its valuation method and certain other aspects of the proposal. In June 2012, those actions were consolidated before this Court as *In re Empire State Realty Trust, Inc. Investor Litigation*, Index No. 650607/2012. In September 2012, the parties agreed to a settlement of the claims raised in the consolidated action.[5]

51. The settlement consisted of a $55 million settlement fund, certain additional disclosures, and an amendment to the transaction structure to permit Participants to elect to receive partnership units of Empire State Realty OP, L.P., instead of common stock, for tax-deferral purposes.

52. The actions described below that form the basis of Defendants' liability in this litigation – including their subsequent refusals of all-cash buyout offers between June 2013 and October 2013 – each occurred after the parties agreed to settle the previous litigation.

THE MALKIN-SELECTED INVESTMENT BANK'S VALUATION APPRAISES EMPIRE AT $1.3 BILLION AND THE EMPIRE STATE BUILDING AT $2.5 BILLION

53. On January 21, 2013, the Malkins sent Empire investors the Prospectus/Consent Solicitation Statement. Included in this document was a valuation prepared by Duff & Phelps, an investment bank hired by the Malkins. The Duff & Phelps valuation appraised the Empire State Building as a whole (*i.e.*, the value of Empire plus the value of the Operating Company) at $2.5 billion, the value of Empire alone at $1.3 billion, and the value of the entire consolidated REIT at $5.2 billion.

[5] This Court approved the settlement on May 17, 2013.

54. As the Malkins' Consent Solicitation Statement acknowledged, there was a risk that the "enterprise value as determined by the IPO price [could] be significantly lower than the [appraised] value."

55. The likely IPO value of Empire State Realty Trust suffered a serious blow in May 2013, when Federal Reserve Chairman Ben Bernanke signaled that the Federal Reserve could begin pulling back on its purchases of Treasury securities. After this announcement, the yield on Treasury notes increased by almost one percentage point and interest rates sharply increased.

56. This shift in the market was likely to reduce the value of publicly traded REITs in two ways. First, the cost of borrowing for capital improvements would increase. Second, REITs' dividend payments would become less appealing relative to other high-yield investments. As described below, the market for publicly traded REITS did, in fact, decline significantly.

OUTSIDE BUYERS THREATEN TO DERAIL THE MALKIN PLAN

57. On May 28, 2013, after a bitter campaign – and aided in significant measure by their improper threat to manage the Building so as to reduce or eliminate overage rent – the Malkins finally obtained consent from enough Participants to cross the 80% threshold.

58. Before they could complete the consolidation and IPO, however, the Malkins received a flurry of unsolicited, all-cash offers to buy the Empire State Building.

59. On June 18, 2013, Cammeby's International, a company run by Rubin Schron, made an unsolicited $2 billion offer. In a letter, Mr. Schron's attorney, Stephen Meister, told the Malkins that "Mr. Schron is ready to go to contract immediately with a

$50 million non-refundable deposit; closing in ninety days, all cash," and added that "in lieu of receiving cash, the offer includes an option for [Empire] participants to remain invested by receiving a membership interest in the purchasing entity."

60. Accepting a cash offer would have given Empire investors certainty as opposed to the significant risk of an IPO. The option to receive a membership interest would have allowed members to remain invested in the Empire State Building alone without diluting their interest through consolidation with the less desirable Other Malkin Properties.

61. Less than one week later, as reported by Crain's New York Business on June 27, 2013, a "bidding war emerge[d]." Specifically, the Malkins received a topping bid for the Empire State Building from an unnamed Middle Eastern buyer working with Philip Pilevsky of Philips International. The unnamed buyer offered $2.1 billion in cash. In a June 26, 2013 story, the New York Post quoted a source who stated that "[t]o this guy, it's like buying a painting ... It will be very hard to stop them. They will keep ratcheting up [the offer] until they get it."

62. Days later, a third unsolicited bidder entered the picture. On June 27, 2013 Reuters reported that Thor Equities "offered more than $2.1 billion in cash to buy the Empire State Building."

63. Less than a week after that, a fourth unsolicited buyer joined the fray. As reported by The Observer on July 3, 2013, a group led by Reuven Kahane, a California-based investor, topped the three prior bids and offered $2.25 billion for the Empire State Building.

64. On July 12, 2013, the Real Deal reported that Brazil-based investor Moni Shababo had made a $2.3 billion bid for the Empire State Building. Shababo told The Real Deal that his offer was completely ignored and they he never received a response.

65. The Malkins steadfastly ignored the spiraling bidding war and refused to engage in any substantive discussions with any of the Empire State Building bidders. On June 24, 2013, the Malkins had sent a short note to Participants stating that they were reviewing the offers and terms of the first two bids and that they "consider[ed] all matters, including unsolicited offers, consistent with our fiduciary duties, to form a judgment on what action is appropriate." Other than this brief communication, the Malkins remained essentially silent.

66. On July 25, 2013, the Observer reported that the Malkins had received an unsolicited, all-cash bid from Andrew Penson to buy One Grand Central Place, one of the Other Malkin Properties, for $710 million. The Duff & Phelps valuation had appraised One Grand Central Place at only $704 million. As Real Estate Weekly explained in a July 30, 2013 story: "Penson's offer on One Grand Central Place exceed[ed] both the appraised and exchange value of that building ... putting greater pressure on the Malkins to fulfill their fiduciary duty to the ownership of 1GCP and sell the building outside of the proposed REIT." The Malkins refused this offer.

67. The bidding on the Empire State Building continued unabated into August. On August 9, 2013 Thor Equities made two new all-cash bids. One of the bids was for the Operating Company. The other bid was for Empire alone. According to the New York Post, Thor Equities' bid for Empire was higher than the appraisal value given to Empire by the Duff & Phelps valuation (*i.e.*, higher than $1.3 billion).

68. That same day, a story in Greenwich Time quoted Jason Meister, Stephen Meister's son and the broker who had submitted both Schron's $2 billion bid and Thor's $2.1 billion bid. Mr. Meister stated that he had "received feelers from potential overseas buyers" who were "waiting on the sidelines until they hear[d] a substantive response for the Malkins."

69. Still, the Malkins refused to engage with any of the current bidders or encourage other bids for the sale of Empire or the Empire State Building.

70. On August 30, 2013, the SEC wrote to the Malkins that it had "note[d] the recent public information in regards to offers to purchase the Empire State Building ... Please advise us whether you plan to consider such offers ..."

71. On September 8, 2013, the Malkins filed a Form 8-K attaching a letter sent to Participants on September 6, 2013. In the letter the Malkins stated:

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

72. Although the Malkins' letter referenced the engagement of Lazard, they did not provide Participants with details regarding Lazard's analysis, if any.

73. On September 9, 2013, Thor Equities, through Stephen Meister, submitted another offer. This time Thor Equities offered to "purchase fee title to the Empire State Building (and the Master Lease) from [Empire] for $1.4 billion." As Thor's offer noted,

this was "materially greater than [Empire's] allocated portion of the Empire State Building appraised value." Indeed, this offer guaranteed Participants approximately $100 million more – ***in cash*** – than the $1.3 billion valuation for Empire in the Duff & Phelps analysis from January 2013.

74. As the Malkins were rejecting escalating offers for Empire and the Empire State Building in July through September of 2013, the market for publicly traded REITS was tumbling. According to an October 8, 2013 story in the Wall Street Journal: "The Dow Jones Equity All REIT Total Return index, which tracks 147 publicly traded REITs, delivered a total return of minus 2.7% in the July-September period, its worst performance since the third quarter of 2011." According to a September 17, 2013 story in the New York Times, a Bloomberg index consisting specifically of office REITS had declined 10.5% since late May.

75. These broader trends made it likely that in an IPO, Participants would fail to realize even the $1.3 billion exchange value for Empire that was projected by the Duff & Phelps valuation, let alone the $1.4 billion guaranteed by the Thor offer.

76. Yet on September 19, 2013, the Malkins filed a Form 8-K with the SEC stating that, the Malkins, acting in their role as Empire's "supervisor, as fiduciary, [had] completed [their] review with [their] independent financial advisor Lazard Freres & Co. LLC of indications of interest to purchase the fee, master lease and/or operating lease positions of the Empire State Building. The [Malkins] concluded that it is in the best interest of the participants to proceed with the consolidation and IPO as approved by 100% of the participants." The Malkins specifically stated that they would "not entertain any additional offers." Again, the Malkins did not disclose Lazard's analysis, if any.

77. On the same day that they expressly refused to consider other offers, the Malkins filed a preliminary prospectus stating that they expected the "initial public offering price to be between $13.00 and $15.00 per share." At $13 per share, the implied value of the Empire State Building (*i.e.*, the combined value of Empire and the Operating Company) would be approximately $1.89 billion – approximately $600 million less than the $2.5 billon appraisal value, and as much as $400 million less than the all-cash bids described above. At $13 per share, the implied value of Empire alone was approximately $816 million – more than $575 million *less* than the $1.4 billion offer from Thor Equities. Even at the high point of $15 per share, the implied value of Empire would still be less than $1 billion.

78. On October 1, 2013, the Malkin Plan was successfully implemented. The consolidation went through and Empire State Realty Trust went public at $13 per share under the New York Stock Exchange ticker symbol "ESRT."

79. Dr. Keenholtz's experience demonstrates the damages suffered by Participants as a result of the Malkins' breaches of fiduciary duty leading to their unjust enrichment. When the IPO launched, Mr. Keenholtz – who held one unit of Empire and elected the tax-deferred option – received 17,206 units of Empire State Realty OP, LP. Those units were worth approximately $224,000. Even if those units increased to $15 per share (the projected high end of the range), Mr. Keenholtz's holdings would be worth only approximately $259,000. But if Empire had been sold for its appraisal value (or greater), Dr. Keenholtz would have received over $323,000.

CAUSES OF ACTION

COUNT I
(Breach of Fiduciary Duty Against the Malkins)

80. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

81. The Malkins owed Plaintiff and the Class the utmost fiduciary duties of loyalty and due care.

82. By reason of the foregoing, the Malkins breached their fiduciary duties. In particular, the Malkins acted in a self-interested manner and used their control as supervisors to benefit themselves at the expense of the Plaintiff and the other members of the Class by obtaining consents to the Malkin Plan through threats to reduce the Building's income and by failing to obtain a fair price for Participants' interests in Empire.

83. As a result of the conduct of the Malkins, Plaintiff and the Class have been damaged as they did not receive fair value for their interests in Empire.

COUNT II
(Unjust Enrichment Against the Malkins)

84. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

85. Through the wrongful course of conduct and actions complained of herein, the Malkins were unjustly enriched at the expense of, and to the detriment of the Participants, by way of their control over negotiations for the purchase of Empire and the Empire State Building, which the Malkins exercised in a manner that breached their fiduciary duties to the Participants.

86. The Malkins realized this benefit from Plaintiff and other Class members and accepted and retained the non-gratuitous benefits taken from Plaintiff and other Class members. It would be inequitable and unjust for the Malkins to retain these wrongfully obtained profits.

87. Plaintiff and other Class members are therefore entitled to restitution in an amount to be determined at trial.

RELIEF REQUESTED

88. **WHEREFORE**, Plaintiff demands judgment in its favor and in favor of the Class and against the Defendants as follows:

a. Certifying this case as a class action, certifying the proposed class and designating Plaintiff and the undersigned as representatives of the Class;

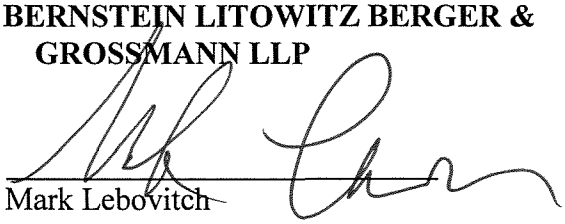
b. Awarding Plaintiff and the Class appropriate compensatory damages, together with pre- and post-judgment interest;

c. Awarding Plaintiff the costs, expenses and disbursements of this action, any attorneys' and experts' fees appropriate and, if applicable, pre-judgment and post-judgment interest; and

d. Awarding Plaintiff and the Class such other relief as this Court deems just equitable and proper.

Dated: January 14, 2014

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP



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Counsel for the Plaintiff

VERIFICATION

I, Dr. Steven Keenholtz, have read the foregoing Verified Class Action Complaint. The facts set forth in the foregoing Verified Class Action Complaint that relate to my own acts and deeds of are true as to my own knowledge. With respect to the facts set forth in the foregoing Verified Class Action Complaint that relate to the acts and deeds of others, as to those matters, I believe them to be true.

Dated: January 13, 2014

Dr. Steven Keenholtz