

Empire State Realty Trust, Inc.  
Form S-4/A  
December 17, 2012  
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As filed with the Securities and Exchange Commission on December 17, 2012

Registration No. 333-179486

Registration No. 333-179486-01

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Pre-Effective Amendment No. 5 to**  
**Form S-4**  
**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**EMPIRE STATE REALTY TRUST, INC.**  
**EMPIRE STATE REALTY OP, L.P.**

(Exact name of registrants as specified in charter)

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<b>Maryland</b>	<b>6798</b>	<b>37-1645259</b>
<b>Delaware</b>	<b>6500</b>	<b>45-4685158</b>
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)
	<b>One Grand Central Place</b>	
	<b>60 East 42nd Street</b>	
	<b>New York, New York 10165</b>	
	<b>(212) 953-0888</b>	

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrants Principal Executive Offices)

**Anthony E. Malkin**

**Chairman, Chief Executive Officer and President**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

*With copies to:*

<b>Arnold S. Jacobs, Esq.</b>	<b>Larry P. Medvinsky, Esq.</b>
<b>Steven A. Fishman, Esq.</b>	<b>Jason D. Myers, Esq.</b>
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<b>Eleven Times Square</b>	<b>31 West 52nd Street</b>
<b>New York, New York 10036</b>	<b>New York, New York 10019</b>
<b>(212) 969-3000</b>	<b>(212) 878-8000</b>

**Approximate date of commencement of the proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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If this Form is post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

**The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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Empire State Building	250 West 57th St.
Associates L.L.C.	60 East 42nd St. Associates L.L.C.
	Associates L.L.C.
	One Grand Central Place
	60 East 42nd Street
	New York, New York 10165

**NOTICE OF CONSENT SOLICITATION TO PARTICIPANTS**

**, 2012**

Malkin Holdings LLC, the supervisor of each limited liability company listed above, requests that you consent to the following:

*Proposed consolidation of your subject LLC into Empire State Realty Trust, Inc.* As described in the attached Prospectus/Consent Solicitation Statement, Malkin Holdings LLC, as supervisor, proposes a consolidation of certain office and retail properties in Manhattan and the greater New York metropolitan area owned by Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C., or the subject LLCs, and certain private entities supervised by the supervisor, and certain related management businesses into Empire State Realty Trust, Inc., or the company. The consolidation is conditioned, among other things, upon the closing of the initial public offering, or the IPO, of the company's Class A common stock. The company will issue to each of the participants in the subject LLCs a specified number of operating partnership units, or at each participant's election, Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The company expects the Class A common stock and the operating partnership units offered herein to be listed on the New York Stock Exchange. After the series of transactions in which the subject LLCs will be consolidated into the company, the company will own, through direct and indirect subsidiaries, the assets of the subject LLCs and the assets of the private entities, along with certain related management businesses. There are 22 private entities involved in the consolidation, including the operating lessees of each of the subject LLCs, from which all required consents to the consolidation have previously been obtained. Attached to the supplement for each subject LLC as Appendix B is the contribution agreement for each subject LLC, which describes the terms of the consolidation in detail. Only the participants holding participation interests in a subject LLC during the consent solicitation period are entitled to notice of, and to vote **FOR** or **AGAINST**, the proposed consolidation. For the reasons the supervisor believes this proposal is fair and reasonable, see Background of and Reasons for the Consolidation.

*Proposal to authorize the supervisor to sell or contribute the property interests in a third-party portfolio transaction.* As a potential alternative to the consolidation, the supervisor requests that the participants consent to the sale or contribution of the subject LLCs' property interests as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. The third-party portfolio transaction would be undertaken only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. The proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquiror after the closing or receive any compensation from the acquiror (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction). For the reasons the supervisor believes this proposal is fair and reasonable, see Third-Party Portfolio Proposal.

*Voluntary pro rata reimbursement program for expenses of legal proceedings with former property manager and leasing agent.* In addition, the participants are being asked to consent to a voluntary pro rata

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reimbursement to the supervisor 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 of the properties owned by the subject LLCs. For the reasons the supervisor believes this proposal is reasonable, see Voluntary Pro Rata Reimbursement Program for Expenses of Legal Proceedings with Former Property Manager and Leasing Agent.

The supervisor invites you to vote using the enclosed consent form because it is important that your participation interest in your subject LLC be represented. Please sign, date and return the enclosed consent form in the accompanying postage-paid envelope or by facsimile, as described in the Prospectus/Consent Solicitation Statement. You also may revoke your consent to the consolidation, the third-party portfolio proposal, or both, at any time in writing before the later of the date that consents from participants equal to the percentage required to approve the consolidation and the third-party portfolio proposal, as applicable, as set forth later in the attached Prospectus/Consent Solicitation Statement are received by your subject LLC and the 60<sup>th</sup> day after the date of the attached Prospectus/Consent Solicitation Statement.

Malkin Holdings LLC

By: Peter L. Malkin  
Chairman

Anthony E. Malkin  
President

The attached Prospectus/Consent Solicitation Statement is dated

, 2012 and is being mailed to participants on or about , 2012.

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**The information in this Prospectus/Consent Solicitation Statement is not complete and may be changed. A registration statement relating to the securities has been filed with the Securities and Exchange Commission. Empire State Realty Trust, Inc. may not sell the securities offered by this Prospectus/Consent Solicitation Statement until the registration statement filed with the Securities and Exchange Commission becomes effective. This Prospectus/Consent Solicitation Statement is not an offer to sell these securities and Empire State Realty Trust, Inc. is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED DECEMBER 17, 2012**

**PROSPECTUS/CONSENT SOLICITATION STATEMENT**

**shares of Class A common stock, par value \$.01 per share,**

**shares of Class B common stock, par value \$.01 per share**

**Empire State Realty OP, L.P.**

**units of limited partnership interests consisting of**

**Series ES units of limited partnership interest,**

**Series 60 units of limited partnership interest and**

**Series 250 units of limited partnership interest**

If you are a participant in any of the following subject LLCs, your vote is very important:

Empire State Building

60 East 42nd St.

250 West 57th St.

Associates L.L.C.

Associates L.L.C.

Associates L.L.C.

Malkin Holdings LLC, the supervisor of three publicly-registered 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., or the subject LLCs, requests that you, as a holder of a participation interest in one or more of the subject LLCs, vote on whether to approve the proposed consolidation of the subject LLC in which you are a participant into Empire State Realty Trust, Inc., or the company, as part of a consolidation of office and retail properties in Manhattan and the greater New York metropolitan area owned by the subject LLCs and the private entities supervised by the supervisor, along with certain related management businesses, into the company, as described in more detail herein. Such transaction is referred to herein as the consolidation. The principals of the supervisor include Peter L. Malkin and Anthony E. Malkin.

The supervisor believes you will benefit from this consolidation through newly created opportunities for liquidity, enhanced property diversification, increased growth opportunities, enhanced operating and financing abilities and efficiencies, combined balance sheets and anticipated regular quarterly cash distributions, with a board of directors consisting predominantly of independent directors. Anthony E. Malkin will be the only management member of the board of directors.

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Following the consolidation, participants may liquidate their investments and realize current values in cash as and when they so desire (subject to the restrictions of the applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation) or may hold operating partnership units and/or shares of common stock they receive in the company. The company intends to apply to have the Class A common stock listed on the New York Stock Exchange under the symbol ESB. The operating partnership units will be issued in three separate series having identical rights to the participants in each of the three subject LLCs, and the operating partnership intends to apply to have such series listed on the New York Stock Exchange under the symbols ESBA, OGCP and FISK. Each participant will receive operating partnership units, which are expected to be tax-deferred for U.S. federal income tax purposes (to the extent described herein), unless such participant elects to receive shares of Class A common stock or, to a limited extent, as described herein, Class B common stock. One share of Class B common stock and 49 operating partnership units together represent a similar economic value and provide the same voting rights as 50 shares of Class A common stock.

The price of the Class A common stock will be determined at the IPO, and the price of the operating partnership units will not be known unless and until the IPO pricing. Therefore, participants will not know the value of the common stock and operating partnership units that they will receive as determined by the IPO price until after they vote on the consolidation. The enterprise value as determined by the IPO price may be significantly lower than the exchange value. The IPO price will not impact the dividends the company intends to pay, which will be, at a minimum, 90% of REIT taxable income (determined without regard to the deduction for dividends paid and excluding net capital gain). After the applicable lock-up period referenced herein has expired, any participant may choose when, if ever, he wishes to sell, and in making that decision will be able to gauge the market price at that time. No participant will be forced to sell at the time of the IPO. A table showing an illustrative range of enterprise values based on illustrative IPO prices is set forth in Questions and Answers about the Consolidation How was the value of my participation interest determined? on page [ ].

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The supervisor recommends that you vote **FOR** the consolidation. The Malkin Holdings group (as defined herein), will receive substantial benefits from the consolidation and have conflicts of interest making this recommendation. See **Conflicts of Interest**.

As a potential alternative to the consolidation, the supervisor also requests that the participants consent to the sale or contribution of the subject LLCs' property interests as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party.

The supervisor recommends that you vote **FOR** the third-party portfolio transaction proposal. The Malkin Holdings group will receive substantial benefits from such transaction and have conflicts of interest making this recommendation. See **Conflicts of Interest**.

Participants also are being asked to consent to a voluntary pro rata reimbursement program pursuant to which the supervisor and Peter L. Malkin, a principal of the supervisor, will be reimbursed for the prior advances of all costs, plus interest, incurred in connection with the legal proceedings required to remove and replace the former property manager and leasing agent.

This solicitation of consents expires at 5:00 p.m., Eastern time on \_\_\_\_\_, 2013, unless the supervisor extends the solicitation period. The supervisor reserves the right to extend on one or more occasions the solicitation period for one or more proposals for one or more subject LLCs or one or more participating groups in a subject LLC without extending for other proposals, subject LLCs or participating groups whether or not it has received approval for the consolidation or the third-party portfolio proposal.

**The supervisor and the Malkin Holdings group receive substantial benefits and from inception have had conflicts of interest in connection with the subject LLCs, including in connection with the consolidation or a third-party portfolio transaction. Based on the assumptions set forth herein, after the consolidation and the IPO, the Malkin Holdings group will own 16.5% of the common stock and operating partnership units and will own common stock having 30.4% of the voting power of the company due to its election to take the maximum number of Class B shares to which it was entitled. Based on the elections by participants in the private entities which were less than the maximum number of Class B shares which they had the right to elect to receive, the supervisor assumed that most of the participants in the subject LLCs elected to receive operating partnership units and only a small number elected to receive Class B common stock. If participants in the subject LLCs elect to receive 100% of the Class B common stock to which they are entitled, the Malkin Holdings group's percentage of voting power would be 20.2%. Additionally, as operating partnership units are redeemed for Class A common stock, the Malkin Holdings group's percentage of voting power will decline. There are material risks and potential disadvantages associated with the consolidation or a third-party portfolio transaction. The supervisor and the Malkin Holdings group will receive substantial benefits in connection with the consolidation or a third-party portfolio transaction. See **Risk Factors** beginning on page 100 and **Conflicts of Interest** beginning on page 279.**

A participant's interest in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. may, in some cases, as described below, be subject to a buyout if he or she votes **AGAINST** or **ABSTAINS** on either the consolidation or the third-party portfolio transaction proposal, or does not vote. If you are a participant in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C., and you vote **AGAINST** the consolidation or the third-party portfolio transaction proposal, you do not vote or you **ABSTAIN** and your subject LLC participates in the consolidation, your participation interests will be subject to a buyout if you do not vote in favor of the consolidation or third-party portfolio transaction proposal within ten days after notice that the required supermajority consent has been received from the participants in your participating group, and the buyout amount for your interest, which is equal to the original cost less capital repaid, but not less than \$100 and is currently \$100, would be substantially lower than the consideration you would receive in connection with the consolidation or third-party portfolio transaction. Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of either the consolidation or third-party portfolio transaction proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout if the tabulation of consents by MacKenzie Partners, Inc. shows that the required consent in his or her participating group has been received, but in no event before the expiration of the 60-day solicitation period as the same may be extended, regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received. You will not be subject to a buyout merely by voting **AGAINST** or **ABSTAINING** on the consolidation or third-party portfolio transaction, or by not voting.



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THE SUPERVISOR BELIEVES THAT THE CONSOLIDATION PROVIDES SUBSTANTIAL BENEFITS AND IS FAIR TO THE PARTICIPANTS IN EACH SUBJECT LLC AND RECOMMENDS THAT ALL PARTICIPANTS VOTE **FOR** THE CONSOLIDATION. SEE BACKGROUND OF AND REASONS FOR THE CONSOLIDATION THE SUPERVISOR S REASONS FOR PROPOSING THE CONSOLIDATION.

THE SUPERVISOR BELIEVES IT IS IN THE BEST INTERESTS OF THE PARTICIPANTS TO PROVIDE THE SUPERVISOR WITH THE AUTHORITY TO APPROVE A THIRD-PARTY PORTFOLIO TRANSACTION AS AN ALTERNATIVE TO THE CONSOLIDATION AND RECOMMENDS THAT ALL PARTICIPANTS VOTE **FOR** THE THIRD-PARTY PORTFOLIO PROPOSAL. SEE THIRD PARTY PORTFOLIO PROPOSAL FOR THE SUPERVISOR S REASONS FOR RECOMMENDING APPROVAL OF THE PROPOSAL.

THE SUPERVISOR BELIEVES THAT THE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM IS FAIR AND REASONABLE AND RECOMMENDS THAT ALL PARTICIPANTS WHO HAVE NOT PREVIOUSLY CONSENTED TO THE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM **CONSENT TO** THE PROPOSAL. SEE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM FOR EXPENSES OF LEGAL PROCEEDINGS WITH FORMER PROPERTY MANAGER AND LEASING AGENT FOR A DISCUSSION OF THE SUPERVISOR S REASONS FOR RECOMMENDING APPROVAL OF THE PROPOSAL AND THE BENEFITS TO THE SUPERVISOR.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Class A common stock, Class B common stock or operating partnership units or passed upon the accuracy or adequacy of this Prospectus/Consent Solicitation Statement. Any representation to the contrary is a criminal offense.**

After you read this Prospectus/Consent Solicitation Statement, the company and the supervisor urge you to read the accompanying supplement for your subject LLC. The supplement contains information particular to your subject LLC. This information is material in your decision whether to vote **FOR** or **AGAINST** the consolidation.

THIS PROSPECTUS/CONSENT SOLICITATION IS AUTHORIZED FOR DELIVERY TO PARTICIPANTS ONLY WHEN ACCOMPANIED BY ONE OR MORE SUPPLEMENTS RELATING TO THE SUBJECT LLCS IN WHICH SUCH PARTICIPANTS HOLD PARTICIPATION INTERESTS. SEE WHERE YOU CAN FIND MORE INFORMATION.

**WHO CAN HELP ANSWER YOUR QUESTIONS?**

If you have more questions about the proposed consolidation or would like additional copies of this Prospectus/Consent Solicitation Statement or the supplement relating to your subject LLC(s) (which will be provided at no cost), you should contact the person designated on the consent form sent to you.

**To obtain timely delivery, you should request this information no later than \_\_\_\_\_, 2012.**

The date of this Prospectus/Consent Solicitation Statement is \_\_\_\_\_, 2012.

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The company uses market data and industry forecasts and projections throughout this Prospectus/Consent Solicitation Statement, and in particular in the sections entitled **Economic and Market Overview**, **The Company Business and Properties** and **Business of the Subject LLCs**. The company has obtained all of this information from a market study prepared for the company by Rosen Consulting Group, or RCG, a nationally recognized real estate consulting firm, in August 2012. The company has paid RCG a fee for such services. Such information is included herein in reliance on RCG's authority as an expert on such matters. See **Experts**. The company believes the data prepared by RCG is reliable, but it has not independently verified this information. Any forecasts prepared by RCG are based on data (including third party data), models and experience of various professionals, and are based on various assumptions, all of which are subject to change without notice. There is no assurance that any of the forecasts will be achieved.

The term **greater New York metropolitan area** is used herein to refer only to Fairfield County, Connecticut and Westchester County, New York. The manner in which the company defines its property markets and submarkets differs from how RCG has done so in its market study included herein. Further, RCG's definition of the New York metropolitan area differs from the company's definition of the greater New York metropolitan area. RCG's definition includes Putnam County and Rockland County in New York and Bergen County, Hudson County, and Passaic County in Northern New Jersey and excludes Fairfield County in Connecticut.

*Unless the context otherwise requires or indicates, references in this Prospectus/Consent Solicitation Statement, which is referred to herein as the prospectus/consent solicitation, to:*

- (i) *the subject LLCs refers to Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C.,*
- (ii) *the private entities refer to the privately-held entities supervised by the supervisor, which are all of the entities, other than the subject LLCs, listed in the chart under the section **Summary The Subject LLCs, the Private Entities and the Management Companies**, which will be included in the consolidation,*
- (iii) *the company refers to Empire State Realty Trust, Inc. (formerly known as Empire Realty Trust, Inc.), a Maryland corporation, together with its consolidated subsidiaries, including Empire State Realty OP, L.P. (formerly known as Empire Realty Trust, L.P.), a Delaware limited partnership, which is referred to herein as the operating partnership, after giving effect to the series of transactions involving the consolidation of the subject LLCs and the private entities described in this prospectus/consent solicitation that have consented to the consolidation and a combination of (a) Malkin Holdings LLC, a New York limited liability company that acts as the supervisor of, and performs various asset management services and routine administration with respect to, the subject LLCs and certain of the private entities (as discussed in this prospectus/consent solicitation), which is referred to herein as the supervisor; (b) Malkin Properties, L.L.C., a New York limited liability company that serves as the manager and leasing agent to certain of the private entities in Manhattan, (c) Malkin Properties of New York, L.L.C., a New York limited liability company that serves as the manager and leasing agent to certain of the private entities located in Westchester County, New York, (d) Malkin Properties of Connecticut, Inc., a Connecticut corporation that serves as the manager and leasing agent to certain of the private entities in the State of Connecticut and (e) Malkin Construction Corp., a Connecticut corporation that is a general contractor and provides services to the private entities and third parties (including certain tenants at the properties owned by the private entities), which collectively are referred to herein as the management companies,*
- (iv) *the properties refers to the subject LLCs' direct or indirect fee ownership interests in the Empire State Building, One Grand Central Place and 250 West 57th Street, respectively,*
- (v) *the properties of the company and the portfolio refer to the properties, the other assets of the subject LLCs, the ownership interests of the private entities in their properties and the other assets of the private entities,*

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- (vi) *the agents refer to holders of the membership interests in the subject LLCs for the benefit of participants in the agent's participating group; each of the agents is an affiliate of the supervisor,*
- (vii) *the participants refer to the holders of participation interests in the membership interests held by the agents and, as applicable, investors in the private entities,*
- (viii) *the participation interests refer to the beneficial ownership interests of participants in the membership interest of the subject LLCs held by an agent for the benefit of participants and, as applicable, membership or partnership interests or the beneficial interests therein held by investors in the private entities,*
- (ix) *common stock and shares of common stock refer to both shares of the company's Class A common stock, par value \$0.01, and Class B common stock, par value \$0.01 per share, unless otherwise indicated,*
- (x) *the IPO refers to the initial public offering of the Class A common stock of the company, and IPO price refers to the price per share of Class A common stock in the IPO,*
- (xi) *operating partnership units refer to the operating partnership's limited partnership interests. The operating partnership will have two classes of units of limited partnership interest—operating partnership units and LTIP units. The operating partnership units will have four series—Series PR operating partnership units, Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units, which are referred to either collectively, or with respect to one or more series, as the operating partnership units, as the context requires or indicates. Operating partnership units are redeemable for a cash amount equal to the then-current market value of one share of Class A common stock per operating partnership unit, or at the company's election, shares of Class A common stock on a one-for-one basis. The Series ES operating partnership units will be issued to participants in Empire State Building Associates L.L.C., the Series 60 operating partnership units will be issued to participants in 60 East 42<sup>nd</sup> St. Associates L.L.C. and the Series 250 operating partnership units will be issued to participants in 250 West 57<sup>th</sup> St. Associates L.L.C., in each case except for the Wien group. The operating partnership intends to apply to have the Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units listed on the New York Stock Exchange under the symbols ESBA, OGCP, and FISK, respectively. The Series PR operating partnership units will be issued to the participants in the private entities and the Wien group and will not be listed on a national securities exchange, and*
- (xii) *organizational documents refer to the limited liability company agreement, the participating agreements and the terms of any voluntary capital transaction override program and voluntary pro rata reimbursement programs for each subject LLC, to the extent applicable.*

*All references to the enterprise value refer to the value of the company after completion of the consolidation determined in connection with the IPO by the company in consultation with the investment banking firms managing the IPO and prior to the issuance of Class A common stock in the IPO and any issuance of Class A common stock pursuant to the company's and the operating partnership's equity incentive plan, or the equity incentive plan.*

*All references to the aggregate exchange value refer to the aggregate exchange value of the subject LLCs, the private entities and the management companies based on the appraisal, or the Appraisal, by Duff & Phelps, LLC, the independent valuer. The exchange values as of June 30, 2012 are based on a final valuation analysis prepared by the independent valuer as of June 30, 2012. The final valuation updates a preliminary valuation prepared as of June 30, 2011. The preliminary exchange values based on such preliminary valuation were used in connection with the solicitation of consents from participants in the private entities in November 2011. See Appendix C-2 Preliminary Exchange Values and Projections used in Connection with Preliminary Exchange Values, which sets forth the preliminary exchange values and preliminary valuation.*

*All references (other than information labeled as pro forma information, including the pro forma financial statements) to the number of shares of common stock, on a fully-diluted basis, issued in the consolidation refer to*



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*the number of shares of Class A common stock and Class B common stock issued or received in the consolidation, prior to the issuance of Class A common stock in the IPO and pursuant to any incentive plans, assuming that (i) the enterprise value in connection with the IPO equals the aggregate exchange value, (ii) the offering price per share in the IPO used herein which is used solely for illustrative purposes equals a hypothetical \$10 per share, (iii) all of the subject LLCs, the private entities and the management companies participate in the consolidation, (iv) no cash is paid to participants in the private entities, (v) no shares of Class A common stock are issued to the supervisor pursuant to the voluntary pro rata reimbursement program, (vi) no fractional shares are issued and (vii) all operating partnership units issued in the consolidation are redeemed on a one-for-one basis and all shares of Class B common stock issued in the consolidation are converted on a one-for-one basis for shares of Class A common stock.*

*The enterprise value will equal the total number of shares of common stock and total number of operating partnership units issuable in the consolidation (excluding any shares of common stock issued in the IPO, and assuming all participants in the private entities receive shares of common stock or operating partnership units and not cash) multiplied by the IPO price. 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.*

*All references to distributions to participants assume that all amounts payable under the voluntary pro rata reimbursement program are paid out of cash distributions from the subject LLCs and the private entities, as applicable and that no shares of Class A common stock are issued to the supervisor for amounts due under the voluntary pro rata reimbursement program.*

*The supervisor has made certain of these assumptions to permit the presentation of information in tables in this prospectus/consent solicitation on a consistent basis. For example, while throughout this prospectus/consent solicitation the supervisor has assumed for purposes of this presentation of information that no cash is paid, cash will be paid to non-accredited investors in the private entities and to certain investors in the private entities that are charitable organizations and elect to receive cash pursuant to the cash option described herein.*

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*All references to the stockholders refer to the holders of Class A common stock and Class B common stock of the company.*

*All references to the Malkin Family refer to Anthony E. Malkin, Peter L. Malkin, each of their lineal descendants (including spouses of any of the foregoing), any estates of any of the foregoing, any trusts now or hereafter established for the benefit of any of the foregoing, or any corporation, partnership, limited liability company or other legal entity controlled by Anthony E. Malkin or any permitted successor in such entity for the benefit of any of the foregoing.*

*All references to the Malkin Holdings group refer to the Malkin Family and Thomas N. Keltner, Jr., and his spouse.*

*All references to the Wien group refer to each of the lineal descendants of Lawrence A. Wien, including Peter L. Malkin and Anthony E. Malkin (including spouses of such descendants), any estates of any of the foregoing, any trusts now or hereafter established for the benefit of any of the foregoing, or any corporation, partnership, limited liability company or other legal entity controlled by Anthony E. Malkin for the benefit of any of the foregoing.*

*For demonstrative purposes, the supervisor has assigned a hypothetical IPO price of \$10 per share. That value is strictly hypothetical and is for illustrative purposes only.*

*All references to the property and assets owned by the company upon completion of the consolidation refer to the company upon completion of the consolidation, without giving effect to the IPO, and assuming that all required supermajority consents of the participants in the subject LLCs have been obtained and all of the properties and assets to be acquired from the subject LLCs, the private entities and the management companies pursuant to the consolidation have been acquired.*

*All references to a third-party portfolio transaction refer to the sale or contribution of the subject LLCs' property interests and other assets as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. The description of the company in this prospectus/consent solicitation assumes that all of the properties and assets to be acquired from the subject LLCs, the private entities and the management companies pursuant to the consolidation have been acquired by the company rather than an unaffiliated third party pursuant to a third-party portfolio transaction.*

*Certain terms and provisions of various agreements are summarized in this prospectus/consent solicitation. These summaries are qualified in their entirety by reference to the complete text of any such agreements, which are either attached as exhibits or appendices to this prospectus/consent solicitation or the supplement for your subject LLC in the form in which they are expected to be signed (but subject to change, including potentially significant changes, as described below) or filed as an exhibit to the Registration Statement on Form S-4 of which this prospectus/consent solicitation is a part. The parties to such agreements may make changes (including changes that may be deemed material) to the forms of the agreements attached as appendices or exhibits hereto, contained in the applicable supplement or filed as exhibits to the Registration Statement on Form S-4.*

*Upon completion of the IPO, the company expects to grant LTIP units and/or restricted shares of its Class A common stock (at the grantee's discretion) to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees, which will be subject to time-based and performance-based vesting over a three to four year period. The aggregate number of LTIP units/shares the company intends to grant to such individuals will be in an amount equal to 1.5% of the gross proceeds raised in the IPO (excluding the underwriters' option to purchase additional shares of the Class A common stock) divided by the IPO price. Assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the Class A common stock), and assuming an IPO price of \$10 per share, the aggregate number of LTIP units and/or restricted shares of the Class A common stock the company intends to grant to its independent directors, executive officers (other than Anthony E. Malkin) and certain other employees*

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*will be 1,500,000 units/shares and will have an aggregate dollar value of \$15,000,000. The aggregate number of LTIP units and/or restricted shares to be granted upon completion of the IPO may be increased by a modest amount based on future events, such as the hiring of additional officers.*

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**QUESTIONS AND ANSWERS ABOUT  
THE CONSOLIDATION**

Q: What am I being asked to approve?

A: The supervisor, which is an affiliate of Peter L. Malkin and Anthony E. Malkin, is submitting the following proposals for your approval:

A consolidation of your subject LLC and certain office and retail properties in Manhattan and the greater New York metropolitan area owned by the subject LLCs and the private entities, all of which are supervised by the supervisor, and certain related management businesses, into the company, which is intended to qualify for taxation as a real estate investment trust for U.S. federal income tax purposes, which is referred to herein as a REIT.

As a potential alternative to the consolidation, the sale or contribution of the subject LLCs' property interests as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. While the supervisor believes the consolidation represents the best opportunity for participants to achieve liquidity and to maximize the value of their investment, the supervisor believes it also is in the best interest of all participants for the supervisor to have the flexibility and discretion, subject to certain conditions, to accept an offer for the portfolio of properties from an unaffiliated third party if the supervisor determines that the offer price includes what the supervisor believes is an adequate premium above the value that is expected to be realized over time from the consolidation. The third-party portfolio transaction would be undertaken only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. The proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquiror after the closing or receive any compensation from the acquiror (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction).

Voluntary pro rata reimbursement to the supervisor 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 of the property.

Each of these proposals is subject to a separate consent, and approval of each proposal is not dependent on approval of any other proposal.

Q: What is the proposed consolidation upon which I am being asked to vote?

A: You are being requested to approve the consolidation in which your subject LLC will contribute its assets to the operating partnership in exchange for operating partnership units, Class A common stock and to a limited extent, as described herein, Class B common stock. All of the subject LLCs together represent 39.69% of the aggregate exchange value. As part of the consolidation, the company also will enter into similar transactions with the other subject LLCs, private entities and the management companies described elsewhere in this prospectus/consent solicitation.

Through the consolidation, the company intends to combine the properties of the subject LLCs and the private entities and the assets and operations of the supervisor and the other management companies into the company, and intends to elect and to qualify as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013. The closing of the consolidation will occur substantially simultaneously with the closing of the IPO. If the consolidation is approved by the three subject LLCs, the

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company acquires the properties from each of private entities and the company acquires the management companies, the company will own 12 office properties (including one long-term ground leasehold interest) which, as of September 30, 2012, encompass approximately 7.7 million rentable square feet of office space, and which were approximately 79.8% leased (or 83.3% giving effect to leases signed but not yet commenced as of that date). Seven of these properties are located in the midtown Manhattan market and encompass in the aggregate approximately 5.9 million rentable square feet of office space, including the Empire State Building. The Manhattan office properties also contain an aggregate of 433,545 rentable square feet of premier retail space on the ground floor and/or lower levels. The remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.8 million rentable square feet. The majority of the square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, the company has entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of its office properties, that will support the development of an approximately 380,000 rentable square foot office building and garage, which is referred to herein as Metro Tower. As of September 30, 2012, the portfolio also included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 204,452 rentable square feet in the aggregate. As of September 30, 2012, the standalone retail properties were 100.0% leased in the aggregate.

The consolidation offers participants the opportunity to become limited partners in the operating partnership or stockholders of the company, which will own a diversified portfolio of properties and have as senior management certain executives of the supervisor, a recognized operator of office and retail properties in Manhattan and the greater New York metropolitan area. The supervisor has a comprehensive knowledge of its markets that has been developed through the supervisor's principals' substantial experience. The consolidation also will result in the creation of a company with a board of directors consisting predominantly of independent directors, which will be responsible for overseeing the operations of the company. Anthony E. Malkin will be the only management member of the board of directors.

All of the properties are located in Manhattan and the greater New York metropolitan area, which, according to RCG, is one of the most-prized office markets in the world and a world-renowned retail market due to a combination of supply constraints, high barriers to entry, near-term and long-term prospects for job creation, vacancy absorption and rental rate growth. The supervisor believes that the company will represent a unique opportunity to invest in a well-capitalized company with real estate in these most-prized markets and recognized and respected leadership. The company's primary focus will be to continue to own, operate and manage its current portfolio and to acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

**Q:** Why is the supervisor proposing the consolidation?

**A:** The supervisor believes this transaction represents the best opportunity for value enhancement for your investment in the subject LLC after years of action under the supervisor's leadership to preserve, restore, and enhance your investment. Included in that history is a challenging time, which began with litigation commenced in 1997 by Peter L. Malkin and the supervisor to remove Helmsley-Spear, Inc., which is referred to herein as the former property manager and leasing agent (after it was sold by entities controlled by Leona M. Helmsley) as property manager and leasing agent of the properties owned by the subject LLCs and other properties which are now included in the plans for this consolidation.

Since the successful resolution of that litigation, the supervisor has overseen the engagement by the subject LLCs of independent property management and leasing agents and the transformation of the Empire State Building to a self management structure, retaining a third party agent for leasing only; developed and is in the process of effecting a comprehensive renovation and repositioning program for improving the physical condition of, and upgrading the credit quality of, tenants at the property, and raised the properties' profile as part of a well regarded portfolio brand. The supervisor believes that it is an opportune time for the subject

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LLCs to take advantage of the opportunity to participate in the consolidation which will afford participants better value protection through diversification, growth opportunities through potential acquisitions and potential growth in revenue of the initial properties and more stable cash flows for distributions, as well as administrative and operating efficiencies. Additionally, the supervisor believes the consolidation provides value enhancement through better access to capital and options for liquidity for investors who so desire and allows participants to receive operating partnership units in a transaction expected to be tax-deferred for U.S. federal income tax purposes.

The supervisor has reviewed this transaction carefully and believes that current and anticipated property results provide favorable prospects for the consolidation. The supervisor will consider the capital market conditions at the time the IPO is ready to commence, but the supervisor is confident that a well located, well run, well capitalized portfolio of office and retail properties in Manhattan and in the greater New York metropolitan area is a desirable portfolio for an IPO. The consolidation and IPO will launch the company as a public company with its Class A common stock expected to be listed on the New York Stock Exchange, which is referred to herein as the NYSE, upon completion of the IPO. The operating partnership units issued to participants in the subject LLCs are also expected to be listed on the NYSE upon completion of the IPO. The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group) and in a separate series to the participants in the private entities receiving operating partnership units and the Wien group. Each series of operating partnership units will have identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership. The separate series were created because there are unique U.S. federal income tax consequences to the participants receiving each series of listed operating partnership units (as compared to ownership of operating partnership units of another series) depending on the subject LLC in which they have an interest and the tax aspects of the property contributed by such entity.

The supervisor believes that the consolidation is the best way for participants to achieve liquidity and to maximize the value of their investment in the subject LLCs. The supervisor believes that benefits to participants from the consolidation include:

The opportunity for participants to receive interests in the company's operating partnership on the same basis as participants in the private entities and the Malkin Family in a transaction expected to be tax-deferred for U.S. federal income tax purposes;

Liquidity for participants that elect to receive shares of Class A common stock expected to be listed on the NYSE, which investors may sell from time to time as and when they so desire (subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation). Presently there is no active trading market for the participation interest you hold in your subject LLC, which is only an indirect interest in real property subject to an operating lease, which is not under the operational control of your subject LLC. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, which also are expected to be listed on the NYSE, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing;

Anticipated value enhancement through property diversification and operating and capital structure efficiencies;

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Anticipated regular quarterly cash distributions on their operating partnership units and shares of common stock, which will include distributions of at least 90% of its annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gains), which is required for REIT qualification as described below. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price;

Conversion of the current governance structure which is inefficient and costly in general and in which participants do not share in the same economic benefit that they would receive through ownership and operation of the properties by a single entity into a modern, centralized and efficient governance structure;

The opportunity to continue to hold interests in an entity operating under the brand developed by the supervisor and to participate in any future growth of the company through potential acquisitions and potential growth in revenue of the initial properties, while removing obstacles to obtaining true synergies and realization of value, such as combining financings, movements of tenants from one building to another, sharing of employees and management and oversight;

The opportunity to continue to hold interests in an entity in which certain executives of the supervisor will be members of the senior management team and Anthony E. Malkin will be Chairman, Chief Executive Officer, President and a director of the company and

The governance structure of an SEC reporting company with its Class A common stock expected to be listed on the NYSE, which provides accountability through the oversight of the company by a board of directors consisting predominantly of independent directors.

Q: What will I be entitled to receive if I vote **FOR** the consolidation and the consolidation is approved by my subject LLC?

A: If you vote **FOR** the consolidation and your subject LLC participates in the consolidation, you will receive operating partnership units, unless you elect to receive shares of Class A common stock or, to a limited extent, Class B common stock. You may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units you would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The percentage of the aggregate exchange value and the company's common stock on a fully diluted basis allocated to each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. is 28.30%, 7.49% and 3.90%, respectively. See Summary Allocation of Consideration in the Consolidation.

The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group) and in a separate series to the participants in the private entities receiving operating partnership units and the Wien group. Each series of operating partnership units will have identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership. The separate series were created because there are unique U.S. federal income tax consequences to the participants receiving each series of listed operating partnership units (as compared to ownership of operating partnership units of another series) depending on the subject LLC in which they have an interest and the tax aspects of the property contributed by such entity.

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Q: How many operating partnership units and shares of common stock will I be entitled to receive if my subject LLC is consolidated with the company?

A: The number of operating partnership units and shares of common stock that will be allocated to each subject LLC in the consolidation based on the exchange value is set forth in the chart under the caption Summary Allocation of Consideration in the Consolidation. The following table sets forth the exchange value allocated to each of the subject LLCs and the shares of common stock or operating partnership units and the exchange value to participants per \$10,000 original investment.

Entity	Total Exchange Value <sup>(1)(2)</sup>	Exchange Value to Participants Per \$10,000 Original Investment (except as otherwise noted)	
		Value of Shares of Common Stock or Operating Partnership Units <sup>(2)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis
Empire State Building Associates L.L.C.	\$ 1,183,612,549		
Participants (subject to voluntary override)		\$ 323,803	32,380
Participants (not subject to voluntary override)		\$ 358,670	35,867
60 East 42nd St. Associates L.L.C.	\$ 313,069,533		
Participants		\$ 402,658	40,266
250 West 57th St. Associates L.L.C.	\$ 163,064,607		
Participants (subject to voluntary override)		\$ 409,662	40,966
Participants (not subject to voluntary override)		\$ 452,957	45,296

(1) The exchange value is determined as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.

(2) The exchange value of each subject LLC is based on each subject LLC's assets and liabilities included in the quarterly balance sheets of the subject LLC as of June 30, 2012. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation.

You will receive a portion of the operating partnership units and common stock allocated to your subject LLC in accordance with your election and with your percentage interest in the subject LLC and the subject LLC's organizational documents, after taking into account the allocations in respect of the supervisor's override interests. The number of operating partnership units and shares of common stock presented in this prospectus/consent solicitation is based on the hypothetical \$10 per share exchange value arbitrarily assigned by the supervisor to illustrate the number of operating partnership units and/or shares of common stock that a participant would receive if the enterprise value of the company determined in connection with the IPO were the same as the aggregate exchange value and the IPO price were \$10 per share. The actual number of operating partnership units and shares of common stock, on a fully-diluted basis, issued in the consolidation will equal the enterprise value divided by the actual IPO price upon 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.



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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.

**Q:** How was the value of my participation interest determined?

**A:** The value of your participation interest, as described in this prospectus/consent solicitation, was determined based on the exchange value for your subject LLC. The exchange value of your subject LLC and the other subject LLCs, the private entities and the management companies is the value of each of and all these entities based on the Appraisal by Duff & Phelps, LLC, which is referred to herein as Duff & Phelps or the independent valuer, which serves as the independent valuer for all the subject LLCs, the private entities and the management companies. Shares of common stock, operating partnership units and/or cash, as applicable, will be allocated among the subject LLCs, the private entities and the management companies based upon the exchange values of each subject LLC, each private entity and the management companies. The exchange value was then allocated among the participants and the holders of the override interests by the independent valuer in accordance with each subject LLC's organizational documents. However, as described elsewhere in this prospectus/consent solicitation, while the exchange value was used to establish the relative value of the properties and participation interests, this value does not necessarily represent the fair market value of your participation interest. The number of shares of Class A common stock, Class B common stock, and operating partnership units issued in the consolidation will be determined based on the company's enterprise value, which will be determined based on the IPO price, without giving effect to shares of Class A common stock issued in the IPO.

The fair market value of the consideration that you receive will not be known until the pricing of the IPO, which will occur after you vote upon the approval of the consolidation transaction. Accordingly, at the time you vote on the consolidation proposal, you will not know the amount of the consideration you will receive. The value of the consideration will be based on the enterprise value determined in connection with pricing of the IPO.

The IPO will take place after approval of the consolidation. To allow participants to determine the potential value at the time of the IPO of the securities that they will receive, the following table sets forth a range of enterprise values per \$10,000 original investment for participants in each of the three subject LLCs. The exchange value is shown as 100%, and various premiums and discounts are shown in relation to the exchange value. The enterprise values in the table are being furnished for illustrative purposes and do not represent the supervisor's estimate of the range of likely enterprise values or the range of prices at which the company will complete the IPO.

The IPO price will not impact the regular, quarterly dividends the company currently intends to pay, which will be based on the performance of the company and its portfolio of properties, rather than just one property, and 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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After the applicable lock-up periods referenced herein have expired, any participant may choose when, if ever, he wishes to sell and in making that decision will be able to gauge the market price at that time. Other than the Helmsley estate, no participant will be able to sell his common stock and operating partnership units in the IPO or be required to sell such securities at that time. Therefore, the IPO price will not show the value that a participant may receive upon such later sale(s), but will only be an indication of how the market values the company at the date of the IPO.

The exchange value methodology will cause any enterprise value at the IPO below the exchange value to reduce the shares allocated to the Malkin Holdings group in respect of their override interests.

<b>Enterprise Value (based on IPO Price) Per \$10,000 Original Investment<sup>(1)</sup></b>								
<b>60 East 42<sup>nd</sup> St.</b>								
<b>Empire State Building Associates L.L.C.</b>			<b>Associates L.L.C.</b>			<b>250 West 57<sup>th</sup> St. Associates L.L.C.</b>		
<b>Enterprise Value</b>								
<b>as a Percentage of</b>								
<b>Exchange Value</b>	<b>Participants (Voluntary Override)</b>	<b>Participants (No Voluntary Override)</b>	<b>Override to Supervisor<sup>(2)</sup></b>	<b>Participants</b>	<b>Override to Supervisor<sup>(2)</sup></b>	<b>Participants (Voluntary Override)</b>	<b>Participants (No Voluntary Override)</b>	<b>Override to Supervisor<sup>(2)</sup></b>
150% of Exchange Value	\$ 485,205	\$ 538,006	\$ 52,801	\$ 603,917	\$ 66,946	\$ 613,492	\$ 679,436	\$ 65,944
145% of Exchange Value	\$ 469,065	\$ 520,072	\$ 51,007	\$ 583,791	\$ 64,710	\$ 593,109	\$ 656,788	\$ 63,679
140% of Exchange Value	\$ 452,925	\$ 502,139	\$ 49,214	\$ 563,665	\$ 62,474	\$ 572,726	\$ 634,140	\$ 61,414
135% of Exchange Value	\$ 436,785	\$ 484,205	\$ 47,421	\$ 543,539	\$ 60,238	\$ 552,343	\$ 611,492	\$ 59,149
130% of Exchange Value	\$ 420,644	\$ 466,272	\$ 45,627	\$ 523,413	\$ 58,001	\$ 531,960	\$ 588,844	\$ 56,884
125% of Exchange Value	\$ 404,504	\$ 448,338	\$ 43,834	\$ 503,287	\$ 55,765	\$ 511,577	\$ 566,197	\$ 54,620
120% of Exchange Value	\$ 388,364	\$ 430,405	\$ 42,040	\$ 483,162	\$ 53,529	\$ 491,194	\$ 543,549	\$ 52,355
115% of Exchange Value	\$ 372,224	\$ 412,471	\$ 40,247	\$ 463,036	\$ 51,293	\$ 470,811	\$ 520,901	\$ 50,090
110% of Exchange Value	\$ 356,084	\$ 394,538	\$ 38,454	\$ 442,910	\$ 49,057	\$ 450,428	\$ 498,253	\$ 47,825
105% of Exchange Value	\$ 339,994	\$ 376,604	\$ 36,660	\$ 422,784	\$ 46,820	\$ 430,045	\$ 475,605	\$ 45,561
<b>100% of Exchange Value</b>	<b>\$ 323,803</b>	<b>\$ 358,670</b>	<b>\$ 34,867</b>	<b>\$ 402,658</b>	<b>\$ 44,584</b>	<b>\$ 409,662</b>	<b>\$ 452,957</b>	<b>\$ 43,296</b>
95% of Exchange Value	\$ 307,663	\$ 340,737	\$ 33,074	\$ 382,532	\$ 42,348	\$ 389,278	\$ 430,309	\$ 41,031
90% of Exchange Value	\$ 291,523	\$ 322,803	\$ 31,280	\$ 362,406	\$ 40,112	\$ 368,895	\$ 407,662	\$ 38,766
85% of Exchange Value	\$ 275,383	\$ 304,870	\$ 29,487	\$ 342,280	\$ 37,876	\$ 348,512	\$ 385,014	\$ 36,501
80% of Exchange Value	\$ 259,243	\$ 286,936	\$ 27,694	\$ 322,154	\$ 35,639	\$ 328,129	\$ 362,366	\$ 34,237
75% of Exchange Value	\$ 243,103	\$ 269,003	\$ 25,900	\$ 302,028	\$ 33,403	\$ 307,746	\$ 339,718	\$ 31,972
70% of Exchange Value	\$ 226,962	\$ 251,069	\$ 24,107	\$ 281,903	\$ 31,167	\$ 287,363	\$ 317,070	\$ 29,707
65% of Exchange Value	\$ 210,822	\$ 233,136	\$ 22,314	\$ 261,777	\$ 28,931	\$ 266,980	\$ 294,422	\$ 27,442
60% of Exchange Value	\$ 194,682	\$ 215,202	\$ 20,520	\$ 241,651	\$ 26,695	\$ 246,597	\$ 271,774	\$ 25,177
55% of Exchange Value	\$ 178,542	\$ 197,269	\$ 18,727	\$ 221,525	\$ 24,458	\$ 226,214	\$ 249,126	\$ 22,913
50% of Exchange Value	\$ 162,402	\$ 179,335	\$ 16,934	\$ 201,399	\$ 22,222	\$ 205,831	\$ 226,479	\$ 20,648

(1) Assumes that the enterprise value equals the percentage of exchange value noted in the relevant row.

(2) Represents override payable to Malkin Holdings LLC with respect to distributions out of capital proceeds per \$10,000 original investment.

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.



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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.

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Q: What is the difference between how the exchange value was determined and how the enterprise value of the company will be determined?

A: In the prospectus/consent solicitation, there are descriptions of the exchange values of the subject LLCs and discussion of the enterprise value in valuing the consideration that participants will receive. The following summarizes how the exchange value and the enterprise value are determined.

The aggregate exchange value is the sum of the exchange values of each of the subject LLCs, private entities and the management companies. These exchange values were calculated by the independent valuer based on the Appraisal (after making certain adjustments). The description of the Appraisal is set forth under Reports, Opinions and Appraisals Appraisal and the adjustments to the Appraisal to calculate the exchange values is set forth under Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.

The enterprise value is the value of the company after completion of the consolidation (but immediately before the IPO). While this prospectus/consent solicitation shows the value of the consideration that you would receive based on the exchange value solely for illustrative purposes, the actual value of your consideration will be based on the enterprise value. The enterprise value is the value of the company determined based on IPO price rather than the appraised value. The enterprise value will equal the total number of shares of common stock and total number of operating partnership units issuable in the consolidation (excluding any shares of common stock issued in the IPO, and assuming all participants in the private entities receive shares of common stock or operating partnership units and not cash) multiplied by the IPO price. The enterprise value will not be known until the IPO pricing date. The prospectus for the IPO will show the number of shares of common stock and operating partnership units outstanding immediately before the IPO (which may be different from the hypothetical number of shares calculated by dividing the aggregate exchange value by the \$10 per share hypothetical price per share) and the IPO price.

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. The Appraisal was undertaken in connection with establishing relative pre-consolidation 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 IPO.

Q: If my subject LLC consolidates with the company, may I choose to receive something other than operating partnership units?

A: Yes. Each participant will have the opportunity to receive operating partnership units in a transaction expected to be tax-deferred for U.S. federal income tax purposes. Each participant in the subject LLCs will receive operating partnership units, unless he or she elects to receive shares of Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock.

Q: Will I receive a distribution of cash from my subject LLC at the closing of the consolidation?

A: The subject LLCs will distribute promptly following the closing any excess cash held by them at the time of the closing of the consolidation. The cash to be distributed by a subject LLC will be (i) any cash held by

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such entity at the closing in excess of the normalized level of net working capital for such entity, as determined by the supervisor, (ii) the consolidation expenses reimbursed by the operating partnership to the subject LLC at the closing of the consolidation out of proceeds of the IPO and (iii) overage rent that will have accrued through the date of the closing of the consolidation.

The following table shows, for each of the subject LLCs, the amount of cash at September 30, 2012 which would have been available for distribution by the subject LLCs (in addition to any amounts that would have been distributable out of accrued overage rent) had the closing occurred on such date; the amount of reimbursement for costs incurred in connection with the consolidation and the IPO out of the proceeds of the IPO entitled to be received by the subject LLCs as of September 30, 2012; total distributions by each subject LLC and to each participant per \$10,000 original investment out of such excess cash (including such reimbursements); the payment under the voluntary pro rata reimbursement program per \$10,000 original investment; the amount of cash distributions that would be received by participants who consent to the voluntary pro rata reimbursement program per \$10,000 original investment and the additional proceeds to be received by participants from the class action settlement per \$10,000 original investment.

	Available Cash	Reimbursement of Costs in Connection with the Consolidation and IPO	Total Distribution to Participants	Total Distribution to Participants per \$10,000 Original Investment <sup>(1)</sup>	Payment under Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Distribution to Participants Who Consent to the Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Additional Proceeds to be Received by Participants from the Class Action Settlement per \$10,000 Original Investment <sup>(2)</sup>
Empire State Building Associates L.L.C.	\$ 3,350,000	\$ 15,500,000	\$ 18,850,000	\$ 5,012	\$ 1,029	\$ 3,983	\$ 9,840 <sup>(3)</sup>
60 East 42nd St. Associates L.L.C.	\$ 150,000	\$ 3,600,000	\$ 3,750,000	\$ 5,357	\$ 2,410	\$ 2,947	\$ 6,530
250 West 57th St. Associates L.L.C.	\$ 380,000	\$ 1,800,000	\$ 2,180,000	\$ 6,055	\$ 2,080	\$ 3,975	\$ 6,370 <sup>(4)</sup>

- (1) The actual amount of distributions will be based on cash available at closing of the consolidation and no assurance can be given that these cash amounts will be available for distribution.
- (2) The allocation of settlement proceeds from the class action settlement is in addition to the distributions shown elsewhere in this table. The allocation of net settlement proceeds (that is, net of any court-awarded attorneys' fees and expenses) shown in the table is based on the current plan of allocation proposed by counsel for the class plaintiffs. The settlement and the allocation of settlement proceeds are approximate and subject to court approval, and the proposed allocation is subject to revision by counsel for the class. They are not effective until such court approval is final, including the resolution of any appeal.
- (3) \$8,350 per \$10,000 original investment for participants not subject to voluntary capital override.
- (4) \$4,700 per \$10,000 original investment for participants not subject to voluntary capital override.

Q: Who will pay transaction expenses relating to the consolidation and the IPO if the consolidation closes and the IPO is consummated, and who will pay the transaction costs relating to the consolidation and the IPO if the consolidation does not close?

A: If the company acquires the property of your subject LLC in the consolidation and the IPO is consummated, the company will bear all consolidation and IPO expenses. Your subject LLC will be reimbursed for the consolidation expenses previously paid by it out of the proceeds from the IPO and the amount reimbursed will be distributed to participants in your subject LLC. Each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C.'s allocable share of the costs of the consolidation and IPO as of September 30, 2012 are \$16,024,725, \$4,286,205, and \$2,232,502, respectively. The supervisor estimates that the aggregate costs of the consolidation and IPO will be approximately \$75,000,000 and that each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C.'s allocable share of such aggregate costs will be approximately \$18,600,000, \$4,900,000 and \$2,600,000, respectively. If the consolidation does not close or your subject LLC does not approve the consolidation, your subject LLC will bear its proportionate share of the consolidation and IPO expenses based on exchange values and will not be reimbursed for the consolidation and IPO expenses previously paid by it.



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Q: What will I be entitled to receive if I don't vote **FOR** the consolidation and the consolidation proposal is approved by my subject LLC?  
A: If you vote **AGAINST** the consolidation, you do not vote or you **ABSTAIN**, and your subject LLC participates in the consolidation, if you are a participant in 250 West 57th St. Associates L.L.C., you will receive operating partnership units, unless you elect to receive shares of Class A common stock or, to a limited extent, as described in response to the immediately preceding question, Class B common stock, and, as set forth under the section entitled Summary Voting Procedures for the Consolidation Proposal and the Third-Party Portfolio Proposal, if you are a participant in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C., your participation interests will be subject to a buyout pursuant to a buyout right included in the participating agreements since inception of the subject LLCs, even if the consolidation is not consummated or the consolidation is not approved by the other participating groups in your subject LLC. The buyout amount for your interest would be substantially lower than the exchange value. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively. Prior to an agent purchasing the participation interests of non-consenting participants for the benefit of the applicable subject LLC, the agent will give such participants not less than ten days' notice after the required supermajority consent is received by the applicable participating group in such subject LLC to permit them to consent to the consolidation or the third-party portfolio proposal, as applicable, in which case their participation interests will not be purchased.

Q: Who is the supervisor?

A: The supervisor of the subject LLCs, Malkin Holdings LLC, provides all asset management services for, and supervises the operations of, the subject LLCs. Anthony E. Malkin and Peter L. Malkin are principals of the supervisor. The supervisor, which is related to the principals who formed the subject LLCs, was appointed as the supervisor of the subject LLCs pursuant to the original partnership agreement of each of the subject LLCs and is the only party which has performed, and is authorized to perform, this role under the subject LLCs' organizational documents. The supervisor is controlled and managed by lineal descendants of the founder of the subject LLCs, Lawrence A. Wien. The members of the supervisor are Peter L. Malkin, Anthony E. Malkin, direct descendants of Peter L. Malkin, and trusts and entities, the beneficiaries and owners of which are Peter L. Malkin, his descendants and their spouses, and Thomas N. Keltner, Jr. The subject LLCs were originally established as partnerships with no managing general partner or managing member and the supervisor is responsible for the operations and administrative functions on behalf of the subject LLCs. The supervisor, in its capacity as supervisor of each of the subject LLCs, provides and directs all administrative and oversight services. The supervisor also provides similar services to the private entities, including the private entities that hold operating lease interests in the properties owned by the subject LLCs.

Q: What are the rights of holders of Class A common stock and Class B common stock?

A: Each share of Class A common stock entitles the holder to one vote. Operating partnership units have economic rights similar to the Class A common stock but do not have the right to vote on matters presented to holders of Class A common stock and Class B common stock. The participants in the subject LLCs have an option to elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Accredited investors in the private entities and the management companies had the same option at the time they made their election of consideration in the private solicitation. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of

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directors, and holders of shares of Class A common stock and Class B common stock will vote together as a single class. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. One share of Class B common stock may be converted into one share of Class A common stock at any time, and one share of Class B common stock is subject to automatic conversion into one share of Class A common stock upon a direct or indirect transfer of such share of Class B common stock or certain transfers of the operating partnership units held by the holder of Class B common stock (or a permitted transferee) to a person other than a permitted transferee.

**Q:** What are the rights of holders of operating partnership units, and when are operating partnership units exchangeable for shares of common stock?

**A:** Holders of operating partnership units and stockholders of the company will have the same rights to distributions. Holders of operating partnership units will not have the right to vote on matters presented to holders of common stock. Participants will have the right to elect to receive Class B common stock, which vote together as a class with the Class A common stock, in lieu of a portion of the operating partnership units issuable to them, as described in response to the immediately preceding question.

Beginning 12 months after the completion of the IPO, each holder of operating partnership units will have the right, subject to the terms and conditions set forth in the operating partnership agreement, to require the operating partnership to redeem all or a portion of its operating partnership units for a cash amount equal to the then-current market value of one share of Class A common stock per operating partnership unit, or, at the company's election, to exchange each such operating partnership unit for a share of Class A common stock on a one-for-one basis.

The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs, other than the Wien group. The operating partnership units of each of these series are expected to be separately listed on the NYSE and traded separately. In addition, a separate series of operating partnership units, which will not be listed on a national securities exchange, will be issued to the participants in the private entities and the Wien group. Each series of operating partnership units has identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership. The four series vote together as a single class on all matters on which the holders of operating partnership units have the right to vote or consent. The separate series were created because there are unique U.S. federal income tax consequences to the participants receiving each series of listed operating partnership units (as compared to ownership of operating partnership units of another series) depending on the subject LLC in which they have an interest and the tax aspects of the property contributed by such entity. By issuing the operating partnership units in separate series, each of the operating partnership units in a series that will be trading on the NYSE is expected to be uniform with other operating partnership units of that series with regard to distributions, liquidation and other rights as a limited partner in the operating partnership.

**Q:** When can I sell operating partnership units or shares of Class A common stock of the company after the consolidation and the IPO?

**A:** After 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 operating partnership units and common stock received in the consolidation at any time after the 180th day following the IPO pricing date and the balance of the operating partnership units and Class A common stock 12 months after the IPO pricing date. This includes Class A common stock issuable in exchange for operating partnership units, which are only issuable in exchange for operating partnership units beginning 12 months after the completion of the IPO, and Class B common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per

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share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock.

**Q:** Will I be able to transfer the operating partnership units and shares of Class A common stock I receive in the consolidation?

**A:** As limited partners of the operating partnership or stockholders of the company, participants will own operating partnership units and Class A common stock, as applicable, which are expected to be listed on the NYSE, and therefore will be publicly valued and freely tradable. Participants will be able to achieve liquidity by selling all or part of their shares of Class A common stock, subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

**Q:** Why is the company entering into the IPO?

**A:** The IPO is an integral part of the consolidation, the reasons for which are described in response to the immediately preceding question. The supervisor believes that the IPO will provide liquidity by exchanging the current, illiquid interests held by participants for shares of Class A common stock (or operating partnership units or to a limited extent, as described herein, Class B common stock exchangeable for Class A common stock) expected to be listed on the NYSE, which investors may sell from time to time as and when they so desire (subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation). There is expected to be an active trading market in the Class A common stock as a result of the IPO. The supervisor also believes the consolidated entity will have access to additional sources of capital. The company intends to use the proceeds from the IPO (i) to provide cash consideration in the consolidation to the non-accredited investors in the private entities in an estimated amount equal to \$85.3 million, (ii) to pay fees and other expenses of the consolidation and the IPO (including in connection with the assumption of indebtedness), in an estimated amount equal to \$155.0 million, (iii) to repay a loan made by investors in one of the private entities, including Anthony E. Malkin and Peter L. Malkin, to such private entity, in an amount equal to \$3.6 million, (iv) to pay transfer taxes and other expenses and for general working capital purposes, in an estimated amount equal to \$84.2 million, and (v) with respect to the balance of the net proceeds, to provide cash consideration to the Helmsley estate and other charitable organizations, to provide them cash in lieu of common stock or operating partnership units in an amount estimated to equal \$671.9 million. The estimated amounts shown in the preceding sentences assume that the net proceeds from the IPO are equal to the assumed net proceeds set forth in the pro forma financial statements. If additional shares of Class A common stock are sold in the IPO, the net proceeds will be used to pay additional cash in lieu of common stock or operating partnership units to the Helmsley estate and other charitable organizations. See the unaudited pro forma financial information for the company beginning on page F-5 of this prospectus/consent solicitation.

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Q: What discretion does the supervisor and the Helmsley estate have not to proceed with the IPO?

A: The company will proceed with the IPO only if the IPO is approved by a pricing committee formed in connection with the IPO. The pricing committee will have the authority to evaluate market conditions, determine the desirability of continuing to pursue the IPO and approve the price and terms of the IPO, based, in part, on discussions with the underwriters retained for the IPO. The pricing committee will consist of representatives of the supervisor and a representative of the Helmsley estate, who must act unanimously to approve the IPO. Accordingly, the supervisor and the Helmsley estate each have the discretion to determine whether the IPO will proceed. If the IPO does not close, the consolidation will not close.

Q: What are the conditions for the consolidation to close?

A: The following conditions must be satisfied to consummate the consolidation of the subject LLC: (i) requisite consent of the participants in the subject LLC must have been received; (ii) the closing of the IPO and the listing of the three series of operating partnership units issued to participants in the subject LLCs and Class A common stock on the NYSE or another national securities exchange; (iii) the closing of the consolidation no later than December 31, 2014; (iv) the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building, and (v) other customary conditions. The consolidation is not conditioned on any of the other subject LLCs or private entities contributing their property interests to the company in the consolidation.

Q: Has the company received consents from the private entities and the management companies for the consolidation?

A: All required consents of the private entities and the management companies, including the consents of the Wien group and the interests of the estate of Leona M. Helmsley (which is referred to herein as the Helmsley estate), to the acquisition by the company of the assets of the private entities and the management companies have been obtained prior to the date of this prospectus/consent solicitation. In addition, the Wien group collectively owns participation interests in the subject LLCs and has advised that it will vote in favor of the consolidation and the third-party portfolio proposal. These participation interests held by the Wien group represent the following percentage ownership for each subject LLC: 8.195% for Empire State Building Associates L.L.C., 8.447% for 60 East 42nd St. Associates L.L.C. and 8.912% for 250 West 57th St. Associates L.L.C. In addition to the participation interests, members of the Wien group hold override interests, which are non-voting. See Background of and Reasons for the Consolidation Background of the Subject LLCs.

Q: Have there been prior transactions that are comparable to the consolidation?

A: The proposed consolidation and IPO include many elements that generally are not present in other transactions. These elements include the acquisitions of properties and assets from more than 20 private entities and the three publicly registered entities, the acquisition of the properties from the subject LLCs in a transaction in which the securities are being registered on a Registration Statement on Form S-4 that is subject to the SEC's roll-up regulations, certain of the subject LLCs and the private entities having a two-tier ownership structure, and an IPO by the company following completion of the solicitation of the participants in the subject LLCs and simultaneously with the closing of the consolidation. As a result, the supervisor believes that the consolidation is a unique transaction and is not aware of any comparable transaction.

Q: When will the buyout provisions be triggered?

A: The buyout provisions for Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. are triggered only if a supermajority consent is received with respect to either the consolidation or the third-party portfolio transaction by the applicable participating group. Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East



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42nd St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of such proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received. If the required supermajority consent is not received by the applicable participating group, participants cannot and will not be subject to the buyout provisions. Thus, a participant in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C. would be subject to a buyout if such participant:

votes **AGAINST** or **ABSTAINS** with respect to the consolidation, and the supermajority consent from participants in such participant's participating group is obtained with respect to the consolidation, and votes **FOR** the third-party portfolio transaction;

votes **AGAINST** or **ABSTAINS** with respect to the third-party portfolio transaction, and the supermajority consent from participants in such participant's participating group is obtained with respect to the third-party portfolio transaction, and votes **FOR** the consolidation;

votes **AGAINST** or **ABSTAINS** with respect to the consolidation and votes **AGAINST** or **ABSTAINS** with respect to the third-party portfolio transaction, and the supermajority consent from participants in such participant's participating group is obtained with respect to either or both proposals; or

does not vote and the supermajority consent from participants in such participant's participating group is obtained with respect to either or both proposals.

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

**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, as amended, referred to herein as the Code. A REIT is subject to requirements under the Code related to, among other things, the nature of its income and the composition of its assets, the amount of its annual distributions, and the diversity of its stock ownership. 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 its net income distributed to its stockholders if it distributes its net taxable income to its stockholders on an annual basis. Therefore, upon a distribution of dividends by the company to its stockholders, income generated by the company will be taxed only at the stockholder-level. By contrast, a non-REIT C corporation is subject to U.S. federal corporate income tax on its taxable income without regard to dividends paid, and its stockholders are subject to U.S. federal income tax on dividends received.

**Q:** What is the scope of the public U.S. REIT market?

**A:** According to the National Association of Real Estate Investment Trusts, as of December 13, 2012, there were approximately 154 REITs in the U.S. that trade on one of the major stock exchanges, with 144 trading on the NYSE. Total equity market capitalization was approximately \$578 billion.

**Q:** What is the operating partnership?

**A:** The structure of the company generally is referred to as an UPREIT structure. Substantially all of the company's assets will be held directly or indirectly by the operating partnership. Holders of operating partnership units and stockholders of the company will have the same rights to distributions. This structure generally will enable the company to acquire assets in transactions that will not trigger the recognition of gain to the owners of the acquired assets, assuming certain conditions are met.

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The company will be the sole general partner of the operating partnership. As such, the company generally has the exclusive power under the operating partnership agreement to manage and conduct the business of the operating partnership, without the consent of the holders of operating partnership units or the stockholders.

The operating partnership units will be owned by the company and by any person who transfers interests or assets to the operating partnership or one of its subsidiaries in exchange for operating partnership units, including participants in the private entities and the Malkin Holdings group that will be issued operating partnership units as part of the consolidation in exchange for their participation interests and override interests in the private entities and the subject LLCs and their interests in certain of the management companies, as applicable. The company will own one operating partnership unit for each outstanding share of common stock.

**Q:** Why am I being asked to consent to a third-party portfolio proposal?

**A:** As a potential alternative to the consolidation, you also are being asked to consent to the sale or contribution of the subject LLC's property interest as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. Through solicitation of consents, for the first time the properties owned by the subject LLCs and the private entities can be joined as a single portfolio. While the supervisor believes the consolidation and IPO represent the best opportunity for participants in the subject LLCs and the private entities to achieve liquidity and to maximize the value of their respective investments, the supervisor also believes it is in the best interest of all participants for the supervisor to be able to approve offers from unaffiliated third parties for the portfolio as a whole.

Market forces are dynamic, unpredictable, and subject to volatility. Should the public awareness of the proposed consolidation and IPO produce potential compelling offers from unaffiliated third parties to purchase the consolidated portfolio, it will be costly and time consuming to solicit consents to allow a sale or contribution of the portfolio to a third party, and there is considerable risk that any opportunity which might appear would be lost without the requested consent in place. Therefore, the supervisor believes that it is advisable to have the flexibility and discretion, subject to certain conditions, to accept an offer for the entire portfolio of properties from an unaffiliated third party, rather than pursue the consolidation and IPO, if the supervisor determines the offer price includes what the supervisor believes is an adequate premium above the value that is expected to be realized over time from the consolidation. The third-party portfolio transaction would be undertaken only if the aggregate consideration payable in the third-party portfolio transaction is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. Any third-party portfolio proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquiror after the closing or receive any compensation from the acquiror (other than consideration that they will receive in the third-party portfolio transaction). In addition, the supervisor has agreed that it will not accept a third-party offer unless it is unanimously approved by a committee which will include representatives of the supervisor and a representative of the Helmsley estate. The supervisor will be authorized to approve offers only if definitive agreements are entered into prior to December 31, 2015 or such earlier date as the supervisor may set with or without notice or public announcement.

**Q:** What will I be entitled to receive if I don't vote **FOR** the third-party portfolio proposal and it is approved by my subject LLC?

**A:** If you vote **AGAINST** the third-party portfolio proposal, you do not vote or you **ABSTAIN**, and your subject LLC participates in the third-party portfolio proposal, if you are a participant in 250 West 57th

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St. Associates L.L.C. you will receive the same consideration as other participants. Participants in 250 West 57th St. Associates L.L.C. are not subject to a buyout. As set forth under the section entitled Summary Voting Procedures for the Consolidation Proposal and the Third-Party Portfolio Proposal, if you are a participant in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C., your participation interests will be subject to a buyout pursuant to a buyout right included in the participating agreements since inception of the subject LLCs even if the third-party portfolio proposal is not approved by the other participating groups in your subject LLC. The buyout amount for your interest would be substantially lower than the exchange value in connection with the allocation of consideration in the consolidation. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively. Prior to an agent purchasing the participation interests of non-consenting participants for the benefit of the applicable subject LLC, the agent will give such participants not less than ten days notice after the required supermajority consent is received by the applicable participating group in such subject LLC to permit them to consent to the consolidation or the third-party portfolio proposal, as applicable, in which case their participation interests will not be purchased.

**Q:** Why am I being asked to consent to a voluntary pro rata reimbursement program?

**A:** You are being asked to consent to a voluntary pro rata reimbursement program pursuant to which the supervisor and Peter L. Malkin, a principal of the supervisor, will be reimbursed for the prior advances of all costs, plus interest, incurred in connection with the legal proceedings with Helmsley-Spear, Inc., the former property manager and leasing agent, which resulted in the removal of the former property manager and leasing agent as property manager and leasing agent of the properties owned by the subject LLCs and certain of the private entities and has enabled a renovation and repositioning turnaround program to be implemented by the supervisor. If you consent to the voluntary pro rata reimbursement program, the supervisor and Peter L. Malkin will be reimbursed for your pro rata share of costs, plus interest, previously incurred out of your share of the excess cash of your subject LLC that is being distributed to participants, and, to the extent that is insufficient, the consideration that you would receive in the consolidation or the consideration that you would receive in a third-party portfolio transaction, as applicable, will be reduced by the balance (valued, if the consolidation is consummated, at the IPO price) and such balance would be paid to the supervisor and Peter L. Malkin in shares of Class A common stock, if the consolidation is consummated, or out of distributions that you would receive from the proceeds of a third-party portfolio transaction, if consummated, or out of distributions from operations of the subject LLC.

The table below shows the amount to be received by the supervisor out of the distributions of each consenting participant for each \$10,000 of original investment by a participant pursuant to the voluntary pro rata reimbursement program:

	<b>Voluntary Reimbursement</b>	
	<b>Per \$10,000 Original Investment<sup>(1)</sup></b>	<b>Total Potential Reimbursement with 100% Participation</b>
Empire State Building Associates L.L.C.	\$ 1,029	\$ 3,396,880
60 East 42nd St. Associates L.L.C.	\$ 2,410	\$ 1,687,101
250 West 57th St. Associates L.L.C.	\$ 2,080	\$ 748,704

- (1) Empire State Building Associates L.L.C. s, 60 East 42nd St. Associates L.L.C. s and 250 West 57th St. Associates L.L.C. s share of the aggregate voluntary reimbursement (before any reimbursements) is \$3,150,896, \$1,564,930, and \$694,487, respectively, plus interest. The amount shown in the table includes accrued interest through September 30, 2012 and does not include interest which will accrue subsequent to September 30, 2012.

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97% of the potential voluntary reimbursement is attributable to advances by Peter L. Malkin for payments to unaffiliated third parties, with interest thereon at prime, and 3% is for amounts to be paid to the supervisor for work it performed.

The Helmsley estate, as part of an agreement with the supervisor covering this and other matters, has paid the voluntary pro rata reimbursement to the supervisor for its pro rata share of costs advanced, plus interest, which totaled \$5,021,048.

To consent to this proposal, simply indicate on the enclosed consent form that you want to consent to this proposal, then sign and submit the consent form by mail in the accompanying postage-paid envelope or by facsimile as soon as possible. If you **CONSENT** to the voluntary pro rata reimbursement program, your consent is made only with respect to your participation interest, and your participation in the program is not dependent on the consent of any other participant. If you sign and send in your consent form and do not indicate that you want to consent, you will be counted as **NOT** consenting to this proposal. If you indicate on your consent form that you **ABSTAIN**, you will be counted as **NOT** consenting to this proposal.

Q: Who can vote on the consolidation and third-party portfolio proposal?

A: Participants in each subject LLC who hold participation interests in such subject LLC during the consent solicitation period are entitled to vote **FOR** or **AGAINST** each of the proposed consolidation and the third-party portfolio proposal with respect to such subject LLC. In the event of a transfer of a participation interest that previously has been voted, that vote will remain in effect unless revoked by the transferee.

The Wien group collectively owns participation interests in the subject LLCs and has advised that it will vote in favor of the consolidation and the third-party portfolio proposal. These participation interests represent the following percentage ownership for each subject LLC: 8.195% for Empire State Building Associates L.L.C., 8.447% for 60 East 42nd St. Associates L.L.C. and 8.912% for 250 West 57th St. Associates L.L.C. In addition to the participation interests, members of the Wien group hold override interests which are non-voting. See Background of and Reasons for the Consolidation Background of the Subject LLCs.

Q: What is the required vote for the consolidation proposal and the third-party portfolio proposal?

A: For each of the consolidation proposal and the third-party portfolio proposal to be approved, participants holding 100% of the outstanding participation interests in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. must approve that proposal, and participants holding greater than 75% of the outstanding participation interests in eight out of the ten participating groups of 250 West 57th St. Associates L.L.C. must approve that proposal. If you are a participant in 250 West 57th St. Associates L.L.C., approval by the required vote of the participants in 250 West 57th St. Associates L.L.C. in favor of a proposal will be binding on you, even if you vote **AGAINST** such proposal.

If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve the consolidation or third-party portfolio proposal, as shown in the tabulation of consents by MacKenzie Partners, Inc., pursuant to a buyout right included in the participating agreements, the agent of any such participating group will purchase on behalf of the subject LLC the participation interest of any participant in such participating group that voted **AGAINST** the consolidation or the third-party portfolio proposal or **ABSTAINED**, as applicable, or that did not submit a consent form, even if the proposal is not approved by the other participating groups in such subject LLC, unless such participant consents to the proposal within ten days after receiving written notice that the required supermajority consent has been received by such participant's participating group, for the buyout amount.

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Because consent of the agents for each of the participating groups is required for Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C., if any one of the three participating groups in Empire State Building Associates L.L.C. or any one of the seven participating groups in 60 East 42nd St. Associates L.L.C. does not approve the consolidation proposal or the third-party portfolio proposal, the proposal will not be approved by the relevant subject LLC.

**Q:** How do I vote **FOR** the consolidation and the third-party portfolio proposal?

**A:** Simply indicate on the enclosed consent form how you want to vote for each proposal, then sign and submit the consent form by mail in the accompanying postage-paid envelope or by facsimile as soon as possible so that your participation interest may be voted **FOR** or **AGAINST** each proposal. If you sign and send in your consent form and do not indicate how you want to vote on either one of these proposals, your consent will be counted as a vote **FOR** such proposal. If you do not submit your consent form or you indicate on your consent form that you **ABSTAIN** from either proposal, it will have the effect of voting **AGAINST** such proposal. If you vote **FOR** the consolidation and your subject LLC participates in the consolidation, you effectively will preclude other alternatives, other than a third-party portfolio transaction, unless you vote **AGAINST** the third-party portfolio proposal. These alternatives include continuation of your subject LLC and a sale of your subject LLC's interest in the property and the resulting distribution of the net proceeds to its participants. Each of these proposals is subject to a separate consent and approval of each proposal is not dependent on approval of any other proposal.

**Q:** Can I change my vote on the consolidation proposal or the third-party portfolio proposal after I submit my consent form?

**A:** Yes. You can change your vote on the consolidation proposal, the third-party portfolio proposal, or both, at any time before the later of the date that consents from participants holding the required percentage interests in your participating group are received and the 60<sup>th</sup> day after the date of this prospectus/consent solicitation, as described in further detail in response to the next question. In addition, participants in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. that voted against the consolidation proposal, the third-party portfolio proposal, or both, or abstained from either or both of those proposals, will be notified and may change their vote within ten days of receiving notice that the subject LLC has received consents from participants holding the required percentage interests. The required percentage interests for Empire State Building Associates L.L.C. is 80% of the outstanding participation interests in each of the three participating groups, for 60 East 42nd St. Associates L.L.C. is 90% of the outstanding participation interests in each of the seven participating groups and for 250 West 57th St. Associates L.L.C. is 75% of the outstanding participation interests in eight out of the ten participating groups. As of September 30, 2012, each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. had 2,878, 857, and 640 total participants holding 3,300, 700, and 720 total participation interests, respectively.

As of September 30, 2012, the following numbers of participation interests were held by the number of participants in each subject LLC's participating groups:

<b>Empire State Building Associates L.L.C.</b>	<b>Number of Participants</b>	<b>Number of Participation Interests Held<sup>(1)</sup></b>
Participating Group 1.	1,156	1,100
Participating Group 2	1,146	1,100
Participating Group 3	1,152	1,100

(1) Based on an original investment per participation interest of \$10,000.

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	Number of Participants	Number of Participation Interests Held <sup>(1)</sup>
<b>60 East 42nd St. Associates L.L.C.</b>		
Participating Group 1.	129	100
Participating Group 2	148	100
Participating Group 3	131	100
Participating Group 4.	132	100
Participating Group 5	144	100
Participating Group 6	137	100
Participating Group 7.	144	100

(1) Based on an original investment per participation interest of \$10,000.

	Number of Participants	Number of Participation Interests Held <sup>(1)</sup>
<b>250 West 57th St. Associates L.L.C.</b>		
Participating Group 1.	46	72
Participating Group 2	73	72
Participating Group 3	89	72
Participating Group 4.	63	72
Participating Group 5	84	72
Participating Group 6	73	72
Participating Group 7.	66	72
Participating Group 8.	58	72
Participating Group 9	87	72
Participating Group 10	69	72

(1) Based on an original investment per participation interest of \$5,000.

You can change your vote in one of two ways: you can send the company a written statement that you would like to change your vote, or you can send the company a new consent form. Any change in your vote or new consent form should be sent to MacKenzie Partners, Inc., the vote tabulator, by mail or facsimile, as described below.

**Q:** What is the process by which I may change my vote on the consolidation proposal or the third-party portfolio proposal?

**A:** You may change your vote at any time before the later of the date that consents from participants holding the required percentage interest in your participating group are received and the 60<sup>th</sup> day after the date of this prospectus/consent solicitation. In addition, a participant in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C. that does not consent to (or who abstains from or does not vote with respect to) the consolidation or the third-party portfolio proposal, as applicable, may also change his or her vote to consent to the consolidation or the third-party portfolio proposal, as applicable, within ten days after the notice that the required supermajority consent from the participants in such participant's participating group has been received with respect to such proposal is sent, as described below.

A participant can change his or her vote by sending to MacKenzie Partners, Inc., the vote tabulator, (i) a written statement that he or she would like to change his or her vote, or (ii) a new consent form, in either case, by mail, to 105 Madison Avenue, NY, NY 10016, or by facsimile, to (212) 929-0308. Either MacKenzie Partners, Inc. or the supervisor will send to the participant a written acknowledgment by facsimile or, if requested by the participant, mail, that the participant's vote has been changed promptly following receipt of a changed vote. Participants may call MacKenzie Partners, Inc. during the solicitation period to check whether or not the required supermajority consent from the participants in such participant's participating group has been received, or to confirm that such participant's changed vote has been received.

If a participant in Empire State Building Associates L.L.C. or 60 East 42<sup>nd</sup> St. Associates L.L.C. votes **AGAINST** the consolidation or the third-party portfolio proposal, **ABSTAINS** or does not submit a consent form and the supermajority consent of his or her participating group is received, the agent for his or her participating group will provide the written buyout notice, stating that such supermajority consent from



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the participants in such participant's participating group has been received to the participant following the expiration of the solicitation period, as the same may be extended.

The following is a hypothetical example illustrating the general timeline for this process:

DAY 1: the prospectus/consent solicitation is mailed to participants

DAY 46: the required supermajority consent for the consolidation is received by the participating group

DAY 47: the required supermajority consent for the third-party portfolio transaction is received by the participating group

DAY 61: the solicitation period expires; for the applicable participating group in Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C., the buyout notice that such supermajority consent from the participants in the applicable participating group has been received is mailed to participants who voted **AGAINST** or **ABSTAINED** on the consolidation or the third-party portfolio transaction, or did not vote.

DAY 71: expiration of 10-day period during which participants may change their vote to **FOR**.

Q: Are there tax consequences as a result of the consolidation?

A: It is expected that the consolidation should be treated for U.S. federal income tax purposes as follows:

- (i) If you receive solely shares of Class A common stock, the consolidation should be treated as a taxable sale of your participation interest in which gain or loss is recognized. Such gain or loss should generally equal the difference between your amount realized (which generally will equal the amount of the aggregate fair market value of shares of common stock that you receive, plus any distribution you receive of consolidation expenses that the operating partnership pays as a reimbursement to your subject LLC, plus the share of liabilities associated with your participation interests that you are deemed to be relieved of under U.S. federal income tax law) and your adjusted tax basis in your participation interests. You will realize phantom income if you have a negative capital account with respect to your participation interest. In each of 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C., original participants have a negative capital account. If you are an individual or a partnership for New York State personal income tax purposes, any gain that you recognize in the consolidation will generally be treated as New York source income for New York State personal income tax purposes. As a result, you (or, if you are a partnership, any of your partners who are individuals) will generally be subject to New York State personal income tax on such gain even if you are treated as a New York nonresident for purposes of the New York State personal income tax. The New York City personal income tax should not apply to individuals who are treated as New York City nonresidents for purposes of the tax. If all of your participation interest is exchanged for Class A common stock pursuant to the consolidation, suspended passive activity losses associated with your participation interest, if any, may be eligible for treatment as losses that are not from a passive activity to the extent that they exceed income and gains from passive activities for your taxable year that includes the consolidation.
- (ii) If you receive solely operating partnership units, or if you receive a combination of (a) operating partnership units and (b) shares of common stock that do not exceed your allocable share, after certain adjustments, of certain qualified capital expenditures of the subject LLC, as further described under U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Operating Partnership Units (the reimbursement amount), the consolidation should be treated as a tax-deferred contribution by the subject LLC of the subject LLC's property to the operating partnership in exchange for operating partnership units and common stock as a reimbursement of certain qualified capital



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expenditures, followed by a tax-deferred distribution of such operating partnership units and common stock to you. You should not generally recognize gain unless (i) the disguised sale rules of the Code apply, (ii) you are deemed to receive a constructive distribution of cash in excess of your tax basis in your operating partnership units under Sections 731 and 752(b) of the Code due to a reduction in your share of partnership liabilities or (iii) you have at-risk recapture income under Section 465(e) of the Code. To the extent that you do not recognize gain in the consolidation for U.S. federal income tax purposes, you also generally should not recognize gain for purposes of the New York State personal income tax and, if applicable, the New York City personal income tax.

- (iii) If you receive a combination of (a) operating partnership units and (b) shares of common stock in excess of your reimbursement amount, you should be treated as first selling a portion of your participation interest for such excess shares of common stock in a transaction in which gain or loss is recognized. Following such sale, the subject LLC should be treated as contributing the portion of its property not attributable to participation interests otherwise treated as having been sold to the operating partnership in exchange for operating partnership units and common stock as a reimbursement of qualified capital expenditures in a tax-deferred contribution, and the subject LLC should be treated as distributing operating partnership units and shares of common stock equal to your reimbursement amount to you in a tax-deferred distribution.

If you consent to the voluntary pro rata reimbursement program, you may be treated as receiving shares of common stock that you would otherwise receive in the consolidation and immediately transferring such shares of common stock to the supervisor as a reimbursement payment. For this purpose, even if you elect to receive solely operating partnership units in the consolidation, you should be treated as receiving shares of common stock equal to the amount that you are treated as transferring to the supervisor as a reimbursement payment. Accordingly, the gain or loss that you recognize in the consolidation transaction should take into account your deemed receipt of such common stock. You should be entitled to deduct the value of the shares of common stock that you are deemed to pay to the supervisor as an expense associated with your participation interest in your subject LLC. This deduction should offset the amount of gain you recognize, or increase the amount of losses you would otherwise recognize, as a result of your deemed receipt of shares of common stock. However, this deduction may be subject to certain limitations depending on your individual circumstances and may be required to be capitalized, and you should consult with your tax advisor regarding your ability to utilize all or a portion of this deduction for U.S. federal income tax purposes. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former Property Manager and Leasing Agent Legal Proceedings.

Participants should carefully review U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation. Participants should consult with their tax advisors with regard to the

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U.S. federal income tax, New York State personal income tax and New York City personal income tax consequences of receiving operating partnership units or common stock in exchange for their participation interests in their particular circumstances.

**Q:** In addition to this prospectus/consent solicitation, I received a supplement. What is the difference between this prospectus/consent solicitation and the supplement?

**A:** The purpose of this prospectus/consent solicitation is to describe the consolidation generally and to provide you with a summary of the investment considerations generally applicable to all of the subject LLCs. The purpose of the supplement is to describe the investment considerations particular to your subject LLC.

After you read this prospectus/consent solicitation, the supervisor urges you to read the supplement. The supplement contains information particular to your subject LLC. This information is material in your decision whether to vote **FOR** or **AGAINST** the consolidation.

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

**A:** The company plans 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. The company is unable to estimate the closing date of the consolidation and has required that it be completed no later than December 31, 2014. Your consent form must be received by \_\_\_\_\_, 2012, unless the supervisor extends the solicitation period. The supervisor reserves the right to extend on one or more occasions the solicitation period for one or more proposals for one or more subject LLCs or one or more participating groups in a subject LLC without extending for other proposals, subject LLCs or participating groups whether or not it has received approval for the consolidation or the third-party portfolio proposal.

If the consolidation is approved, the contribution agreements require that the consolidation be consummated by December 31, 2014. There could be significant changes in the value of the company between the date that the consents are received and the date of consummation of the consolidation. The contribution agreements use a formula to ascribe value to the subject LLCs, the private entities, and the management companies based, in part, on the relative exchange values of the subject LLCs, the private entities, and the management companies determined as of June 30, 2012 and effectively locks in the relative values of the subject LLCs, the private entities, and the management companies for purposes of the consolidation,

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whenever consummated. The consents will not be affected by any change in value, including any change in the relative value of a subject LLC as compared to the value of other subject LLCs, private entities or the management companies. The consolidation may be consummated regardless of how significant such changes are and may be consummated notwithstanding such changes.

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

A: For each subject LLC in which you own a participation interest, in the same mailing in which you received this prospectus/consent solicitation 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. 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 this prospectus/consent solicitation is based on a \$10,000 original investment. Where can I find information about my actual original investment?

A: Information is presented in this prospectus/consent solicitation 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.

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**WHO CAN HELP ANSWER YOUR QUESTIONS?**

If you have more questions about the consolidation or would like additional copies of the prospectus/consent solicitation or the supplement relating to your subject LLC(s) (which will be provided at no cost), you should contact the person designated on the consent form sent to you.

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**SUMMARY**

*This summary highlights information contained elsewhere in this prospectus/consent solicitation and may not contain all of the information regarding the consolidation that is important to you. To understand the consolidation and the third-party portfolio proposal fully and for a more complete description of the terms of and risks related to the consolidation and the third-party portfolio proposal, you should read carefully this entire prospectus/consent solicitation, the accompanying supplement relating to your subject LLC, the accompanying transmittal letter and the other documents to which the supervisor or the company, as applicable, has referred you, including the appendices and documents incorporated into this prospectus/consent solicitation by reference. See *Where You Can Find More Information*.*

**Purpose of this Prospectus/Consent Solicitation**

You are being requested to approve the consolidation in which your subject LLC will contribute its assets to the company as part of the consolidation in exchange for operating partnership units and/or common stock of the company. As part of the consolidation, the company also will enter into similar transactions with the other subject LLCs, the private entities and with the supervisor and other management companies that provide services to the subject LLCs and these entities. The company will be led by its Chairman, Chief Executive Officer and President, Anthony E. Malkin, who has provided portfolio leadership as president of the supervisor, while Peter L. Malkin will continue to provide guidance as Chairman Emeritus, all supported by the supervisor's team of executives and staff, who are expected to join the company as part of the consolidation. The consolidation also will result in the creation of a company with a board of directors consisting predominantly of independent directors, which will be responsible for overseeing the operations of the company. Anthony E. Malkin will be the only management member of the board of directors and will be the only member of the Malkin Family that will be employed by the company or receive salary or other compensation from the company.

The supervisor believes you will benefit from this consolidation through newly created opportunities for liquidity, enhanced property diversification, increased growth opportunities, enhanced operating and financing abilities and efficiencies, combined balance sheets, anticipated regular quarterly cash distributions, and continued leadership by the principals of the supervisor under the accountability of the governance structure of a company with its Class A common stock expected to be listed on the New York Stock Exchange, which is referred to herein as the NYSE, and a board of directors consisting predominantly of independent directors.

The supervisor believes this transaction represents the best opportunity for value enhancement for your investment in the subject LLC after years of action under the supervisor's leadership to preserve, restore, and enhance your investment. Included in that history is a challenging time, which began with litigation commenced in 1997 by Peter L. Malkin and the supervisor to remove Helmsley-Spear, Inc., the former property manager and leasing agent (after it was sold by entities controlled by Leona M. Helmsley), as property manager and leasing agent of the properties owned by the subject LLCs and other properties, which are now included in the plans for this consolidation.

Since the successful resolution of that litigation, the supervisor has overseen the engagement by the subject LLCs of independent property management and leasing agents, developed and substantially effected a comprehensive renovation and repositioning program for improving the physical condition of and upgrading the credit quality of tenants at the property, and raised the property's profile as part of a well regarded portfolio brand. The supervisor believes that it is an opportune time for the subject LLCs to take advantage of the opportunity to participate in the consolidation which will afford participants better value protection through diversification, growth opportunities through potential acquisitions and potential growth in revenue of the initial properties and more stable cash flows for distributions, as well as administrative and operating efficiencies. Additionally, the supervisor believes the consolidation provides value enhancement through better access to capital and liquidity for investors who so desire.

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The supervisor has reviewed this transaction carefully and believes that current and anticipated property results provide favorable prospects for the consolidation. The supervisor will consider the capital market conditions at the time the IPO is ready to commence, but the supervisor is confident that a well located, well run, well capitalized portfolio of office and retail properties in Manhattan and in the greater New York metropolitan area is a desirable portfolio for an IPO.

The consolidation offers participants the opportunity to become limited partners in the operating partnership and stockholders of the company, which is being formed to continue and expand the commercial real estate business of the subject LLCs, the private entities and the management companies participating in the consolidation. The supervisor has developed a comprehensive knowledge of its markets that has been acquired through its senior management team's substantial experience and is a recognized operator of office and retail properties.

Manhattan and the greater New York metropolitan area is one of the most-prized office markets in the world and a world-renowned retail market. Its status is derived from a combination of supply constraints and high barriers to entry, as well as near-term and long-term prospects for job creation, vacancy absorption and rental rate growth. Upon completion of the consolidation, all of the company's properties will be located in Manhattan and the greater New York metropolitan area. The supervisor believes that the company will represent a unique opportunity to invest in a well-capitalized company with real estate in these most-prized markets and recognized and respected leadership. The company's primary focus will be to manage its current portfolio and acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

A subject LLC will participate in the consolidation only if participants holding more than the required percentage of the outstanding participation interests in the subject LLC vote in favor of the consolidation, as described herein.

### **Description of the Company and the Subject LLCs**

#### **Overview**

The company is a self-administered and self-managed real estate investment trust, or REIT, that owns, manages, operates, acquires and repositions office and retail properties in Manhattan and the greater New York metropolitan area. The company was formed to continue and expand the commercial real estate business of the supervisor and its affiliates. The company's primary focus will be to continue to own, manage and operate its current portfolio and to acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

As of September 30, 2012, the company owned 12 office properties (including one long-term ground leasehold interest) encompassing approximately 7.7 million rentable square feet of office space, which were approximately 79.8% leased (or 83.3% giving effect to leases signed but not yet commenced as of that date). Seven of these properties are located in the midtown Manhattan market and encompass in the aggregate approximately 5.9 million rentable square feet of office space, including the Empire State Building. The company's Manhattan office properties also contain an aggregate of 433,545 rentable square feet of premier retail space on their ground floor and/or lower levels. The company's remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.8 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, the company has entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of its office properties, that will support the development of an approximately 380,000 rentable square foot office building and garage, which is referred to herein as Metro Tower. As of September 30, 2012, the company's portfolio also included four standalone retail properties located in Manhattan and two standalone retail properties

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located in the city center of Westport, Connecticut, encompassing 204,452 rentable square feet in the aggregate. As of September 30, 2012, the company's standalone retail properties were 100.0% leased in the aggregate.

In addition, the company has an option to acquire from three private entities supervised by the supervisor two additional Manhattan office properties encompassing approximately 1.5 million rentable square feet of office space and 154,149 rentable square feet of ground floor retail space. Each of the Malkin Holdings group and the Helmsley estate owns interests in such private entities. These option properties currently are subject to ongoing litigation and the company has an option to acquire fee, long-term leasehold, sub-leasehold and/or sub-subleasehold interests in these two properties, as applicable, after such litigation is resolved. These properties are referred to herein as the option properties. For more information please see "The Company Business and Properties" Description of Option Properties.

From 2002 through 2006, the supervisor gradually gained full control of the day-to-day management of the company's Manhattan office properties (with the Helmsley estate holding certain approval rights at some of these properties as a result of its interest in the entities owning the properties). Helmsley-Spear, Inc. had provided property management services to the company's Manhattan office properties during the period from 2002 through 2006 prior to its removal as property manager. See "Business and Properties" History for more information regarding how the supervisor gained full control of the day-to-day management of the company's Manhattan office properties. Since then, the supervisor has been undertaking a comprehensive renovation and repositioning strategy of its Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such properties. Since the supervisor assumed full control of the day-to-day management of the company's Manhattan office properties beginning with One Grand Central Place in 2002 and through September 30, 2012, the subject LLCs and the private entities have invested a total of approximately \$342.0 million (excluding tenant improvement costs and leasing commissions) in its Manhattan office properties pursuant to this program. The company currently intends to invest between \$100.0 million and \$130.0 million of additional capital through the end of 2013. The company expects to complete substantially this program by the end of 2013, except with respect to the Empire State Building, which is the last Manhattan office property that began its renovation program. In addition, the company currently estimates that between \$85.0 million and \$115.0 million of capital is needed beyond 2013 to complete substantially the renovation program at the Empire State Building, which the company expects to occur by the end of 2016, due to the size and scope of the company's remaining work and the company's desire to minimize tenant disruptions at the property. The company intends to fund these capital improvements through a combination of operating cash flow and borrowings.

These improvements, within the renovation and repositioning program, include restored, renovated and upgraded or new lobbies; elevator modernization; renovated public areas and bathrooms; refurbished or new windows; upgrade and standardization of retail storefront and signage; façade restorations; modernization of building-wide systems and enhanced tenant amenities. These improvements are designed to improve the overall value and attractiveness of the company's properties and have contributed significantly to its tenant repositioning efforts, which seek to increase the company's occupancy; raise the company's rental rates; increase the company's rentable square feet; increase the company's aggregate rental revenue; lengthen the company's average lease term; increase the company's average lease size; and improve the company's tenant credit quality. The company has also aggregated smaller spaces in order to offer larger blocks of office space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. This strategy has shown attractive results to date, as illustrated by the case studies which are described in "The Company Business and Properties" Renovation and Repositioning Case Studies, and the company believes it has the potential to improve the company's operating margins and cash flows in the future. The company believes the company will continue to enhance its tenant base and improve rents as the company's pre-renovation leases continue to expire and be re-leased.

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The Empire State Building is the company's flagship property and provides the company with a significant and diversified source of revenue through its office and retail leases, observatory operations and broadcasting licenses and related leased space. Empire State Building Associates L.L.C. owns the fee interest in, and the land underlying, the Empire State Building. On a pro forma basis, during the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively, the company generated approximately \$181.6 million and \$213.4 million of revenue from the Empire State Building. The ongoing repositioning of the Empire State Building, which comprises 2,696,316 rentable square feet of office space and 169,215 rentable square feet of retail space, is representative of the company's strategic vision for its Manhattan office properties. To date, the renovation and repositioning efforts have enabled the supervisor to lease significant amounts of space at the Empire State Building to new higher credit-quality tenants, including: LF USA; Skanska; Coty, Inc.; the Federal Deposit Insurance Corporation; Funaro & Co.; Kaltex North America, Inc.; LinkedIn; Noven Pharmaceuticals; People's Daily Online USA; Taylor Global; The Freeh Group; Turkish Airlines; and World Monuments Fund. The company believes completing the repositioning program for the Empire State Building, as well as its other Manhattan office properties, represents a significant growth opportunity for the company.

In addition to the Empire State Building, the company's portfolio attracts high quality tenants to its high quality, midtown Manhattan and greater New York metropolitan area office properties.

Major tenants of 1333 Broadway include LF USA, Inc., Aetna Life Insurance Company, OCE-USA Holdings, and a variety of service firms and retail tenancy in its multi-level retail space. Major tenants of 1350 Broadway include E-Bay, Tarter Krinsky & Drogin LLP, Marketfish, Ecolab, Open Space Institute, a variety of service firms including Carrier Corporation and retail tenancy in its multi-level retail space including Bank Santander (Sovereign Bank), Duane Reade (a division of Walgreen Co.), HSBC, Starbucks, and FedEx/Kinko's. Major tenants of 1359 Broadway include LF USA Inc., IPREO Holdings LLC, Actimize, Inc., Equifax, Parkinson's Disease Foundation and a variety of leading not-for-profit and service firms. Major tenants of 501 Seventh Avenue include the corporate headquarters of both Carolina Herrera Ltd. and Warnaco, Local Initiatives Support Corporation, a variety of service firms and retail tenancy including Chipotle Mexican Grill and Pot Belly Sandwich Shop. One Grand Central Place is largely a small tenant building. Its major tenants include Fairfield Maxwell Group, Ales Group USA, Inc., Tourist Office of Spain, American Bureau of Shipping, Pine Brook Road Partners LLC, a variety of financial, services, corporate, and not-for-profit tenants and retail tenancy in its multi-level retail space including JP Morgan Chase Bank, Bank of America, N.A., and Charles Schwab & Co. 250 West 57th Street is largely a small tenant building. Its major tenant is Perseus Books Group and its other tenants include a variety of financial, services, corporate, and not-for-profit tenants including N.S. Bienstock, Inc., Chase Paymentech (a division of JPMorgan Chase Bank) and retail tenancy in its multi-level retail space including TJ Maxx, the Gap, and Duane Reade (a division of Walgreen Co.).

In the greater New York metropolitan area, the company's portfolio includes high quality suburban office properties in densely populated metropolitan communities in Fairfield County, Connecticut and Westchester County, New York. Major tenants of the greater New York metropolitan area flagship Metro Center (at the Transportation Center in Stamford, Connecticut) include Thomson Reuters, Jefferies Group, Columbus Circle Investors, OMI Group, Olympus Partners, BP Energy, Tweedy, Browne Company and a variety of other investment management and private equity firms. Major tenants of First Stamford Place (within a short walking distance of the Transportation Center in Stamford, Connecticut) include Ernst & Young, Legg Mason, Citibank, N.A., Elizabeth Arden, Inc., Thomson Reuters, Guardian Life Insurance Company, the corporate headquarters of Crane Co., Air Castle Advisor LLC, National Indemnity Company, Gleacher Securities Group Inc., Robert W. Baird, Inc., MKM Partners, Jones Lang LaSalle, Bank of Ireland, Forevermark US Inc., and a variety of investment management and service firms. Major tenants of 383 Main Avenue (at the intersection of the Merritt Parkway and Route 7 in Norwalk, Connecticut) include Reed Elsevier, Inc., Nestle Holdings, Inc., Cisco Systems, Inc., SunGard, CIT LLC, SAP America, Inc., SymphonyIRI Group, Multiple Myeloma Research Foundation, Fairfield County Community Trust and a variety of not-for-profit and service firms. Major tenants of 10 Bank Street (at the Transportation Center



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in White Plains, New York) include JP Morgan Chase Bank, Pearson Education, Inc., Fifth Street Capital, Inc., Rockwood Capital, LLC, Pine Brook Road Partners, LLC, Evolution Markets, LLC, US Renewables Group, Liberty Mutual, Nokia, Marubeni Specialty Chemicals Inc., Hitachi Cable America Inc., and a variety of leading investment management and service firms. Major tenants of 500 Mamaroneck Avenue (between the Hutchinson River Parkway and Interstate 95 in Harrison, New York) include Mariner Investment Group, O Connor Davies Munn & Dobbins, Pasternak Wine Imports, Universal Remote Control, Stark Business Solutions and a variety of financial and service firms.

The company's portfolio also includes high quality retail properties located in premier retail corridors in Manhattan and Westport, Connecticut. Tenants at 10 Union Square in Manhattan include Best Buy Mobile, Starbucks, A&P, Panera Bread, FedEx/Kinko's, Au Bon Pain, Chipotle Mexican Grill, and GameStop. Tenants at 1010 Third Avenue's multi-level retail space in Manhattan include Ethan Allen. Tenants at 55 West 57th Street include Tapps Supermarkets and Bank of America, N.A. Tenants at 69-97 Main Street in Westport, Connecticut include Ann Taylor, Lululemon, Allen Edmonds, Nike, and Theory. Tenants at 103-109 Main Street include Kate Spade.

112-122 West 34th Street, one of the option properties, is in transition from a garment tenant profile. 112-122 West 34th 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., 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.

The company is led by Anthony E. Malkin, its Chairman, Chief Executive Officer and President, who has a strong reputation in the industry for quality management, repositioning and marketing expertise. Mr. Malkin, together with the company's senior management team, has developed the company's strategy with a focus on tenant and broker relationships and the cultivation of the company's brand to attract higher credit-quality tenants to its improved buildings and negotiate attractive rental terms. Mr. Malkin has over 24 years of real estate experience specifically in expanding, renovating, repositioning and managing this portfolio. The company's senior management team has an average of approximately 29 years of experience covering all aspects of real estate, including asset and property management, leasing, marketing, acquisitions, construction, development, legal and finance. Messrs. Malkin, Thomas P. Durels and Thomas N. Keltner, Jr. have worked together for the supervisor for approximately 23 years, with Messrs. Malkin and Durels being responsible for supervising the design and implementation of the company's renovation and repositioning program.

### **The Company's Competitive Strengths**

The company believes that it distinguishes itself from other owners and operators of office and retail properties as a result of the following competitive strengths:

**Irreplaceable Portfolio of Office Properties in Midtown Manhattan.** The company's Manhattan office properties are located in one of the most prized office markets in the world due to a combination of supply constraints, high barriers to entry, near-term and long-term prospects for job creation, vacancy absorption and rental rate growth. The company's management believes these properties could not be replaced today on a cost-competitive basis, if at all. As of September 30, 2012, the company owned seven Manhattan office properties (including one long-term ground leasehold interest) encompassing approximately 5.9 million rentable square feet of office space, including the Empire State Building, the company's flagship property.

**Expertise in Repositioning and Renovating Manhattan Office Properties.** The company has substantial expertise in renovating and repositioning Manhattan office properties, having invested a

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total of approximately \$342.0 million (excluding tenant improvement costs and leasing commissions) in the Manhattan office properties since the supervisor assumed full control of the day-to-day management of these properties beginning with One Grand Central Place in November 2002 through September 30, 2012. The supervisor has successfully aggregated and is continuing to aggregate smaller spaces to offer larger blocks of space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. As part of this program, the supervisor converted some or all of the ground office floors of certain of its Manhattan office properties to higher rent retail space. The company believes that the post-renovation high quality of its buildings and the service the company provides also attract higher credit-quality tenants and allow it to grow cash flow.

**Leader in Energy Efficiency Retrofitting.** The company has pioneered certain practices in energy efficiency at the Empire State Building where the company has partnered with the Clinton Climate Initiative, Johnson Controls Inc., Jones Lang LaSalle and the Rocky Mountain Institute to create and implement a groundbreaking, replicable process for integrating energy efficiency retrofits in the existing built environment. The reduced energy consumption reduces costs for the company and its tenants, and the company believes creates a competitive advantage for its properties. As a result of the energy efficiency retrofits, the company currently estimates that the Empire State Building will save at least 38% of its energy use, resulting in at least \$4.4 million of annual energy cost savings. Johnson Controls Inc. has guaranteed minimum energy cost savings of \$2.2 million, from 2010 through 2025, with respect to certain of the energy efficiency retrofits which Johnson Controls Inc. was responsible for installing. In 2011, the actual energy cost savings for the energy efficiency retrofits which Johnson Controls Inc. was responsible for installing was \$2.4 million. As a result of the company's efforts, the Empire State Building is now an Energy Star building and has been awarded LEED EBOM-Gold certification. The company is currently underway with the design and specification process to implement energy efficiency retrofitting projects in its Manhattan and greater New York metropolitan area office properties based on its work at the Empire State Building. The company believes that its portfolio's attractiveness is enhanced by these practices and that this should result in higher rental rates, longer lease terms and higher quality tenants.

**Attractive Retail Locations in Densely Populated Metropolitan Communities.** As of September 30, 2012, the company's portfolio also included six standalone retail properties and retail space at the ground floor and/or lower levels of its Manhattan office properties. All of these properties are located in premier retail corridors with convenient access to mass transportation, a diverse tenant base and high pedestrian traffic and/or main destination locations. The company's retail portfolio includes 616,546 rentable square feet located in Manhattan and 21,433 rentable square feet located in Westport, Connecticut. The company's retail tenants cover a number of industries, including financial services, and include Allen Edmonds; Ann Taylor; AT&T; Bank of America; Bank Leumi; Bank Santander (Sovereign Bank); Best Buy Mobile; Charles Schwab; Chipotle; Duane Reade (a division of Walgreen Co.); Ethan Allen; FedEx/Kinko's; Food Emporium; Foot Locker; the GAP; GameStop; HSBC; JP Morgan Chase; Kate Spade; Loews Theatre; Lululemon; Men's Wearhouse; Nike; Panera Bread; Payless Shoesource; Potbelly Sandwich Works; Sprint; Starbucks; Theory; TJ Maxx; and Walgreens.

**Experienced and Committed Management Team with Proven Track Record.** The company's senior management team is highly regarded in the real estate community and has extensive relationships with a broad range of brokers, owners, tenants and lenders. The company has substantial in-house expertise and resources in asset and property management, leasing, marketing, acquisitions, construction, development and financing and a platform that is highly scalable. Members of the company's senior management team have worked in the real estate industry for an average of approximately 29 years, and Messrs. Malkin, Durels and Keltner have worked together for the supervisor for approximately 23 years. Upon completion of the IPO, the company's senior management

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team is expected to own 8.7% of the company's common stock on a fully diluted basis (including shares of common stock on a fully diluted basis as to which Anthony E. Malkin has the right to vote, but does not have a pecuniary interest), and therefore their interests are expected to be aligned with those of the company's stockholders, and they are incentivized to maximize returns for the company's stockholders.

**Strong Balance Sheet Well Positioned For Future Growth.** Upon completion of the consolidation and the IPO, the company expects to have pro forma total debt outstanding of approximately \$1.11 billion, with a weighted average interest rate of 5.20%, a weighted average maturity of 3.4 years and 78.2% of which is fixed-rate indebtedness. Additionally, the company expects to have approximately \$304.1 million of available borrowing capacity under its loans on a pro forma basis (excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). Upon completion of the IPO and on a pro forma basis for the year ended December 31, 2011, the company expects to have a debt-to-earnings before interest, income tax, depreciation and amortization, or EBITDA, ratio of approximately 4.93x. For the year ended December 31, 2011, the company's pro forma EBITDA and pro forma net income were approximately \$213.2 million and \$58.7 million, respectively. The company has no debt maturing in the remainder of 2012 and approximately \$56.9 million maturing in 2013.

### **Business and Growth Strategies**

The company's primary business objectives are to maximize cash flow and total returns to its stockholders and to increase the value of the company's properties through the pursuit of the following business and growth strategies:

**Lease-up Available Space at Manhattan Office Properties.** As of September 30, 2012, the company's Manhattan office properties were approximately 77.0% leased (or 81.4% giving effect to leases signed but not yet commenced as of that date) and had approximately 1.4 million rentable square feet of available space (excluding leases signed but not yet commenced). This compares to an average of 90.2% leased in midtown Manhattan according to RCG as of June 30, 2012. The company believes its renovation and repositioning program for its Manhattan office properties is a catalyst for additional lease-up. To date the company believes these efforts have accelerated its ability to lease space to new higher credit-quality tenants, many of which have expanded the office space they lease from the company over time. Examples of this include LF USA, Coty, Inc., the Federal Deposit Insurance Corporation and Actimize which collectively have leases signed with the company for over 1,397,250 rentable square feet that represent additional annualized base rent of \$56,424,227 as of September 30, 2012.

**Increase Existing Below-Market Rents.** The company believes it can capitalize on the successful repositioning of its Manhattan office portfolio and improving market fundamentals to increase rents. For example, the company expects to benefit from the re-leasing of 16.6%, or approximately 1.0 million rentable square feet (including month-to-month leases), of its Manhattan office leases expiring through December 31, 2014, which the company generally believes are currently at below market rates. These expiring leases represent a weighted average base rent of \$39.39 per square foot based on current measurements. As older leases expire, the company expects to continue to upgrade certain space to further increase rents and the company expects to increase the total rentable square footage of such space as a result of remeasurement and application of market loss factors to the company's space which the company expects will generate additional rental revenue.

**Complete the Redevelopment and Repositioning of the Company's Current Portfolio.** The company intends to continue to increase occupancy, improve tenant quality and enhance cash flow and

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value by completing the renovation and repositioning of its Manhattan office properties. The company intends selectively to continue to allow leases for smaller spaces to expire or relocate smaller tenants in order to aggregate, demolish and re-demise existing office space into larger blocks of vacant space, which the company believes will attract higher credit-quality tenants at higher rental rates. In addition, the company is a leader in developing economically justified energy efficiency retrofitting and sustainability and has made it a portfolio-wide initiative. The company believes this makes its properties desirable to high credit-quality tenants at higher rental rates and longer lease terms.

**Pursue Attractive Acquisition and Development Opportunities.** The company will opportunistically pursue attractive opportunities to acquire office and retail properties, including the option properties. For more information regarding the option properties, please see The Company Business and Properties Description of Option Properties. The company intends to focus its acquisition strategy primarily on Manhattan office properties and, to a lesser extent, office and multi-tenanted retail properties in densely populated communities in the greater New York metropolitan area and other markets the company may identify in the future. The company's strong balance sheet, access to capital, and ability to offer operating partnership units in tax deferred acquisition transactions should give the company significant flexibility in structuring and consummating acquisitions.

**Proactively Manage the Company's Portfolio.** The company believes its proactive, service-intensive approach to asset and property management helps increase occupancy and rental rates. The company utilizes its comprehensive building management services and its strong commitment to tenant and broker relationships and satisfaction to negotiate attractive leasing deals and to attract high credit-quality tenants. The company proactively manages its rent roll and maintains continuous communication with its tenants. The company believes long-term tenant relationships will improve its operating results over time by reducing leasing, marketing and tenant improvement costs and reducing tenant turnover.

## **Company Information**

As of September 30, 2012, the company had approximately 605 employees, 102 of whom were managers and professionals. The company's principal executive offices are located at One Grand Central Place, 60 East 42<sup>nd</sup> Street, New York, New York 10165. In addition, the company has six additional regional leasing and property management offices in Manhattan and the greater New York metropolitan area. The company's telephone number is (212) 953-0888. The company's website address is [www.empirestaterealtytrust.com](http://www.empirestaterealtytrust.com). The information on or otherwise accessible through, the company's website does not constitute a part of this prospectus/consent solicitation.

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As of September 30, 2012, the company's portfolio consisted of 12 office properties and six standalone retail properties totaling approximately 8.4 million rentable square feet and was approximately 80.2% leased (or 83.5% giving effect to leases signed but not yet commenced as of that date). In addition, the company owned entitled land that will support the development of an approximately 380,000 rentable square foot office building and garage (Metro Tower) at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of the company's office properties, as of September 30, 2012. The table below presents an overview of the company's portfolio and the option properties as of September 30, 2012:

Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized Base Rent Per Leased Square Foot <sup>(5)</sup>	Net Effective Rent Per Leased Square Foot <sup>(6)</sup>	Number of Leases <sup>(7)</sup>
<b>Manhattan Office Properties</b>								
The Empire State Building	Penn Station-Times Sq. South	1931/ In process					\$ 43.80	
Office <sup>(8)</sup>			2,696,316	67.4%	\$ 70,119,745	\$ 38.60		247
Retail <sup>(9)</sup>			169,215	85.9%	\$ 15,234,691	\$ 104.82		25
One Grand Central Place	Grand Central	1930/ In process					\$ 47.67	
Office			1,181,327	79.1%	\$ 41,949,725	\$ 44.89		297
Retail			68,005	92.9%	\$ 6,313,878	\$ 99.97		19
250 West 57th Street	Columbus Circle-West Side	1921/ In process					\$ 45.02	
Office			476,574	86.0%	\$ 16,794,389	\$ 40.99		165
Retail			52,247	100.0%	\$ 4,566,250	\$ 87.40		7
501 Seventh Avenue	Penn Station-Times Sq. South	1923/ In process					\$ 35.79	
Office			441,203	87.3%	\$ 13,487,847	\$ 35.03		31
Retail			35,502	100.0%	\$ 1,784,676	\$ 50.27		10
1359 Broadway	Penn Station-Times Sq. South	1924/ In process					\$ 39.41	
Office			441,022	93.0%	\$ 15,407,047	\$ 37.58		31
Retail			27,618	40.3%	\$ 1,510,342	\$ 135.59		5
1350 Broadway <sup>(10)</sup>	Penn Station-Times Sq. South	1929/ In process					\$ 55.80	
Office			368,323	81.7%	\$ 12,154,203	\$ 40.41		73
Retail			30,895	100.0%	\$ 5,730,477	\$ 185.48		6
1333 Broadway	Penn Station-Times Sq. South	1915/ In process					\$ 43.96	
Office			302,277	96.6%	\$ 11,996,983	\$ 41.09		10
Retail			50,063	6.4%	\$ 745,713	\$ 233.11		3
<b>Sub-Total / Weighted Average Manhattan Office Properties</b>			<b>6,340,587</b>	<b>77.1%</b>	<b>\$ 217,795,966</b>	<b>\$ 44.54</b>	<b>\$ 44.46</b>	<b>929</b>
<b>Office</b>			<b>5,907,042</b>	<b>77.0%</b>	<b>\$ 181,909,939</b>	<b>\$ 39.99</b>		<b>854</b>
<b>Retail</b>			<b>433,545</b>	<b>78.8%</b>	<b>\$ 35,886,027</b>	<b>\$ 105.09</b>		<b>75</b>
<b>Greater New York Metropolitan Area Office Properties</b>								
First Stamford Place <sup>(11)</sup>	Stamford, Connecticut <sup>(12)</sup>	1986/2003	785,945	88.6%	\$ 26,824,272	\$ 38.53	\$ 39.54	38
Metro Center	Stamford, Connecticut <sup>(12)</sup>	1987/1999	275,758	98.6%	\$ 12,855,443	\$ 47.28	\$ 47.28	26
383 Main Avenue	Norwalk, Connecticut <sup>(13)</sup>	1985/1996	259,856	81.3%	\$ 5,787,139	\$ 27.39	\$ 27.94	18
500 Mamaroneck Avenue	Harrison, New York <sup>(14)</sup>	1986/2004	289,711	88.5%	\$ 6,950,955	\$ 27.12	\$ 26.74	29
10 Bank Street	White Plains, New York <sup>(15)</sup>	1989/2001	228,994	85.4%	\$ 6,485,766	\$ 33.15	\$ 33.71	28
			<b>1,840,264</b>	<b>88.6%</b>	<b>\$ 58,903,574</b>	<b>\$ 36.11</b>	<b>\$ 36.62</b>	<b>139</b>

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Sub-Total / Weighted Average Greater New York Metropolitan  
Area Office Properties

<b>Total / Weighted Average Office Properties</b>	<b>7,747,306</b>	<b>79.8%</b>	<b>\$ 240,813,514</b>	<b>\$ 38.97</b>	<b>993</b>
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Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized	Net Effective	Number of Leases <sup>(7)</sup>
						Leased Square Foot <sup>(5)</sup>	Leased Square Foot <sup>(6)</sup>	
<b>Standalone Retail Properties</b>								
10 Union Square	Union Square	1988/1997	58,005	100.0%	\$ 4,731,292	\$ 81.57	\$ 81.95	13
1542 Third Avenue	Upper East Side	1993 <sup>(16)</sup>	56,250	100.0%	\$ 2,775,618	\$ 49.34	\$ 47.71	3
1010 Third Avenue	Upper East Side	1963/2007 <sup>(17)</sup>	44,662	100.0%	\$ 3,048,085	\$ 68.25	\$ 65.88	2
77 West 55th Street	Midtown	1962 <sup>(16)</sup>	24,102	100.0%	\$ 2,244,516	\$ 93.13	\$ 79.62	3
69-97 Main Street	Westport, Connecticut	1922/2005	17,103	100.0% <sup>(18)</sup>	\$ 1,513,984	\$ 88.52	\$ 90.79	5
103-107 Main Street	Westport, Connecticut	1900 <sup>(16)</sup>	4,330	100.0%	\$ 423,696	\$ 97.85	\$ 94.69	3
<b>Sub-Total / Weighted Average Standalone Retail Properties</b>			<b>204,452</b>	<b>100.0%</b>	<b>\$ 14,737,191</b>	<b>\$ 72.08</b>	<b>\$ 69.75</b>	<b>29</b>
<b>Total / Weighted Average Retail Properties<sup>(19)</sup></b>								
			<b>637,997</b>	<b>85.6%</b>	<b>\$ 50,623,218</b>	<b>\$ 92.73</b>		<b>104</b>
<b>Portfolio Total</b>								
			<b>8,385,303</b>	<b>80.2%</b>	<b>\$ 291,436,732</b>	<b>\$ 43.33</b>	<b>\$ 43.33</b>	<b>1,097</b>
<b>Option Properties</b>								
112-122 West 34 <sup>th</sup> Street <sup>(20)</sup>	Penn Station- Times Sq. South	1954/ In process					\$ 36.09	
Office			608,050	83.9%				47
Retail			133,437	100.0%				3
1400 Broadway	Penn Station- Times Sq. South	1930/ In process					\$ 37.01	
Office			866,103	79.1%				79
Retail			20,712	39.4%				13
<b>Option Properties Total</b>			<b>1,628,302</b>					<b>142</b>

- (1) For more information regarding the status of ongoing renovations at certain of the company's properties, see "The Company Business and Properties" Description of the Company's Properties.
- (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) 119,437 square feet of space across the company's portfolio attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.
- (3) Based on leases signed and commenced as of September 30, 2012 and calculated as (i) rentable square feet less available square feet divided by (ii) rentable square feet.
- (4) Annualized base rent for office properties 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 the office properties for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$10,441,248. Total annualized base rent, net of abatements and free rent, for the company's office properties is \$230,372,265. Annualized base rent for retail properties (including the retail space in the company's Manhattan office properties) is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements, tenant reimbursements and free rent with respect to the retail properties (including the retail space in the company's Manhattan office properties) for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$243,517. Total annualized base rent, net of abatements, tenant reimbursements and free rent, for the company's retail properties is \$50,379,701. Annualized base rent data for the company's office and retail properties is as of September 30, 2012 and does not reflect scheduled lease expirations for the 12 months ending September 30, 2013.
- (5) Represents Annualized Base Rent under leases commenced as of September 30, 2012 divided by leased square feet.
- (6) Net effective rent per leased square foot represents (i) the contractual base rent for office and retail leases in place as of September 30, 2012, 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 September 30, 2012.
- (7) Represents the number of leases at each property or on a portfolio basis. If a tenant has more than one lease, whether or not at the same property, but with different expirations, the number of leases is calculated equal to the number of leases with different expirations.

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- (8) Includes 85,812 rentable square feet of space leased by the company's broadcasting tenants.
- (9) Includes 6,180 rentable square feet of space leased by Host Services of New York, a licensee of the company's observatory.
- (10) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to the company, of approximately 38 years (expiring July 31, 2050).
- (11) First Stamford Place consists of three buildings.
- (12) This submarket is part of the Stamford, Connecticut central business district (CBD) submarket as defined by RCG. See Economic and Market Overview.
- (13) This submarket is part of the South Central Stamford, Connecticut submarket as defined by RCG. See Economic and Market Overview.
- (14) This submarket is part of the Eastern Westchester County submarket as defined by RCG. See Economic and Market Overview.
- (15) This submarket is part of the White Plains, New York CBD submarket as defined by RCG. See Economic and Market Overview.
- (16) No major renovation activity was undertaken at this property.
- (17) This property underwent major renovations in 2007 to coincide with the signing of a significant retail lease.
- (18) 100% leased, including leases signed but not yet commenced.
- (19) Includes 433,545 rentable square feet of retail space in the company's Manhattan office properties.
- (20) 112-122 West 34th Street consists of two parcels having separate owners and ownership structures. The real property interests that the company will acquire with respect to the parcel located at 112-120 West 34th Street consist of (i) a ground leasehold interest currently



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held by 112 West 34th Street Associates L.L.C., one of the affiliates of the supervisor with whom the company has entered into an option agreement and (ii) an operating leasehold interest currently held by 112 West 34th Street Company L.L.C., another affiliate of the supervisor with whom the company has entered into an option agreement. The real property interests that the company will acquire with respect to the parcel located at 122 West 34th Street consist of (i) a fee interest and a subleasehold interest currently held by 112 West 34th Street Associates L.L.C. and (ii) an operating leasehold interest currently held by 112 West 34th Street Company L.L.C.

**Background of and Reasons for the Consolidation**

**The Subject LLCs, the Private Entities and the Management Companies**

The three subject LLCs are publicly-registered limited liability companies originally formed as partnerships by principals of the supervisor from 1953 to 1961. The principals of the supervisor during this period consisted of Lawrence A. Wien, until his death in 1988 and, beginning in 1958, Mr. Wien's son-in-law Peter L. Malkin. Anthony E. Malkin, Mr. Wien's grandson, joined his father Peter L. Malkin as a principal in 1989. In exercising control, Peter L. Malkin and Anthony E. Malkin have been, and continue to be, subject to fiduciary duties owed to multiple sets of equity owners in each subject LLC and private entity. Each subject LLC was formed to acquire the fee title or long-term ground lease interest in an office property located in Manhattan and to lease the property to an operating lessee, which operates the property. The private entities, including the operating lessees were formed between 1953 and 2008 and own office properties, retail properties and, in one case, fully entitled land including a development site, in Manhattan and the greater New York metropolitan area. The supervisor and the Malkin Family provide supervisory and other services for each subject LLC, each operating lessee and the other private entities.

As lessor, each subject LLC receives from its operating lessee fixed basic rent (and, in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., primary additional rent), and overage rent (equal to 50% of the operating lessee's net operating profit). In the case of Empire State Building Associates L.L.C., net operating profit is calculated as net operating profits in excess of \$1,000,000 per annum, which amount is retained by Empire State Building Company L.L.C., and in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., net operating profit is calculated as net operating profits in excess of \$1,053,800 per annum and \$752,000 per annum, respectively, of primary additional rent, which is paid by the operating lessee to the applicable subject LLC to the extent of net profits. Such amounts represent approximately 2.78%, 4.35% and 10.59%, respectively, of the original purchase price of each of the Empire State Building, One Grand Central Place and 250 West 57<sup>th</sup> Street. Each operating lessee was formed initially as a partnership, the partners of which included Lawrence A. Wien and Harry B. Helmsley, and later converted to a limited liability company. Under the operating lease, the subject LLC, as lessor, has no right to operate the property. The operating lessee does not require any approval from the subject LLC for any operating decision. As such, the operating lessee makes all decisions relating to the operations of the property, including decisions as to leasing the property and selection of tenants and timing of leasing; what repairs to make, how much to spend on them and how to maintain the property (consistent with its obligation to repair, maintain and replace the property, subject to the lessor's consent for certain alterations which must be reasonably given); whether to hire property management and leasing agents or to handle such work internally; how to use the cash flow from the property; whether to seek financing for major expenditures; and whether to use cash flow for property-related expenses or to establish reserves. Each subject LLC has the right to approve a sale or mortgage of the entire property. The control by the operating lessee affects the cash returns to a subject LLC above basic rent (and, in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., primary additional rent) because, under the lease, the subject LLC and operating lessee have a 50/50 split of net operating profit above such specified amount.

A subject LLC, as lessor, cannot decide whether to take steps to maximize the value of the property or to undertake improvements or repairs and maintenance. A subject LLC, as lessor, also cannot determine to obtain additional financing to maximize cash flows and therefore distributions unless the operating lessee also agrees to the financing, because, in view of the operating lessee's rights under the operating lease, lenders generally could be expected to require in connection with any significant financing that the operating lessee subordinate its

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interest to the financing. A subject LLC, as lessor, has the right to sell its fee interest in the property without the operating lessee's consent. While the operating lessee does not have a contractual right to approve a sale of the property by the subject LLC, any property sale not agreed to by the operating lessee necessarily will be subject to the operating lease. The supervisor believes this limitation reduces the value of the subject LLCs unless sold with the operating lease position.

The supervisor, which is related to the principals who formed the subject LLCs, was appointed as the supervisor of the subject LLCs pursuant to the original partnership agreements of each of the subject LLCs and is the only party which has performed, and is authorized to perform, this role under the subject LLCs' organizational documents. The members of the supervisor are Peter L. Malkin, Anthony E. Malkin, direct descendants of Peter L. Malkin, and trusts and entities, the beneficiaries and owners of which are Peter L. Malkin, his descendants and their spouses and, Thomas N. Keltner, Jr. The subject LLCs were originally established as general partnerships with no managing general partner or managing member and the supervisor is responsible for the operations and administrative functions on behalf of the subject LLCs. The supervisor, in its capacity as supervisor of each of the subject LLCs, provides all administrative and oversight services, such as maintaining the entity's records, including those related to participants, performing physical inspections of the property, providing or coordinating certain counsel services to the subject LLC, reviewing insurance coverage, arranging for financing, conducting annual supervisory review meetings, payment of monthly and additional distributions to the participants, payment of all other disbursements including real estate taxes, review of operations of the properties by the operating lessee, preparation and filing of tax returns, preparation of financial statements of the subject LLC and preparation of quarterly, annual and other periodic filings with the SEC and applicable state authorities and distribution of tax information and other information to the participants. The supervisor performs all of these services itself. In exchange for such services, the supervisor has received supervisory fees as described in the section entitled "Distributions and Compensation Paid to the Supervisor and its Affiliates - Compensation, Reimbursement and Distributions to the Supervisor and its Affiliates" in the supplement for each subject LLC. The supervisor currently receives supervisory fees at the rate of \$761,888, \$189,158, and \$107,190, per annum, from each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates, L.L.C., and 250 West 57th St. Associates, L.L.C., respectively, for such services, in addition to compensation at an hourly rate for special supervisory services. During 2011, the supervisor billed fees for special supervisory services (primarily relating to legal and accounting services) as follows: \$1,094,938 to Empire State Building Associates L.L.C. (\$93,693 regarding mortgage financing and \$1,001,245 regarding the proposed consolidation and IPO), \$228,603 to 60 East 42<sup>nd</sup> St. Associates L.L.C. (all regarding the proposed consolidation and IPO) and \$109,560 to 250 West 57<sup>th</sup> St. Associates L.L.C. (all regarding the proposed consolidation and IPO). The fees for basic and special supervisory services expected to be received over the 10 years ended 2020 were taken into account in determining the exchange value of the management companies. The fees for special supervisory services in connection with the consolidation and IPO were not included in determining the exchange value of the management companies. The supervisor also serves as supervisor of the private entities and in that capacity, in addition to providing the administrative functions similar to those it provides to the subject LLCs, it supervises all aspects of property operations, leasing, reporting and financing. The supervisor's supervisory services on behalf of the subject LLCs and the operating lessees are interrelated, as they have been since inception. The supervisor owes a fiduciary duty to the subject LLCs.

Principals of the supervisor have been partners, members or agents in the operating lessees from the origination of these entities, and in its capacity as supervisor of the operating lessees, the supervisor oversees the day-to-day operations of the operating lessees and the properties.

Each of the agents is a member of the subject LLCs with the right to approve actions requiring the consent of members of the subject LLCs, subject to approval of certain significant actions by participants to the extent required under the participating agreements and as described in the next paragraph and under "Comparison of Ownership of Participation Interests, Operating Partnership Units and Shares of Common Stock - Voting Rights." The agents, in their capacities as agents, have no economic interest in the subject LLCs. From inception, the agents have been persons who have been principals of, or are related to principals of, the supervisor. The supervisor has played the central role in administering the subject LLCs and the agents' role has been primarily performing ministerial

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functions and consenting to matters proposed by the supervisor for which the participants have given any required consent. The agents have a duty to comply with the participating agreements and the organizational documents of the subject LLCs and owe a fiduciary duty to the participants in their participation groups.

The participants are divided into participating groups and the participants in each participating group have been granted participations in the membership interest of one of the agents. Under the participating agreements, the agent has the right to take all actions with respect to its membership interest, except for certain significant actions, such as sales, financings and amendment to the operating lease, that require the consent of the participants. For a more detailed list of such actions requiring consent of the participants, see *Comparison of Ownership of Participation Interests, Operating Partnership Units and Shares of Common Stock Voting Rights*. The agents distribute all amounts received by them to the participants in their participating group, pro rata in proportion to their participation interests.

The Malkin Holdings group and the Helmsley estate own, on an aggregate basis, the following interests in each of the subject LLCs, each of the operating lessees and the private entities (other than the operating lessees), as a group, based on exchange values and percentage of aggregate exchange value for the applicable entity:

Entity	Malkin Holdings group		Helmsley estate	
	Exchange Value	Percentage	Exchange Value	Percentage
<b>Empire State Building Associates L.L.C.</b>				
As holders of participation interests <sup>(1)</sup>	\$ 74,481,907	6.29%	\$ 971,410	0.08%
Override Interests <sup>(2)</sup>	\$ 108,143,382	9.14%		
<b>Total</b>	<b>\$ 182,625,289</b>	<b>15.43%</b>	<b>\$ 971,410</b>	<b>0.08%</b>
<b>60 East 42<sup>nd</sup> St. Associates L.L.C.</b>				
As holders of participation interests <sup>(3)</sup>	\$ 22,600,706	7.22%	\$ 1,207,974	0.39%
Override Interests <sup>(2)</sup>	\$ 31,208,953	9.97%		
<b>Total</b>	<b>\$ 53,809,659</b>	<b>17.19%</b>	<b>\$ 1,207,974</b>	<b>0.39%</b>
<b>250 West 57<sup>th</sup> St. Associates L.L.C.</b>				
As holders of participation interests	\$ 10,933,720	6.71%	\$ 452,957	0.28%
Override Interests <sup>(2)</sup>	\$ 12,207,951	7.49%		
<b>Total</b>	<b>\$ 23,141,671</b>	<b>14.19%</b>	<b>\$ 452,957</b>	<b>0.28%</b>
<b>Empire State Building Company L.L.C.</b>				
As holders of participation interests <sup>(4)</sup>	\$ 24,724,899	2.13%	\$ 740,862,007	63.75%
Override Interests <sup>(2)</sup>	\$ 52,889,643	4.55%		
<b>Total</b>	<b>\$ 77,614,543</b>	<b>6.68%</b>	<b>\$ 740,862,007</b>	<b>63.75%</b>
<b>Lincoln Building Associates L.L.C.</b>				
As holders of participation interests <sup>(5)</sup>	\$ 19,979,144	6.75%	\$ 79,916,576	27.00%
Override Interests <sup>(2)</sup>	\$ 29,598,732	10.0%		
<b>Total</b>	<b>\$ 49,577,876</b>	<b>16.75%</b>	<b>\$ 79,916,576</b>	<b>27.00%</b>
<b>Fisk Building Associates L.L.C.</b>				
As holders of participation interests	\$ 18,354,490	12.14%	\$ 47,611,871	31.50%
Override Interests <sup>(2)</sup>	\$ 31,851,768	21.07%		
<b>Total</b>	<b>\$ 50,206,258</b>	<b>33.22%</b>	<b>\$ 47,611,871</b>	<b>31.50%</b>
<b>Other Private Entities</b>				
As holders of participation interests <sup>(6)</sup>	\$ 239,052,294	26.65%	\$ 157,600,323	17.57%
Override Interests <sup>(2)</sup>	\$ 38,451,943	4.29%		
<b>Total</b>	<b>\$ 277,504,237</b>	<b>30.94%</b>	<b>\$ 157,600,323</b>	<b>17.57%</b>

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- (1) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 0.15% of the participation interests of Empire State Building Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$1,619,017.

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- (2) The percentage determined is based on the percentage of distributions that will be received based on the exchange values, which were determined as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values. In the case of Empire State Building Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., the override interests included in the table represent a voluntary capital override, which was voluntarily agreed to by certain participants.
- (3) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 0.14% of the participation interests of 60 East 42<sup>nd</sup> St. Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$402,658.
- (4) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group either acts as agent for a participating group that owns the economic interests in the participation interests or is the general partner of a partnership that owns participation interests. In either case, the member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 23.75% of the participation interests of Empire State Building Company L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$180,266,284.
- (5) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 5.0% of the participation interests of Lincoln Building Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$13,319,429.
- (6) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group either acts as agent for a participating group that owns the economic interests in the participation interests, is the general partner of a partnership that owns participation interests or is the trustee of a trust that owns participation interests in certain of the subject LLCs and private entities. In either case, the member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. With respect to the other private entities, a member of the Malkin Holdings group serves as trustee for a trust that holds participation interests in one of the other private entities. These participation interests represent 1.1% of the participation interests in such private entity. The economic interests in such participation interests are held by unaffiliated third parties and have an aggregate exchange value of \$1,586,319.

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The following is a list of the subject LLCs and the private entities and the appraised value of the real property interests owned by the subject LLCs and the private entities, before deducting mortgage indebtedness or other liabilities and the exchange value, which is calculated as described in this prospectus/consent solicitation after deducting mortgage indebtedness and other liabilities:

Entity <sup>(1)</sup>	Appraised Property Value <sup>(2)</sup>	Appraised Entity Value	Exchange Value
Empire State Building	\$ 2,530,000,000		
Empire State Building Associates L.L.C.		\$ 1,306,500,000	\$ 1,183,612,549
Empire State Building Company L.L.C. <sup>(3)</sup>		\$ 1,223,500,000	\$ 1,162,136,482
Total		\$ 2,530,000,000	\$ 2,345,749,031
One Grand Central Place	\$ 704,000,000		
60 East 42 <sup>nd</sup> St. Associates L.L.C.		\$ 359,500,000	\$ 313,069,533
Lincoln Building Associates L.L.C. <sup>(4)</sup>		\$ 344,500,000	\$ 295,987,317
Total		\$ 704,000,000	\$ 609,056,850
250 West 57 <sup>th</sup> St.	\$ 361,000,000		
250 West 57 <sup>th</sup> St. Associates L.L.C.		\$ 186,000,000	\$ 163,064,607
Fisk Building Associates L.L.C. <sup>(5)</sup>		\$ 175,000,000	\$ 151,148,797
Total		\$ 361,000,000	\$ 314,213,405
1333 Broadway			
1333 Broadway Associates L.L.C.	\$ 209,000,000	\$ 209,000,000	\$ 156,335,546
1350 Broadway			
1350 Broadway Associates L.L.C.	\$ 187,000,000	\$ 187,000,000	\$ 135,845,247
1359 Broadway			
Marlboro Building Associates L.L.C.	\$ 206,000,000	\$ 206,000,000	\$ 158,233,045
501 Seventh Avenue	\$ 178,000,000		
Seventh & 37 <sup>th</sup> Building Associates L.L.C.		\$ 91,000,000	\$ 66,208,949
501 Seventh Avenue Associates L.L.C.		\$ 87,000,000	\$ 62,736,281
Total		\$ 178,000,000	\$ 128,945,230
69-97 Main Street			
Soundview Plaza Associates II L.L.C.	\$ 31,000,000	\$ 31,000,000	\$ 21,557,416
1010 Third Avenue and 77 West 55 <sup>th</sup> Street			
East West Manhattan Retail Portfolio L.P.	\$ 85,000,000	\$ 85,000,000	\$ 56,011,882
Metro Center			
One Station Place, Limited Partnership	\$ 157,000,000	\$ 157,000,000	\$ 57,902,962
10 Union Square			
New York Union Square Retail L.P.	\$ 105,000,000	\$ 105,000,000	\$ 83,379,307
103-107 Main Street			
Westport Main Street Retail L.L.C.	\$ 7,000,000	\$ 7,000,000	\$ 6,925,553
First Stamford Place <sup>(6)</sup>	\$ 266,000,000		
Fairfax Merrifield Associates L.L.C.		\$ 82,938,800	\$ 6,337,762
Merrifield Apartments Company L.L.C.		\$ 82,938,800	\$ 6,337,762
First Stamford Place L.L.C.		\$ 100,122,400	\$ 7,385,119
Total		\$ 266,000,000	\$ 20,060,643
10 Bank Street			
1185 Swap Portfolio L.P.	\$ 50,000,000	\$ 50,000,000	\$ 15,580,253
1542 Third Avenue			
1185 Swap Portfolio L.P.	\$ 41,000,000	\$ 41,000,000	\$ 21,274,903
383 Main Ave			

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Fairfield Merrittview Limited Partnership	\$	37,000,000	\$	37,000,000	\$	5,711,887
500 Mamaroneck Ave 500 Mamaroneck Avenue L.P.	\$	52,000,000	\$	52,000,000	\$	14,623,879
BBSF LLC	\$	14,600,000	\$	14,600,000	\$	14,600,000
Supervisor and Management Companies <sup>(7)</sup>	\$	14,775,000	\$	14,775,000	\$	16,302,000
<b>Total</b>	\$	<b>5,235,375,000</b>	\$	<b>5,235,375,000</b>	\$	<b>4,182,309,039</b>

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- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an appraised value of \$776,000,000 (after reduction for the third-party ground lease). The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The appraised values of such properties are the appraised values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities.
- (2) Represents the appraised value of each property owned (or in the case of a property subject to a third-party ground lease, the value of the interest as ground lessee) by or subject to an operating lease with each subject LLC and each private entity and the appraised value of management companies.
- (3) Operating lessee of Empire State Building Associates L.L.C.
- (4) Operating lessee of 60 East 42nd St. Associates L.L.C.
- (5) Operating lessee of 250 West 57th St. Associates L.L.C.
- (6) First Stamford Place L.L.C. is a 37.64% co-tenant with Fairfax Merrifield Associates L.L.C. and Merrifield Apartments Company L.L.C., together owning a 62.36% interest. Merrifield Apartments Company L.L.C. is the operating lessee, owning a 50.00% interest in the co-tenancy, for an aggregate ownership interest of 31.18% in the property.
- (7) The value represents the appraised value of the management companies excluding the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.

**The Supervisor's Reasons for Proposing the Consolidation**

The supervisor proposed the consolidation and recommends that you vote **FOR** the consolidation. The supervisor believes this transaction represents the best opportunity for value enhancement for your investment in the subject LLC.

From time to time, for various reasons, the supervisor has pursued sales of properties supervised by the supervisor in Manhattan, when the supervisor believed a sale would produce a higher return than continuing to hold the property. After the death of Leona Helmsley in August 2007, the supervisor briefly considered, and had discussions with representatives of the Helmsley estate concerning, the possible sale of the Empire State Building. It was ultimately decided that there was greater value for Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. in holding, improving, and repositioning the Empire State Building rather than selling the Empire State Building in its then-current condition. In 2010, Anthony E. Malkin and Peter L. Malkin, as principals of the supervisor, met with the executors of the Helmsley estate, as a significant investor, to discuss the merits of a consolidation of several properties, including the subject LLCs, and a subsequent initial public offering of the consolidated entity. Thereafter, Anthony E. Malkin and Peter L. Malkin, as principals of the supervisor, investigated the feasibility of a consolidation transaction and IPO of the company which would be formed in connection with the consolidation and took steps to consider and pursue the consolidation.

The Helmsley estate has expressed its intention that, if the consolidation and IPO do not occur, it will liquidate its interests in the private entities, including each of the operating lessees. The supervisor believes that such liquidation by the Helmsley estate is required pursuant to the specific terms of Leona Helmsley's will.

In the event of such a liquidation, the supervisor and the other participants in the subject LLCs and the private entities will not be able to influence or control the selection of the purchaser. Such purchaser would own the Helmsley estate's current position in the operating lessee of the Empire State Building, which would provide it with the ability to veto all decisions, and a large percentage of each of the other two operating lessees.

The Malkin Family and the Helmsley estate each effectively has an ability to veto actions by Empire State Building Company L.L.C., because under the operating agreement of Empire State Building Company L.L.C., full administrative and operational control of all matters connected with the business of Empire State Building Company L.L.C., including all matters connected with the operation, management, leasing, maintenance, repair and improvement of the Empire State Building, require the consent of 80% in interest of the participants in Empire State Building Company L.L.C. The Helmsley estate (or its successor) owns 63.75% of the participation



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interests while principals of the supervisor have the right to vote as to 23.75% of the participation interests. Because the consent of each of the supervisor and the Helmsley estate is needed for such actions, the potential for a stalemate is created. The Helmsley estate is required to sell its interests in the private entities, including the operating lessees of the subject LLCs, pursuant to the will of Leona M. Helmsley. As a result, the status quo, which consists of the current working arrangement between the supervisor and the Helmsley estate, will not continue and the supervisor and any transferee of the Helmsley estate's interest may not reach agreement on actions to be taken to operate the Empire State Building.

Since an operating lessee controls all aspects of the operations of its property, and that control allows it to make decisions that affect property performance and the availability of profits which are shared 50/50 with the subject LLCs, such purchaser may take actions which adversely affect the value and distributions for the Empire State Building Associates L.L.C. and its participants and could influence materially the activities in the other two subject LLCs.

The consolidation and IPO would permit the Helmsley estate to monetize a significant portion of its interests at the IPO price without creating such a potentially adverse event. Further, it would also provide a liquid trading market for the Helmsley estate to monetize the remainder of its interests in an efficient manner that will be transparent to the public markets.

The supervisor believes it is in the best interests of the participants and the company to provide to the Helmsley estate the right to receive an allocation of excess IPO proceeds in exchange for their interests in the private entities, to the extent available after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds. This would include proceeds from any upside of the IPO and any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock.

The supervisor has overseen the engagement by the subject LLC of independent property management and leasing agents, developed and substantially effected a comprehensive renovation and repositioning program for improving the physical condition of and upgrading the credit quality of tenants at the property, and raised the property's profile as part of a well regarded portfolio brand. The supervisor believes that it is an opportune time for the subject LLCs to take advantage of the opportunity to participate in the consolidation which will afford participants better value protection through diversification, growth opportunities through potential acquisitions and potential growth in revenue of the initial properties and more stable cash flows for distributions, as well as administrative and operating efficiencies. Additionally, the supervisor believes the consolidation provides value enhancement through better access to capital and options for liquidity for investors who so desire.

The supervisor believes that the consolidation of your subject LLC into the company is the best way for you to maximize the value of your investment in your subject LLC and to achieve liquidity through ownership of operating partnership units (which are exchangeable for cash or, at the option of the company, Class A common stock) and/or shares of Class A common stock, in each case, expected to be listed on the NYSE, which investors may sell from time to time as and when they so desire (subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation). The supervisor believes that in view of the fact that the subject LLCs own the interests in the properties, but the operating lessees operate the properties, it would not be in the best interests of the subject LLCs to sell their interests in the properties separate from a sale by the operating lessees. The private entities (including the operating lessees), with the required consent of their participants, have agreed to transfer their interests in the properties, including their interests in the operating lessees, as part of the consolidation. The supervisor believes that the consolidation, over time, likely will result in higher values for participants in the subject LLCs than if the interests in the properties were sold individually and the subject LLCs were liquidated as a result of increased efficiencies, growth opportunities and other opportunities for value enhancement. The Malkin Holdings group will receive substantial benefits from the consolidation and have conflicts of interest in making this recommendation.

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### **Benefits of Participation in the Consolidation**

The supervisor believes that the consolidation will provide you with the following benefits:

*Tax-deferred Transaction.* You will have the opportunity to receive interests in the company's operating partnership on the same basis as participants in the private entities and the Malkin Family in a transaction expected to be tax-deferred for U.S. federal income tax purposes. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation. Participants are urged to consult with their tax advisor as to the tax consequences of the consolidation in light of their particular circumstances;

*Liquidity.* You will be able to achieve liquidity by selling all or part of your shares of Class A common stock, subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period described under The Consolidation Lock-Up Agreement. The shares of Class A common stock are expected to be listed on the NYSE. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants who receive operating partnership units may also sell operating partnership units, which also are expected to be listed on the NYSE, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing. There is only a limited market for the participation interests in the subject LLCs and the highest price for sales of participation interests since January 1, 2009 of which the supervisor is aware is \$50,000 per \$10,000 original investment for Empire State Building Associates L.L.C., \$16,000 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C. and \$50,000 per \$10,000 original investment for 250 West 57th St. Associates L.L.C., which the supervisor believes is substantially below their value;

*Risk Diversification.* The company will own a large number of quality office and retail properties in the Manhattan and the greater New York metropolitan area and have much broader tenant diversification than your subject LLC, which owns an interest in a single property. This diversification will reduce the dependence of your investment upon the performance of, and the exposure to the risks associated with, owning an interest in a single property, and allow for more stable cash flows for distributions;

*Regular Quarterly Cash Distributions.* Similar to the subject LLCs' present method of operation, the supervisor expects that the company and the operating partnership will make regular quarterly cash distributions on the operating partnership units and common stock, which will include distributions of at least 90% of the company's annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gains), which is required for REIT qualification. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price.

The expected regular quarterly dividends to stockholders in the company will be based on the performance of a portfolio of properties rather than just one property and 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 the company's qualification as a REIT. The supervisor believes that participants have greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC from improved performance

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of the properties, potential growth from acquisitions and a better capital structure made possible by the combined balance sheet of all the properties. There is no assurance, however, that the company's dividends will increase over time or be greater than the historical distributions made to participants in a subject LLC.

*More Efficient Decision-Making.* Each subject LLC currently requires several internal procedural steps to undertake major transactions, which affects its ability to take timely advantage of favorable opportunities. Financing and sales require costly and time consuming steps to obtain consent of a very high percentage of the participants in a subject LLC;

*Improved Capital Structure by Eliminating Two-Tier Ownership.* Except for very small loans supported by basic rent, the relationship between the subject LLCs and the operating lessees requires that any additional financing placed on an entire property requires the agreement of both the operating lessee and the subject LLCs.

*Easier Access to Financing.* A subject LLC cannot require the operating lessee to obtain or utilize financing to maximize its cash flow and therefore overage rent available for additional distributions to participants in the subject LLCs. Each operating lessee controls all aspects of property operations, leasing, and investment and has broad discretion to use cash flow from the property for purposes related to the applicable property. Operating lessee decisions can result in little or no overage rent to the corresponding subject LLC, and additional distributions to the subject LLC's participants are contingent on overage rent.

*Eliminates Two-Tier Ownership Impact on Borrowing.* In the past, decisions by operating lessees have resulted in uneven payments of overage rent to the subject LLCs from year to year. Without the cooperation of the operating lessee, there is very limited opportunity for financing by the subject LLCs to provide funds for distributions. It is likely that any lender would require agreement of the operating lessee before making any loan to a subject LLC.

*Shared Motivations to Reinvest and Maintain Properties.* Additionally, the operating leases between the subject LLCs and the operating lessees do not address reinvestment by the operating lessees in capital improvements for the properties. To induce reinvestment by their operating lessees, two of the subject LLCs (60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C.) have agreed, in accordance with their participants' consent and the supervisor's recommendation, to extend the operating leases. These extensions have been coupled with consents by the operating lessees to allow financing on the entire property, which minimized the impact of reinvestment on operating profit and allowed for additional distributions from overage rent.

In connection with these extension and financing agreements, the basic rent has been increased by the amount of the increase in debt service arising from the financing, and such increase in basic rent is deducted in calculating overage rent, ultimately resulting in the debt service being shared 50/50 between each such subject LLC and its operating lessee. In the case of the Empire State Building, because of the pendency of this proposed consolidation, there has been no such lease extension request, though the operating lessee has consented to limited advances under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances. If the consolidation does not go forward, the operating lessee has indicated it will request additional lease extensions as a condition for subordination to additional mortgage advances at that time.

*Broader Markets for Property Sales.* Finally, as described under "Background of and Reasons for the Consolidation" The Supervisor's Reasons for Proposing the Consolidation, the supervisor believes that, unless the operating lessee joins with the corresponding subject LLC in a sale of the property, such a sale would not maximize the value of the such subject LLC's interests in the property.

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*Modern Governance Structure.* The company will have a modern governance structure. Capital reinvestment and financing decisions will be based on what is considered to be best for the company, and there will be no need to secure approvals of operating lessees or subject LLCs. Such decisions will be made under a corporate governance structure governed by a board of directors, with six of seven directors being independent.

*Quarterly Distributions of a Minimum of 90% of REIT Taxable Income.* The supervisor expects that the company and the operating partnership will make regular quarterly cash distributions on the operating partnership units and common stock, which will include distributions of at least a minimum of 90% of the company's annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding any net capital gains), as required for REIT qualification. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price. Such distributions will be based on a portfolio of properties, rather than investors' being dependent on a single property. The subject LLCs generally have been required to maintain property-level reserves to meet potential future expenditures, including those relating to repairs, maintenance and capital improvement, and such reserves generally have been, and in the future, if the consolidation is not consummated, are expected to be, required under the subject LLCs' loan agreements. The supervisor does not believe that property-level reserves will be required to be maintained by the company and, as a result, additional cash should be available to the company for distribution;

*Risk of Reduction in Distributions if Consolidation is Not Consummated.* Distributions from your subject LLC come from payments made by the operating lessee. Your operating lessee is required to pay a low basic rent to your subject LLC. Any payment you receive above that comes from the profits from your operating lessee's performance and comes in the form of payment of overage rent out of profits from the operating lessee's operations of the property. The operating lessee makes all decisions relating to the operations of the property.

Decisions over which the operating lessee has control which directly impact whether or not there is overage rent from which you may receive additional distributions include whether or not to lease, whether or not to improve the property, whether to use the cash flow from the property or to seek financing for capital expenditures, and whether to use cash flow for property-related expenses. From the overage rent which is paid, the supervisor maintains reserves for expenses. The balance, if any, is paid out as a distribution from overage rent. In recent years, overage rent has been made possible from time to time through the operating lessee working with your subject LLC to gain consents for financing, the operating lessee agreeing to borrow, and the proceeds of borrowing being used to pay for expenses rather than relying exclusively on cash flow from the property.

In the past, when the operating lessee for your subject LLC has not used financing, overage rent has decreased or ceased. If the operating lessee for your subject LLC exercises its right to use cash flow to fund future capital improvements, tenant installation costs, commissions and other expenses rather than to use financing, your distributions from overage rent may again decrease or cease. If the operating lessee for your subject LLC has a deadlock in operating decision-making, it may make decisions or take actions which meaningfully reduce the prospects of your subject LLC's receipt of overage rent in the future. In the case of the Empire State Building, because of the pendency of this proposed consolidation, Empire State Building Company, L.L.C., the operating lessee, has consented to advances of up to the current outstanding principal amount under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances, as required by the lender, without having requested an extension of the term of the operating lease beyond any extension provided for in the operating lease.

At the two other properties involved in this consent solicitation, 250 West 57th Street and One Grand Central Place, their improvement and financing programs were linked to extensions of their operating leases. If the consolidation does not go forward, it is possible that the operating lessee of the Empire

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State Building may not approve additional advances under the loan agreement unless Empire State Building Associates L.L.C. approves lease extensions, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures.

Decisions as to whether to use cash flow or financing are made by the operating lessees from time to time and no decision has been made by any of the operating lessees involved in this consent. Any decision by the operating lessees for 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C. would require the consent of members of the Malkin Holdings group and/or the Helmsley estate or their successor in interest. Any decision by the operating lessee of the Empire State Building would require the consent of the members of both the Malkin Holdings group and the Helmsley estate or their successor in interest.

*Increased Accountability.* As a result of the governance structure of a company with its Class A common stock and operating partnership units expected to be listed on the NYSE, stockholders will benefit from the oversight by a board of directors consisting predominantly of independent directors.

*Growth Potential.* The supervisor believes that you have greater potential for increased distributions as a unitholder or stockholder and increased value from capital appreciation than as a participant in your subject LLC. The supervisor's belief is based on the anticipated growth in the revenues of the initial properties operated as a portfolio under the Malkin brand and potential additional investments by the company;

*Greater and More Efficient Access to Capital.* The company will have a larger base of assets and believes that it will have a greater variety of options and ability to access the capital markets and the equity value in its assets than any of the subject LLCs individually. As a result, the company expects to have greater and more efficient access to the capital necessary to fund its operations, fund renovations to the properties and consummate acquisitions than would be available to any of the subject LLCs individually. The supervisor believes that it would be extremely difficult for the subject LLCs to obtain similar access to capital due to their size and ownership structure;

*Elimination of Risk and Discount in Value from Subject LLCs' Passive Ownership of the Property Interests.* Each subject LLC owns an interest in a single property subject to an operating lease. The operating lessee operates the property and the subject LLC does not participate in the management of the operations of the property. The market for the interest held by each subject LLC is smaller and the interest less valuable than of the entire property not subject to the operating lease. Following the consolidation, ownership and operation of the properties owned by the subject LLCs and private entities will be integrated;

*Valuable Synergies.* The subject LLCs presently benefit from being part of a portfolio of properties with a common brand awareness. However, under the current structure, there are major obstacles to obtaining true synergies and realization of value, such as combining financings, movements of tenants from one building to another, sharing of employees and management and oversight. The consolidation will remove such obstacles and free up access to value creation;

*Position in Highly Desirable Marketplace.* The properties owned by the subject LLCs and the private entities are concentrated in Manhattan and the greater New York metropolitan area. The supervisor believes this is one of the most highly desired markets in the world for office and retail properties;

*Reduced Conflicts of Interest.* From inception, the supervisor has represented many different ownership interests, and the subject LLCs and the private entities, therefore, have been exposed to conflicts of interest. For example, the supervisor and persons associated with the supervisor act as an external manager for all of the entities (including the subject LLCs and the operating lessees), serve as agents for the participants in the subject LLCs and certain of the private entities, determine when to make recommendations on sales, financings and operations of the properties, and make or recommend all



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operating and leasing decisions in all operating entities and all decisions of the subject LLCs. Decisions made by the supervisor in its capacity as supervisor of the operating lessees with regard to property operations dictate the cash available for distribution to the subject LLCs, which are also supervised by the supervisor. The company, on the other hand, will be managed by its officers, subject to the direction and control of its board of directors, which will consist predominantly of independent directors, and all the properties will be owned directly or indirectly by a single entity, without a division of interests. There will not be separate interests of different groups of owners and there will not be a role for, or *requirement* of, an outside supervisor. Accordingly, the supervisor believes this consolidated structure eliminates the conflicts inherent in the structure which have been there from inception of the subject LLCs and the private entities and more closely aligns the interests among the stockholders and management; and

*Election to Receive Operating Partnership Units, Class A Common Stock and/or Class B Common Stock.* Each participant in a subject LLC will have the option to receive operating partnership units in a transaction expected to be tax-deferred for U.S. federal income tax purposes. Each participant will receive operating partnership units, unless such participant elects to receive shares of Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The Malkin Holdings group will receive its consideration as follows: 97.00% in operating partnership units, 1.03% in Class A common stock and 1.97% in Class B common stock. The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group) and in a separate series to the participants in the private entities receiving operating partnership units and the Wien group. Each series of operating partnership units will have identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership.

**Third-Party Portfolio Transaction**

As a potential alternative to the consolidation, you also are being asked to consent to the sale or contribution of the subject LLC's property interest as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. Through solicitation of consents, for the first time the properties owned by the subject LLCs and the private entities can be joined as a single portfolio. While the supervisor believes the consolidation and IPO represent the best opportunity for participants in the subject LLCs and the private entities to achieve liquidity and to maximize the value of their respective investments, the supervisor also believes it is in the best interest of all participants for the supervisor to be able to approve offers from unaffiliated third parties for the portfolio as a whole.

Market forces are dynamic, unpredictable, and subject to volatility. Should the public awareness of the proposed consolidation and IPO produce potential compelling offers from unaffiliated third parties to purchase the consolidated portfolio, it will be costly and time consuming to solicit consents to allow a sale or contribution of the portfolio to a third party, and there is considerable risk that any opportunity which might appear would be lost without the requested consent in place. Therefore, the supervisor believes that it is advisable to have the flexibility and discretion, subject to certain conditions, to accept an offer for the entire portfolio of properties from an unaffiliated third party, rather than pursue the consolidation and IPO. The supervisor will consider an offer from an unaffiliated third party only for the entire portfolio of properties owned by all of the subject LLCs and all of the private entities (including the operating lessees of the subject LLCs), excluding (a) the option properties, (b) certain properties owned by the private entities that are not included in the consolidation, (c) any

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property interest as to which the required consent is not received, and (d) any property interest as to which customary contract conditions, such as absence of a material adverse change, are not satisfied. A third-party portfolio transaction also will include the management companies.

The third-party portfolio transaction would be undertaken only if the aggregate consideration payable in the third-party portfolio transaction is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. If such a third-party portfolio transaction were to proceed, the consideration will be allocated among the subject LLCs, the private entities and the management companies on a basis consistent with the exchange values.

A third-party portfolio transaction would include the following:

The proposal must provide for all cash, payable in full at closing. There will be no purchase price adjustments, earn-outs, or any other similar or contingent payments.

The proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family, affiliates of the subject LLCs and private entities and participants in the subject LLCs and the private entities will have the right to elect to receive securities only on the same proportional basis as other participants.

No member of the Malkin Family, and no other affiliate of the subject LLCs or the private entities will be an affiliate, consultant, employee, officer or director of the acquiror or any of its affiliates or subsidiaries before or after the closing or receive any compensation or any other consideration from the acquiror or any of its subsidiaries or affiliates (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction).

Employees of the supervisor, other than the Malkin Family, could become officers, directors, and/or employees of the acquiring entity after a third-party portfolio transaction.

Because of the inability to act without consent of the subject LLCs and certain of the private entities, the supervisor intends to inform any unaffiliated third-party which expresses interest in making a third-party offer that it will not consider any offer until after completion of the solicitation of consents of the subject LLCs. If a bona fide offer is submitted during the solicitation period, the supervisor will provide information regarding the proposal to participants, to assist them in their decision regarding the consolidation.

The supervisor has agreed that it will not accept a third-party offer unless it is unanimously approved by a committee which will include representatives of the supervisor and a representative of the Helmsley estate. The supervisor will be authorized to approve offers only if a definitive agreement is entered into prior to December 31, 2015 or such earlier date as the supervisor may set with or without notice or public announcement. The tax protection agreement will not apply to a third-party portfolio transaction.

## **Settlement of Class Action**

In March 2012, five putative class actions, or the Class Actions, were filed in New York State Supreme Court, New York County by participants in Empire State Building Associates L.L.C. and several other entities supervised by the supervisor, against Malkin Holdings LLC, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., Malkin Construction Corp., Anthony E. Malkin, Peter L. Malkin, the Helmsley estate, the operating partnership and the company. The parties entered into a Stipulation of Settlement dated September 28, 2012, resolving the Class Actions.

The Stipulation of Settlement states, among other things, that the transaction presents potential benefits, including the opportunity for liquidity and capital appreciation, that merit the participants' serious consideration.



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and that each of named class representatives intends to support the transaction as modified. The terms of the settlement include, among other things (i) a payment of \$55 million, with a minimum of 80% in cash and maximum of 20% in freely-tradable shares of common stock and/or freely-tradable operating partnership units to be distributed, after reimbursement of plaintiffs' counsel's court-approved expenses and payment of plaintiffs' counsel's court-approved attorneys' fees and, in the case of shares of common stock and/or operating partnership units, after the termination of specified lock-up periods, to participants in the subject LLCs and the private entities pursuant to a plan of allocation to be prepared by counsel for plaintiffs; (ii) defendants' agreement that (a) the IPO will be on the basis of a firm commitment underwriting; (b) if, during the solicitation period, any of the three subject LLC's percentage of total exchange value is lower than what is stated in the final prospectus/consent solicitation by 10% or more, such decrease will be promptly disclosed by defendants to investors in the subject LLCs; and (c) unless total gross proceeds of \$600,000,000 are raised in the IPO, defendants will not proceed with the transaction without further approval of the subject LLCs; and (iii) defendants' agreement to make additional disclosures in this prospectus/consent solicitation regarding certain matters (which are included herein).

The payment in settlement of the Class Actions will be made by the Helmsley estate and the Malkin Holdings group (provided that no member of the Malkin Holdings group that would become a direct or indirect subsidiary of the company in the consolidation will have any liability for such payment) and certain participants in the private entities who agree to contribute. The company and the operating partnership will not bear any of the settlement payment. The settlement is subject to court approval. It is not effective until such court approval is final, including the resolution of any appeal. See "The Company Business and Properties - Legal Proceedings."

**Risk Factors**

***The Consolidation or a Third-Party Portfolio Transaction***

The following is a summary of the material risks of the consolidation and the third-party portfolio transaction. The risks are more fully discussed in "Risk Factors." The supervisor believes that the risks described hereunder have substantially the same effect on each of the subject LLCs. You should consider these risks in determining whether or not to vote **FOR** the consolidation proposal or the third-party portfolio proposal.

The fair market value of the consideration that you receive will not be known until the pricing of the IPO, which will occur after you vote upon the approval of the consolidation transaction. The valuation of the consideration that you will receive in the consolidation, as presented in this prospectus/consent solicitation, is based on the exchange value of your subject LLC and the aggregate exchange value. These exchange valuations were based on the Appraisal by the independent valuer. 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

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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.

The participants will not know at the time they vote on the consolidation the size, makeup and leverage of the company or the exact number of operating partnership units and/or shares of common stock that the participants in the subject LLCs will receive in the consolidation. The consolidation is conditioned on the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land; and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building but is not conditioned on any of the other subject LLCs or private entities contributing their property interests to the company in the consolidation. Each subject LLC represents a significant portion of the exchange value and anticipated future net income and cash flow of the company;

If the consolidation is approved, the contribution agreements require that the consolidation be consummated by December 31, 2014. There could be significant changes in the value of the company between the date that the consents are received and the date of consummation of the consolidation. The consolidation may be consummated regardless of how significant such changes are and may be consummated notwithstanding such changes;

The supervisor arbitrarily has assigned \$10 as the hypothetical value of each operating partnership unit and share of common stock for purposes of illustrating the number of shares of common stock and operating partnership units that will be issued to each of the subject LLCs, the private entities and the management companies in the consolidation. The IPO price of the Class A common stock may be below the hypothetical \$10 per share;

After the consolidation and completion of the IPO, your investment will be subject to market risk and the trading price of the operating partnership units and Class A common stock may fluctuate significantly and may trade at prices below the IPO price. Your ability to sell operating partnership units and shares of Class A common stock will be subject to the restrictions of applicable U.S. federal and state securities laws and subject to the lock-up period described herein;

The value of the operating partnership units and common stock to be received by the participants in connection with the consolidation may be less than the fair market value of the participants' participation interests in the subject LLCs;

The consolidation of your subject LLC into the company involves a fundamental change in the nature of your investment, including:

You no longer will hold a participation interest in a subject LLC that owns an interest in a single property subject to an operating lease located in Manhattan. Instead, you will own operating partnership units in the operating partnership and/or shares of common stock in the company if the consolidation is consummated, which will own a portfolio of office and retail assets in Manhattan and the greater New York metropolitan area. The company will own, and in the future may invest in, types of properties different from those in which your subject LLC has invested, and you may be subject to increased risk because of the larger number of properties and broader types of properties held by the company;

Historically, the supervisor generally has not reinvested the proceeds from a sale of properties by investment programs that it supervises, although it is not restricted from doing so. Net proceeds which are not reinvested or reserved in the supervisor's discretion would be distributed to the participants in accordance with each subject LLC's organizational documents. As the company expects to reinvest the proceeds from sales of its properties, you likely will not receive a distribution of any such proceeds, and such reinvestments may be made in properties that are not profitable;



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While the participants in Empire State Building Associates L.L.C. in 2008 authorized the supervisor to obtain financing to invest in properties, none of the subject LLCs has acquired any additional properties. The company may raise additional funds through equity or debt financings to make future acquisitions of properties. You may be subject to the risk that the company's future issuances of debt or equity securities or the company's other borrowings will reduce the market price of the operating partnership units or shares of Class A common stock and dilute your ownership in the company;

You will have different voting rights as a result of the consolidation. As a holder of participation interests in a subject LLC, you generally have voting rights only on the sale, mortgage or transfer of the interest in the property, modification of the existing lease on the property held by your subject LLC or entry into a new lease affecting your subject LLC. As a stockholder of the company, you will have voting rights that permit you to elect the board of directors and to approve certain major actions such as mergers and sales of all or substantially all of the assets of the company. Such voting rights do not include the right to consent to a financing;

As a result of the consolidation, you will no longer own a participation interest in your subject LLC which entitles you to a pro rata share of distributions made to participants in your subject LLC derived from cash flow from operations or cash flow from sales or financings. Your subject LLC makes small regular monthly distributions and annual distributions out of overage rent to the extent paid under the operating lease, in each case, to the extent of available cash flow. You will hold operating partnership units in the operating partnership and/or shares of common stock in the company, which will entitle you to a per share/unit amount of dividends and distributions paid with respect to the operating partnership units and common stock (which are expected to be paid quarterly and include distributions of at least 90% of the company's annual REIT taxable income determined without regard to the deduction for dividends paid and excluding net capital gains). REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price; as is required for the company's continued REIT qualification, if, as and when declared by the board of directors of the company. The amount of such dividends and distributions and the timing thereof will be established by the board of directors; and

As a result of the consolidation, the Malkin Holdings group and its affiliates will no longer receive supervisory fees and distributions on account of their participation interests and override interests. Anthony E. Malkin, David A. Karp, Thomas P. Durels and Thomas N. Keltner, Jr., executives of the supervisor, will become officers, and Mr. Malkin will become a director, of the company, and will receive customary salaries, bonuses and benefits as determined by the company's board of directors, in addition to dividends and distributions payable to the Malkin Holdings group in respect of shares of common stock and operating partnership units they hold.

Participants will receive operating partnership units, unless they elect to receive shares of Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. While the holders of operating partnership units generally will have the same rights to distributions as stockholders in the company, holders of operating partnership units will not have the same voting rights as stockholders, although participants will have the right to elect to receive Class B common stock, which vote together as a class with the Class A common stock, in lieu of a portion of their operating partnership units;

While the operating partnership units issued to participants in the subject LLCs are expected to be listed on the NYSE, they will not be acquired by investors in the IPO. The market for the operating partnership units may be more limited than for the Class A common stock, and, accordingly participants who receive operating partnership units may not be able to liquidate their investment prior

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to 12 months after the completion of the IPO when they can redeem all or a portion of their operating partnership units for a cash amount equal to the then-current market value of one share of Class A common stock per operating partnership unit, or, at the company's election, to exchange each such operating partnership unit for a share of Class A common stock on a one-for-one basis;

The operating partnership units to be issued to participants in the subject LLCs (other than the Wien group) will be issued in three separate series, each of which will be listed and traded separately. Because the operating partnership units are in separate series, there will be fewer holders of each series. While each of the series has the same rights, the tax consequences to a participant that receives, and a subsequent purchaser of, operating partnership units of a particular series will be different than those to a participant that receives, and a subsequent purchaser of, operating partnership units of another series (based on different and unique tax attributes of the properties being contributed by each of the subject LLCs). These factors may adversely affect the market for operating partnership units. To avoid such factors and to achieve liquidity, holders of operating partnership units may elect to exercise their redemption rights with respect to such operating partnership units, which commence 12 months after the completion of the IPO, and, if applicable, sell the Class A common stock received in exchange;

While the subject LLCs' exchange values have been determined based on the Appraisal by the independent valuer, which has also delivered a fairness opinion, no independent representative was retained to negotiate on behalf of the participants. There are 23 subject LLCs and private entities and groups with different interests in many of these entities. The supervisor does not believe that a single independent representative could have represented the interests of all participants and believes that to locate and retain an independent and equally competent and qualified representative for each separate interest in the consolidation is not possible. The supervisor represents the interests of all participants in the subject LLCs and private entities. The supervisor has served the same role in the past for sales of other properties with different groups of participants, which included the sale of three office properties in New York City in the past fifteen years, 200 Fifth Avenue (known as the International Toy Center), 498 Seventh Avenue and 500-512 Seventh Avenue, and believes it is not required to retain any independent representative on behalf of each group of participants or all of the participants as a whole. The supervisor believes the Appraisal prepared by the independent valuer serves the purposes of representing all parties fairly and that the consolidation is fair to all participants regardless of the absence of any such independent representative. If a representative or representatives had been retained for the participants, the terms of the consolidation might have been different and, possibly, more favorable to the participants;

While the independent valuer appraised each property, the independent valuer's fairness opinion addressed only the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) (i) among the subject LLCs, the private entities and the management companies and (ii) to the participants in each subject LLC and each private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities);

The independent valuer's fairness opinion cannot address the market value of the operating partnership units and/or common stock you will receive, which can only be set by the market value at the time the IPO is consummated;

For each subject LLC, approval of the consolidation by the requisite vote of the participants will cause the subject LLC to participate in the consolidation, whether you vote **FOR** or **AGAINST** the consolidation;

The organizational documents provide that if more than a specified percentage of participation interests in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. approve an action, the agents may purchase on behalf of the subject LLC the participation interests of participants who do not approve such action, and that price would be substantially below the exchange value of the

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participation interests. If the required supermajority consent of the participation interests in a participating group in a subject LLC approves the consolidation, an agent's participating group will purchase on behalf of the subject LLC the participation interests of the participants that do not approve the consolidation, at a price substantially below the exchange value of the participation interests;

If the required percentage of participation interests in the participating groups in a subject LLC approves the consolidation and the subject LLC is consolidated with the company, the subject LLC no longer can enter into alternatives to the consolidation. These alternatives include (i) continuation of the subject LLC and (ii) a sale of the subject LLC's interest in the property followed by the distribution of the net proceeds to its participants;

From inception, the supervisor has represented many different ownership interests, and the subject LLCs and the private entities, therefore, have been exposed to conflicts of interest. For example, the supervisor and persons associated with the supervisor act as an external manager for all of the entities (including the subject LLCs and operating lessees), serve as agents for the participants in the subject LLCs and certain of the private entities, determine when to make recommendations on sales, financings and operations of the properties, and make or recommend all operating and leasing decisions in all operating entities and all decisions of the subject LLCs. Decisions made with regard to property operations dictate the cash available for distribution to the subject LLCs;

The Malkin Holdings group will receive shares of Class A common stock and Class B common stock and operating partnership units which are exchangeable for cash or, at the company's election, Class A common stock, having an aggregate value of \$730,781,533, which they will receive in accordance with the allocation of exchange value based on the Appraisal. The amounts allocated to the Malkin Holdings group are based on the hypothetical \$10 per share exchange value that the supervisor arbitrarily assigned for illustrative purposes, and consists of: their interests as participants which will be allocated to them on the same basis as other participants; their interests as holders of override interests which will be allocated to them in accordance with the subject LLCs' and private entities' organizational documents; and their interests in the management companies, which will be allocated to them in accordance with the valuations of the management companies by the independent valuer. This is in addition to shares of Class A common stock issuable in respect of the voluntary pro rata reimbursement program consented to by participants in the subject LLCs and its share of distributions of any cash available for distribution from the subject LLCs prior to the consolidation. The Malkin Holdings group also will receive other benefits from the consolidation, and have interests that conflict with those of the participants. The Malkin Family is also subject to a longer lock-up period than other participants before they can begin to sell common stock or operating partnership units. The Malkin Family may not sell their common stock or operating partnership units until one year after the IPO pricing date. See Conflicts of Interest and Benefits to the Supervisor and its Affiliates.

If you receive solely Class A common stock, you generally will recognize gain or loss for U.S. federal income tax purposes with respect to your participation interest equal to the amount by which the value of any shares of Class A common stock you receive in connection with the consolidation, plus the amount of liabilities allocable to your participation interest, exceeds your tax basis in your participation interest. You will recognize phantom income (*i.e.*, income in excess of the value of any shares of Class A common stock you receive) if you have a negative capital account with respect to your participation interest. The supervisor urges you to consult with your tax advisor to evaluate the tax consequences to you in your particular circumstances as a result of the consolidation;

To the extent you receive or are deemed to receive common stock you may also recognize gain or loss for U.S. federal income tax purposes, as more fully discussed under U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation and U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former

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Property Manager and Leasing Agent Legal Proceedings. The supervisor urges you to consult with your tax advisor to evaluate the tax consequences to you in your particular circumstances as a result of your participation in the consolidation;

The supervisor may not approve a third-party portfolio transaction even if it provides for more consideration than to be issued or paid pursuant to the consolidation. The supervisor is authorized to approve a third-party portfolio transaction only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met; provided that, subject to its fiduciary duties, the supervisor is not required to accept any offer that the supervisor is authorized to accept. The proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option, the Malkin Family will have the right to elect to receive securities only on the same proportional basis as other participants. No member of the Malkin Family will be an affiliate, consultant, employee, officer or director of the acquiror after the closing or receive any compensation from the acquiror (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction). In addition, supervisor has agreed that it will not accept a third-party offer unless it is unanimously approved by a committee which will include representatives of the supervisor and a representative of the Helmsley estate;

If the required percentage of participation interests in their participating group consents to the third-party portfolio proposal, participants in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. who voted **AGAINST** the third-party portfolio proposal, did not return a consent form or **ABSTAINED** will be bought out regardless of whether the required consents of other participating groups is received or whether there is a third-party portfolio offer at a price substantially below the exchange value of their participation interests;

At the time you vote on the third-party portfolio proposal, there will be significant uncertainties as to the terms of any third-party portfolio transaction, which may not be received until after the consent solicitation has been completed, including the amount of consideration you would receive if a third-party portfolio transaction is consummated. These uncertainties affect your ability to evaluate the third-party portfolio proposal. The supervisor may approve a third-party portfolio transaction which you may view as less favorable than the consolidation; and

The supervisor, the agents and their affiliates serve in their respective capacities with respect to each subject LLC and each private entity, and, as such, have conflicts of interest in connection with decisions concerning the terms of a third-party portfolio transaction.

### ***Ownership of Operating Partnership Units in the Operating Partnership and Shares of Common Stock in the Company***

The following is a summary of the material risks of ownership of operating partnership units in the operating partnership and shares of common stock in the company.

There is no assurance as to the amount or source of funds for the estimated initial cash distributions of the operating partnership or the company, and the expected initial cash distributions to the participants following the consolidation could be less than the estimated cash distributions participants would receive from their respective subject LLCs;

All of the company's properties are located in Manhattan and the greater New York metropolitan area, in particular midtown Manhattan, and adverse economic or regulatory developments in this area could materially and adversely affect the company;

Adverse economic and geopolitical conditions in general and in Manhattan and the greater New York metropolitan area commercial office and retail markets in particular, could have a material adverse





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effect on the company's results of operations, financial condition and its ability to make distributions to its stockholders and holders of operating partnership units;

There can be no assurance that the company's renovation and repositioning program will be completed in its entirety in accordance with the anticipated timing or at the anticipated cost, or that the company will achieve the results it expects from the renovation and repositioning program, which could materially and adversely affect the company's financial condition and results of operations;

The company may be unable to renew leases, lease vacant space or re-lease space on favorable terms as leases expire, which could materially and adversely affect the company's financial condition, results of operations and cash flow;

The company is exposed to risks associated with property redevelopment and development that could materially and adversely affect its financial condition and results of operations;

The company depends on significant tenants in its office portfolio, including LF USA, Coty, Inc., Legg Mason, Warnaco and Thomson Reuters, which together represented approximately 20.9% of the company's total portfolio's annualized base rent as of September 30, 2012;

The company's dependence on rental income may materially and adversely affect its profitability, its ability to meet its debt obligations and its ability to make distributions to its stockholders and holders of operating partnership units;

The company's option properties are subject to various risks, and the company may not be able to acquire them;

Competition for acquisitions may reduce the number of acquisition opportunities available to the company and increase the costs of those acquisitions, which may impede the company's growth;

The observatory operations at the Empire State Building are not traditional real estate operations, and competition and changes in tourist trends may subject the company to additional risks;

The broadcasting operations at the Empire State Building are not traditional real estate operations, and competition and changes in the broadcasting of signals over air may subject the company to additional risks, which could materially and adversely affect the company;

The company's outstanding indebtedness upon completion of the IPO reduces cash available for distribution and may expose the company to the risk of default under its debt obligations;

The continuing threat of a terrorist event may materially and adversely affect the company's properties, their value and the ability to generate cash flow;

The company may assume unknown liabilities in connection with the consolidation, which, if significant, could materially and adversely affect its business;

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The departure of any of the company's key personnel could materially and adversely affect the company;

The company's Chairman, Chief Executive Officer and President has outside business interests that will take his time and attention away from the company, which could materially and adversely affect the company;

The company's operating performance and value are subject to risks associated with real estate assets and the real estate industry, the occurrence of which could materially and adversely affect the company;

The company has no operating history as a REIT or as a publicly-traded company and its lack of experience could materially and adversely affect the company;

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Certain provisions of Maryland law could inhibit changes in control of the company, which could negatively affect the market price of the Class A common stock;

There will be no public market for the operating partnership units or common stock prior to the IPO and an active trading market may not develop or be sustained following the IPO, which may negatively affect the market price of the operating partnership units and shares of the Class A common stock and make it difficult for investors to sell their operating partnership units or shares;

Cash available for distribution may not be sufficient to make distributions at expected levels;

Failure of the operating partnership to maintain its status as a partnership for U.S. federal income tax purposes and/or the company to qualify or remain qualified as a REIT would subject the operating partnership and/or the company to U.S. federal income tax and applicable state and local taxes, which would reduce the amount of cash available for distribution to holders of operating partnership units and/or company shareholders; and

The REIT distribution requirements could require the company to borrow funds during unfavorable market conditions or subject the company to tax, which would reduce the cash available for distribution to the stockholders.

### **Conflicts of Interest and Benefits to the Supervisor and its Affiliates**

From inception of the subject LLCs, the supervisor, the agents of the subject LLCs and their respective affiliates and related persons have served as supervisor, agents for groups of participants or in a similar capacity with respect to each subject LLC and each private entity with conflicts of interest and as such have conflicts of interest in connection with the consolidation. The supervisor and its affiliates will receive benefits as a result of the consolidation or a third-party portfolio transaction. These benefits and conflicts include:

The Malkin Holdings group will receive 73,078,153 shares of Class A common stock, Class B common stock and operating partnership units, which they will receive in accordance with the allocation of exchange value based on the Appraisal by the independent valuer. The amounts allocated to the Malkin Holdings group consist of: their interests as participants which will be allocated to them on the same basis as other participants; their interests as holders of override interests which will be allocated to them in accordance with the subject LLCs and private entities' organizational documents; and their interests in the management companies, which will be allocated to them in accordance with the valuations of the management companies by the independent valuer. This is in addition to shares of Class A common stock issuable in respect of the voluntary pro rata reimbursement program consented to by participants in the subject LLCs and its share of distributions of any cash available for distribution from the subject LLCs prior to the consolidation;

Following the consolidation, certain executives of the supervisor will be members of the senior management team and Anthony E. Malkin, an executive and principal of the supervisor, will be Chairman, Chief Executive Officer, President and a director of the company;

Upon completion of the IPO, the company expects to grant LTIP units and/or restricted shares of its Class A common stock to its independent directors, executive officers (other than Anthony E. Malkin) and certain other employees, including certain executives of the supervisor. Assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the company's Class A common stock), and assuming an IPO price of \$10 per share, David A. Karp, the company's Chief Financial Officer, Executive Vice President and Treasurer, is expected to be granted 114,500 LTIP units and/or restricted shares of Class A common stock, Thomas P. Durels, the company's Executive Vice President and Chief of Property Operations and Leasing, is expected to be granted 395,700 LTIP units and/or restricted shares of Class A common stock, and Thomas N. Keltner, Jr., the company's Executive Vice President, General Counsel and



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Secretary, is expected be granted 252,800 LTIP units and/or restricted shares of Class A common stock. The LTIP units and/or restricted share will be subject to time-vesting and/or performance-vesting over a three to four year period;

The company intends to enter into (i) an employment agreement with Anthony E. Malkin providing for salary, bonus and other benefits, including severance upon a termination of employment under certain circumstances and the issuance of equity awards as described under Management Employment Agreement and (ii) change in control severance agreements with Thomas P. Durels, David A. Karp and Thomas N. Keltner, Jr. as described under Management Change in Control Severance Agreements, and it is expected that other members and officers of the supervisor will be officers and employees of the company;

Members, managers and officers of the supervisor, who will be employed by the company, will be indemnified by the company for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against them for actions taken as officers and as a director of the company and for actions taken on behalf of the supervisor and other management companies, in their capacities as such, including actions relating to the consolidation;

As part of the consolidation, the operating partnership intends to enter into a tax protection agreement with Peter L. Malkin and Anthony E. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation. The company believes that it is consistent with market practice for significant contributing unitholders, such as the Malkin Group and the one additional third party investor in Metro Center, to be indemnified against certain tax liabilities as set forth in the tax protection agreement. Accordingly, the company believes it is appropriate to enter into a tax protection agreement. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

The company will release (i) Anthony E. Malkin and Peter L. Malkin from all claims, liabilities, damages and obligations against them related to their ownership of interests in any of the subject LLCs or the private entities and (ii) certain members of the company's senior management team who were officers or employees of the supervisor from all claims, liabilities, damages and obligations against them related to their ownership in the subject LLCs, the private entities and the management

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companies and their employment with the management companies that exist at the closing of the consolidation, other than breaches by them or entities related to them, as applicable, of the employment and non-competition agreement and the contribution agreements and the merger agreements entered into by them and these entities in connection with the consolidation;

The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction.

Peter L. Malkin and Anthony E. Malkin will be released from or otherwise indemnified for liabilities arising under certain guarantees and indemnities with respect to approximately \$1.11 billion of mortgage loans (including currently undrawn amounts) on the company's properties, which will be assumed by the company upon closing of the IPO and the consolidation in respect of obligations arising after the closing. The guarantees and indemnities with respect to mortgage loans of many of the existing entities, including the subject LLCs, were undertaken by Messrs. Malkin and Malkin to meet a conventional lender requirement which became standard only long after such entities were formed. In each case, Messrs. Malkin and Malkin provided such guarantee while serving in a representative capacity as an agent or member of a subject LLC or private entity which was then seeking a mortgage loan. The lender required such guarantee, and no party was available or willing to provide it except Messrs. Malkin and Malkin. They received no compensation for the guarantee and provided it as an accommodation to benefit such subject LLC or private entity in obtaining financing. The guarantees and indemnities with respect to all of the indebtedness are, in most instances, limited to losses incurred by the applicable lender arising from acts such as fraud, misappropriation of funds, intentional breach, bankruptcy and certain environmental matters. In connection with the company's assumption of these mortgage loans, it will seek to have the guarantors released from these guarantees and indemnities and to have the company's operating partnership assume any such guarantee and indemnity obligations as replacement guarantor and/or indemnitor. To the extent lenders do not consent to the release of these guarantors and/or indemnitors, and they remain guarantors and/or indemnitors on assumed indebtedness following the IPO and the consolidation, the company's operating partnership will enter into indemnification agreements with the guarantors and/or indemnitors pursuant to which the company's operating partnership will be obligated to indemnify such guarantors and/or indemnitors for any amounts paid by them under guarantees and/or indemnities with respect to the assumed indebtedness. The company believes that since the mortgage loans relating to the guarantees and indemnities will be assumed by the company upon closing of the consolidation, and it will have greater financial resources than the individual property owning entities which are subject to the mortgage loans, it is appropriate, and consistent with market practice, for Messrs. Malkin and Malkin to be indemnified by the company's operating partnership if the lenders do not consent to the release of these guarantors and/or indemnitors. Under the organizational documents of the subject LLCs and private entities and applicable law, Messrs. Malkin and Malkin are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence, including any such liabilities under these guarantees and indemnities. In addition, in connection with future mortgage loans that the company would enter into in connection with future property acquisitions or refinancing of the company's properties, the company intends to enter into any necessary guarantees directly, and neither Messrs. Malkin and Malkin nor any of the company's other directors, executive officers or stockholders would be expected to enter into such guarantees;

The supervisor and the Malkin Family may hold a greater interest (including their share of distributions in respect of the override interests) in other subject LLCs or private entities than in your subject LLC, including, in the case of 250 West 57th St. Associates L.L.C., the private entity which is the operating lessee of the property it owns. Accordingly, they would be benefited to the extent that a greater portion of the exchange value is allocated to other subject LLCs or private entities than to your subject LLC;

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After the consolidation, the company intends to enter into management and/or services agreements with the entities that own interests in or manage the excluded properties and with the managers of certain of the excluded businesses (other than with respect to the registered broker dealer), which entities are owned in part by Anthony E. Malkin. There may be conflicts of interest in the allocation of his time between the company and his other interests;

The operating partnership has entered into option agreements with three private entities controlled by the supervisor;

The company intends to enter into management agreements with the entities that own long-term leasehold, sub-leasehold and/or sub-subleasehold interests in the option properties, which entities are owned in part by Anthony E. Malkin, together with members of the Malkin Family and supervised by the supervisor, as well as management and/or services agreements with the entities that own interests in or manage the excluded properties and with the managers of certain of the excluded businesses (other than with respect to the registered broker dealer);

Affiliates of the supervisor also will retain interests in the option properties, certain other properties to which the company will provide management services and certain excluded businesses. Affiliates of the supervisor are subject to conflicts of interest in connection with the terms of these arrangements; and

The supervisor and its affiliates may have a conflict of interest in deciding whether to approve a third-party portfolio transaction and with respect to the terms of the third-party portfolio transaction due to the benefits that the Malkin Holdings group could receive in that transaction.

### **The Consolidation**

#### **Principal Components of the Consolidation**

The consolidation will consist of the following principal components:

The subject LLCs that approve the consolidation will contribute their assets to the operating partnership or subsidiaries of the operating partnership. As a result, the company will own an interest in each subject LLC's property indirectly through its ownership of the operating partnership, and the operating partnership or its subsidiaries generally will assume each subject LLC's liabilities. Each participant in the subject LLCs will receive operating partnership units, unless he or she elects to receive shares of Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The company will issue operating partnership units, Class A common stock or Class B common stock, as applicable to the subject LLCs which, in turn, will distribute them in accordance with participants' elections.

The subject LLCs will distribute promptly following the closing any excess cash held by them at the time of the closing of the consolidation. The cash to be distributed by a subject LLC will be (i) any cash held by such entity at the closing in excess of the normalized level of net working capital for such entity, as determined by the supervisor, (ii) the consolidation expenses reimbursed by the operating partnership to the subject LLC at the closing of the consolidation out of proceeds of the IPO and (iii) overage rent that will have accrued through the date of the closing of the consolidation.

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The following table shows, for each of the subject LLCs, the amount of cash at September 30, 2012 which would have been available for distribution by the subject LLCs (in addition to any amounts that would have been distributable out of accrued overage rent) had the closing occurred on such date; the amount of reimbursement for costs incurred in connection with the consolidation and the IPO out of the proceeds of the IPO entitled to be received by the subject LLCs as of September 30, 2012; total distributions by each subject LLC and to each participant per \$10,000 original investment out of such excess cash (including such reimbursements); the payment under the voluntary pro rata reimbursement program per \$10,000 original investment; the amount of cash distributions that would be received by participants who consent to the voluntary pro rata reimbursement program per \$10,000 original investment and the additional proceeds to be received by participants from the class action settlement per \$10,000 original investment.

	Available Cash	Reimbursement of Costs in Connection with the Consolidation and IPO	Total Distribution to Participants	Total Distribution to Participants per \$10,000 Original Investment <sup>(1)</sup>	Payment under Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Distribution to Participants Who Consent to the Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Additional Proceeds to be Received by Participants from the Class Action Settlement per \$10,000 Original Investment <sup>(2)</sup>
Empire State Building Associates L.L.C.	\$ 3,350,000	\$ 15,500,000	\$ 18,850,000	\$ 5,012	\$ 1,029	\$ 3,983	\$ 9,840 <sup>(3)</sup>
60 East 42nd St. Associates L.L.C.	\$ 150,000	\$ 3,600,000	\$ 3,750,000	\$ 5,357	\$ 2,410	\$ 2,947	\$ 6,530
250 West 57th St. Associates L.L.C.	\$ 380,000	\$ 1,800,000	\$ 2,180,000	\$ 6,055	\$ 2,080	\$ 3,975	\$ 6,370 <sup>(4)</sup>

- (1) The actual amount of distributions will be based on cash available at closing of the consolidation and no assurance can be given that these cash amounts will be available for distribution.
- (2) The allocation of settlement proceeds from the class action settlement is in addition to the distributions shown elsewhere in this table. The allocation of net settlement proceeds (that is, net of any court-awarded attorneys' fees and expenses) shown in the table is based on the current plan of allocation proposed by counsel for the class plaintiffs. The settlement and the allocation of settlement proceeds are approximate and subject to court approval, and the proposed allocation is subject to revision by counsel for the class. They are not effective until such court approval is final, including the resolution of any appeal.
- (3) \$8,350 per \$10,000 original investment for participants not subject to voluntary capital override.
- (4) \$4,700 per \$10,000 original investment for participants not subject to voluntary capital override.

These distributions will be liquidating distributions and the business of each of the subject LLCs will be liquidated and wound up promptly following the closing.

It is expected that any distributions of excess cash held by the subject LLCs and any distributions of overage rent accrued through the date of the closing of the consolidation should be treated as distributions of cash from your subject LLC prior to the liquidation of your subject LLC. Accordingly, you should not generally be taxable for U.S. federal income tax purposes on any such distribution to the extent such distribution does not exceed your basis in your participation interest in the subject LLC immediately prior to the liquidation of the subject LLC, and your basis in your participation interest in your subject LLC should be reduced (but not below zero) by the amount of such distribution. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Termination of the Subject LLCs and Distribution of Cash from the Subject LLCs.

If you receive solely shares of Class A common stock in the consolidation, any distribution to you of consolidation expenses that the operating partnership pays to your subject LLC should generally increase your amount realized in the consolidation, and accordingly should increase the amount of gain or decrease the amount of loss you recognize in the consolidation. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Class A Common Stock Solely Class A Common Stock.





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If you receive solely operating partnership units or a combination of operating partnership units and shares of common stock in the consolidation, it is expected that your share of any payment the operating partnership makes to your subject LLC as a reimbursement of consolidation expenses should be treated as a reimbursement of capital expenditures to which the disguised sale rules should not apply to the extent that such payment does not exceed certain qualified capital expenditures incurred by your subject LLC, and the distribution to you of any such amounts should be treated as additional consideration in the consolidation. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Operating Partnership Units Potential Application of the Disguised Sale Rules.

Each subject LLC will enter into a contribution agreement conditioned on (i) the requisite consent of the participants in the subject LLC; (ii) the closing of the IPO and the listing of the operating partnership units and Class A common stock on the NYSE or another national securities exchange; (iii) the closing of the consolidation no later than December 31, 2014; (iv) the participation by Empire State Building Associates L.L.C. and Empire State Building Company L.L.C., the private entity that is the operating lessee of the Empire State Building, in the consolidation; and (v) other customary conditions;

Based on the hypothetical exchange value of \$10 per share which the supervisor has arbitrarily assigned for illustrative purposes, the company will issue to participants and holders of override interests in the private entities 129,080,462 operating partnership units having an exchange value of \$1,290,804,624; 6,974,722 shares of Class A common stock having an exchange value of \$69,747,222; and 1,007,830 shares of Class B common stock having an exchange value of \$10,078,299 and the company will issue to equity holders in the management companies 866,222 operating partnership units having an exchange value of \$8,662,220; 746,300 shares of Class A common stock having an exchange value of \$7,463,000; and 17,678 shares of Class B common stock having an exchange value of \$176,780, (not including, in each case, any additional shares of Class A common stock that may be issued to charitable organizations as described below). In addition, participants in the private entities who are non-accredited investors who would have been entitled to 8,530,581 shares of common stock on a fully diluted basis having an exchange value of \$85,305,810, will receive cash at a price per share equal to the offering price in the IPO. Participants in the private entities who are charitable organizations, including the Helmsley estate, who would have been entitled in the aggregate to 105,032,439 shares of common stock on a fully diluted basis having an exchange value of \$1,050,324,394 that have made a cash election will receive cash, subject to a cut back (at a price per share equal to the IPO price reduced by the underwriting discount per share paid by the company in the IPO) and will receive Class A common stock for the balance;

The Malkin Holdings group and the Helmsley estate will receive the largest amount of consideration in the consolidation, because they hold participation interests and, in the case of the Malkin Holdings group, overrides, issued to them or their predecessors during a period of more than 60 years in respect of their cumulative cash investments and their roles in the entity formation and property operations with respect to (a) all of the entities and properties in the case of the Malkin Holdings group including the activities of Lawrence A. Wien, Peter L. Malkin and Anthony E. Malkin for many decades and (b) a large number of them in the case of the Helmsley estate;

As part of the consolidation, each private entity will contribute its property interest and other assets, other than interests in certain properties excluded from the consolidation, to the operating partnership or its subsidiary, in exchange for operating partnership units or, at the option of the participants in the private entities, shares of common stock and/or cash. The private entities (including the operating lessees) with the required consent of their participants, have agreed to transfer their interests in the properties, including their interests in the operating lessees, as part of the consolidation. Each private entity has entered into a contribution agreement conditioned on (i) the closing of the IPO and the listing of the operating partnership units and Class A common stock on the NYSE or another national

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securities exchange; (ii) the closing of the consolidation no later than December 31, 2014; (iii) the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building; (iv) the delivery of a fairness opinion by the independent valuer to the private entities and (v) other customary conditions;

The company will acquire pursuant to a contribution agreement with the supervisor and the Wien group the participation interests held by the Wien group in the subject LLCs and override interests of the supervisor in the subject LLCs in exchange for operating partnership units. The override interests under which the supervisor will share in the proceeds from the consolidation are contractual rights, previously and separately documented. In the case of each of Empire State Building Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., the overrides were agreed to by participants on an individual, voluntary basis and provide the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of their original investment (or two times their original investment, in the case of 250 West 57<sup>th</sup> St. Associates L.L.C.). In the case of 60 East 42<sup>nd</sup> St. Associates L.L.C., the override is payable pursuant to its organizational documents and provides that supervisor is entitled to 10% of the distributions (without specifying the source of distributions) after the members have received distributions equal to a return at the rate of 14% on their cash investment in the year in which the distribution is made. Each of the overrides was valued based on the amount distributable to the supervisor under the terms of the override. The overrides were granted by the participants in either the subject LLCs' organizational documents or in the subsequent, separate voluntary agreements entered into individually, to permit the supervisor to share in benefits resulting from improvements in the property's operating results and value, and the supervisor did not pay any consideration for the overrides. The participation interests in each of the subject LLCs held by the Malkin Holdings group were acquired from Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., respectively, for the same consideration paid by other participants or were purchased from participants at a purchase price equal to or in excess of the original purchase price;

Each share of Class A common stock entitles the holder to one vote. Operating partnership units have economic rights similar to the Class A common stock but do not have the right to vote on matters presented to holders of Class A common stock and Class B common stock. The participants in the subject LLCs have an option to elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Accredited investors in the private entities and the management companies had the same option at the time they made their election of consideration in the private solicitation. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and holders of shares of Class A common stock and Class B common stock will vote together as a single class. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. One share of Class B common stock may be converted into one share of Class A common stock at any time, and one share of Class B common stock is subject to automatic conversion into one share of Class A common stock upon a direct or indirect transfer of such share of Class B common stock or certain transfers of the operating partnership units held by the holder of Class B common stock (or a permitted transferee) to a person other than a permitted transferee;

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The company will acquire through merger the supervisor and the other management companies, which are owned by the same persons as own the supervisor. Holders of interests in the management companies will receive shares of common stock or operating partnership units in exchange for the interests in such entities;

Charitable organizations, including the Helmsley estate, were granted a cash option in connection with their interests in the private entities. These charitable organizations had the option to receive cash at a price per share equal to the IPO price per share (reduced by the underwriting discount per share paid by the company in the IPO) to the extent of cash available from the IPO for this purpose after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds. To the extent that there is not sufficient available cash to pay in full the cash payable to electing charitable organizations, there will be a pro rata reduction in the cash received by each electing charitable organization and the balance will be in the form of Class A common stock;

Pursuant to the cash option referred to in the preceding paragraph, the Helmsley estate and other charitable organizations have exercised the cash option as to all of the operating partnership units issuable to them by the private entities in the consolidation (which based on the exchange values represents 24.53% for the Helmsley estate and 0.58% for the other charitable organizations, respectively, of the common stock on a fully-diluted basis or \$1.050 billion of the exchange value in the aggregate) and will receive Class A common stock, Class B common stock and/or operating partnership units to the extent that the cash available for this purpose is insufficient to pay all of the consideration in cash. The Helmsley estate will also receive an amount equal to any New York City transfer tax savings resulting from its status as a charitable organization. In addition, the company and the Helmsley estate have also agreed that if the IPO is upsized after the effective time of the registration statement filed in connection with the IPO or if the underwriters in the IPO exercise their option to purchase additional shares of Class A common stock, all additional net proceeds from the sale of Class A common stock issued by the company in such upsize or option will be allocated solely to the Helmsley estate for purposes of the consolidation at the same value as the cash option described above;

The company has provided the Helmsley estate with the cash option described above. Following the consummation of the consolidation and the IPO, the Helmsley estate is anticipated to continue to own a sizeable position in the company. Therefore, in light of the Helmsley estate's desire, and requirement, to sell all or a significant portion of its post-IPO position, which could adversely affect the market price of the company's Class A common stock following the IPO, the supervisor structured elements of the consolidation and the IPO, including this cash option, to minimize the Helmsley estate's post-IPO position. The company also has provided that the net proceeds from any potential upsizing of the IPO or any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock would also be applied to the Helmsley estate's cash election to further reduce the Helmsley estate's position in the company. Such reduction of the Helmsley estate's overhang would be viewed favorably by the market and would provide for a better trading market in the company's Class A common stock following the IPO for the benefit of all stockholders. The company has also provided registration rights to the Helmsley estate to provide for an efficient and transparent process for the Helmsley estate to sell all or a portion of its remaining interest in the company following the IPO. The Helmsley estate may receive cash only to the extent of cash available from the IPO after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds, and therefore does not reduce cash required for the company.

The company has entered into a representation, warranty and indemnity agreement with Anthony E. Malkin and his siblings, Scott D. Malkin and Cynthia M. Blumenthal, pursuant to which they have made limited representations and warranties to the company and the operating partnership regarding the entities, properties and assets to be contributed to the company and agreed to indemnify the company and the operating partnership for 12 months following the closing of the consolidation for breaches of such

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representations subject to a \$1 million deduction and threshold of up to a maximum of \$25 million. Other than these individuals, none of the Malkin Family, or other participants in the subject LLCs, private entities or management companies, will provide the company with any indemnification;

The operating partnership intends to enter into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin pursuant to which the company will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction;

The company expects to obtain an \$800.0 million secured revolving and term credit facility upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates. The company has obtained a commitment for \$400.0 million of availability under the secured revolving and term credit facility, subject to satisfaction of certain customary conditions precedent, from the representatives of the underwriters or their respective affiliates who have also agreed to use commercially reasonable efforts to syndicate the remainder of the facility. The company expects to use this secured revolving and term credit facility to, among other things, fund capital expenditures and tenant improvements and leasing commissions, potential acquisitions, general corporate matters and working capital. Additionally, the secured revolving and term credit facility will be used to repay and retire the existing \$500.0 million term loan currently secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012. The company expects that the secured revolving and term credit facility will include an accordion feature that would allow the company to increase availability thereunder to \$1.25 billion, under specified circumstances. See Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Consolidated Indebtedness to be Outstanding After the IPO Description of Certain Debt Secured Revolving and Term Credit Facility. There is no assurance that the company will be able to enter into a definitive agreement relating to this facility on acceptable terms, or at all;

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The company intends to enter into management and/or services agreements with the entities that own interests in or manage the excluded properties and with the managers of certain of the excluded businesses (other than with respect to the registered broker dealer). See [Related Party Transactions](#) [Excluded Properties and Businesses](#);

The operating partnership has executed option agreements with three private entities supervised by the supervisor, one of which is the ground lessee of the property located at 112-120 West 34th Street and fee owner of the property located at 122 West 34th Street, one of which is the operating lessee of 112-122 West 34th Street and one of which is the ground lessee of 1400 Broadway, pursuant to which each of these private entities has granted to the operating partnership an option to acquire fee, long-term leasehold, sub-leasehold and/or sub-subleasehold interests in the option properties, as applicable. Concurrent with the closing of the consolidation, the company intends to enter into management agreements with respect to each of the option properties. 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;

As a result of the consolidation, the company will assume approximately \$1.11 billion of total debt (based on September 30, 2012 pro forma outstanding balances), and the company expects to have approximately \$304.1 million of additional borrowing capacity under its loans on a pro forma basis (excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates);

The company will sell shares of Class A common stock in the IPO and will contribute the net proceeds from the IPO to the operating partnership in exchange for operating partnership units and

Upon completion of the IPO, the company expects to grant LTIP units and/or restricted shares of Class A common stock to its independent directors, executive officers (other than Anthony E. Malkin) and certain other employees, including certain executives of the supervisor.

The supervisor and its principals and certain of the private entities own interests in other properties, including the option properties, assets and businesses that will not be contributed to the company. The supervisor provides supervisory or advisory services with respect to certain of these properties. The company intends to enter into management and/or services agreements with the entities that own interests in or manage these excluded properties and with the managers of certain excluded businesses after consummation of the consolidation.

The company and the supervisor have required that the consolidation be completed no later than December 31, 2014.

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The following charts show the organization of each subject LLC prior to the consolidation:

**Empire State Building Associates L.L.C.**

- (1) Represents a voluntary capital override agreed to by approximately 94% of the participants and documented individually with each participant who granted the override, which provides the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of their original investment. The supervisor will receive distributions on the voluntary capital overrides with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such overrides would comprise approximately 9.14% of the economic value of Empire State Building Associates L.L.C. These voluntary capital overrides were solicited pursuant to consent solicitation statements dated September 13, 1991, September 14, 2001 and June 9, 2008.
- (2) This override, which is not a voluntary override, is payable pursuant to the original offering documents for Empire State Building Associates L.L.C. and provides the supervisor the right to receive additional payments equal to 6% of any distributions of overage rent received under the operating lease, 6% of 50% of the amount of the reduction in mortgage charges due to the repayment of the purchase money mortgage placed at the time of the original acquisition by Empire State Building Associates L.L.C. of its interest in the Empire State Building and 6% of 50% of certain scheduled reductions in ground rent payable by Empire State Building Associates L.L.C. under the operating lease.

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**60 East 42nd St. Associates L.L.C.**

- (1) The override, which is not a voluntary override, represents a contractual obligation of the subject LLC payable pursuant to a consent of participants in 1968 and provides that supervisor is entitled to receive 10% of all additional amounts paid out (without specifying the source of distributions) after the members have received distributions equal to a return at the rate of 14% on their cash investment in the year in which the distribution is made. The supervisor will receive distributions on the override with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such override would comprise approximately 9.97% of the economic value of 60 East 42<sup>nd</sup> St. Associates L.L.C.



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**250 West 57th St. Associates L.L.C.**

- (1) Represents a voluntary capital override agreed to by approximately 78% of the participants and documented individually with each participant who granted the override, which provides the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of twice the amount of their original investment. The supervisor will receive distributions on the voluntary capital overrides with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such overrides would comprise approximately 7.49% of the economic value of 250 West 57<sup>th</sup> St. Associates L.L.C. These voluntary capital overrides were solicited pursuant to consent solicitation statements dated March 10, 2004 and May 17, 2006. All of these override interests are owned by the Malkin Holdings group.
- (2) The override, which is not a voluntary override, is payable pursuant to a consent of participants in 1968, represents the right to receive 10% of all cash distributions (other than from mortgage, sale or condemnation proceeds) in excess of 15% on the remaining cash investment in any one year.

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The following chart shows the percentage ownership of the common stock on a fully diluted basis in the company (assuming exchange of all operating partnership units for Class A common stock, conversion of all Class B common stock into Class A common stock, and that no cash is paid to any participants in the private entities) after closing of the consolidation but prior to the closing of the IPO, allocable to each of the entities shown in the table (including the Helmsley estate, which has made a cash election as described under Related Party Transactions Transactions Relating to the Consolidation ), and assuming the consolidation is approved by all three subject LLCs:

- (1) 15.43% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.08% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (2) 6.68% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 63.75% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (3) 17.19% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.39% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (4) 16.75% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 27.00% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (5) 14.19% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.28% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (6) 33.22% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 31.50% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (7) 30.94% of the shares of common stock on a fully diluted basis issuable to the other private entities is allocable to the Malkin Holdings group and 17.57% of the shares of common stock on a fully diluted basis issuable to the other private entities is allocable to the Helmsley estate.
- (8) All of the shares of common stock on a fully diluted basis issuable to the entity are allocated to the Malkin Holdings group.
- (9) 17.47% of the shares of common stock on a fully diluted basis is allocable to the Malkin Holdings group and 24.59% of the shares of common stock on a fully diluted basis is allocable to the Helmsley estate.

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The following charts show, for each of the properties owned by the subject LLCs, the relative exchange value of the applicable property attributable to the subject LLC, the operating lessee, and, for each of the subject LLCs and operating lessees, the participants' interests and override interests associated with the subject LLCs and operating lessees' override interests, except as otherwise noted, are held by the Malkin Holdings group:

- (1) Voluntary capital transaction override.
- (2) \$53,218,257 of the overrides are paid to persons other than the Malkin Holdings group. Of the additional overrides not owned by the Malkin Holdings group, \$42,851,487 are owned primarily by members of the Wien group (who are not members of the Malkin Family). Such overrides were created under agreements with participants who acquired their interests from Lawrence A. Wien, and they were transferred to members of the Wien group as descendants of Lawrence A. Wien. In addition, a portion of the overrides held by persons other than the Malkin Holdings group are held by other persons not members of the Wien group who sold their participation interests, but retained an override interest.

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- (1) Voluntary capital transaction override.
- (2) \$13,826,125 of the overrides are paid to persons other than the Malkin Holdings group. The additional overrides not owned by the Malkin Holdings group are owned by members of the Wien group (who are not members of the Malkin Family). The override interests were created under the agreements in which participants received their interests from Lawrence A. Wien and were transferred to members of the Wien group as descendants of Lawrence A. Wien.

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The following chart shows the organization of the company after the consolidation and the IPO, assuming the consolidation is approved by all three subject LLCs, that each participant in the subject LLCs elects to receive Class A common stock, Class B common stock and operating partnership units in the same proportion as participants (other than the Malkin Family and the Helmsley estate) in the private entities, that 100 million shares of Class A common stock are issued in the IPO at a purchase price of \$10 per share, that net proceeds from the IPO are used as set forth in the pro forma financial statements (unaudited) of the company and that cash is paid to participants in the private entities that are non-accredited investors or charitable organizations (including the Helmsley estate) that elected cash. The operating partnership units and common stock issuable to the Helmsley estate assumes the Helmsley estate receives cash in lieu of 69,360,195 shares of common stock on exercise of its cash election and does not give effect to any additional cash that the Helmsley estate may receive as a result of any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock in the IPO.

The Class A common stock, Class B common stock and operating partnership units represent 30.0%, 0.5% and 69.5%, respectively, of the common stock, on a fully diluted basis.

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### **What You Will Receive if Your Subject LLC is Included in the Consolidation**

If the consolidation is approved by the participants in your subject LLC and is consummated, you will receive operating partnership units and/or shares of common stock as consideration for your participation interest, as described below.

*Allocation of Consideration.* Based upon the Appraisal that the independent valuer prepared, the number of operating partnership units and/or common stock you will receive was allocated as follows:

The exchange values were first determined for each subject LLC, each private entity and the management companies as follows:

The appraised values of the interests in the properties owned by the subject LLCs, the private entities and the management companies were determined by the independent valuer,

The appraised values were adjusted by the independent valuer as described more fully in Reports, Opinions and Appraisals to determine the exchange values and

The supervisor reviewed and approved the exchange values.

To allocate the operating partnership units and common stock, the supervisor arbitrarily assigned a hypothetical \$10 per share exchange value for illustrative purposes and arbitrarily assumed that the enterprise value of the company is equal to the aggregate exchange value of all of the contributed assets. The independent valuer allocated to each subject LLC a number of operating partnership units and shares common stock equal to the exchange value of its assets divided by \$10. See the section entitled Summary Allocation of Consideration in the Consolidation.

In accordance with each subject LLC's organizational documents, all of the operating partnership units and shares of common stock were allocated to the participants holding participation interests in the subject LLC, after taking into account the allocations in respect of the supervisor's override interest.

The allocation of operating partnership units and common stock to the participants in this prospectus/consent solicitation is based on the hypothetical \$10 per share exchange value arbitrarily assigned by the supervisor to illustrate the number of shares of common stock that a participant would receive if the enterprise value of the company determined in connection with the IPO were the same as the aggregate exchange value and the IPO price were \$10 per share of Class A common stock. The actual number of shares of common stock, on a fully-diluted basis, issued in the consolidation will equal the enterprise value (which will be allocated to each of the subject LLCs, the private entities and the management companies in proportion to their relative share of the aggregate exchange value) divided by the IPO price. 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





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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.

*Allocation of Operating Partnership Units and/or Common Stock.* You will receive operating partnership units, unless you elect to receive, in exchange for your participation interests, Class A common stock, or, to a limited extent, as described below, Class B common stock. The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group) and in a separate series to the participants in the private entities receiving operating partnership units and the Wien group. Each series of operating partnership units will have identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership.

*Class A Common Stock.* If you elect to receive Class A common stock in lieu of operating partnership units issuable to you, you will receive one share of Class A common stock for each operating partnership unit you would have otherwise been entitled to receive.

*Class B Common Stock.* Participants may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and holders of shares of Class A common stock and Class B common stock will vote together as a single class. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock.

*Lock-up Agreements.* Pursuant to lock-up agreements, each participant in the subject LLCs and private entities may not sell or otherwise transfer or encumber shares of common stock or operating partnership units (i) with respect to 50% of the operating partnership units and shares of common stock owned by them at completion of the IPO, for a period of 180 days after the IPO pricing date and (ii) with respect to any remaining operating partnership units and shares of common stock, for a period of one year after the IPO pricing date, in each case without first obtaining the written consent of the representatives of the underwriters in the IPO. This includes Class A common stock issuable in exchange for the operating partnership units, which are only issuable in exchange for operating partnership units beginning 12 months after the completion of the IPO, and Class B common stock. In addition, each participant in Empire State Building Associates L.L.C. that receives operating partnership units may, immediately following the consolidation and the IPO, sell such participant's pro rata portion of the greater of 1,100,000 operating partnership units and \$40.0 million in value of operating partnership units (based on the IPO price of the Class A common stock), and each participant in 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C. that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to the same percentage as the percentage of each participant's operating partnership units that can be sold by participants in Empire State Building Associates L.L.C. immediately following the consolidation and the IPO. Therefore, each participant in the subject LLCs that

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receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

However, the Malkin Family and the company's directors and senior management team members may not sell any of the shares of common stock or securities convertible or exchangeable into Class A common stock (including operating partnership units) held by any of them until one year after the IPO pricing date. In addition, the company has agreed with the representatives of the underwriters, subject to certain exceptions, not to sell or otherwise transfer or encumber any such shares or securities (including operating partnership units) at the completion of the IPO for a period of 180 days after the IPO pricing date without the prior written consent of the representatives of such underwriters.

### **Why the Supervisor Believes the Consolidation is Fair to You**

The supervisor believes that the terms of the consolidation are fair and that the consolidation will allow you to achieve liquidity and maximize the value of your investment in your subject LLC for the following principal reasons, as well as allowing the company to achieve costs savings, faster decision-making and greater and more efficient access to capital, all of which should increase the value of your investment:

The exchange values of each of the subject LLCs, the private entities and the management companies are based on the Appraisal by Duff & Phelps, LLC, the independent valuer. The independent valuer determined the exchange value, which was reviewed and approved by the supervisor. The supervisor believes that the allocations in accordance with the Appraisal by the independent valuer were in the best interests of the participants;

The supervisor believes that the expected benefits of the consolidation to you outweigh the risks and potential detriments of the consolidation to you. Some of those benefits are described above. The risks and potential detriments are discussed in Risk Factors;

The supervisor considered alternatives to the consolidation including the continuation of the subject LLCs without change and the liquidation of the subject LLCs and the distributions of the net proceeds to you (as described below). The supervisor does not believe that the subject LLCs could realize their allocable share of the value of the properties through a sale of the interests in the properties held by them. The supervisor believes that, over time, the likely value of the interest you will receive in the consolidation will be higher than the value of the consideration you would receive from any of the other alternatives as a result of increased efficiencies, growth opportunities, more efficient access to financing and other opportunities for value enhancement;

The supervisor considered that each participant will be given the option to elect to receive operating partnership units, Class A common stock, or, to a limited extent, as described above, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. The operating partnership units would be issued in a transaction expected to be tax-deferred for U.S. federal income tax purposes. These options allow participants to receive the same form of consideration as the participants in the private entities and the Malkin Family;

The supervisor believes that the consolidation is fair to all participants in each subject LLC and as a whole, regardless of which particular combination of entities participates in the consolidation. Even if less than all of the subject LLCs participate in the consolidation, the supervisor believes that the participants in the subject LLCs that do participate will realize the benefits described under Benefits of Participation in the

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Consolidation. There are no material differences among the subject LLCs (such as with respect to types of assets owned or investment objectives) that affect the reasons why the supervisor believes that the consolidation is fair to you. While the supervisor believes that it would be more beneficial to participants if all of the subject LLCs participate in the consolidation, the supervisor believes that, through a combination of the properties of the private entities, for which necessary approvals have been obtained, and the property interests of Empire State Building Associates L.L.C. and Empire State Building Company L.L.C., the company will be of sufficient size and have sufficient assets to allow participants to realize the benefits described under Summary Benefits of Participation in the Consolidation even if one or both of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C. do not participate in the consolidation;

While the subject LLCs' exchange values have been determined based on the Appraisal by the independent valuer, which has also delivered a fairness opinion as described above, no independent representative was retained to negotiate on behalf of the participants. There are 23 subject LLCs and private entities and groups with different interests in many of these entities. The supervisor does not believe that a single independent representative could have represented the interests of all participants and believes that to locate and retain an independent and equally competent and qualified representative for each separate interest in the consolidation is not possible. The supervisor represents the interests of all participants in the subject LLCs and private entities. The supervisor has served the same role in the past for sales of other properties with different groups of participants, which included the sale of three office properties in New York City in the past fifteen years, 200 Fifth Avenue (known as the International Toy Center), 498 Seventh Avenue and 500-512 Seventh Avenue, and believes it is not required to retain any independent representative on behalf of each group of participants or all of the participants as a whole. The supervisor believes the Appraisal prepared by the independent valuer serves the purposes of representing all parties fairly and that the consolidation is fair to all participants regardless of the absence of any such independent representative;

While the supervisor has had from inception conflicts of interest which are described under Conflicts of Interest, the supervisor does not believe that these conflicts of interests affected its fairness determination;

In considering fairness, the supervisor considered the following:

The tax protection agreement, which the supervisor believes is consistent with market practice for transactions of this type and generally would require payment only if the company took or failed to take certain actions, which it does not currently intend to take or fail to take, as the case may be, with respect to the protected properties;

The option agreements, which the supervisor believes benefit the company by providing it with the right to acquire attractive properties complementary to the company's portfolio on terms which the company believes are reasonable and with respect to which, any determination to be made by the company will be made by the company's independent directors; and

The agreements to indemnify the principals of the supervisor for certain liabilities relating to the subject LLCs and the private entities; the supervisor believes it is reasonable for a REIT which is being formed to assume indemnification obligations relating to the operations of entities whose assets are being acquired. Under the organizational documents of the subject LLCs and private entities and applicable law, the principals of the supervisor are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence.

The supervisor also took into account the terms of the compensation payable to persons in the Malkin Holdings group by the company after the closing of the consolidation as set forth under Management Executive Compensation, which, the supervisor believes, are on terms customary for similar publicly-traded REITs and are based on recommendations of a compensation consultant and



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The supervisor has adopted and concurs with the conclusions of the fairness opinion from and the Appraisal by the independent valuer, which are described below.

### **Appraisal**

The independent valuer has delivered to the supervisor a copy of its report, based upon the review, analysis, scope, assumptions, qualifications and limitations described therein, as to the estimated fair market value of the properties owned by the subject LLCs and the private entities as of June 30, 2012 (the Appraisal). The Appraisal, which contains a description of the assumptions and qualifications made, matters considered and limitations on the review and analysis, is attached to this prospectus/consent solicitation as Appendix B and should be read in its entirety.

The independent valuer has appraised the properties utilizing solely the income approach to valuation. The income approach is based on the assumption that the value of a property or portfolio of properties can be represented by the present value of future cash flows. These cash flows are compiled into a value through either direct capitalization or discounted cash flow analysis, or a combination of the two. The indicated value by the income approach represents the estimated amount an investor would pay for the expected future stream of net cash flow generated by a property or a portfolio of properties (calculated as gross income less operating expenses, capital expenditures, and leasing costs) generated by a property or a portfolio of properties. As used herein, market value is defined by the Appraisal of Real Estate, Thirteenth Edition, as follows: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under undue duress.

The income approach was relied upon in determining the market value of the properties owned by the subject LLCs and private entities (with the exception of the Stamford, CT land which utilized the sales comparison approach). The independent valuer believes that the income approach is the approach utilized by typical investors and other market participants in the local market of the properties owned by the subject LLCs and private entities, and was therefore determined to be the most reliable indicator of market value.

In performing the Appraisal, the independent valuer conducted investigations and inquiries as it deemed appropriate in establishing its estimates of value and made assumptions and identified qualifications and limitations that it considered necessary in its findings. The independent valuer's opinion of the estimated value of the properties owned by each of the entities is as of June 30, 2012. They do not necessarily reflect the sales prices of the properties or portfolio that would be realized in actual sales of the properties or portfolio. These prices could be higher or lower than the appraised value of the properties or portfolio.

For further information, please see Reports, Opinions and Appraisals Appraisal.

### **Fairness Opinion**

The independent valuer has delivered to the supervisor and each of the subject LLCs and the private entities its opinion, dated \_\_\_\_\_, 2012, to the effect that, as of that date and subject to the assumptions, limitations and qualifications contained therein, the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) (i) among each subject LLC, each private entity and the management companies was fair from a financial point of view to each such subject LLC, each such private entity and the participants in each such subject LLC and each such private entity, and (ii) to the participants in each subject LLC and each private entity was fair from a financial point of view to the participants in each such subject LLC and each such private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private

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entities). In this regard, the fairness opinion addressed the fairness of the consolidation assuming that each subject LLC and each private entity would participate in the proposed consolidation and did not address the fairness of all possible combinations in the proposed consolidation. The supervisor believes that, for reasons stated under Recommendation and Fairness Determination Material Factors Underlying Belief as to Fairness, such opinion addressing the fairness of all possible combinations in the proposed consolidation is not necessary because the supervisor believes that the consolidation is fair, regardless of which particular combination of entities participates in the consolidation among any such combination.

Since each subject LLC will receive capital transaction proceeds from its contribution of assets to the company and distribute such proceeds to all its interest holders including the participants and the supervisor, as holder of the override interests, the consideration allocable to the supervisor, as holder of the override interests, will be determined based on the amount to which it is entitled under such constituent documents in connection with a distribution by each subject LLC of capital transaction proceeds. Accordingly, the amounts of consideration to each participant will take into account the override interests held by the supervisor for each of the subject LLCs. The fairness opinion took those override interests into account in addressing the fairness of the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) to the participants in each subject LLC and each private entity.

The fairness opinion, dated \_\_\_\_\_, 2012, is attached as Appendix A to this prospectus/consent solicitation. You should read the independent valuer's opinion in its entirety with respect to the assumptions made, matters considered and limits of the review undertaken by the independent valuer in rendering its opinion.

For further information, please see Reports, Opinions and Appraisals Fairness Opinion.

## **Alternatives to the Consolidation**

In determining whether to propose and recommend the consolidation, the supervisor considered several alternatives. The following discussion summarizes the alternatives to the consolidation that each subject LLC could have pursued. Each of the alternatives that the supervisor considered, including the alternatives discussed below, is described in more detail under the section entitled The Consolidation Alternatives to the Consolidation.

The principal alternatives considered by the supervisor were:

Liquidation through the sale by each subject LLC of its interest in its property, either individually or as part of a third-party portfolio transaction, followed by a distribution of the net proceeds to its participants or

Continued management of each subject LLC as currently structured.

The supervisor also considered other alternatives:

The possibility of converting each subject LLC into a separate REIT that would list its shares on a national securities exchange. The supervisor believes that a REIT with a relatively small capitalization that is advised by an outside advisor and owns an interest in the ground lessor of a single property with most of its cash flow dependent on overage rent under the operating lease would not be well-received by traditional open-market purchasers of REIT common stock.

Listing of the participation interests of each subject LLC in its current form as a limited liability company on a national securities exchange. The supervisor believes there would be limited trading interest in the presently outstanding participation interests due to, among other things, (i) the fact that the subject LLCs have a relatively small capitalization, own an interest in a property which is operated by an operating lessee that has significant decision-making authority with respect to the property; and (ii) the two-tier subject LLC structure, including the relative lack of certain corporate governance attributes, such as the ability to elect directors.



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Other means of producing liquidity for the participants, such as cash tender offers to acquire participation interests from participants or borrowing by the subject LLCs secured by their interests in properties to provide funds for distribution to participants. The supervisor believes that cash tender offers are costly and would not yield a good value for investors and that borrowing to fund added distributions is not a feasible alternative given that most of its cash flow is dependent on overage rent under the operating lease.

*Advantages and Disadvantages of Liquidation Alternative.* The supervisor believes that there would be advantages of a liquidation of your subject LLC, including:

Liquidation provides you with liquidity from a sale of an interest in the property owned by your subject LLC. You would receive your share of the net proceeds obtained from a sale of the interest in the property of your subject LLC;

The amount that you would receive would not depend on the stock market's valuation of the company, but rather your share of the consideration received from a sale of the interests in the property of your subject LLC and

You would avoid the risks of continued ownership of your subject LLC or ownership of the company and/or the operating partnership.

The supervisor believes that there would be disadvantages to a liquidation of your subject LLC, including:

The interest in the property owned by the subject LLC on its own may not create demand from investors, may not be as attractive for financing for investors to acquire the property and has a higher risk profile than the interest in the property as part of a portfolio;

You would not participate in potential increases in value resulting from anticipated operating efficiencies, marketing efficiencies, capital market efficiencies and an improved governance structure;

You would not participate in potential increases in value resulting from (a) enhanced performance of the existing portfolio due to leasing available and expiring space at higher rents following the recent renovations and repositioning of the initial properties operated as a branded portfolio and (b) potential additional investments;

The supervisor does not believe that the subject LLCs could realize their allocable share of the value of the properties through a sale of the interests in the properties held by them. The operating lessees have agreed to transfer their interests in the properties as part of the consolidation, regardless of whether a subject LLC approves the consolidation, and, if the consolidation closes, it may not be possible for a subject LLC to realize its allocable share of the value of the entire property through a sale and

You may not have the option to improve both your liquidity options and participate in a tax-deferred transaction, which you may do under the consolidation.

While the supervisor believes the consolidation will provide greater benefits to participants than a liquidation, the supervisor believes it is in the best interest of the participants to approve the third-party portfolio proposal, which will allow the supervisor to consider a third-party offer, if one is made, as an alternative to the consolidation.

*Advantages and Disadvantages of Continuation Alternative.* The supervisor believes there would be advantages to the continued operation of the subject LLCs, including:



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The participants would continue to receive regular monthly distributions from 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 subject LLCs eventually may sell their interests in the properties and distribute the net proceeds, although the supervisor does not believe that such a sale would optimize the value of the participants' participation interests;

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Continuing the subject LLC without change avoids the risks related to the consolidation as described in this prospectus/consent solicitation and

Each subject LLC would retain the individual benefits of ownership of its interest in its property.

The supervisor believes that there would be disadvantages to the continued operation of the subject LLCs, including:

The interest in the property owned by the subject LLC on its own may not create demand from investors, may not be attractive for financing for investors to acquire the property and has a higher risk profile than the interest in the property as a portfolio.

Your investment would continue to be illiquid because your participation interest is not freely transferable and there is no established public trading market or market valuation for your participation interest;

There is a risk of reduction in distributions if the consolidation is not consummated. Distributions from your subject LLC come from payments made by the operating lessee. Your operating lessee is required to pay a low basic rent to your subject LLC. Any payment you receive above that comes from the profits from your operating lessee's performance and comes in the form of payment of overage rent out of profits from the operating lessee's operations of the property. The operating lessee makes all decisions relating to the operations of the property.

Decisions over which the operating lessee has control which directly impact whether or not there is overage rent from which you may receive additional distributions include whether or not to lease, whether or not to improve the property, whether to use the cash flow from the property or to seek financing for capital expenditures, and whether to use cash flow for property-related expenses. From the overage rent which is paid, the supervisor maintains reserves for expenses. The balance, if any, is paid out as a distribution from overage rent. In recent years, overage rent has been made possible from time to time through the operating lessee working with your subject LLC to gain consents for financing, the operating lessee agreeing to borrow, and the proceeds of borrowing being used to pay for expenses rather than relying exclusively on cash flow from the property.

In the past, when the operating lessee for your subject LLC has not used financing, overage rent has decreased or ceased. If the operating lessee for your subject LLC exercises its right to use cash flow to fund future capital improvements, tenant installation costs, commissions and other expenses rather than to use financing, your distributions from overage rent may again decrease or cease. If the operating lessee for your subject LLC has a deadlock in operating decision-making, it may make decisions or take actions which meaningfully reduce the prospects of your subject LLC's receipt of overage rent in the future. In the case of the Empire State Building, because of the pendency of this proposed consolidation, Empire State Building Company, L.L.C., the operating lessee, has consented to advances of up to the current outstanding principal amount under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances, as required by the lender, without having requested an extension of the term of the operating lease beyond any extension provided for in the operating lease.

At the two other properties involved in this consent solicitation, 250 West 57th Street and One Grand Central Place, their improvement and financing programs were linked to extensions of their operating leases. If the consolidation does not go forward, it is possible that the operating lessee of the Empire State Building may not approve additional advances under the loan agreement unless Empire State Building Associates L.L.C. approves lease extensions, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures.

Decisions as to whether to use cash flow or financing are made by the operating lessees from time to time and no decision has been made by any of the operating lessees involved in this consent. Any

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decision by the operating lessees for 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C. would require the consent of members of the Malkin Holdings group and/or the Helmsley estate or their successor in interest. Any decision by the operating lessee of the Empire State Building would require the consent of the members of both the Malkin Holdings group and the Helmsley estate or their successor in interest.

The subject LLCs have limited roles in property operations;

The Helmsley estate is required under Leona Helmsley's will to sell its interest in the private entities that are the operating lessees of the subject LLCs. Because the consent of both the Malkin Holdings group and the Helmsley estate is required for action by Empire State Building Company L.L.C., the potential for deadlock exists, particularly after a sale of the Helmsley estate's interest. In addition, the Helmsley estate owns a 35% interest in the operating lessee of 250 West 57<sup>th</sup> St. Associates L.L.C. and 30% in the operating lessee of 60 East 42<sup>nd</sup> St. Associates L.L.C. Any purchaser of the Helmsley estate interests will be able to block any decision of the operating lessee of the Empire State Building and will have influence over decisions made by the operating lessees of 250 West 57<sup>th</sup> St. Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C.;

There are inefficiencies which result from the current structure:

Presently, property management, leasing and financial reporting for each of the 23 ownership groups covering 18 different office and retail properties and one development site are provided by third party managers, third party leasing agents and outside accountants under the supervision of the supervisor. This is inefficient and that inefficiency causes distraction and requires time and effort. The supervisor believes that the consolidation will enable the company to centralize operations and leasing, which will be more efficient and enhance the competitive position of the properties. Combining the properties in a single entity with a modern corporate structure will also help the company attract qualified management and property leasing and management personnel (to the extent needed by the company) for management succession;

The current two-tier structure is archaic, complicates operations, financial reporting and financing of the subject LLCs and is inefficient and costly in general. The consolidation will create a modern governance structure in which participants will share in the ownership of a portfolio of properties by a single entity;

The subject LLCs have a cumbersome and costly approval process for certain actions, including financings;

Your subject LLC owns an interest in a single property and is not diversified and

The receipt of a Schedule K-1 for your subject LLC and each other subject LLC or private entity in which you own participation interests is a process which is complex and time consuming for both the supervisor and the participants. Separate financial statements and tax returns need to be prepared for each entity. With increasingly complex filing requirements, it has become unrealistic to complete all the necessary financial statements and tax returns required to complete and deliver Schedules K-1 to participants in time to file their federal income tax returns by April 15, causing participants to have to file their tax returns on extension. After the consolidation, tax returns will be required only for the company and the operating partnership. Participants who receive operating partnership units will receive only one Schedule K-1. Participants who receive only common stock in the consolidation will receive one Form 1099 for all their interests. The supervisor believes that the simplified financial reporting and tax filings will allow for faster completion and distribution of Forms 1099 and Schedules K-1 for participants and allow participants to file their taxes by April 15 of each year.



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The following table sets forth a comparison of the distributions by the subject LLCs and by the company:

Subject LLC	Average Annual Distribution for the years ending December 31, 2007-2011 Per \$10,000 Original Investment <sup>(1)</sup>	Estimated Initial Distribution of the Company to Former Participants for the year ending September 30, 2013 Per \$10,000 Original Investment <sup>(2)</sup>
<b>Empire State Building Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,179	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 140	
Overage rent distributions attributable to operations	\$ 1,791	
<b>Total distributions</b>	<b>\$ 3,110</b>	<b>\$ 5,866<sup>(4)</sup></b>
<b>60 East 42nd St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,495	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 1,498	
Overage rent distributions attributable to operations	\$ 3,317	
<b>Total distributions</b>	<b>\$ 6,310</b>	<b>\$ 7,294</b>
<b>250 West 57th St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 2,000	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 3,308	
Overage rent distributions attributable to extraordinary lease cancellation payment <sup>(3)</sup>	\$ 652	
Overage rent distributions attributable to operations	\$ 5,016	
<b>Total distributions</b>	<b>\$ 10,976</b>	<b>\$ 7,421<sup>(4)</sup></b>

(1) Distributions each year consist of small regular monthly distributions out of basic rent and larger, but variable, distributions out of overage rent. The amount of distributions out of overage rent varies from year to year depending on factors such as:

capital expenditures funded out of operating cash flow which reduced distributions;

borrowings to fund capital expenditures which must be agreed to by the operating lessees of each subject LLC and which would otherwise have been paid out of operating cash flow, which increases overage rent and the amount available for distribution; and

non-recurring events that generate additional cash, such as early lease cancellations, which may increase distributions and non-recurring events that require expenditure of funds, which may decrease distributions.

Accordingly, participants should not treat the amount distributed in any year as indicative of the amount that they would have received in future years if the subject LLC continued its operations. After the consolidation, a diverse collection of properties will be combined with more efficient access to capital and, as a result, the supervisor expects that overall distributions should be more consistent with less fluctuation due to these factors.

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- (2) The calculation of the estimated annual distributions to stockholders of the company is shown in the table under Background of and Reasons for the Consolidation Comparison of Distributions by the Subject LLCs and the Company Distributions by the Company.
- (3) In 2010, the operating lessee received an extraordinary lease cancellation payment from a space tenant in the amount of \$7.9 million, which contributed to \$3,259 per \$10,000 original investment of overage rent distributions in that year (or \$652 per \$10,000 original investment of average annual overage rent distributions over the period).
- (4) Assumes that a participant is subject to the voluntary override.

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**Voluntary Pro Rata Reimbursement Program for Expenses of Legal Proceedings with Former Property Manager and Leasing Agent**

In 1997, the supervisor commenced litigation and arbitration proceedings, which is referred to herein as the former property manager and leasing agent legal proceedings, to remove Helmsley-Spear, Inc. (after it was sold by entities controlled by Leona M. Helmsley), the former property manager and leasing agent, as property manager and leasing agent of the properties owned by the subject LLCs.

The successful outcome of the former property manager and leasing agent legal proceedings and the settlement thereof enabled the subject LLCs to conclude the termination of the former property manager and leasing agent as property manager and leasing agent (with the release of claims) and engage new independent property managers (except Empire State Building Associates L.L.C., which later became self-managed) and leasing agents and to launch strategic improvements and Malkin branding programs for the properties that the subject LLCs own. The supervisor also added engineering, marketing and tax/accounting staff to compensate for the former property manager and leasing agent's deficiency. While the supervisor has believed from inception that it is entitled to be reimbursed for these litigation and arbitration expenses, it, together with Peter L. Malkin, advanced all costs pending the outcome.

Now, with the impending consolidation, the supervisor requests of each participant in each subject LLC, on a voluntary and individual basis, consent that a portion of your distributions to be received in connection with the consolidation or a third-party portfolio transaction, as applicable, be applied to reimburse the supervisor and Peter L. Malkin for a pro rata share of such advances, including interest at prime, from the date of each such advance. The same voluntary pro rata reimbursement program has been approved by holders representing 72.36% of the interests in the 13 private entities and other entities supervised by the supervisor to which the proposal has been made. These approvals include the Helmsley estate, which as part of an agreement with the supervisor covering this and other matters, has paid the voluntary pro rata reimbursement to the supervisor for its pro rata share of costs advanced, plus interest, which totaled \$5,021,048.

If you consent to the voluntary pro rata reimbursement program, the supervisor and Peter L. Malkin will be reimbursed for your pro rata share of costs, plus interest, previously incurred out of your share of the excess cash of your subject LLC that is being distributed to participants, and, to the extent that is insufficient, the consideration that you would receive in the consolidation or the consideration that you would receive in a third-party portfolio transaction, as applicable, will be reduced by the balance and such balance would be paid to the supervisor and Peter L. Malkin in shares of Class A common stock, if the consolidation is consummated, or out of distributions that you would receive from the proceeds of a third-party portfolio transaction, if consummated, or out of distributions from operations of the subject LLC. To the extent that the supervisor and Peter L. Malkin have not otherwise been reimbursed from distributions in connection with the consolidation, 50% of any distributions to be paid to you in excess of your share of aggregate distributions by the subject LLC equal to \$3,889,333 per annum, \$1,046,320 per annum and \$720,000 per annum, respectively, for Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. for the period commencing January 1, 2008 (including any cumulative deficiency from prior months) will be applied to reimburse the supervisor and Peter L. Malkin for a pro rata share of such advances, including interest at prime from the date of each such advance, until your pro rata share of the costs is paid in full. Cumulative distributions equal to the target amount have been made for the period from January 1, 2008 through the date hereof and therefore there are no past cumulative deficiencies.

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The table below shows the amount to be received by the supervisor out of the distributions of each consenting participant for each \$10,000 of original investment by a participant pursuant to the voluntary pro rata reimbursement program:

	<b>Voluntary Reimbursement Per \$10,000 Original Investment<sup>(1)</sup></b>	<b>Total Potential Reimbursement with 100% Participation</b>
Empire State Building Associates L.L.C.	\$ 1,029	\$ 3,396,880
60 East 42nd St. Associates L.L.C.	\$ 2,410	\$ 1,687,101
250 West 57th St. Associates L.L.C.	\$ 2,080	\$ 748,704

(1) Empire State Building Associates L.L.C. s, 60 East 42nd St. Associates L.L.C. s and 250 West 57th St. Associates L.L.C. s share of the aggregate voluntary reimbursement (before any reimbursements) is \$3,150,896, \$1,564,930, and \$694,487, respectively, plus interest. The amount shown in the table includes accrued interest through September 30, 2012 and does not include interest which will accrue subsequent to September 30, 2012.

97% of the potential voluntary reimbursement is attributable to advances by Peter L. Malkin for payments to unaffiliated third parties, with interest thereon at prime, and 3% is for amounts to be paid to the supervisor for work it performed.

The consent to the voluntary pro rata reimbursement program is independent of your vote on the consolidation. Thus, you can consent to the program whether you voted **FOR**, **AGAINST**, **ABSTAIN** or failed to vote on the consolidation and the third-party portfolio proposal. Your failure to consent to the program will not affect whether or not the subject LLC participates in the consolidation or a third-party portfolio transaction.

See Voluntary Pro Rata Reimbursement Program for Expenses of Legal Proceedings with Former Property Manager and Leasing Agent.

#### **Allocation of Consideration in the Consolidation**

The following table sets forth for each subject LLC, each private entity and the management companies:

the exchange value of each subject LLC, each private entity and the management companies;

the percentage of total exchange value and percentage of total shares of common stock, on a fully-diluted basis, to be issued;

the number of shares of common stock, on a fully-diluted basis, to be allocated to each subject LLC, each private entity and the management companies based on the hypothetical exchange value of \$10 per share arbitrarily assigned by the supervisor for illustrative purposes, including the number of operating partnership units to be allocated on account of the override interests of the supervisor and the Malkin Holdings group;

the value of common stock or operating partnership units based on the hypothetical exchange value of \$10 per share arbitrarily assigned by the supervisor for illustrative purposes for each \$10,000 of original investment in each subject LLC and its operating lessee;



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the book value (deficit) of the assets determined in accordance with U.S. generally accepted accounting principles, which is referred to herein as GAAP, per \$10,000 original investment in each subject LLC and its operating lessee; and

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the number of shares of common stock, on a fully-diluted basis, per \$10,000 original investment in each subject LLC and its operating lessee:

Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>Empire State Building Associates L.L.C.</b>						
Participants (subject to voluntary override)	\$ 1,004,308,935	24.0%	100,430,894	\$ 323,803	\$ (2,853)	32,380
Participants (not subject to voluntary override)	\$ 71,160,232	1.7%	7,116,023	\$ 358,670	\$ (2,853)	35,867
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 108,143,382	2.6%	10,814,338	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 1,183,612,549</b>	<b>28.3%</b>	<b>118,361,255</b>			
<b>60 East 42nd St. Associates L.L.C.</b>						
Participants	\$ 281,860,580	6.7%	28,186,058	\$ 402,658	\$ (13,607)	40,266
Override Interests to the Malkin Holdings group	\$ 31,208,953	0.8%	3,120,895	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 313,069,533</b>	<b>7.5%</b>	<b>31,306,953</b>			
<b>250 West 57<sup>th</sup> St. Associates L.L.C.</b>						
Participants (subject to voluntary override)	\$ 115,510,893	2.8%	11,551,089	\$ 409,662	\$ (7,497)	40,966
Participants (not subject to voluntary override)	\$ 35,345,763	0.9%	3,534,576	\$ 452,957	\$ (7,497)	45,296
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 12,207,951	0.3%	1,220,795	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 163,064,607</b>	<b>3.9%</b>	<b>16,306,461</b>			
<b>Empire State Building Company L.L.C.<sup>(7)(8)</sup></b>						
Members and Participants	\$ 1,056,028,581	25.3%	105,602,858	\$ 105,602,858	\$ 2,601,832	10,560,286
Override Interests to the Malkin Holdings group	\$ 52,889,643	1.3%	5,288,964	NA	NA	NA
Other Override Interests	\$ 53,218,257	1.3%	5,321,826	NA	NA	NA
<b>Total</b>	<b>\$ 1,162,136,482</b>	<b>27.8%</b>	<b>116,213,648</b>			
<b>Lincoln Building Associates L.L.C.<sup>(9)</sup></b>						
Members	\$ 266,388,586	6.4%	26,638,859	\$ 2,663,886	\$ 563,798	266,389
Override Interests to the Malkin Holdings group	\$ 29,598,732	0.7%	2,959,873	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 295,987,317</b>	<b>7.1%</b>	<b>29,598,732</b>			
<b>Fisk Building Associates L.L.C.<sup>(10)</sup></b>						
Members and Participants	\$ 105,470,905	2.5%	10,547,090	\$ 10,547,090	\$ 263,687	1,054,709

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Override Interests to the Malkin						
Holdings group	\$ 31,851,768	0.8%	3,185,177	NA	NA	NA
Other Override Interests	\$ 13,826,125	0.3%	1,382,612	NA	NA	NA
Total	\$ 151,148,797	3.6%	15,114,880			
1333 Broadway Associates L.L.C.						
Members	\$ 156,335,546	3.7%	15,633,555			

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Entity <sup>(1)</sup>	Per \$10,000 Original Investment (except as otherwise noted)					
	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>1350 Broadway Associates L.L.C.</b>						
Peter L. Malkin 50% Group	\$ 54,376,708	1.3%	5,437,671			
Override Interests to the Malkin Holdings group	\$ 13,545,915	0.3%	1,354,591			
Other Override Interests	\$ 0	0%	0			
David M. Baldwin 50% Group	\$ 67,922,623	1.6%	6,792,262			
<b>Total</b>	<b>\$ 135,845,247</b>	<b>3.3%</b>	<b>13,584,525</b>			
<b>Marlboro Building Associates L.L.C.</b>						
Members	\$ 147,828,064	3.5%	14,782,806			
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 10,404,981	0.3%	1,040,498			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 158,233,045</b>	<b>3.8%</b>	<b>15,823,304</b>			
<b>Seventh &amp; 37<sup>th</sup> Building Associates L.L.C.</b>						
Participants	\$ 60,461,969	1.5%	6,046,197			
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 5,746,980	0.1%	574,698			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 66,208,949</b>	<b>1.6%</b>	<b>6,620,895</b>			
<b>501 Seventh Avenue Associates L.L.C.</b>						
Member	\$ 56,462,653	1.4%	5,646,265			
Override Interests to the Malkin Holdings group	\$ 6,273,628	0.2%	627,363			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 62,736,281</b>	<b>1.5%</b>	<b>6,273,628</b>			
<b>Soundview Plaza Associates II L.L.C.<sup>(11)</sup></b>						
Malkin Co-Investor Capital L.P. (General Partner) <sup>(12)</sup>	\$ 114,039	0.0%	11,404			
Malkin Co-Investor Capital L.P. (Class A LPs)	\$ 11,289,834	0.3%	1,128,983			
Malkin Co-Investor Capital L.P. (Class B LPs) <sup>(13)</sup>	\$ 0	0.0%	0			
Peter L. Malkin	\$ 8,935,118	0.2%	893,512			
New Soundview Plaza Associates LLC (excluding interests held by the Malkin Holdings group)	\$ 1,218,425	0.0%	121,842			
<b>Total</b>	<b>\$ 21,557,416</b>	<b>0.5%</b>	<b>2,155,742</b>			
<b>East West Manhattan Retail Portfolio L.P.</b>						

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General Partner <sup>(12)</sup>	\$ 560,119	0.0%	56,012
Class A LPs	\$ 27,725,882	0.7%	2,772,588
Class B LP <sup>(13)</sup>	\$ 27,725,882	0.7%	2,772,588
<b>Total</b>	<b>\$ 56,011,882</b>	<b>1.3%</b>	<b>5,601,188</b>
One Station Place, Limited Partnership <sup>(11)</sup>			
General Partner <sup>(12)</sup>	\$ 579,030	0.0%	57,903
Class A LP	\$ 5,211,267	0.1%	521,127
Class B LPs	\$ 52,112,666	1.3%	5,211,267
<b>Total</b>	<b>\$ 57,902,962</b>	<b>1.4%</b>	<b>5,790,296</b>

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Entity <sup>(1)</sup>	Per \$10,000 Original Investment (except as otherwise noted)			Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>	
	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>		Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>
<b>New York Union Square Retail L.P.</b>					
General Partner <sup>(12)</sup>	\$ 833,793	0.0%	83,379		
Class A LPs	\$ 41,272,757	1.0%	4,127,276		
Class B LP <sup>(13)</sup>	\$ 41,272,757	1.0%	4,127,276		
<b>Total</b>	<b>\$ 83,379,307</b>	<b>2.0%</b>	<b>8,337,931</b>		
<b>Westport Main Street Retail L.L.C.<sup>(11)</sup></b>					
Manager <sup>(14)</sup>	\$ 69,256	0.0%	6,926		
Class A Members	\$ 6,856,297	0.2%	685,630		
Class B Member <sup>(13)</sup>	\$ 0	0.0%	0		
<b>Total</b>	<b>\$ 6,925,553</b>	<b>0.2%</b>	<b>692,555</b>		
<b>Fairfax Merrifield Associates L.L.C.</b>					
Participants	\$ 5,703,986	0.1%	570,399		
<b>Override Interests to the Malkin Holdings group</b>					
Other Override Interests	\$ 633,776	0.02%	63,378		
Other Override Interests	\$ 0	0%	0		
<b>Total</b>	<b>\$ 6,337,762</b>	<b>0.1%</b>	<b>633,776</b>		
<b>Merrifield Apartments Company L.L.C.</b>					
55% Members	\$ 3,137,192	0.1%	313,719		
45% Members	\$ 1,283,397	0.0%	128,340		
<b>Override Interests to the Malkin Holdings group</b>					
Other Override Interests	\$ 1,275,275	0.03%	127,547		
Other Override Interests	\$ 641,698	0.02%	64,170		
<b>Total</b>	<b>\$ 6,337,762</b>	<b>0.2%</b>	<b>633,776</b>		
<b>First Stamford Place L.L.C.</b>					
Class A & A2 Members	\$ 3,655,634	0.1%	365,563		
Manager <sup>(14)</sup>	\$ 73,851	0.0%	7,385		
Class B Member <sup>(13)</sup>	\$ 3,655,634	0.1%	365,563		
<b>Total</b>	<b>\$ 7,385,119</b>	<b>0.2%</b>	<b>738,512</b>		
<b>1185 Swap Portfolio L.P.<sup>(11)</sup></b>					
1185 Bank L.L.C.(General Partner) <sup>(12)</sup>	\$ 271,977	0.0%	27,198		
1185 Gotham L.L.C.(General Partner) <sup>(11)</sup>	\$ 371,386	0.0%	37,139		
<b>Total (General Partner)</b>	<b>\$ 643,364</b>	<b>0.0%</b>	<b>64,336</b>		
1185 Bank L.L.C.(Class 1 LP)	\$ 13,928,283	0.3%	1,392,828		
1185 Gotham L.L.C.(Class 1 LP)	\$ 19,019,130	0.5%	1,901,913		
<b>Total (Class 1 LP)</b>	<b>\$ 32,947,413</b>	<b>0.8%</b>	<b>3,294,741</b>		
1185 Bank L.L.C.(Class 2 LP)	\$ 539,450	0.0%	53,945		
1185 Gotham L.L.C.(Class 2 LP)	\$ 736,621	0.0%	73,662		

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Total (Class 2 LP)	\$ 1,276,070	0.0%	127,607
Malkin Support Fund L.P.	\$ 1,988,308	0.1%	198,831
Total (1185 Swap Portfolio L.P.)	\$ 36,855,156	0.9%	3,685,516

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Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)	
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012
<b>Fairfield Merrittview Limited Partnership<sup>(11)</sup></b>					
General Partner <sup>(12)</sup>	\$ 51,407	0.0%	5,141		
Class A LP	\$ 2,804,539	0.1%	280,454		
Class B LP <sup>(13)</sup>	\$ 2,284,752	0.1%	228,475		
<b>Override Interests to the Malkin Holdings group</b>					
Other Override Interests	\$ 571,189	0.01%	57,119		
	\$ 0	0%	0		
<b>Total</b>	<b>\$ 5,711,887</b>	<b>0.1%</b>	<b>571,189</b>		
<b>500 Mamaroneck Avenue L.P.</b>					
Class A LPs	\$ 10,858,230	0.3%	1,085,823		
Class B LPs <sup>(13)</sup>	\$ 0	0.0%	0		
General Partner <sup>(12)</sup>	\$ 109,679	0.0%	10,968		
Co-Tenant	\$ 3,655,970	0.1%	365,597		
<b>Total</b>	<b>\$ 14,623,878</b>	<b>0.4%</b>	<b>1,462,388</b>		
<b>BBSF LLC</b>					
	\$ 14,600,000	0.4%	1,460,000		
<b>Supervisor and Management Companies</b>					
Malkin Holdings, LLC <sup>(15)</sup>	\$ 5,777,000	0.1%	577,700		
Malkin Properties <sup>(16)</sup>	\$ 5,500,000	0.1%	550,000		
Malkin Construction Corp.	\$ 5,025,000	0.1%	502,500		
<b>Total</b>	<b>\$ 16,302,000</b>	<b>0.4%</b>	<b>1,630,200</b>		
<b>Total</b>	<b>\$ 4,182,309,037</b>	<b>100.0%</b>	<b>418,230,904</b>		
<b>Overrides (including Class B interests) held by the Supervisor and the Malkin Holdings group</b>					
	\$ 304,352,372	7.3%	30,435,237		
<b>Overrides (including Class B interests) of other Persons</b>					
	\$ 128,327,761	3.1%	12,832,776		

(1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an aggregate exchange value of \$612,458,701. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The exchange values of such properties are the exchange values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities. If the option properties are included in the consolidation, the aggregate exchange value would increase by the total exchange value of the option properties, and the individual exchange values of the other properties would not be affected. The relative share of the aggregate exchange value of each of the subject LLCs would be calculated based on the aggregate exchange value including the private entities that own the option properties.

(2) The exchange value is determined as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.

(3) The exchange value of each subject LLC, each private entity and the management companies is based on each subject LLC's, each private entity's and each management company's assets and liabilities included in the quarterly balance sheets of the subject LLC, private entity or the management companies, as of June 30, 2012. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital



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expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC or private entity to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation.

- (4) The number of shares of common stock issued, on a fully-diluted basis, equals the number of shares of Class A common stock outstanding plus shares of Class A common stock issuable upon the exchange of operating partnership units or upon conversion of Class B common stock for shares of Class A common stock on a one-for-one basis. To the extent that participants in the private entities that are non-accredited investors or charitable organizations receive cash, the Class A common stock, which would have been issued to them, will not be issued. As a result, the number of outstanding shares of Class A common stock will be reduced and the percentage of the Class A common stock each participant owns will increase.
- (5) The number of shares of common stock, on a fully-diluted basis, assumes that none of the participants in the private entities receive cash. The number of shares of common stock, on a fully-diluted basis, issuable to each subject LLC, as set forth in the table, was determined by dividing the exchange value for the subject LLC by \$10, which is the hypothetical value that the supervisor arbitrarily assigned for illustrative purposes. The number of shares of Class A common stock, Class B common stock, and operating partnership units issued in

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the consolidation will be determined based on the company's enterprise value, which will be determined based on the IPO price. Enterprise value is calculated without giving effect to shares of Class A common stock issued in 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.

- (6) Represents a voluntary capital override, which was voluntarily agreed to by certain participants.
- (7) Operating lessee of Empire State Building Associates L.L.C.
- (8) Information is provided per 1% interest instead of per \$10,000 original investment.
- (9) Operating lessee of 60 East 42nd St. Associates L.L.C.
- (10) Operating lessee of 250 West 57th St. Associates L.L.C.
- (11) Based on financial statements prepared on a tax basis and not in accordance with GAAP.
- (12) The general partner is an affiliate of the supervisor.
- (13) The Class B interests are equivalent to override interests.
- (14) The manager is an affiliate of the supervisor.
- (15) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.
- (16) Refers collectively to Malkin Properties, L.L.C. Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, L.L.C. (collectively Malkin Properties).

*How the exchange value per \$10,000 original investment was calculated.* Exchange value per participant's average \$10,000 original investment was calculated as follows. The supervisor started with the exchange value for each subject LLC, as computed by the independent valuer and approved by the supervisor. The supervisor divided the exchange value by the aggregate original investment in each subject LLC multiplied by 10,000 to determine the exchange value per \$10,000 original investment. The voluntary capital transaction override was then deducted only from the distributions allocable to those participants that consented. The distributions allocable to participants that did not consent to the voluntary capital transaction override program and/or the voluntary pro rata reimbursement program will be determined without any deduction for such payments. The amount of voluntary capital transaction override in the tables is presented as if each participant in each subject LLC and each private entity that has a voluntary capital transaction override program has consented to the program. To determine the approximate value of the operating partnership units and/or common stock you will receive if your subject LLC is acquired in the consolidation, you would multiply the figure in the fourth column (titled "Value of Shares of Common Stock or Operating Partnership Units per Participant's \$10,000 Original Investment") by the amount of your original investment divided by \$10,000. This calculation assumes that all payments under the voluntary pro rata reimbursement program will be made out of consenting participants' share of excess cash of the subject LLCs and the private entities and not deducted from consideration at closing of the consolidation.

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For a detailed explanation of the manner in which the allocations are made, see Background of and Reasons for the Consolidation Allocation of Common Stock and Operating Partnership Units among the Subject LLCs, the Private Entities and the Management Companies.

**Voting Procedures for the Consolidation Proposal and the Third-Party Portfolio Proposal**

The supervisor is asking you to vote **FOR** both the consolidation and the third-party portfolio proposal. If you own participation interests in more than one subject LLC, for each subject LLC in which you own a participation interest you will receive a transmittal letter, supplement and consent form. Regardless of how many subject LLCs in which you own a participation interest, you will receive a single copy of the prospectus/consent solicitation. Participants in each subject LLC will vote separately on whether or not to approve the consolidation and the third-party portfolio proposal. Accordingly, if you hold interests in more than one subject LLC, you must complete one consent form for each subject LLC in which you are a participant.

If you vote **FOR** the consolidation and your subject LLC participates in the consolidation, you effectively will be voting against the alternatives to the consolidation, other than a third-party portfolio transaction, unless you vote **AGAINST** the third-party portfolio proposal. These alternatives include continuation of your subject LLC and a sale of your subject LLC's interest in the property and distribution of the net proceeds to participants. If the consolidation is not approved your subject LLC and a third-party portfolio transaction is not consummated, the supervisor expects the operations of your subject LLC to continue.

Your consent form must be received by MacKenzie Partners, Inc. by 5:00 p.m. Eastern time on \_\_\_\_\_, 2013 unless the supervisor extends the solicitation period as set forth below. You may submit your consent form by mail, to 105 Madison Avenue, NY, NY 10016, or by facsimile, to (212) 929-0308. You can change your vote by mail or facsimile at any time before the later of the date that consents from participants holding the required percentage interest in your participating group are received and the 60<sup>th</sup> day after the date of this prospectus/consent solicitation. Either MacKenzie Partners, Inc. or the supervisor will send you a written acknowledgment by facsimile or, if requested by you, mail, that your vote has been changed promptly following receipt of a changed vote. If you are a participant in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C., and you do not consent to the consolidation or the third-party portfolio proposal, as applicable, you may also change your vote to consent to the consolidation or the third-party portfolio proposal, as applicable, within ten days' notice that the required supermajority consent from the participants in your participating group has been received, as described below. You may call MacKenzie Partners, Inc. during the solicitation period to check whether or not the required supermajority consent has been received from the participants in your participating group, or to confirm that your changed vote has been received.

The supervisor may extend on one or more occasions the solicitation period for one or more proposals for one or more subject LLCs or one or more participating groups in a subject LLC without extending for other proposals, subject LLCs or participating groups whether or not it has received approval for the consolidation proposal or the third-party portfolio proposal on expiration of the consent solicitation period.

If you do not submit a consent form, you will be counted as having voted **AGAINST** both the consolidation and the third-party portfolio proposal. If you submit a properly signed consent form but do not indicate how you wish to vote on the consolidation, the third-party portfolio proposal, or both, you will be counted as having voted **FOR** such proposal(s).

The participation interests in each subject LLC are divided into separate participating groups. Participants are being asked to vote on both the proposed consolidation and the third-party portfolio proposal. For each of these proposals to be approved, participants holding 100% of the outstanding participation interests in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. must approve that proposal, and

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participants holding greater than 75% of the outstanding participation interests in eight out of the ten participating groups of 250 West 57th St. Associates L.L.C. must approve that proposal. Approval by the required vote of the participants in 250 West 57th St. Associates L.L.C. in favor of a proposal will be binding on you if you are a participant in 250 West 57th St. Associates L.L.C. even if you vote **AGAINST** such proposal.

If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve the consolidation or third-party portfolio proposal, as shown in the tabulation of consents by Mackenzie Partners, Inc., pursuant to a buyout right included in the participating agreements since inception of the subject LLCs, the agent of any such participating group will purchase on behalf of the subject LLC the participation interest of any participant in such participating group that voted **AGAINST** the consolidation or the third-party portfolio proposal or **ABSTAINED**, as applicable, or that did not submit a consent form, even if the proposal is not approved by the other participating groups in such subject LLC, unless such participant consents to the proposal within ten days after receiving written notice that the required supermajority consent has been received by such participant's participating group, for the buyout amount.

The buyout amount for your interest would be substantially lower than the exchange value. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively.

These buyouts are contractual provisions expressly stated for 60 East 42<sup>nd</sup> St. Associates L.L.C. and Empire State Building Associates L.L.C. at the inception of these subject LLCs in their original participating agreements dated December 1, 1954 and July 11, 1961, respectively, under which the participation interests were issued. The buyout provisions were included as a practical way to permit the entity to act, while still following the then-current tax advice provided to the supervisor of the subject LLCs that participants needed to act unanimously to permit these subject LLCs to obtain partnership status and to avoid entity level tax as a corporation for U.S. federal income tax purposes. For this purpose, the buyout provisions allow the purchase, at original cost less capital returned (but not less than \$100), of the interest held by a non-consenting participant after ten-days' notice of receipt of approval by a required supermajority (90% for 60 East 42<sup>nd</sup> St. Associates L.L.C. and 80% for Empire State Building Associates L.L.C., in each case by participation group), if such non-consenting participant still does not change its vote to approval. Accordingly, the buyout provisions preserved the unanimity which was considered necessary for these tax reasons, but prevented a small minority, which might be acting for its own purposes and not in the interests of other participants, from preventing action by the large supermajority. The agents are authorized under the participating agreements to buy out participation interests of participants that do not consent to the action if the required supermajority consent is received, as described below. Since such buyout is necessary to provide for the required unanimous consent and is not conditioned on the transaction closing, the agent has the right to buy out participation interests from participants who do not vote **FOR** either proposal, if the required supermajority consent is obtained with respect to such proposal, within ten days after written notice, as described below, whether or not either or neither proposal is consummated.

Prior to an agent purchasing the participation interests of non-consenting participants, an agent will give such participants not less than ten days notice after the required supermajority consent is received by the applicable participating group in a subject LLC to permit them to consent to the consolidation or the third-party portfolio proposal, as applicable, in which case their participation interests will not be purchased. The agents will purchase the participation interests for the benefit of the subject LLC and not for their own account and will be reimbursed by the subject LLC for the cost of such buyout. If the agent purchases these participation interests, the requirement for consent of participants holding 100% of the participation interests of that participating group will be satisfied.

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Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of either the consolidation or third-party portfolio transaction proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received. A vote for the proposed transaction by the participants constitutes an authorization for the agents of each participating group to approve, in their capacity as members of the applicable subject LLC, the consolidation or the third-party portfolio transaction, as applicable. The agents, under the operating agreements of the subject LLCs, have discretion, subject to their fiduciary duties, to determine whether to approve the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. Additionally, the supervisor, acting on behalf of the subject LLCs and the agents, similarly has discretion, subject to its fiduciary duties, as to whether to abandon or to postpone the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. The agents and supervisor could determine not to proceed with the consolidation and the IPO due to market conditions or other reasons.

The agents, who are the members of your subject LLCs, recently created a new class of membership interests, which were divided into series. A separate series was deemed to be distributed to holders of each participating group in your subject LLC. Each new series provides protections similar to those under a shareholder rights plan for a corporation. Each new series corresponds to a participating group for which a member acts as agent. The new series will not affect voting rights, except with respect to any person or group that acquires 6%, 3%, or 7.5% or more, respectively, of the outstanding participation interests in the applicable participating group (an acquiring person ) for each of 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 there is an acquiring person, the effect of the new series is that approval of the consolidation proposal and the third-party portfolio proposal by a participating group will require approval by the requisite consent of the participants in the participating group, as holders of the new series of membership interests, excluding the acquiring person.

The Wien group collectively owns participation interests in the subject LLCs and has advised that it will vote in favor of the consolidation and the third-party portfolio proposal. These participation interests represent the following percentage ownership for each subject LLC: 8.195% for Empire State Building Associates L.L.C., 8.447% for 60 East 42nd St. Associates L.L.C. and 8.912% for 250 West 57th St. Associates L.L.C. In addition to the participation interests, members of the Wien group hold override interests which are non-voting. See Background of and Reasons for the Consolidation Background of the Subject LLCs.

### **No Right to Independent Appraisal**

If your subject LLC approves the consolidation or the third-party portfolio proposal and your subject LLC participates in the consolidation or a third-party portfolio transaction, as applicable, participants who vote **AGAINST** or **ABSTAIN** with respect to such proposal or do not submit a consent form will not have appraisal rights for their participation interests or a right to receive cash based upon an appraisal.

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### **Consolidation Expenses**

If your subject LLC approves the consolidation and your subject LLC is consolidated with the company, the company will bear all consolidation expenses. The company will also bear all of the consolidation expenses of other subject LLCs and private entities that are consolidated with the company. Additionally, the entities owning the option properties have borne a portion of the consolidation expenses and if the option is approved by the participants in such entities, the company will bear all of the consolidation expenses of such entities.

If the consolidation does not close, each subject LLC and private entity will bear its proportionate share of the consolidation expenses based on the exchange value of each subject LLC and private entity. If the consolidation closes, but the subject LLC does not participate in the consolidation, the subject LLC will bear its proportionate share of all consolidation expenses incurred through the date of termination of the contribution agreement. The supervisor does not know whether the acquiror in a third-party portfolio transaction will agree to pay any of the consolidation expenses.

### **Conditions to the Consolidation**

The following conditions must be satisfied to consummate the consolidation of each of the subject LLCs:

Requisite consent of the participants in the subject LLC must have been received;

The IPO must close;

The operating partnership units and Class A common stock must be approved for listing on the NYSE or another national securities exchange prior to or concurrently with the consummation of the consolidation and the closing of the IPO;

The contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building;

The consolidation must have been completed by December 31, 2014 and

The consolidation will be subject to other customary conditions as set forth in Section 2.1 of the Contribution Agreement attached to the supplement for each subject LLC as Appendix B.

### **Your Right to Investor Lists and to Communicate with Other Participants**

Under federal securities laws, upon written request from you, the supervisor will deliver the following information to you:

A statement of the approximate number of participants in your subject LLC and

The estimated cost of mailing a proxy statement, form of proxy or other similar communication to your subject LLC's participants. In addition, you have the right, at your option, either:

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To have your subject LLC mail (at your expense) copies of any consent statement, consent form or other soliciting materials to be furnished by you to the other participants in your subject LLC or

To have your subject LLC deliver to you, within five business days of the receipt of the request, a reasonably current list of the names, addresses and participation interests held by the participants in your subject LLC.

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The right to receive the list of participants is subject to your payment of the cost of mailing and duplication at a rate of \$0.20 per page.

**U.S. Federal Income Tax Considerations of the Consolidation Proposal**

It is expected that the consolidation should be treated for U.S. federal income tax purposes as follows:

- (i) If you receive solely shares of Class A common stock, the consolidation should be treated as a taxable sale of your participation interest in which gain or loss is recognized. Such gain or loss should generally equal the difference between your amount realized (which generally will equal the fair market value of shares of Class A common stock that you receive, plus any distribution you receive of consolidation expenses that the operating partnership pays as a reimbursement to your subject LLC, plus the share of liabilities associated with your participation interests that you are deemed to be relieved of under U.S. federal income tax law) and your adjusted tax basis in your participation interests. You will realize phantom income if you have a negative capital account with respect to your participation interest. In each of 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C., original participants have a negative capital account. If you are an individual or a partnership for New York State personal income tax purposes, any gain that you recognize in the consolidation will generally be treated as New York source income for New York State personal income tax purposes. As a result, you (or, if you are a partnership, any of your partners who are individuals) will generally be subject to New York State personal income tax on such gain even if you are treated as a New York nonresident for purposes of the New York State personal income tax. The New York City personal income tax should not apply to individuals who are treated as New York City nonresidents for purposes of the tax. If all of your participation interest is exchanged for Class A common stock pursuant to the consolidation, suspended passive activity losses associated with your participation interest, if any, may be eligible for treatment as losses that are not from a passive activity to the extent that they exceed income and gains from passive activities for your taxable year that includes the consolidation.
- (ii) If you receive solely operating partnership units, or if you receive a combination of (a) operating partnership units and (b) shares of common stock that do not exceed your allocable share, after certain adjustments, of certain qualified capital expenditures of the subject LLC, as further described under U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Operating Partnership Units (the reimbursement amount), the consolidation should be treated as a tax-deferred contribution by the subject LLC of the subject LLC's property to the operating partnership in exchange for operating partnership units and common stock as a reimbursement of certain qualified capital expenditures, followed by a tax-deferred distribution of such operating partnership units and common stock to you. You should not generally recognize gain unless (i) the disguised sale rules of the Code apply, (ii) you are deemed to receive a constructive distribution of cash in excess of your tax basis in your operating partnership units under Sections 731 and 752(b) of the Code due to a reduction in your share of partnership liabilities or (iii) you have at-risk recapture income under Section 465(e) of the Code. To the extent that you do not recognize gain in the consolidation for U.S. federal income tax purposes, you also generally should not recognize gain for purposes of the New York State personal income tax and, if applicable, the New York City personal income tax.
- (iii) If you receive a combination of (a) operating partnership units and (b) shares of common stock in excess of your reimbursement amount, you should be treated as first selling a portion of your participation interest for such excess shares of common stock in a transaction in which gain or loss is recognized. Following such sale, the subject LLC should be treated as contributing the portion of its property not attributable to participation interests otherwise treated as having been sold to the operating partnership in exchange for operating partnership units and common stock as a reimbursement of qualified capital expenditures in a tax-deferred contribution, and the subject LLC should be treated as distributing operating partnership units and shares of common stock equal to your reimbursement amount to you in a tax-deferred distribution.



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If you receive solely Class A shares of common stock in the consolidation, or if you receive a combination of (a) operating partnership units and (b) an amount of common stock in excess of your reimbursement amount, upon receipt of such shares of common stock, you will be deemed to have consented to treat the consolidation as a sale of all or a portion of your participation interest in exchange for such shares of common stock for U.S. federal income tax purposes.

If you consent to the voluntary pro rata reimbursement program, you may be treated as receiving shares of common stock that you would otherwise receive in the consolidation and immediately transferring such shares of common stock to the supervisor as a reimbursement payment. For this purpose, even if you elect to receive solely operating partnership units in the consolidation, you should be treated as receiving shares of common stock equal to the amount that you are treated as transferring to the supervisor as a reimbursement payment. Accordingly, the gain or loss that you recognize in the consolidation transaction should take into account your deemed receipt of such common stock. You should be entitled to deduct the value of the shares of common stock that you are deemed to pay to the supervisor as an expense associated with your participation interest in your subject LLC. This deduction should offset the amount of gain you recognize, or increase the amount of losses you would otherwise recognize, as a result of your deemed receipt of shares of common stock. However, this deduction may be subject to certain limitations depending on your individual circumstances and may be required to be capitalized, and you should consult with your tax advisor regarding your ability to utilize all or a portion of this deduction for U.S. federal income tax purposes. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former Property Manager and Leasing Agent Legal Proceedings.

Whether you receive operating partnership units, Class A common stock, or Class B common stock in connection with the consolidation, you will be allocated your proportionate share of the income and other tax items of the subject LLC for the period ending with the date of closing of the consolidation. You will have to report such income even though you do not receive cash in consideration for your participation interest.

Participants should carefully review U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation. Participants should consult with their tax advisors with regard to the U.S. federal income tax, New York State personal income tax and New York City personal income tax consequences of receiving operating partnership units or common stock in exchange for their participation interests in their particular circumstances.

*Taxable gain and loss estimates per participant s \$10,000 original investment for participants receiving solely Class A common stock*

<b>Subject LLC</b>	<b>Estimated Gain/(Loss) per Participant s \$10,000 Original Investment<sup>(1)(2)</sup> Participant Receives Class A Common Stock</b>	
Empire State Building Associates L.L.C.		
Participants (without voluntary overrides)	\$	356,320
Participants (with voluntary overrides)	\$	321,460
250 West 57th St. Associates L.L.C.		
Participants (without voluntary overrides)	\$	467,200
Participants (with voluntary overrides)	\$	423,900
60 East 42nd St. Associates L.L.C.		
Participants	\$	425,260

(1) Values are based on the hypothetical \$10 per share exchange value that the supervisor arbitrarily assigned for illustrative purposes. Upon listing the Class A common stock on the NYSE, the price at which the Class A common stock will trade may be above or below the hypothetical \$10 per share.

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- (2) The estimated gain/(loss) is calculated based upon presumed tax treatment of the subject LLCs as a result of the proposed consolidation for participants that were original investors in the subject LLCs.

**Qualification of the Company as a REIT**

The company has been organized and intends to operate in a manner that will enable it to qualify as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013. The company has not requested and does not intend to request a ruling from the Internal Revenue Service, or the IRS, that it qualifies as a REIT. Qualification as a REIT involves the application of highly technical and complex Code provisions and Treasury Regulations promulgated thereunder for which there are limited judicial and administrative interpretations. The complexity of these provisions and of applicable Treasury Regulations is greater in the case of a REIT that, like the company, holds its assets through partnerships. To qualify as a REIT, the company must meet, on an ongoing basis, various tests regarding the nature and diversification of the company's assets and income, the ownership of the company's outstanding shares, and the amount of the company's distributions. The company's ability to satisfy these asset tests depends upon the company's analysis of the characterization and fair market values of its assets, some of which are not susceptible to a precise determination, and for which the company will not obtain independent appraisals. The company's compliance with the REIT income and quarterly asset requirements also depends upon the company's ability to manage successfully the composition of its income and assets on an ongoing basis. Moreover, new legislation, court decisions or administrative guidance, in each case possibly with retroactive effect, may make it more difficult or impossible for the company to qualify as a REIT. Thus, while the company intends to operate so that it will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in the company's circumstances, no assurance can be given that the company will so qualify for any particular year. These considerations also might restrict the types of assets that the company can acquire in the future. If the company fails to qualify as a REIT in any taxable year and does not qualify for certain statutory relief provisions, the company will be subject to U.S. federal income tax at regular corporate rates and may be precluded from qualifying as a REIT for the subsequent four taxable years following the year during which it lost its REIT qualification. Even if the company qualifies for taxation as a REIT, it may be subject to certain U.S. federal, state and local taxes on its income or property. See U.S. Federal Income Tax Considerations.

**Selected Financial and Other Data**

The following table sets forth selected financial and other data on (i) a combined historical basis for the predecessor beginning on page F-51 and (ii) a pro forma basis for the company giving effect to the consolidation and the IPO, the related use of proceeds thereof and the other adjustments described in the unaudited pro forma financial information beginning on page F-5. The company has not presented historical information for Empire State Realty Trust, Inc. because the company has not had any corporate activity since its formation other than the issuance of shares of common stock in connection with the initial capitalization of the company and because the company believes a discussion of the results of the company would not be meaningful.

The company's predecessor's combined historical financial information includes:

The management companies, including their asset management, leasing, administrative, construction and development operations;  
and

the real estate operations for the subject LLCs and the private entities excluding the four office properties for which the supervisor acts as supervisor but that are not consolidated into the company's predecessor for accounting purposes except for the company's predecessor's non-controlling interests in such properties.

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You should read the following selected financial data in conjunction with the company's combined historical and unaudited pro forma condensed consolidated financial statements and the related notes and with Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust.

The selected historical combined balance sheet information as of December 31, 2011, 2010 and 2009 of the company's predecessor and selected combined statements of operations information for the years ended December 31, 2011, 2010, 2009 and 2008 of the company's predecessor have been derived from the audited historical combined financial statements of the company's predecessor. The historical combined balance sheet information as of September 30, 2012 and combined statements of operations for the nine months ended September 30, 2012 and 2011 have been derived from the unaudited combined financial statements of the company's predecessor. The selected historical combined balance sheet information as of December 31, 2008 and 2007 and selected combined statements of operations information for the year ended December 31, 2007 have been derived from the unaudited combined financial statements of the company's predecessor. The company's results of operations for the interim period ended September 30, 2012 are not necessarily indicative of the results that will be obtained for the full fiscal year.

The company's unaudited selected pro forma condensed consolidated financial statements and operating information as of and for the nine months ended September 30, 2012 and for the year ended December 31, 2011 assumes completion of the consolidation and the IPO and the other adjustments described in the unaudited pro forma financial information beginning on page F-5 as of January 1, 2012 for the operating data and as of the stated date for the balance sheet data.

The company's unaudited pro forma financial information is not necessarily indicative of what the company's actual financial position and results of operations would have been as of the date and for the periods indicated, nor does it purport to represent the company's future financial position or results of operations.

**Table of Contents****Empire State Realty Trust, Inc.****Selected Financial and Other Data***(amounts in thousands except for shares and per share data)*

	Nine Months Ended September 30,			Year Ended December 31,					
	Pro Forma Consolidated 2012 (Unaudited)	Historical Combined (Predecessor) 2012	2011	Pro Forma Consolidated 2011 (Unaudited)	2011	2010	Historical Combined (Predecessor) 2009	2008	2007 (Unaudited)
<b>Statement of Operations Data:</b>									
<b>Revenue:</b>									
Rental revenue	\$ 232,321	\$ 129,673	\$ 126,768	\$ 301,828	\$ 198,494	\$ 166,159	\$ 167,556	\$ 162,194	\$ 166,524
Tenant expense reimbursement	46,305	22,570	22,869	62,932	31,063	32,721	36,309	35,684	35,789
Third-party management and other fees	2,148	3,909	4,671	3,672	5,626	3,750	4,296	5,916	4,220
Construction revenue	11,731	11,731	35,323	47,560	47,560	27,139	15,997	56,561	42,373
Observatory income <sup>(1)(2)</sup>	68,493			80,562					
Other income and fees	23,041	8,778	9,909	16,485	12,045	16,776	8,157	8,442	13,601
<b>Total Revenues</b>	<b>384,039</b>	<b>176,661</b>	<b>199,540</b>	<b>513,039</b>	<b>294,788</b>	<b>246,545</b>	<b>232,315</b>	<b>268,797</b>	<b>262,507</b>
<b>Expenses</b>									
Operating expenses	106,186	40,336	40,520	141,381	57,102	60,356	58,850	55,291	51,180
Marketing, general, and administrative expenses	26,481	14,415	13,431	28,778	15,688	13,924	16,145	17,763	17,173
Observatory expenses <sup>(2)</sup>	15,473			20,009					
Construction expenses	12,575	12,575	34,121	46,230	46,230	27,581	17,281	56,080	42,217
Formation transaction expenses		1,640	1,849		2,845	807			
Real estate taxes	50,401	22,493	21,968	67,439	29,160	27,585	28,937	24,863	22,063
Depreciation and amortization	69,194	31,877	25,773	93,941	35,513	34,041	29,327	26,838	25,802
<b>Total Operating Expenses</b>	<b>280,310</b>	<b>123,336</b>	<b>137,662</b>	<b>397,778</b>	<b>186,538</b>	<b>164,294</b>	<b>150,540</b>	<b>180,835</b>	<b>158,435</b>

(footnotes on next page)

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	Nine Months Ended September 30,			Year Ended December 31,					
	Pro Forma Consolidated 2012 (Unaudited)	Historical Combined (Predecessor)		Pro Forma Consolidated 2011 (Unaudited)	2011	Historical Combined (Predecessor)			2007 (Unaudited)
		2012	2011			2010	2009	2008	
<b>Income from Operations before Interest Expense and Equity in Net income of Non-controlled Entities</b>	103,729	53,325	61,878	115,261	108,250	82,251	81,775	87,962	104,072
Interest expense, net	43,566	40,223	41,732	56,608	54,746	52,264	50,738	48,664	50,758
<b>Income from Operations before Equity in Net Income of Non-controlled Entities</b>	60,163	13,102	20,146	58,653	53,504	29,987	31,037	39,298	53,314
Equity in net income of non-controlled entities <sup>(2)</sup>		13,498	12,239		3,893	15,324	10,800	13,422	15,947
<b>Net Income</b>	\$ 60,163	\$ 26,600	\$ 32,385	\$ 58,653	\$ 57,397	\$ 45,311	\$ 41,837	\$ 52,720	\$ 69,261
<b>Other Data</b>									
Funds from operations <sup>(3)</sup>	\$ 128,804	\$ 63,381	\$ 63,402	\$ 151,854	\$ 99,761	\$ 85,020	\$ 75,458	\$ 83,513	
EBITDA <sup>(4)</sup>	\$ 178,514	\$ 106,837	\$ 108,235	\$ 213,171	\$ 158,647	\$ 141,283	\$ 129,591	\$ 134,269	
Cash flows from:									
Operating activities		\$ 85,646	\$ 59,426		\$ 47,682	\$ 73,574	\$ 58,509	\$ 75,410	
Investing activities		\$ (69,836)	\$ (42,218)		\$ (60,527)	\$ (34,837)	\$ (38,617)	\$ (13,768)	
Financing activities		\$ (8,891)	\$ 20,685		\$ 11,130	\$ (44,793)	\$ (5,035)	\$ (65,824)	

	Nine Months Ended September 30,			Year Ended December 31,					
	Pro Forma Consolidated 2012 (Unaudited)	Historical Combined (Predecessor)		2011	2010	Historical Combined (Predecessor)			2007 (Unaudited)
		2012	2011			2009	2008		
<b>Balance Sheet Data (at period end):</b>									
Net real estate	\$ 1,239,096	\$ 675,139	\$ 632,132	\$ 590,466	\$ 582,904	\$ 567,404	\$ 575,348		
Total assets	\$ 2,683,193	\$ 1,053,348	1,004,971	910,743	890,598	857,796	870,537		
Notes and loans payable	\$ 1,110,292	\$ 991,275	939,705	869,063	871,636	828,150	828,812		
Total liabilities	\$ 1,351,356	\$ 1,073,085	1,003,677	922,308	908,856	872,736	873,036		
Stockholders /owners equity (deficit)	\$ 1,331,837	\$ (19,737)	1,294	(11,565)	(18,258)	(14,940)	(2,499)		
Total liabilities and stockholders /owners equity (deficit)	\$ 2,683,193	\$ 1,053,348	1,004,971	910,743	890,598	857,796	870,537		

- (1) Observatory income includes \$4,167 and \$4,870 for the nine months ended September 30, 2012 and for the year ended December 31, 2011, respectively, of rental revenue attributable to a retail tenant which operates the concession space in the observatory under a lease expiring in May 2020.
- (2) For the historical combined periods, the company's proportionate share of the revenues and expenses of the Empire State Building, including the observatory, are included in Equity in net income of non-controlled entities. Upon completion of the IPO, the revenues and expenses of the Empire State Building, including the observatory, will be presented on a consolidated basis.
- (3) For a definition and reconciliation of funds from operations, or FFO, and a statement disclosing the reasons why the company's management believes that presentation of FFO provides useful information to investors and, to the extent material, any additional purposes for which the company's management uses FFO, see Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Funds from Operations.
- (4) For a definition and reconciliation of earnings before interest, income tax, depreciation and amortization, or EBITDA, and a statement disclosing the reasons why the company's management believes that presentation of EBITDA provides useful information to investors and, to the extent material, any additional purposes for which the company's management uses EBITDA, see Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust EBITDA.

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**RISK FACTORS**

*Before you decide how to vote on the consolidation and the third-party portfolio proposal, you should be aware that there are various risks involved in the consolidation and a third-party portfolio transaction, including those described below. In addition to the other information included in this prospectus/consent solicitation, you should consider the following risk factors carefully in determining whether to vote in favor of the consolidation and the third-party portfolio proposal. The supervisor believes the various risks described below have substantially the same effect on participants in each subject LLC.*

*The supervisor and the company also caution you that this prospectus/consent solicitation contains forward-looking statements. These forward-looking statements are based on the supervisor's or the company's 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 below, as well as general economic, business and market conditions, changes in federal and local laws and regulations, costs or difficulties relating to the consolidation and related transactions and increased competitive pressures. See *Forward-Looking Statements*. The terms of the agreements and the assumptions concerning the IPO could change prior to the closing of the consolidation and the IPO and such changes could be significant.*

**Risk Factors Related to the Company and Risks Resulting from the Consolidation**

***The value of the operating partnership units and/or common stock that you receive and trading price of the operating partnership units and Class A common stock following completion of the IPO is uncertain. The value of the operating partnership units and Class A common stock and their trading prices could be lower than anticipated and, based on current market conditions, the supervisor believes that such values may be less than the exchange value.***

The exchange values of the subject LLCs, each private entity and the management companies were determined based on the Appraisal of each subject LLC, each private entity and the management companies prepared by the independent valuer. The Appraisal does not necessarily represent the values that would be realized in a sale of the subject LLCs, the private entities, the management companies or their assets in arm's length transactions. The value of the operating partnership units and/or common stock that you receive will be based on the enterprise value of the company determined in connection with the IPO. The enterprise value and the IPO price for the Class A common stock will be based on a variety of factors, including the price per share at which third-party investors are willing to invest in the Class A common stock and economic and market conditions for the Class A common stock at the time of the IPO. Accordingly, the fair market value of the consideration that you receive will not be known until the pricing of the IPO, which will occur after you vote upon the approval of the consolidation transaction. 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.

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The market value of the operating partnership units and Class A common stock could be substantially affected by general market conditions, including the extent to which a secondary market develops for the operating partnership units and Class A common stock following the IPO, the extent of institutional investor interest in the company, the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities, including securities issued by other real estate-based companies, the company's financial performance and general stock and bond market conditions.

The supervisor arbitrarily has assigned \$10 as the hypothetical value of each operating partnership unit and share of common stock for purposes of illustrating the number of operating partnership units and shares of common stock that will be issued to each of the subject LLCs, the private entities and the management companies in the consolidation. The IPO price of the Class A common stock may be below the hypothetical \$10 per share.

The stock markets, including the NYSE on which the company expects the operating partnership units issued to participants in the subject LLCs and shares of the Class A common stock will be listed, have from time to time experienced significant price and volume fluctuations. As a result, the market price of the operating partnership units and shares of the Class A common stock may be similarly volatile, and investors in the operating partnership units and shares of the Class A common stock may from time to time experience a decrease in the value of their units or shares, including decreases unrelated to the company's operating performance or prospects. The price of the operating partnership units and shares of the Class A common stock could be subject to wide fluctuations in response to a number of factors, including those listed in this Risk Factors section of this prospectus/consent solicitation and others such as:

the company's operating performance and the performance of other similar companies;

actual or anticipated differences in the company's quarterly operating results;

changes in the company's revenues or earnings estimates or recommendations by securities analysts;

publication of research reports about the company, the office or retail real estate sectors, office or retail tenants or the real estate industry;

increases in market interest rates, which may lead investors to demand a higher distribution yield for shares of the company's common stock, and would result in increased interest expenses on the company's debt;

actual or anticipated changes in the company's and its tenants' businesses or prospects;

the current state of the credit and capital markets, and the company's ability and the ability of the company's tenants to obtain financing;

additions and departures of key personnel;

increased competition in the commercial office and retail real estate business in the company's markets;

strategic decisions by the company or the company's competitors, such as acquisitions, divestments, spin-offs, joint ventures, strategic investments or changes in business strategy;

the passage of legislation or other regulatory developments that adversely affect the company or the company's industry;

speculation in the press or investment community;

actions by institutional stockholders;

equity issuances by the company (including the issuances of operating partnership units), or common stock resales by the company's stockholders, or the perception that such issuances or resales may occur;



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the impact of the limited number of holders of each series of operating partnership units, the lock-ups and tax attributes;

actual, potential or perceived accounting problems;

changes in accounting principles;

the failure of the operating partnership to maintain its status as a partnership for U.S. federal income tax purposes;

failure of the company to qualify as a REIT;

terrorist acts, natural or man-made disasters or threatened or actual armed conflicts and

general market and local, regional and national economic conditions, particularly in the Manhattan and greater New York metropolitan area, including factors unrelated to the company's performance.

No assurance can be given that the market price of the operating partnership units and shares of the Class A common stock will not fluctuate or decline significantly in the future or that holders of operating partnership units and shares of the Class A common stock will be able to sell their units or shares when desired on favorable terms, or at all. From time to time, in the past, securities class action litigation has been instituted against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert the company's management's attention and resources.

***There will be a fundamental change in the nature of your investment if the consolidation is consummated.***

The consolidation involves a fundamental change in the nature of your investment. As a result, you may be subject to increased risks, including:

Your investment currently consists of a participation interest in an entity, taxed as a partnership for U.S. federal income tax purposes, which owns an interest in a single office building property in Manhattan. After the consolidation, you will hold operating partnership units, unless you elect to receive Class A common stock, or, to a limited extent, as described herein, Class B common stock in lieu of operating partnership units issuable to you. The operating partnership units will be redeemable at your option for cash or, at the company's election, shares of Class A common stock. The operating partnership is a subsidiary of the company. The company intends to elect and qualify to be taxed as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013, and, through the operating partnership, is expected to own as many as 18 properties that include office and retail properties in Manhattan and the greater New York metropolitan area, and expects to make additional investments;

If your subject LLC sold its property interests it would liquidate and distribute the net proceeds to its participants. The company intends to reinvest the net proceeds from any future property sales. The company may raise additional funds through equity or debt financings to make future acquisitions of properties and such future issuances of debt or equity securities or the company's other borrowings may reduce the market price of the operating partnership units or the company's shares of Class A common stock and dilute your ownership in the company;

The company will own types of properties different from those in which your subject LLC is invested;

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The risks inherent in investing in an operating company such as the company include the risk that the company may invest in new properties that are not as profitable as anticipated;

It is possible that properties acquired in the consolidation will not be as profitable as anticipated and

Your investment will change from one in which you generally are entitled to receive distributions from rents received from the lessees of the property owned by your subject LLC and any net proceeds of a sale or refinancing of your subject LLC's interest in a property to an investment in an entity in which you may realize the value of your investment only through the distributions of rents from the company and the sale of your common stock.

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After the consolidation, you will hold operating partnership units, unless you elect to receive Class A common stock, or, to a limited extent, as described herein, Class B common stock in lieu of operating partnership units issuable to you. Beginning 12 months after the completion of the IPO, the operating partnership units will be exchangeable at your option for cash or, at the company's election, shares of Class A common stock. The operating partnership will be a majority owned subsidiary of the company. You will be subject to the risks inherent in investing in an operating partnership which is a majority owned subsidiary of the company, including the risk that the company may invest in new properties that are not as profitable as anticipated.

***Holders of operating partnership units of the operating partnership will have limited rights.***

Participants issued operating partnership units in the consolidation will hold units of limited partnership interest in a subsidiary of the company and will not be entitled to exercise voting rights in the company or other rights of a stockholder in the company. In addition, holders of operating partnership units will have no right to vote for members of the company's board of directors unless such holder elects, to the limited extent described herein, to receive Class B common stock or until such holder's operating partnership units are exchanged for shares of Class A common stock. Therefore, to the extent a participant receives operating partnership units, such holder's rights will be more limited than if such participant receives Class A common stock.

***Holders of operating partnership units that acquire shares of Class B common stock will have a significant vote in matters submitted to a vote of stockholders.***

The participants in the subject LLCs have an option to elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation (*i.e.*, they will receive one share of Class B common stock and 49 operating partnership units). Accredited investors in the private entities and the management companies had the same option at the time they made their election of consideration in the private solicitation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote. Holders of Class B common stock will be entitled to share equally, on a per share basis, in all distributions payable with respect to shares of the Class A common stock. Holders of Class B common stock may have interests that differ from those holders of Class A common stock, including by reason of their interest in the operating partnership, and may accordingly vote as a stockholder in ways that may not be consistent with the interests of holders of Class A common stock. This significant voting influence over certain matters may have the effect of delaying, preventing or deterring a change of control of the company, or could deprive holders of Class A common stock of an opportunity to receive a premium for their Class A common stock as part of a sale of the company.

***After the consolidation, participants will have exposure to the market and economic conditions of other properties.***

As a result of the consolidation, the participants will own interests in a much larger, broader range of properties than any of the subject LLCs individually. A material adverse change affecting the company's property will affect all the stockholders whether or not a particular stockholder previously was a participant in an entity owning an interest in such affected property. Each subject LLC owns a discrete property asset, and the consolidation will diversify the types of the properties in which the participants, as stockholders of the company, will have interests and result in ownership of interests in an entity owning properties located outside of Manhattan. As a result, the properties owned by the company may be affected differently by economic and market conditions than the property owned by an individual subject LLC.

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*Actual distribution levels to stockholders will depend upon actual results of operations, economic conditions and other factors that could differ materially from current expectations and could be lower than the amount estimated and your current distributions.*

The company cannot assure you that the estimated distribution yields will be made or sustained. Any distributions the company pays in the future will depend upon actual results of operations, economic conditions and factors that could differ materially from current expectations and will be determined in the sole discretion of the company's board of directors. Actual results of operations will be affected by a number of factors, including the revenue the company receives from the existing and acquired properties, operating expenses, interest expense, occupancy levels, the ability of tenants to meet their obligations and unanticipated expenditures. As a result, cash distributions to the stockholders after the consolidation may be less than the anticipated cash distributions and the cash distributions currently received by the participants.

*There are conflicts of interest inherent in the structure of the consolidation, and the supervisor and the Malkin Holdings group will receive substantial benefits if it is consummated.*

The supervisor, the agents and their affiliates serve as supervisor, agents for groups of participants or in a similar capacity with respect to each subject LLC and each private entity, and, as such, have conflicts of interest structuring the consolidation. The supervisor and the Malkin Holdings group structured and negotiated the consolidation and will receive benefits that may exceed the benefits that they would derive from ownership of their interests in the subject LLCs, the private entities and the management companies if the consolidation were not consummated. The Malkin Holdings group will receive an estimated aggregate of 73,078,153 operating partnership units, shares of Class A common stock and shares of Class B common stock, having an aggregate value based on the exchange value of \$730,781,533, which they will receive in accordance with the allocation of exchange value based on the Appraisal. The amounts allocated to the Malkin Holdings group are based on the hypothetical \$10 per share exchange value that the supervisor arbitrarily assigned for illustrative purposes, and consists of: their interests as participants which will be allocated to them on the same basis as other participants; their interests as holders of override interests which will be allocated to them in accordance with the subject LLCs' and private entities' organizational documents; and their interests in the management companies, which will be allocated to them in accordance with the valuations of the management companies by the independent valuer. This is in addition to shares of Class A common stock issuable in respect of the voluntary pro rata reimbursement program consented to by participants in the subject LLCs and its share of distributions of any cash available for distribution from the subject LLCs prior to the consolidation.

The Malkin Holdings group may hold a greater interest, including overrides, in other subject LLCs and the other private entities than in your subject LLC. While the Malkin Holdings group holds a greater interest, including overrides, in Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C. than in their operating lessees, the Malkin Holdings group's interest, including overrides, in Fisk Building Associates L.L.C., the operating lessee of 250 West 57<sup>th</sup> St. Associates L.L.C., is greater than its interest, including overrides, in 250 West 57<sup>th</sup> St. Associates L.L.C.

The Malkin Holdings group has a conflict of interest in connection with the structure of the consideration and the allocation of consideration because it could affect the benefit to the Malkin Holdings group. The Malkin Holdings group will also realize a benefit from the allocation of consideration to the management companies, which has an exchange value of \$16,302,000, and from the company's compensation arrangements. In addition, officers and members of the supervisor will be executive officers and a director of the company and will benefit from the terms of their compensation arrangements with the company. The distribution and compensation to the Malkin Holdings group will change as a result of the consolidation. For a comparison of the distributions and compensation that the Malkin Holdings group would have received from the subject LLCs as compared to the distributions and compensation it will receive after the consolidation, see Comparison of Ownership of Participation Interests, Operating Partnership Units and Shares of Common Stock Compensation and Fees and the section entitled Distributions and Compensation Paid to the Supervisor and its Affiliates Compensation, Reimbursement and Distributions to the Supervisor and its Affiliates in the supplement for your subject LLC.

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Pursuant to an indemnification agreement, the principals of the supervisor also will be entitled to indemnification for claims relating to the consolidation, including a claim by participants in the subject LLCs. As a result, the supervisor of your subject LLC has a conflict of interest in connection with the consolidation, which could affect the structuring of the consolidation.

From inception, the supervisor has represented many different ownership interests, and the subject LLCs and the private entities, therefore, have been exposed to conflicts of interest. For example, the supervisor and persons associated with the supervisor, act as an external manager for all of the entities (including the subject LLCs and the operating lessees), serve as agents for the participants in the subject LLCs and certain of the private entities, determine when to make recommendations on sales, financings and operations of the properties, and make or recommend all operating and leasing decisions in all operating entities and all decisions of the subject LLCs. Decisions made by the supervisor in its capacity as supervisor of the operating lessees with regard to property operations dictate the cash available for distribution to the subject LLCs, which are also supervised by the supervisor. For a detailed description of the conflicts of interests, see Conflicts of Interest.

***The company may acquire properties or portfolios of properties through tax-deferred contribution transactions, which could result in stockholder dilution and limit the company's ability to sell such assets.***

In the future the company may acquire properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership interests in the operating partnership, which may result in stockholder dilution. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation the company could deduct over the tax life of the acquired properties, and may require that the company agree to protect the contributors' ability to defer recognition of taxable gain through restrictions on the company's ability to dispose of the acquired properties and the allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit the company's ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

***The company may pursue less vigorous enforcement of terms of the contribution agreements because of conflicts of interest with certain principals and officers of the supervisor who will be officers of the company, which could have a material adverse effect on the company's business.***

Principals and officers of the supervisor have ownership interests in the subject LLCs and the private entities that the company will acquire in the consolidation upon completion of the IPO. As part of the consolidation, Anthony E. Malkin, Scott D. Malkin and Cynthia M. Blumenthal made limited representations and warranties to the company regarding the entities, properties and assets to be acquired by the company in the consolidation transaction and agreed to indemnify the company and the operating partnership for 12 months after the closing of the IPO for breaches of such representations and warranties subject to a deductible of \$1 million and a cap of \$25 million. Such indemnification is limited, however, and the company is not entitled to any other indemnification in connection with the consolidation. In addition, the company expects that Anthony E. Malkin will enter into an employment agreement with the company pursuant to which he will agree, among other things, not to engage in certain business activities in competition with the company (both during, and for a period of time following, his employment with the company). The company may choose not to enforce, or to enforce less vigorously, its rights under these agreements due to the company's ongoing relationship with its predecessor principals and its executive officers, and this could have a material adverse effect on the company's business.

***If a participant consents to the voluntary pro rata reimbursement program for expenses of the legal proceedings with the former property manager and leasing agent, the supervisor will be reimbursed for costs previously advanced.***

You are being asked to consent to the voluntary pro rata reimbursement program under which your share of distributions will be reduced by your pro rata share of the costs advanced by the supervisor and Peter L. Malkin for the former property manager and leasing agent legal proceedings. See the section entitled Voluntary Pro

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Rata Reimbursement Program For Expenses of Legal Proceeding with Former Property Manager and Leasing Agent. If you consent to the voluntary pro rata reimbursement program, the supervisor and Peter L. Malkin will be reimbursed for your pro rata share of costs previously incurred out of your share of the excess cash of your subject LLC that is being distributed to participants, and, to the extent that is insufficient, the consideration that you would receive in the consolidation or the consideration that you would receive in a third-party portfolio transaction, as applicable, will be reduced by the balance (valued, if the consolidation is consummated, at the IPO price) and such balance would be paid to the supervisor and Peter L. Malkin in shares of Class A common stock, if the consolidation is consummated, or out of distributions that you would receive from the proceeds of a third-party portfolio transaction, if consummated, or out of distributions from operations of the subject LLC. Your failure to consent to this proposal will not affect whether or not the subject LLC participates in the consolidation or a third-party portfolio transaction.

### ***The independent valuer's Appraisal and fairness opinion relied on information that the supervisor provided and analysis performed by the independent valuer.***

The independent valuer's Appraisal of the subject LLCs, the private entities and the management companies and its opinion as to the fairness from a financial point of view of the allocation of consideration relied on information the supervisor provided and analysis performed by the independent valuer. The information the supervisor provided to the independent valuer included in-place and certain other lease rates and other financial and descriptive information about the properties. The supervisor has a conflict of interest in connection with the information it provided because it affects the number of shares of common stock and operating partnership units issued to it and the Malkin Holdings group.

### ***There are limitations on the independent valuer's fairness opinion and Appraisal that could affect the reliance on the fairness opinion and Appraisal rendered by the independent valuer.***

The independent valuer's fairness opinion and Appraisal are subject to limitations which could affect participants' reliance on the fairness opinion and Appraisal, including:

The supervisor engaged the independent valuer to render both the fairness opinion and the Appraisal, so participants do not have the potential benefit of a separate review of the independent valuer's Appraisal by a fairness opinion provider;

The independent valuer's fairness opinion addresses solely the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash) (i) among each subject LLC, each private entity and the management companies and (ii) to the participants in each subject LLC and each private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities). The fairness opinion does not address any other term of the consolidation, the market value of the shares of common stock and operating partnership units, or alternatives to the consolidation. The fairness opinion assumes that all entities are included in the consolidation and has not addressed the fairness of other possible combinations where one or more of such entities is not included. Accordingly, the fairness opinion does not address other matters which are significant to the participants' evaluation of the consolidation and

Since the independent valuer will not further update the Appraisal or fairness opinion, changes may occur from the date of the Appraisal or fairness opinion that might affect the conclusions expressed in them. Some of the changes could be material.

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***The method of calculation of the value of your participation interests in the subject LLC (and consequently, the consideration payable to you in the consolidation) will lock in the relative value of all of the subject LLCs, the private entities and the management companies, which will limit your ability to benefit from relative changes in value of the property in which you currently hold direct or indirect participation interests and will cause you to bear a portion of the burden of changes in the value of the properties in which you do not currently hold direct or indirect participation interests. In addition, the participants' consents to the consolidation will not be affected by any change in value.***

If the consolidation is approved, the contribution agreements require that the consolidation be consummated by December 31, 2014. There could be significant changes in the value of the company between the date that the consents are received and the date of consummation of the consolidation. The contribution agreements use a formula to ascribe value to the subject LLCs, the private entities, and the management companies. This formula is based, in part, on the relative exchange values of the subject LLCs, the private entities, and the management companies determined as of June 30, 2012 and effectively locks in the relative values of the subject LLCs, the private entities, and the management companies as of such date. Other than subsequent variations in relative valuation due to certain extraordinary receipts of or payments made by the subject LLCs, the private entities, and the management companies prior to the closing of the IPO (which are taken into account under the contribution agreements) and certain balance sheet adjustments, these locked-in relative valuations will not change prior to the closing of the consolidation. Therefore, you will not capture all of the benefit from pre-IPO increases in the value of the property relative to the rest of the properties as such increases will be shared pro rata by you and all other holders of participation interests in the subject LLCs, the private entities, and the management companies. Similarly, if the value of other properties declines in value relative to the property in which you currently hold an interest, you will bear a pro rata portion of this decline in value along with all other holders of participation interests in all of the properties. In addition, the participants' consents to the consolidation will not be affected by any change in value, including any change in the relative value of a subject LLC as compared to the value of other subject LLCs, private entities or the management companies. The consolidation may be consummated regardless of how significant such changes are and may be consummated notwithstanding such changes.

***There have been no arm's-length negotiations.***

The supervisor established the terms of the consolidation, including the exchange value, without any arm's-length negotiations. Accordingly, the exchange value may not reflect the value that you could realize upon a sale of your participation interest or a liquidation of your subject LLC's assets.

***The terms of the consolidation may have been more favorable to you and the other participants if an independent representative had been retained on behalf of you and the other participants in structuring and negotiating the consolidation.***

The subject LLCs have not retained any outside representative to act on behalf of the participants in structuring and negotiating the terms and conditions of the consolidation. No group of participants was empowered to negotiate the terms and conditions of the consolidation or to determine what procedures should be in place to safeguard the rights and interests of the participants. In addition, no investment banker, attorney, financial consultant or expert was engaged to represent the interests of the participants. The company and the supervisor of your subject LLC were the parties responsible for structuring all the terms and conditions of the consolidation. The company and the supervisor engaged legal counsel to assist with the preparation of the documentation for the consolidation, including this prospectus/consent solicitation. This legal counsel did not serve, or purport to serve, as legal counsel for the subject LLCs or the participants. While the subject LLCs' exchange values have been determined based on the Appraisal by the independent valuer, which has also delivered a fairness opinion as described above, no independent representative was retained to negotiate on behalf of the participants. There are 23 subject LLCs and private entities and groups with different interests in many of these entities. The supervisor does not believe that a single independent representative could have represented the interests of all participants and believes that to locate and retain an independent and equally

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competent and qualified representative for each separate interest in the consolidation is not possible. The supervisor represents the interests of all participants in the subject LLCs and private entities. The supervisor has served the same role in the past for sales of other properties with different groups of participants and believes it is not required to retain any independent representative on behalf of each group of participants or all of the participants as a whole. The supervisor believes the Appraisal prepared by the independent valuer serves the purposes of representing all parties fairly and that the consolidation is fair to all participants regardless of the absence of any such independent representative. If a representative or representatives had been retained for the participants, the terms of the consolidation might have been different and, possibly, more favorable to the participants.

*The IPO may not be consummated if one or more LLCs do not obtain the requisite consent for the consolidation from its participants.*

The closing of the consolidation is conditioned on the approval of Empire State Building Associates L.L.C., but is not conditioned on the approval of any other subject LLC. The other subject LLCs represent a material portion of the exchange value and anticipated cash flow and net income of the company (assuming that all private entities and subject LLCs participate in the consolidation). As a result, if one or more of the subject LLCs do not approve the consolidation, it could adversely affect the ability of the company to complete the IPO.

*Participants who do not approve the consolidation, including participants that do not timely submit their consent forms, after notice that the required percentage of participants in their participating group have so approved, may have their participation interests purchased at a lower price.*

The organizational documents provide that if holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve an action, the agents may purchase on behalf of the subject LLC the participation interests of participants who do not approve such action, and that price would be substantially below the exchange value of the interests. If the required supermajority consent of the participation interests in a participating group in a subject LLC approves the consolidation, the agent of any such participating group will purchase on behalf of the subject LLC the participation interest of any participant in such participating group that voted **AGAINST** the consolidation, **ABSTAINED**, or did not properly or timely submit a consent form. The buyout amount for a participant's interest would be substantially lower than the exchange value. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively. Prior to an agent purchasing the participation interests of non-consenting participants, an agent will give such participants not less than ten days' notice after the required supermajority consent is received by the applicable participating group in such subject LLC to permit them to consent to the consolidation, in which case their participation interests will not be purchased. Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of either the consolidation or third-party portfolio transaction proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received. A vote for the proposed transaction by the participants constitutes an authorization for the agents of each participating group to approve, in their capacity as members of the applicable subject LLC, the consolidation or the third-party portfolio transaction, as applicable. The agents, under the operating agreements of the subject LLCs, have discretion, subject to their fiduciary duties, to determine whether to approve the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. Additionally, the supervisor, acting on behalf of the subject LLCs and the



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agents, similarly has discretion, subject to its fiduciary duties, as to whether to abandon or to postpone the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. The agents and supervisor could determine not to proceed with the consolidation and the IPO due to market conditions or other reasons.

***If the participants in a subject LLC approve the consolidation and the subject LLC is consolidated with the company, the subject LLC no longer can enter into alternatives to the consolidation.***

The alternatives to participation in the consolidation include continuation of a subject LLC and sale of such subject LLC's interest in the property and the distribution of the net proceeds to its participants. Continuation of the subject LLC in accordance with its existing business plan would not subject the subject LLC to the risks associated with the consolidation or changes in participants' rights. Sale of the subject LLC's interest in a property would enable participants to receive the net proceeds from the sale of the subject LLC's interest in its property. If a subject LLC were consolidated with the company, participants no longer will be able to realize the potential benefits of alternatives to the consolidation.

***Participants have no cash appraisal rights.***

You do not have the right to elect to receive a cash payment equal to the value of your participation interest in your subject LLC if your subject LLC approves the consolidation and you voted **AGAINST** it. Additionally, you do not have the right to have the value of your participation interest determined in a separate proceeding and paid in cash.

***At the time participants vote on the consolidation proposal, there will be uncertainties as to the size, makeup and leverage of the company after the consolidation which affects your ability to evaluate the consolidation.***

There will be several uncertainties relating to the consolidation at the time that you and the other participants vote on the consolidation. Most importantly, you will not know which subject LLCs will approve the consolidation or which of the subject LLCs and the private entities will participate in the consolidation, either because conditions to closing are not satisfied or for other reasons, and thus, which properties the company will acquire. You also will not know the IPO price, the size of the IPO, the exact exchange value for each subject LLC, the enterprise value of the company prior to the IPO or the amount of leverage of the company or the operating partnership. The consolidation is conditioned on the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building, but is not conditioned on any other subject LLC or private entity contributing their property interests to the company in the consolidation. You also will not know the capital structure of the company. These factors will affect the post-consolidation size and scope of the company and the value of your operating partnership units and shares of common stock.

***There is currently litigation pending, and the potential for additional litigation, associated with the consolidation. The company may incur costs from these litigations.***

In March 2012, five putative class actions, or the Class Actions, were filed in New York State Supreme Court, New York County by participants in Empire State Building Associates L.L.C. and several other entities supervised by the supervisor (on March 1, 2012, March 7, 2012, March 12, 2012, March 14, 2012 and March 19, 2012). The plaintiffs assert claims against Malkin Holdings LLC, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., Malkin Construction Corp., Anthony E. Malkin, Peter L. Malkin, the Helmsley estate, the operating partnership and the company for breach of fiduciary duty, unjust enrichment, and/or aiding and abetting breach of fiduciary duty. They allege, among other things, that the terms of the transaction and the process by which it was structured (including the valuation that was employed) are unfair to the participants, the consolidation provides excessive benefits to the Malkin Holdings group and the then-draft prospectus/consent solicitation filed with the SEC failed to make adequate disclosure to permit a fully-

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informed decision about the proposed transaction. The complaints seek money damages and injunctive relief preventing the proposed transaction. The actions were consolidated and co-lead plaintiffs' counsel were appointed by the New York State Supreme Court by order dated June 26, 2012.

The parties entered into a Stipulation of Settlement dated September 28, 2012, resolving the Class Actions. The defendants in the Stipulation of Settlement denied that they committed any violation of law or breached any of their duties and did not admit that they had any liability to the plaintiffs. Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief. Although a Stipulation of Settlement has been entered into, there can be no assurance that the New York State Supreme Court will approve the settlement. In such event, the proposed settlement as contemplated by the Stipulation of Settlement may be terminated. Accordingly, no assurances can be given that the Class Actions will be settled or that the defendants will be successful in the outcome of any of these pending or future lawsuits, and as a result, the company may incur costs associated with defending or settling such litigation or paying any judgment if the company loses. In addition, the company may be required to pay damage awards or settlements. If the New York State Supreme Court does not approve the settlement, the company cannot reasonably assess the timing or outcome of this litigation, estimate the amount of loss, or assess its effect, if any, on its financial statements. The payment in settlement of the Class Actions will be made by the Helmsley estate and the Malkin Holdings group and certain participants in the private entities who agree to contribute. Neither the company nor the operating partnership will bear any of the settlement payment. For a description of the terms of the settlement, see *The Company Business and Properties Legal Proceedings*.

Additionally, there is a risk that other third parties will assert claims against the company or the supervisor, including, without limitation, that the supervisor breached its fiduciary duties to participants in the subject LLCs and the private entities or that the consolidation violates the relevant operating agreements, and third parties may commence litigation against the company or the supervisor. As a result, the company may incur costs associated with defending or settling such litigation or paying any judgment if it loses.

***The company may assume unknown liabilities in connection with the consolidation, which, if significant, could materially and adversely affect the company's business.***

As part of the consolidation, the company (through the operating partnership) will acquire the properties and assets of the subject LLCs, the private entities and the management companies subject to existing liabilities, some of which may be unknown at the time the IPO is consummated. Unknown liabilities might include liabilities for cleanup or remediation of undisclosed environmental conditions, claims of tenants, vendors or other persons dealing with such entities prior to the IPO (whether or not asserted or threatened prior to the IPO), tax liabilities and accrued but unpaid liabilities incurred in the ordinary course of business. As part of the consolidation, Anthony E. Malkin, Scott D. Malkin and Cynthia Blumenthal made limited representations and warranties to the company regarding the subject LLCs, the private entities, the management companies, the properties and the assets to be acquired by the company in the consolidation and agreed to indemnify the company and the operating partnership for 12 months after the closing of the IPO for breaches of such representations subject to a deductible of \$1 million and a cap of \$25 million. Because many liabilities, including tax liabilities, may not be identified within such period, the company may have no recourse against Anthony E. Malkin, Scott D. Malkin or Cynthia Blumenthal for such liabilities. In addition, the company has agreed to indemnify members, managers, officers, directors, partners and agents of the supervisor for certain claims. Any unknown or unquantifiable liability that the company assumes in connection with the consolidation for which it has no or limited recourse could materially and adversely affect the company.

***The departure of any of the company's key personnel could materially and adversely affect the company.***

The company's success depends on the efforts of key personnel, particularly Anthony E. Malkin, the company's Chairman, Chief Executive Officer and President. Among the reasons Anthony E. Malkin is important to the company's success is that he has a national industry reputation that attracts business and

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investment opportunities and assists the company in negotiations with lenders, existing and potential tenants and industry personnel. He has led the acquisition, operating and repositioning of the company's assets for the last two decades. If the company lost his services, the company's external relationships and internal leadership resources would be materially diminished.

Other members of the company's senior management team also have strong industry reputations and experience, which aid the company in attracting, identifying and exploiting opportunities. The loss of the services of one or more members of the company's senior management team, particularly Anthony E. Malkin, could have a material and adverse impact on the company.

***The company's Chairman, Chief Executive Officer and President has outside business interests that will take his time and attention away from the company, which could materially and adversely affect the company.***

The company's Chairman, Chief Executive Officer and President will continue to own interests in the excluded properties, excluded businesses and option properties that are not being contributed to the company in the consolidation, some of which will be managed by the company and certain non-real estate family investments. In some cases, Anthony E. Malkin or his affiliates will have certain management and fiduciary obligations that may conflict with such person's responsibilities as an officer or director of the company and may adversely affect the company's operations. Anthony E. Malkin will devote a majority of his business time and attention to the company's business and, under his employment agreement, he may also devote time to the excluded properties, option properties, the excluded businesses and certain family investments to the extent that such activities do not materially interfere with the performance of his duties to the company.

***The potential liability of the officers and directors of the company is limited.***

As a stockholder, you will have different rights and remedies against the company, its officers and directors than you have against the supervisor and agents of your subject LLC. The company's charter provides that, to the maximum extent permitted by law, no officer or director is liable to the company or its stockholders for monetary damages. Generally, under the company's charter and bylaws, the company will indemnify its officers and directors against specified liabilities that may be incurred in connection with their service to the company. These provisions could limit the legal remedies against any officer or director of the company that are available to the company, to you and to other stockholders after the consolidation. The company's charter limits the liability of its present and former directors and officers to the company and its stockholders for money damages to the maximum extent permitted under Maryland law. Under current Maryland law, the company's present and former directors and officers will not have any liability to the company or its stockholders for money damages other than liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty by the director or officer that was established by a final judgment and is material to the cause of action.

The company's charter and bylaws require the company to indemnify its present and former directors and officers for actions taken by them in those capacities to the maximum extent permitted by Maryland law, in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service to the company. As a result, the company and the stockholders may have limited rights against the company's present and former directors and officers, members, partners, employees and agents, which could limit your recourse in the event of actions not in your best interest.

***After the consolidation, participants will have no control over major decisions.***

Currently, a participant in a subject LLC generally has the right to vote on certain major transactions, such as a financing, sale, transfer or mortgage of the subject LLC's interest in its property or the making or modification of the net operating lease of such property. After the consolidation, decisions regarding most major transactions will be made by the company's management, subject to oversight by the company's board of

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directors. Such decisions may not fully reflect the interests of the stockholders. Holders of common stock and operating partnership units will have no opportunity to vote on financing, management or disposition decisions with respect to individual properties. Holders of common stock will have only the right to approve extraordinary transactions involving the company, such as a sale of all or substantially all of the company's assets. Holders of operating partnership units will not have any consent rights, except to the extent participants elect to receive Class B common stock, which vote together as a class with the Class A common stock, in lieu of a portion of the operating partnership units issuable to them, or receive Class A common stock or exercise their right to require the operating partnership to exchange all or a portion of their operating partnership units for a cash amount equal to the then-current market value of one share of Class A common stock per operating partnership unit, or, at the company's election, to exchange each such operating partnership unit for a share of Class A common stock on a one-for-one basis.

***The board of directors of the company may change its strategies, policies or procedures without stockholder consent, which may subject the company to different and more significant risks in the future.***

The company's investment, financing, leverage and distribution policies and the company's policies with respect to all other activities, including growth, debt, capitalization and operations, will be determined by its board of directors. These policies may be amended or revised at any time and from time to time at the discretion of the board of directors without notice to or a vote of the stockholders. This could result in the company's conducting operational matters, making investments or pursuing different business or growth strategies than those contemplated in this prospectus/consent solicitation. Under these circumstances, the company may expose itself to different and more significant risks in the future, which could have a material adverse effect on its business and growth. In addition, the board of directors may change the company's policies with respect to conflicts of interest, provided that such changes are consistent with applicable legal requirements. A change in these policies could have an adverse effect on the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and ability to satisfy its principal and interest obligations and to make distributions to stockholders.

***The concentration of the company's ownership may adversely affect the ability of new investors to influence the company's policies.***

Upon consummation of the IPO and the Consolidation, Anthony E. Malkin, the Chairman, Chief Executive Officer and President, together with the Malkin Holdings group, will have the right to vote 72,918,219 shares of the company's common stock which will represent approximately 30.4% of the voting power of the company's outstanding common stock (assuming that each participant in the subject LLCs elects to receive Class A common stock, Class B common stock and operating partnership units in the same proportion as participants (other than the Malkin Holdings group and the Helmsley estate) in the private entities). Consequently, Mr. Malkin will have the ability to influence the outcome of matters presented to the company's stockholders, including the election of the company's board of directors and approval of significant corporate transactions, including business combinations, consolidations and mergers and the determination of the company's day-to-day corporate and management policies. Therefore, Mr. Malkin will have substantial influence over the company and could exercise influence in a manner that is not in the best interests of the company's other stockholders. This concentration of ownership might also have the effect of delaying or preventing a change of control that the company's stockholders may view as beneficial.

***The operating partnership may issue additional operating partnership units without the consent of the stockholders, which could have a dilutive effect on the stockholders.***

The operating partnership may issue additional operating partnership units to third parties without the consent of the stockholders, which would reduce the company's ownership percentage in the operating partnership and would have a dilutive effect on the amount of distributions made to the company by the operating partnership and, therefore, the amount of distributions the company can make to its stockholders and holders of operating partnership units. Any such issuances, or the perception of such issuances, could materially and adversely affect the market price of the operating partnership units and Class A common stock.

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*The company's operating performance and value are subject to risks associated with real estate assets and the real estate industry, the occurrence of which could materially and adversely affect the company.*

Real estate investments are subject to various risks and fluctuations and cycles in value and demand, many of which are beyond the company's control. Certain events may decrease cash available for distributions, as well as the value of the company's properties. These events include, but are not limited to:

adverse changes in international, national, regional or local economic and demographic conditions;

vacancies or the company's inability to rent space on favorable terms, including possible market pressures to offer tenants rent abatements, tenant improvements, early termination rights or below-market renewal options;

adverse changes in market rental rates, particularly as the company's buildings age, and the company's ability to fund repair and maintenance costs;

adverse changes in financial conditions of buyers, sellers and tenants of properties;

the company's inability to collect rent and expense reimbursements from tenants;

competition from other real estate investors with significant capital, including other real estate operating companies, publicly traded REITs and institutional investment funds;

the introduction of a competitor's property in or in close proximity to one of the company's current submarkets in the greater New York metropolitan area;

reductions in the level of demand for office or retail space, and changes in the relative popularity of properties; increases in the supply of office or retail space;

increases in the supply of office or retail space;

opposition from local community or political groups with respect to the construction or operations at a property;

the company's inability to provide effective and efficient management and maintenance at the company's properties;

the company's inability to provide effective management to the excluded properties for which it will be designated as the exclusive manager upon consummation of the consolidation;

the investigation, removal or remediation of hazardous materials or toxic substances at a property;

fluctuations in interest rates, which could adversely affect the company's ability, or the ability of buyers and tenants of properties, to obtain financing on favorable terms or at all;

increases in expenses, including, without limitation, insurance costs, labor costs, energy prices, real estate assessments and other taxes and costs of compliance with laws, regulations and governmental policies, which the company may be restricted in passing on to its tenants;

civil disturbances, hurricanes and other natural disasters, or terrorist acts or acts of war which may result in uninsured or underinsured losses and

changes in, and changes in enforcement of, laws, regulations and governmental policies, including, without limitation, health, safety, environmental, zoning and tax laws, governmental fiscal policies and the ADA.

In addition, periods of economic slowdown or recession, rising interest rates or declining demand for real estate, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults among the company's existing leases. If the company cannot operate its properties to meet its financial expectations, the company's financial condition, results of operations, cash flow, trading price of

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the operating partnership units and Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to its stockholders and holders of operating partnership units could be adversely affected. There can be no assurance that the company can achieve its return objectives.

***Conflicts of interest exist or could arise in the future between the interests of the company's stockholders and the interests of holders of operating partnership units, which may impede business decisions that could benefit the company's stockholders.***

Conflicts of interest exist or could arise in the future as a result of the relationships between the company and its affiliates, on the one hand, and the operating partnership or any partner thereof, on the other. The company's directors and officers have duties to the company under applicable Maryland law in connection with their management of the company. At the same time, the company, as the general partner in the operating partnership, has fiduciary duties and obligations to the operating partnership and its limited partners under Delaware law and the partnership agreement of the operating partnership in connection with the management of the operating partnership. The company's fiduciary duties and obligations as general partner to the operating partnership and its partners may come into conflict with the duties of the company's directors and officers to the company.

Additionally, the partnership agreement provides that the company and its directors and officers will not be liable or accountable to the operating partnership for losses sustained, liabilities incurred or benefits not derived if the company, or such director or officer acted in good faith. The partnership agreement also provides that the company will not be liable to the operating partnership or any partner for monetary damages for losses sustained, liabilities incurred or benefits not derived by the operating partnership or any limited partner, except for liability for the company's intentional harm or gross negligence. Moreover, the partnership agreement provides that the operating partnership is required to indemnify its directors and officers, the company and the company's directors and officers and authorizes the operating partnership to indemnify present and former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the supervisor and authorizes the company to indemnify members, partners, employees and agents of the company or the supervisor, in each case for actions taken by them in those capacities from and against any and all claims that relate to the operations of the operating partnership, except (1) if the act or omission of the person was material to the matter giving rise to the action and either was committed in bad faith or was the result of active and deliberate dishonesty, (2) for any transaction for which the indemnified party received an improper personal benefit, in money, property or services or otherwise, in violation or breach of any provision of the partnership agreement or (3) in the case of a criminal proceeding, if the indemnified person had reasonable cause to believe that the act or omission was unlawful. No reported decision of a Delaware appellate court has interpreted provisions similar to the provisions of the partnership agreement of the operating partnership that modify and reduce the company's fiduciary duties or obligations as the general partner or reduce or eliminate the company's liability for money damages to the operating partnership and its partners, and the company has not obtained an opinion of counsel as to the enforceability of the provisions set forth in the partnership agreement that purport to modify or reduce the fiduciary duties that would be in effect were it not for the partnership agreement.

***Under his employment agreement, Anthony E. Malkin will have certain rights to terminate his employment and receive severance in connection with a change of control of the company, which may adversely affect the company.***

In connection with the IPO, the company intends to enter into an employment agreement with Anthony E. Malkin. Although this agreement has not yet been negotiated, the company expects it will provide for termination payments in connection with a change of control if Mr. Malkin is terminated by the company without cause or leaves with good reason within a specified period of time either before or following a change of control (as defined in the equity incentive plan). Furthermore, these provisions could delay or prevent a transaction or a change in control that might involve a premium paid for shares of the company's common stock or otherwise be in the best interests of the company's stockholders.

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***The company could increase or decrease the number of authorized shares of stock, classify and reclassify unissued stock and issue stock without stockholder approval, which could prevent a change in the company's control and negatively affect the market value of the shares.***

The company's board of directors, without stockholder approval, has the power under the company's charter to amend the company's charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the company is authorized to issue, to authorize the company to issue authorized but unissued shares of the company's common stock or preferred stock and to classify or reclassify any unissued shares of common stock or preferred stock into one or more classes or series of stock and set the terms of such newly classified or reclassified shares. See Description of Capital Stock Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock and Power to Reclassify the Company's Unissued Shares of Stock. As a result, the company may issue series or classes of common stock or preferred stock with preferences, dividends, powers and rights, voting or otherwise, that are senior to, or otherwise conflict with, the rights of holders of common stock. Any such issuance could dilute the company's existing stockholders' interests. Although the company's board of directors has no such intention at the present time, it could establish a class or series of preferred stock that could, depending on the terms of such series, delay, defer or prevent a transaction or a change of control that might involve a premium price for the common stock or that the stockholders otherwise believe to be in their best interest.

***Certain provisions of Maryland law could inhibit changes in control of the company, which could negatively affect the market price of the Class A common stock.***

Certain provisions of the Maryland General Corporation Law, or the MGCL, may have the effect of deterring a third party from making a proposal to acquire the company or of impeding a change in control under circumstances that otherwise could provide stockholders with the opportunity to realize a premium over the then-prevailing market price of the Class A common stock. Among other things, the company is subject to the business combination, control share acquisition and unsolicited takeover provisions of the MGCL. These provisions may have the effect of inhibiting a third party from making an acquisition proposal for the company or of delaying, deferring or preventing a change in control of the company under the circumstances that otherwise could provide stockholders with the opportunity to realize a premium over the then-current market price. Pursuant to the statute, the company's board of directors has by resolution exempted business combinations between the company and any other person, provided that such business combination is first approved by the company's board of directors (including a majority of the directors who are not affiliates or associates of such person). The company's bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of the company's stock. There can be no assurance that these exemptions or provisions will not be amended or eliminated at any time in the future. The charter contains a provision whereby the company has elected to be subject to the provisions of Title 3, Subtitle 8 of the MGCL relating to the filling of vacancies on the company's board of directors.

***Certain provisions in the partnership agreement of the operating partnership may delay or prevent unsolicited acquisitions of the company.***

Provisions in the partnership agreement of the operating partnership may delay or make more difficult unsolicited acquisitions of the company or changes of control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of the company or change of control, although some stockholders might consider such proposals, if made, desirable. These provisions include, among others:

redemption rights of qualifying parties;

transfer restrictions on operating partnership units;

the company's ability, as general partner, in some cases, to amend the partnership agreement and to cause the operating partnership to issue units with terms that could delay, defer or prevent a merger or other change of control of the company or the operating partnership without the consent of the limited partners and



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the right of the limited partners to consent to transfers of the general partnership interest and mergers or other transactions involving the company under specified circumstances.

The charter, bylaws, the partnership agreement of the operating partnership and Maryland law also contain other provisions that may delay, defer or prevent a transaction or a change of control that might involve a premium price for the common stock or that the stockholders otherwise believe to be in their best interest.

***The company has no operating history as a REIT or as a publicly-traded company, and the company's inexperience could materially and adversely affect the company.***

The company has no operating history as a REIT or as a publicly-traded company. The company's board of directors and senior management team will have overall responsibility for the company's management and, while certain members of the company's senior management team and directors have extensive experience in real estate marketing, development, management, finance and law, none of the company's directors or members of the company's senior management team have prior experience in operating a business in accordance with the requirements under the Code applicable to REITs or in operating a public company. As a publicly-traded REIT, the company will be required to develop and implement substantial control systems, policies and procedures in order to maintain the company's REIT qualification and satisfy the company's periodic SEC reporting and listing requirements of the New York Stock Exchange, or NYSE. The company cannot assure you that management's past experience will be sufficient to successfully develop and implement these systems, policies and procedures and to operate the company. Failure to do so could jeopardize the company's status as a REIT or as a public company, and the loss of such status would materially and adversely affect the company.

***The charter contains stock ownership limits, which may delay or prevent a change or control.***

In order for the company to qualify as a REIT for each taxable year commencing with the company's taxable year ending December 31, 2013, no more than 50% in value of the company's outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of any calendar year, and at least 100 persons must beneficially own the stock during at least 335 days of a taxable year of 12 months, or during a proportionate portion of a shorter taxable year. Individuals for this purpose include natural persons, private foundations, some employee benefit plans and trusts and some charitable trusts. To assist the company in complying with these limitations, among other purposes, the company's charter generally prohibits any person from directly or indirectly owning more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of the capital stock or more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of the common stock. The ownership limitations could have the effect of discouraging a takeover or other transaction in which stockholders might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests. For further details regarding stock ownership limits, see Description of Capital Stock Restrictions on Ownership and Transfer.

The company's charter's constructive ownership rules are complex and may cause the outstanding shares owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than these percentages of the outstanding shares by an individual or entity could cause that individual or entity to own constructively in excess of these percentages of the outstanding shares and thus violate the share ownership limits. The company's charter also provides that any attempt to own or transfer shares of common stock or preferred stock (if and when issued) in excess of the stock ownership limits without the consent of the board of directors or in a manner that would cause the company to be closely held under Section 856(h) of the Code (without regard to whether the shares are held during the last half of a taxable year) will result in the shares being deemed to be transferred to a trustee for a charitable trust or, if the transfer to the charitable trust is not automatically effective to prevent a violation of the share ownership limits or the restrictions on ownership and transfer of the company's shares, any such transfer of the company's shares will be void.

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***The company's board of directors will approve very broad investment guidelines for the company and will not review or approve each investment decision made by the company's senior management team.***

The company's senior management team will be authorized to follow broad investment guidelines and, therefore, has great latitude in determining the types of assets that are proper investments for the company, as well as the individual investment decisions. The company's senior management team may make investments with lower rates of return than those anticipated under current market conditions and/or may make investments with greater risks to achieve those anticipated returns. The company's board of directors will not review or approve each proposed investment by the company's senior management team.

***If the company fails to establish and maintain an effective system of integrated internal controls, the company may not be able to report the company's financial results accurately, which could have a material adverse effect on the company.***

In the past, the company has reported the company's results to participants in the subject LLCs and the private entities on a property-by-property basis, and the company has not separately reported audited results for the supervisor. In addition, the company was not required to report the company's results on a consolidated basis under GAAP. In connection with the company's operation as a public company, the company will be required to report the company's operations on a consolidated basis under GAAP and, in some cases, on a property-by-property basis. The company is in the process of implementing an internal audit function and modifying the company-wide systems and procedures in a number of areas to enable the company to report on a consolidated basis under GAAP as the company continues the process of integrating the financial reporting of the supervisor. Section 404 of the Sarbanes-Oxley Act of 2002 will require the company to evaluate and report on the company's internal control over financial reporting and have the company's independent auditors issue their own opinion on the company's internal control over financial reporting. If the company fails to implement proper overall business controls, including as required to integrate the systems and procedures of the supervisor and support the company's growth, the company's results of operations could be harmed or the company could fail to meet the company's reporting obligations. In addition, the existence of a material weakness or significant deficiency could result in errors in the company's financial statements that could require a restatement, cause the company to fail to meet the company's public company reporting obligations and cause investors to lose confidence in the company's reported financial information, which could have a material adverse effect on the company.

***There will be no public market for the operating partnership units or common stock prior to the IPO and an active trading market may not develop or be sustained following the IPO, which may negatively affect the market price of the operating partnership units issued to participants in the subject LLCs and shares of the Class A common stock and make it difficult for investors to sell their operating partnership units and shares.***

Prior to the IPO, there will be no public market for the operating partnership units and common stock, and there can be no assurance that an active trading market will develop or be sustained or that operating partnership units or shares of the Class A common stock will be resold at or above the IPO price. The IPO price of shares of the Class A common stock will be determined by agreement among the company and the underwriters, but there can be no assurance that the operating partnership units or Class A common stock will not trade below the IPO price following the completion of the IPO. The market value of the operating partnership units and Class A common stock could be substantially affected by general market conditions, including the extent to which a secondary market develops for the operating partnership units and Class A common stock following the completion of the IPO, the extent of institutional investor interest in the company, the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate-based companies), the company's financial performance and general stock and bond market conditions.

The stock markets, including the NYSE on which the company expects the operating partnership units issued to participants in the subject LLCs and shares of the Class A common stock to be listed, have from time to time experienced significant price and volume fluctuations. As a result, the market price of the operating partnership

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units and shares of the Class A common stock may be similarly volatile, and investors in the operating partnership units and shares of the Class A common stock may from time to time experience a decrease in the value of their operating partnership units or shares, including decreases unrelated to the company's operating performance or prospects. The price of the operating partnership units or shares of the Class A common stock could be subject to wide fluctuations in response to a number of factors, including those listed in this Risk Factors section of this prospectus/consent solicitation and others such as those listed above under *The value of the operating partnership units and/or common stock that you receive and trading price of the operating partnership units and Class A common stock following completion of the IPO is uncertain. The value of the operating partnership units and Class A common stock and the trading price could be lower than anticipated and, based on current market conditions, the supervisor believes that the value may be less than the exchange value.* No assurance can be given that the market price of the operating partnership units or shares of the Class A common stock will not fluctuate or decline significantly in the future or that a holder of operating partnership units or shares of the Class A common stock will be able to sell their operating partnership units or shares, as applicable, when desired on favorable terms, or at all. From time to time in the past, securities class action litigation has been instituted against companies following periods of extreme volatility in their stock price. This type of litigation could result in substantial costs and divert the company's management's attention and resources.

***The trading market for the operating partnership units issued to participants in the subject LLCs may be more limited than the trading market for shares of Class A common stock, and the operating partnership units will not be exchangeable for Class A common stock for 12 months after completion of the IPO, which in each case may adversely affect the liquidity and market price of the operating partnership units.***

While the operating partnership units that participants may receive in accordance with their election are expected to be listed on the NYSE, operating partnership units will not be issued in the IPO. The trading market for the operating partnership units may be less active than the trading market for the Class A common stock, and an active trading market for the operating partnership units may not develop.

Holders of operating partnership units may not elect to exercise their redemption rights with respect to such operating partnership units until 12 months after the completion of the IPO. As a result, the company anticipates that the market price of the operating partnership units during the first 12 months after the IPO may be further adversely affected.

While holders of operating partnership units will be afforded certain registration rights with respect to any shares of Class A common stock issued in exchange for the operating partnership units, such holders will not be issued Class A common stock unless such a registration statement with respect to the issuance of Class A common stock in exchange for such operating partnership units has been filed with the SEC and is effective or an exemption from registration is available.

Furthermore, the operating partnership units to be issued to participants in the subject LLCs will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group), each of which will be listed and traded separately. Because the operating partnership units are in separate series, there will be fewer holders of each series. While each of the series has the same rights, the tax consequences to a participant that receives, and a subsequent purchaser of, operating partnership units of a particular series will be different than those to a participant that receives, and a subsequent purchaser of, operating partnership units of another series (based on different and unique tax attributes of the properties being contributed by each of the subject LLCs). These factors may adversely affect the market for operating partnership units and may adversely affect the market price of the operating partnership units.

***The operating partnership units issued in the consolidation to participants in the subject LLCs will be subject to a lock-up agreement, which could adversely affect the market price of the operating partnership units.***

The operating partnership units that participants may receive in accordance with their election are expected to be listed on the NYSE, but generally will be subject to lock-up agreements pursuant to which the participants

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in the subject LLCs and private entities may not sell or otherwise transfer or encumber shares of common stock or operating partnership units (i) with respect to 50% of the operating partnership units owned by them at completion of the IPO, for a period of 180 days after the IPO pricing date and (ii) with respect to any remaining operating partnership units, for a period of one year after the IPO pricing date, in each case without first obtaining the written consent of the representatives of the underwriters in the IPO. See The Consolidation Lock Up Agreements below, except that each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share, which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing). The restrictions on sales and transfers contained in the lock up agreement could adversely affect the market price of the operating partnership units.

### ***Initial estimated cash available for distribution may not be sufficient to make distributions at expected levels.***

The company intends to make distributions to holders of shares of its common stock and holders of operating partnership units. The company intends to maintain the company's initial distribution rate for the 12-month period following completion of the IPO unless actual results of operations, economic conditions or other factors differ materially from the assumptions used in the company's estimate. All dividends and distributions will be made at the discretion of the company's board of directors and will depend on the company's earnings, financial condition, maintenance of REIT qualification and other factors as the company's board of directors may deem relevant from time to time. If sufficient cash is not available for distribution from the company's operations, the company may have to fund distributions from working capital or to borrow to provide funds for such distribution, or to reduce the amount of such distribution. However, the company currently has no intention to use the net proceeds from the IPO to make distributions. The company cannot yet estimate the amount of dividends and distributions that it will make or assure you that the company's estimated distributions will be made or sustained. Any distributions the company pays in the future will depend upon the company's actual results of operations, economic conditions and other factors that could differ materially from the company's current expectations.

### ***The market price of the operating partnership units and shares of Class A common stock could be adversely affected by the company's level of cash distributions.***

The market value of the equity securities of a REIT is based primarily upon the market's perception of the REIT's growth potential and its current and potential future cash distributions, whether from operations, sales or refinancings, and is secondarily based upon the real estate market value of the underlying assets. For that reason, the operating partnership units and Class A common stock may trade at prices that are higher or lower than the company's net asset value per share. To the extent the company retains operating cash flow for investment purposes, working capital reserves or other purposes, these retained funds, while increasing the value of the company's underlying assets, may not correspondingly increase the market price of the operating partnership units and Class A common stock. The company's failure to meet the market's expectations with regard to future earnings and cash distributions likely would adversely affect the market price of the operating partnership units and Class A common stock.

### ***Increases in market interest rates may result in a decrease in the value of the operating partnership units and Class A common stock.***

One of the factors that will influence the price of the operating partnership units and the Class A common stock will be the dividend yield on the Class A common stock (as a percentage of the price of the Class A common stock) relative to market interest rates. An increase in market interest rates, which are currently at low levels relative to historical rates, may lead prospective purchasers of shares of the Class A common stock to

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expect a higher dividend yield and higher interest rates would likely increase the company's borrowing costs and potentially decrease funds available for distribution. Thus, higher market interest rates could cause the market price of the operating partnership units and Class A common stock to go down.

***The number of shares and operating partnership units available for future sale could adversely affect the market price of the operating partnership units and the company's Class A common stock.***

The company cannot predict whether future issuances of operating partnership units or shares of the company's common stock or the availability of operating partnership units or shares for resale in the open market will decrease the market price of the operating partnership units or the company's Class A common stock. Upon completion of the consolidation, the Malkin Family will own 16.4% of the company's outstanding common stock on a fully diluted basis. Based on the assumptions set forth above the chart showing the organization of the company after the consolidation and the IPO, in the section entitled "The Consolidation Pre- and Post-Consolidation Structure," the company expects the Helmsley estate will hold approximately 7.9% of the company's outstanding common stock on a fully-diluted basis upon the completion of the consolidation. Under the terms of the registration rights agreement, the participants in the consolidation, including the Helmsley estate, will receive rights to have shares of common stock held by them registered for resale under the Securities Act of 1933, as amended, or the Securities Act, and the Malkin Family and the Helmsley estate will have rights to demand underwritten offerings with respect to such resales. As a result, these participants (except the Malkin Family, whose members are subject to a longer restrictive period in which they cannot sell), pursuant to the terms of the lock-up agreements, will have the ability to sell up to 50% of both the operating partnership units and common stock received in the consolidation at any time after the 180<sup>th</sup> day following the IPO pricing date and the balance of the operating partnership units and common stock 12 months after the IPO pricing date. This includes Class A common stock issuable in exchange for operating partnership units, which are only issuable in exchange for operating partnership units beginning 12 months after the completion of the IPO, and Class B common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing. However, the Malkin Family and the company's directors and senior management team members may not sell any of the shares of common stock or securities convertible or exchangeable into Class A common stock (including operating partnership units) held by any of them until one year after the IPO pricing date. Although the Helmsley estate has advised the company that it currently expects to sell a significant portion of its Class A common stock as soon as market and other conditions permit following expiration of the lock-up period, any such sales will be solely within the discretion of the Helmsley estate and it may elect to hold all or any portion of its Class A common stock indefinitely. Each of the company's officers and directors may sell the shares of the company's common stock that they acquire in the consolidation or are granted in connection with the IPO at any time following the expiration of the lock-up periods for such shares, which expire one year after the IPO pricing date, or earlier with the prior written consent of certain of the underwriters in the IPO. The company may also issue shares of common stock or operating partnership units in connection with future property, portfolio or business acquisitions. Sales of substantial amounts of shares of the company's Class A common stock (including shares of Class A common stock issued pursuant to the equity incentive plan) or operating partnership units in the public market, or upon the exchange of operating partnership units, or the perception that such sales might occur could adversely affect the market price of the operating partnership units and shares of Class A common stock. This potential adverse effect may be increased by the large number of shares of common stock, on a fully-diluted basis, owned by the Helmsley estate to the extent that it sells, or there is a perception that it may sell, a significant portion of its holdings. In addition, future sales of shares by the company of Class A common stock may be dilutive to holders of operating partnership units and existing stockholders.

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***Future issuances of debt securities, which would rank senior to shares of the company's common stock or operating partnership units upon the company's liquidation, and future issuances of equity securities (including operating partnership units), which would dilute the holdings of holders of operating partnership units and the company's existing common stockholders and may be senior to the operating partnership units and shares of the company's common stock for the purposes of making distributions, periodically or upon liquidation, may materially and adversely affect the market price of the operating partnership units and shares of the Class A common stock.***

In the future, the company may issue debt or equity securities or make other borrowings. Upon liquidation, holders of the company's debt securities and other loans and preferred shares will receive a distribution of the company's available assets before holders of operating partnership units and holders of shares of the company's common stock. The company is not required to offer any such additional debt or equity securities to existing stockholders on a preemptive basis. Therefore, additional operating partnership units and shares of the company's common stock issuances, directly or through convertible or exchangeable securities (including operating partnership units), warrants or options, will dilute the holdings of the holders of operating partnership units and company's existing common stockholders and such issuances or the perception of such issuances may reduce the market price of the operating partnership units and shares of Class A common stock. The company's preferred shares, if issued, would likely have a preference on distribution payments, periodically or upon liquidation, which could limit the company's ability to make distributions to holders of operating partnership units and holders of shares of the company's common stock. Because the company's decision to issue debt or equity securities or otherwise incur debt in the future will depend on market conditions and other factors beyond the company's control, the company cannot predict or estimate the amount, timing or nature of the company's future capital raising efforts. Thus, holders of operating partnership units and holders of shares of common stock bear the risk that the company's future issuances of debt or equity securities or the company's other borrowings will reduce the market price of the operating partnership units or shares of the Class A common stock and dilute their ownership in the operating partnership and the company.

***A portion of the company's distributions may be treated as a return of capital for U.S. federal income tax purposes, which could reduce the basis of a stockholder's investment in shares of the company's common stock.***

A portion of the company's distributions may be treated as a return of capital for U.S. federal income tax purposes. As a general matter, a portion of the company's distributions will be treated as a return of capital for U.S. federal income tax purposes if the aggregate amount of the company's distributions for a year exceeds the company's current and accumulated earnings and profits for that year. To the extent that a distribution is treated as a return of capital for U.S. federal income tax purposes, it will reduce a holder's adjusted tax basis in the holder's shares, and to the extent that it exceeds the holder's adjusted tax basis will be treated as gain resulting from a sale or exchange of such shares. See U.S. Federal Income Tax Considerations Taxation of Stockholders.

***The combined financial statements of the predecessor to the company and the company's unaudited pro forma financial statements may not be representative of the company's financial statement as an independent public company.***

The combined financial statements of the predecessor to the company and the company's unaudited pro forma financial statements that are included in this prospectus/consent solicitation do not necessarily reflect what the company's financial position, results of operations or cash flows would have been had the company been an independent entity during the periods presented. Furthermore, this financial information is not necessarily indicative of what the company's results of operations, financial position or cash flows will be in the future. It is impossible for the company to accurately estimate all adjustments which may reflect all the significant changes that will occur in the company's cost structure, funding and operations as a result of the IPO and the consolidation, including potential increased costs associated with reduced economies of scale and increased costs

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associated with being a separate publicly traded company. For additional information, see Selected Financial and Other Data and the combined financial statements of the predecessor and the company's unaudited pro forma financial statements, as well as Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust, appearing elsewhere in this prospectus/consent solicitation.

***The company's balance sheet includes significant amounts of goodwill. The impairment of a significant portion of this goodwill would negatively affect the company business, financial condition and results of operations.***

The company's balance sheet includes goodwill, on a pro forma basis, of approximately \$872.1 million at September 30, 2012. These assets consist primarily of goodwill associated with the acquisition of the controlling interest in Empire State Building Company L.L.C. and 501 Seventh Avenue Associates L.L.C. The company also expects to engage in additional acquisitions, which may result in its recognition of additional goodwill. Under accounting standards goodwill is not amortized. On an annual basis and whenever events or changes in circumstances indicate the carrying value or goodwill may be impaired, the company is required to assess whether there have been impairments in the carrying value of goodwill. If the carrying value of the asset is determined to be impaired, then it is written down to fair value by a charge to operating earnings. An impairment of goodwill could have a material adverse effect on the company's business, financial condition and results of operations.

### **Risks Related to a Third-Party Portfolio Transaction**

***At the time you vote on the third-party portfolio proposal and the consolidation proposal, there will be significant uncertainties which affect your ability to evaluate both proposals.***

At the time that you vote on the consolidation proposal and the third-party portfolio proposal, you will not have any information concerning offers that may be subsequently received. There may be other significant information then unknown to you which could be material to your decision as to whether to consent to either or both of the consolidation and the third-party portfolio proposal, such as information on whether an offer for a third-party portfolio transaction will be received and the amount and terms of such offer.

At the time you vote on the third-party portfolio transaction, no information will be available regarding negotiations or solicitations of competing transactions; termination fees in, or termination, non-competition, non-solicitation and financing provisions relating to, the transaction; tax matters relating to, or accounting treatment of, the transaction; or the identity of the acquirer. Any third-party portfolio offer must provide for cash consideration, but may include an option for participants to elect to receive securities. Unlike with respect to the consolidation proposal, it is not possible to know at this time or at the time you vote on the third-party portfolio proposal whether the third-party portfolio offer will include an option to receive securities, and therefore estimated distributions cannot be calculated at this time. Such information, if known to you, could affect your vote on either or both of these proposals. The effectiveness of your consent will not be affected by any information concerning any subsequent offers and or any other unknown information, regardless of how significant. Additionally, if the supervisor accepts a third-party portfolio offer, such an offer would not be subject to any further approval or action by you.

***If both the consolidation proposal and the third-party portfolio proposal are approved, the supervisor may not approve a third-party portfolio transaction, even if it provides for greater consideration than to be issued or paid pursuant to the consolidation.***

Because the supervisor believes the consolidation is likely to provide greater benefits to participants than a third-party portfolio transaction, the supervisor intends to accept an offer for a third-party portfolio transaction only if the consideration to be received pursuant to such offer represents what the supervisor believes is an adequate premium above the value expected to be realized over time from the consolidation. However, the

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supervisor is authorized to approve a third-party portfolio transaction only if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met. Accordingly, if both the consolidation proposal and the third-party portfolio proposal are approved, the supervisor may determine not to approve a third-party portfolio transaction or if such third-party portfolio transaction is approved by the supervisor, the committee, which includes representatives of the supervisor and a representative of the Helmsley estate, may not approve the third-party portfolio transaction, even if such an offer is received providing equal to or greater consideration than the aggregate exchange value.

***The supervisor does not know currently what structure a third-party portfolio transaction would take and may approve a third-party portfolio transaction which you may view as less favorable than the consolidation.***

At the time you vote on the proposals, you may not have information concerning (a) the purchase price or terms of an offer (including the tax consequences associated with the transaction), (b) the extent that the offer provides an option to receive securities instead of cash, and, if so, information concerning the business, prospects or risks associated with an investment in the third party or the market for the securities of the third party, or (c) to the extent participants have been provided with such information, whether or not the supervisor will accept an offer. Accordingly, participants will rely on the supervisor, which will determine whether to accept or reject the offer in its sole discretion and, if the supervisor approves a third-party portfolio transaction, subject to the unanimous approval of a committee which includes representatives of the supervisor and a representative of the Helmsley estate. While the supervisor is authorized to approve a third-party portfolio transaction if the aggregate consideration is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are met, the supervisor may not approve a third-party portfolio proposal even if it provides for consideration greater than the aggregate exchange value. It is also possible that the supervisor may approve a third-party portfolio transaction which you may view as less favorable than the consolidation.

***The supervisor and the Malkin Holdings group may have a conflict of interest in determining whether to accept a third-party portfolio transaction offer and in establishing the terms of a third-party portfolio transaction.***

The supervisor and the Malkin Holdings group may receive different benefits in connection with the consolidation, as compared with a third-party portfolio transaction. Accordingly, the supervisor and the Malkin Holdings group may have a conflict of interest in determining whether to accept a third-party portfolio transaction offer and in making decisions as to the amount and form of the consideration to be received in the transaction, the terms of the agreements, and other matters.

***Even if there is a definitive agreement for a third-party portfolio transaction, it is possible that neither a third-party portfolio transaction nor the consolidation will be consummated.***

If the supervisor approves an offer for a third-party portfolio transaction, it is possible (a) the supervisor and the third party making that offer may not be able to negotiate and conclude a definitive agreement or (b) if a definitive agreement is concluded, it may not be consummated due to its conditions or for other reasons. Nonetheless, the negotiation or execution of such definitive agreement for the portfolio transaction could prevent the IPO and consolidation from being consummated, even if a third-party portfolio transaction is not consummated.

***The amount of consideration you would receive if a third-party portfolio transaction is consummated is uncertain.***

If approved, the third-party portfolio proposal would authorize the supervisor to sell or contribute each subject LLC's interest in its property as part of a portfolio transaction if the aggregate consideration payable in the third-party portfolio transaction is at least 115% of the aggregate exchange value or the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction and certain other conditions are



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met. If such a third-party portfolio transaction were to proceed, the consideration in a third-party portfolio transaction will be allocated among the subject LLCs, the private entities, and the management companies on a basis which is consistent with the exchange values included in this prospectus/consent solicitation. Any third-party portfolio proposal must provide for all cash, payable in full at closing, but such proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. As a result, you will not know the amount of consideration you would receive if a third-party portfolio transaction is consummated.

***Participants who do not approve the third-party portfolio proposal, including participants that do not timely submit their consent forms, after notice that the required percentage of participants in their participating group have so approved may have their participation interests purchased at a lower price.***

If consent is received for the third party portfolio proposal from holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C., the agent of any such participating group has the right to purchase on behalf of the subject LLC the participation interest of any participant in such participating group that failed to vote **FOR** the proposal, including participants that **ABSTAINED** or did not properly or timely submit a consent form, unless within ten days after the agent gives such participant notice of such consent, such participant does vote **FOR** the proposal. The buyout amount for a participant's interest would be substantially lower than the consideration received in a third-party portfolio transaction. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C. as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively.

***Participants have no cash appraisal rights.***

In a third-party portfolio transaction, you may not have the right to elect to receive a cash payment equal to the value of your participation interest in your subject LLC and you will not have the right to have the value of your participation interest determined in a separate proceeding and paid in cash. A third-party portfolio transaction offer must be for cash, provided that it may provide participants with the option to elect to receive securities in lieu of cash.

### **Real Estate/Business Risks**

***All of the company's properties are located in Manhattan and the greater New York metropolitan area, in particular midtown Manhattan, and adverse economic or regulatory developments in this area could materially and adversely affect the company.***

All of the company's properties are located in Manhattan and the greater New York metropolitan area, in particular midtown Manhattan, as well as nearby markets in Fairfield County, Connecticut and Westchester County, New York. Seven of the company's 12 office properties are located in midtown Manhattan. As a result, the company's business is dependent on the condition of the New York City economy in general and the market for office space in midtown Manhattan in particular, which exposes the company to greater economic risks than if it owned a more geographically diverse portfolio. The company is susceptible to adverse developments in the New York City economic and regulatory environment (such as business layoffs or downsizing, industry slowdowns, relocations of businesses, increases in real estate and other taxes, costs of complying with governmental regulations or increased regulation). Such adverse developments could materially reduce the value of the company's real estate portfolio and its rental revenues, and thus materially and adversely affect the company's ability to service current debt and to pay dividends to stockholders. According to RCG, the Manhattan vacancy rate was 9.0% as of June 30, 2012. The company could also be impacted by adverse developments in the Fairfield County, Connecticut and Westchester County, New York markets. The company cannot assure you that these markets will grow or that underlying real estate fundamentals will be favorable to owners and operators of office or retail properties. The company's operations may also be affected if competing properties are built in either of these markets.

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*Adverse economic and geopolitical conditions in general and in Manhattan and the greater New York metropolitan area commercial office and retail markets in particular could have a material adverse effect on the company's results of operations, financial condition and the company's ability to make distributions to its stockholders and holders of operating partnership units.*

The company's business may be affected by the volatility and illiquidity in the financial and credit markets, a general global economic recession, and other market or economic challenges experienced by the real estate industry or the U.S. economy as a whole. The company's business may also be materially and adversely affected by local economic conditions, as substantially all of the company's revenues are derived from its properties located in Manhattan and the greater New York metropolitan area, particularly in Manhattan, Fairfield County and Westchester County. Because the company's portfolio consists primarily of commercial office and retail buildings (as compared to a more diversified real estate portfolio) located principally in Manhattan, if economic conditions persist or deteriorate, then the company's results of operations, financial condition and ability to service current debt and to make distributions to the company's stockholders may be materially and adversely affected by the following, among other potential conditions:

the financial condition of the company's tenants, many of which are financial, legal and other professional firms, may be adversely affected, which may result in tenant defaults under leases due to bankruptcy, lack of liquidity, operational failures or other reasons;

significant job losses in the financial and professional services industries have occurred and may continue to occur, which may decrease demand for the company's office space, causing market rental rates and property values to be impacted negatively;

the company's ability to borrow on terms and conditions that it finds acceptable, or at all, may be limited, which could reduce the company's ability to pursue acquisition and development opportunities and refinance existing debt, reduce the company's returns from both its existing operations and its acquisition and development activities and increase the company's future interest expense;

reduced values of the company's properties may limit its ability to dispose of assets at attractive prices or to obtain debt financing secured by the company's properties and may reduce the availability of unsecured loans;

reduced liquidity in debt markets and increased credit risk premiums for certain market participants may impair the company's ability to access capital;

the value and liquidity of the company's short-term investments and cash deposits could be reduced as a result of a deterioration of the financial condition of the institutions that hold the company's cash deposits or the institutions or assets in which the company has made short-term investments, the dislocation of the markets for the company's short-term investments, increased volatility in market rates for such investments or other factors and

one or more counterparties to the company's derivative financial instruments could default on their obligations to the company, increasing the risk that the company may not realize the benefits of these instruments.

These conditions may continue or worsen in the future, which could have materially and adversely affect the company's results of operations, financial condition and ability to make distributions to the company's stockholders.

*There can be no assurance that the renovation and repositioning program will be completed in its entirety in accordance with the anticipated timing or at the anticipated cost, or that the company will achieve the results it expects from the company's renovation and repositioning program, which could materially and adversely affect the company's financial condition and results of operations.*

Since the supervisor gradually gained full control of the day-to-day management of the company's Manhattan office properties from 2002 through 2006, the supervisor has been undertaking a comprehensive renovation and



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repositioning program of the company's Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such properties. The company currently intends to invest between \$100.0 million and \$130.0 million of additional capital through the end of 2013 on this program. The company expects to complete substantially this program by the end of 2013, except with respect to the Empire State Building, which is the last Manhattan office property that began its renovation program. In addition, the company currently estimates that between \$85.0 million and \$115.0 million of capital is needed beyond 2013 to complete substantially the renovation program at the Empire State Building, which the company expects to occur by the end of 2016. These estimates are based on the supervisor's current budgets (which do not include tenant improvements and leasing commissions) and may be less than the actual costs. The company may also experience conditions which delay or preclude program completion. In addition, the company may not be able to lease available space on favorable terms or at all. Further, the renovation and repositioning program may lead to temporary increased vacancy rates at the company's Manhattan office properties. There can be no assurance that the renovation and repositioning program will be completed in its entirety in accordance with the anticipated timing or at the anticipated cost, or that the company will achieve the results it expects from the renovation and repositioning program, or that the company will be able to achieve results similar to those presented in the case studies described under "The Company Business and Properties Renovation and Repositioning Case Studies," which could materially and adversely affect the company's financial condition and results of operations.

***The company relies on four properties for a significant portion of its revenue.***

As of September 30, 2012, four of the company's properties, the Empire State Building, One Grand Central Place, First Stamford Place and 250 West 57th Street, together accounted for approximately 57.7% of the company's portfolio's annualized base rent, and no other property accounted for more than approximately 6.2% of the company's portfolio's annualized base rent (which excludes revenues from the company's broadcasting licenses and related leased space). As of September 30, 2012, the Empire State Building individually accounted for approximately 29.3% of the company's portfolio's annualized base rent. The company's revenue and cash available for distribution to its stockholders and holders of operating partnership units would be materially and adversely affected if the Empire State Building, One Grand Central Place, First Stamford Place or 250 West 57th Street were materially damaged or destroyed. Additionally, the company's revenue and cash available for distribution to its stockholders and holders of operating partnership units would be materially adversely affected if a significant number of the company's tenants at these properties experienced a downturn in their business which may weaken their financial condition and result in their failure to make timely rental payments, defaulting under their leases or filing for bankruptcy.

***The company may be unable to renew leases, lease vacant space or re-lease space on favorable terms or at all as leases expire, which could materially and adversely affect the company's financial condition, results of operations and cash flow.***

As of September 30, 2012, the company had approximately 1.6 million rentable square feet of vacant office space and 91,872 rentable square feet of vacant retail space (in each case, excluding leases signed but not yet commenced). In addition, leases representing 3.3% and 5.9% of the square footage of the properties in the company's portfolio will expire in the remainder of 2012 (including month-to-month leases) and in 2013, respectively. Above-market rental rates at some of the properties in the company's portfolio may force it to renew some expiring leases or re-lease properties at lower rates. The company cannot assure you expiring leases will be renewed or that its properties will be re-leased at net effective rental rates equal to or above the current average net effective rental rates. If the rental rates of the company's properties decrease, the company's existing tenants do not renew their leases or the company does not re-lease a significant portion of its available space and space for which leases will expire, the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and the Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to its stockholders and holders of operating partnership units would be materially and adversely affected.

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*The actual rents the company receives for the properties in its portfolio may be less than the company's asking rents, and the company may experience a decline in realized rental rates from time to time, which could materially and adversely affect its financial condition, results of operations and cash flow.*

Throughout this prospectus/consent solicitation, the company makes certain comparisons between its in-place rents and its asking rents, and between the company's asking rents and average asking rents in its markets. As a result of various factors, including competitive pricing pressure in the company's markets, a general economic downturn and the desirability of the company's properties compared to other properties in its markets, the company may be unable to realize its asking rents across the properties in its portfolio. In addition, the degree of discrepancy between the company's asking rents and the actual rents the company is able to obtain may vary both from property to property and among different leased spaces within a single property. If the company is unable to obtain sufficient rental rates across its portfolio, then the company's ability to generate cash flow growth will be negatively impacted. In addition, depending on market rental rates at any given time as compared to expiring leases in the company's portfolio, from time to time rental rates for expiring leases may be higher than starting rental rates for new leases.

*The company is exposed to risks associated with property redevelopment and development that could materially and adversely affect its financial condition and results of operations.*

The company has engaged, and continues to engage, in development and redevelopment activities with respect to its Manhattan office properties. In addition, the company owns entitled land at the Stamford Transportation Center in Stamford, Connecticut, that can support the development of an approximately 380,000 rentable square foot office building and garage. To the extent that the company continues to engage in development and redevelopment activities, it will be subject to certain risks, including, without limitation:

the availability and pricing of financing on favorable terms or at all;

the availability and timely receipt of zoning and other regulatory approvals;

the potential for the fluctuation of occupancy rates and rents at developed properties due to a number of factors, including market and economic conditions, which may result in the company's investment not being profitable;

start-up, repositioning and redevelopment costs may be higher than anticipated;

the cost and timely completion of construction (including risks beyond the company's control, such as weather or labor conditions, or material shortages);

the potential that the company may fail to recover expenses already incurred if the company abandons development or redevelopment opportunities after it begins to explore them;

the potential that the company may expend funds on and devote management time to projects which it does not complete;

the inability to complete construction and leasing of a property on schedule, resulting in increased debt service expense and construction or renovation costs and

the possibility that developed or redeveloped properties will be leased at below expected rental rates.

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These risks could result in substantial unanticipated delays or expenses and, under certain circumstances, could prevent the initiation of development and redevelopment activities or the completion of development and redevelopment activities once undertaken, any of which could have an adverse effect on the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and ability to satisfy the company's principal and interest obligations and to make distributions to its stockholders and holders of operating partnership units.

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*The company may be required to make rent or other concessions and/or significant capital expenditures to improve its properties in order to retain and attract tenants, which could materially and adversely affect the company, including the company's financial condition, results of operations and cash flow.*

To the extent there are adverse economic conditions in the real estate market and demand for office space decreases, upon expiration of leases at the company's properties and with respect to its current vacant space, the company will be required to increase rent or other concessions to tenants, accommodate increased requests for renovations, build-to-suit remodeling and other improvements or provide additional services to its tenants. In addition, seven of the company's existing properties are pre-war office properties which may require more frequent and costly maintenance to retain existing tenants or attract new tenants than newer properties. As a result, the company would have to make significant capital or other expenditures in order to retain tenants whose leases expire and to attract new tenants in sufficient numbers. Additionally, the company may need to raise capital to make such expenditures. If the company is unable to do so or capital is otherwise unavailable, it may be unable to make the required expenditures. This could result in non-renewals by tenants upon expiration of their leases and the company's vacant space remaining untenanted, which could materially and adversely affect the company's financial condition, results of operations, cash flow and per share trading price of the operating partnership units and Class A common stock. As of September 30, 2012, the company had approximately 1.6 million rentable square feet of vacant office space and 91,872 rentable square feet of vacant retail space (in each case, excluding leases signed but not yet commenced), and leases representing 3.3% and 5.9% of the square footage of the properties in the company's portfolio will expire in the remainder of 2012 (including month-to-month leases) and in 2013, respectively.

*The company depends on significant tenants in its office portfolio, including LF USA, Coty, Inc., Legg Mason, Warnaco and Thomson Reuters, which together represented approximately 20.9% of the company's total portfolio's annualized base rent as of September 30, 2012.*

As of September 30, 2012, the company's five largest tenants together represented 20.9% of its total portfolio annualized base rent. The company's largest tenant is LF USA. As of September 30, 2012, LF USA leased an aggregate of 820,284 rentable square feet of office space at three of the company's office properties, representing approximately 9.8% of the total rentable square feet and approximately 10.8% of the annualized base rent in the company's portfolio. The company's rental revenue depends on entering into leases with and collecting rents from tenants. General and regional economic conditions, such as the current challenging economic climate described above, may adversely affect the company's major tenants and potential tenants in its markets. The company's major tenants may experience a material business downturn, weakening their financial condition and potentially resulting in their failure to make timely rental payments and/or a default under their leases. In many cases, the company has made substantial up front investments in the applicable leases, through tenant improvement allowances and other concessions, as well as typical transaction costs (including professional fees and commissions) that the company may not be able to recover. In the event of any tenant default, the company may experience delays in enforcing its rights as landlord and may incur substantial costs in protecting its investment.

The bankruptcy or insolvency of a major tenant also may adversely affect the income produced by the company's properties. If any tenant becomes a debtor in a case under the United States Bankruptcy Code, the company cannot evict the tenant solely because of the bankruptcy. In addition, the bankruptcy court might authorize the tenant to reject and terminate their lease with the company. The bankruptcy of a tenant or lease guarantor could delay the company's efforts to collect past due balances under the relevant leases, and could ultimately preclude collection of these sums. If a lease is rejected by a tenant in bankruptcy, the company would have only a general unsecured claim for damages. Any unsecured claim the company holds may be paid only to the extent that funds are available and only in the same percentage as is paid to all other holders of unsecured claims, and there are restrictions under bankruptcy laws that limit the amount of the claim the company can make if a lease is rejected.

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The company's revenue and cash flow could be materially adversely affected if any of its significant tenants were to become bankrupt or insolvent, or suffer a downturn in their business, default under their leases or fail to renew their leases at all or renew on terms less favorable to the company than their current terms.

***Competition may impede the company's ability to attract or retain tenants or re-let space, which could materially and adversely affect the company's results of operations and cash flow.***

The leasing of real estate in the greater New York metropolitan area is highly competitive. The principal means of competition are rent charged, location, services provided and the nature and condition of the premises to be leased. The company directly competes with all lessors and developers of similar space in the areas in which its properties are located as well as properties in other submarkets. Demand for retail space may be impacted by the recent bankruptcy of a number of retail companies and a general trend toward consolidation in the retail industry, which could adversely affect the company's ability to attract and retain tenants. In addition, retailers at the company's properties face increasing competition from outlet malls, discount shopping clubs, electronic commerce, direct mail and telemarketing, which could (i) reduce rents payable to the company, (ii) reduce the company's ability to attract and retain tenants at its properties and (iii) lead to increased vacancy rates at the company's properties, any of which could materially and adversely affect the company.

The company's office properties are concentrated in highly developed areas of midtown Manhattan and densely populated metropolitan communities in Fairfield County and Westchester County. Manhattan is the largest office market in the United States. The number of competitive office properties in the markets in which the company's properties are located (which may be newer or better located than the company's properties) could have a material adverse effect on the company's ability to lease office space at its properties, and on the effective rents the company is able to charge. Additionally, completion of the new Vornado Tower currently under construction at 15 Penn Plaza may provide a significant source of competition for office and retail tenants, due to its close proximity to the Empire State Building.

***If the company's tenants are unable to secure financing necessary to continue to operate their businesses and pay the company rent, the company could be materially and adversely affected.***

Many of the company's tenants rely on external sources of financing to operate their businesses. The U.S. financial and credit markets continue to experience significant liquidity disruptions, resulting in the unavailability of financing for many businesses. If the company's tenants are unable to secure financing necessary to continue to operate their businesses, they may be unable to meet their rent obligations or be forced to declare bankruptcy and reject their leases, which could materially and adversely affect the company.

***The company's dependence on smaller businesses to rent its office space could materially and adversely affect the company's cash flow and results of operations.***

The majority of the tenants in the company's properties (measured by number of tenants as opposed to aggregate square footage) are smaller businesses that generally do not have the financial strength of larger corporate tenants. Smaller companies generally experience a higher rate of failure than large businesses. There is a current risk with these companies of a higher rate of tenant defaults, turnover and bankruptcies, which could materially and adversely affect the company's distributable cash flow and results of operations.

***The company's dependence on rental income may materially and adversely affect the company's profitability, the company's ability to meet its debt obligations and the company's ability to make distributions to its stockholders and holders of operating partnership units.***

A substantial portion of the company's income is derived from rental income from real property. See "The Company Business and Properties - Tenant Diversification." As a result, the company's performance depends on its ability to collect rent from tenants. The company's income and funds for distribution would be negatively affected if a significant number of the company's tenants, or any of its major tenants (as discussed in more detail below):

delay lease commencements;



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decline to extend or renew leases upon expiration;

fail to make rental payments when due or

declare bankruptcy.

Any of these actions could result in the termination of the tenants' leases and the loss of rental income attributable to the terminated leases. In these events, the company cannot be sure that any tenant whose lease expires will renew that lease or that the company will be able to re-lease space on economically advantageous terms or at all. The loss of rental revenues from a number of the company's tenants and the company's inability to replace such tenants may adversely affect the company's profitability, its ability to meet debt and other financial obligations and the company's ability to make distributions to its stockholders and holders of operating partnership units.

***The company may not be able to control its operating costs, or the company's expenses may remain constant or increase, even if income from its properties decreases, causing the company's results of operations to be adversely affected.***

The company's financial results depend substantially on leasing space in its properties to tenants on terms favorable to the company. Costs associated with real estate investment, such as real estate taxes, insurance and maintenance costs, generally are not reduced even when a property is not fully occupied, rental rates decrease or other circumstances cause a reduction in income from the property. As a result, cash flow from the operations of the company's properties may be reduced if a tenant does not pay its rent or the company is unable to rent its properties on favorable terms. Under those circumstances, the company might not be able to enforce its rights as landlord without delays and may incur substantial legal costs. The terms of the company leases may also limit its ability to change tenants for all or a portion of these expenses. Additionally, new properties that the company may acquire or redevelop may not produce significant revenue immediately, and the cash flow from existing operations may be insufficient to pay the operating expenses and principal and interest on debt associated with such properties until they are fully leased.

***The company's breach of or the expiration of its ground lease could materially and adversely affect the company's results of operations.***

The company's interest in one of its commercial office properties, 1350 Broadway, is a long-term leasehold of the land and the improvements, rather than a fee interest in the land and the improvements. If the company is found to be in breach of this ground lease, it could lose the right to use the property. In addition, unless the company purchases the underlying fee interest in this property or extends the terms of its lease for this property before expiration on terms significantly comparable to the company's current lease, the company will lose its right to operate this property and its leasehold interest in this property upon expiration of the lease or the company will continue to operate it at much lower profitability, which would significantly adversely affect the company's results of operations. In addition, if the company is perceived to have breached the terms of this lease, the fee owner may initiate proceedings to terminate the lease. The remaining term of this long-term lease, including unilateral extension rights available to the company, is approximately 39 years (expiring July 31, 2050). Annualized base rent from this property as of September 30, 2012 was approximately \$17.9 million.

Pursuant to the ground lease, the company, as tenant under the ground lease, performs the functions traditionally performed by owners, as landlords, with respect to its subtenants. In addition to collecting rent from its subtenants, the company also maintains the property and pays expenses relating to the property. The company does not have a right, pursuant to the terms of its lease or otherwise, to acquire the fee interest in this property.

***The company will not recognize any increase in the value of the land or improvements subject to the company's ground lease, and the company may only receive a portion of compensation paid in any eminent domain proceeding with respect to the property, which could materially and adversely affect the company.***

The company has no economic interest in the land or improvements at the expiration of its ground lease at 1350 Broadway and therefore the company will not share in any increase in value of the land or improvements

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beyond the term of the company's ground lease, notwithstanding the company's capital outlay to purchase its interest in the property. Furthermore, if the state or federal government seizes the property subject to the ground lease under its eminent domain power, the company may only be entitled to a portion of any compensation awarded for the seizure. In addition, if the value of the property has increased, it may be more expensive for the company to renew its ground lease.

***The company may be unable to identify and successfully complete acquisitions and even if acquisitions are identified and completed, including potentially the option properties, the company may fail to operate successfully acquired properties, which could materially and adversely affect the company and impede its growth.***

The company's ability to identify and acquire properties on favorable terms and successfully operate or redevelop them may be exposed to the following significant risks:

even if the company enters into agreements for the acquisition of properties, these agreements are subject to customary conditions to closing, including completion of due diligence investigations to the company's satisfaction and other conditions that are not within the company's control, which may not be satisfied, and the company may be unable to complete an acquisition after making a non-refundable deposit and incurring certain other acquisition-related costs;

the company may be unable to finance the acquisition on favorable terms in the time period it desires, or at all, including potentially the option properties;

the company may spend more than budgeted to make necessary improvements or renovations to acquired properties;

the company may not be able to obtain adequate insurance coverage for new properties;

acquired properties may be located in new markets where the company may face risks associated with a lack of market knowledge or understanding of the local economy, lack of business relationships in the area and unfamiliarity with local governmental and permitting procedures;

the company may be unable to integrate quickly and efficiently new acquisitions, particularly acquisitions of portfolios of properties, into its existing operations, and as a result the company's results of operations and financial condition could be adversely affected;

market conditions may result in higher than expected vacancy rates and lower than expected rental rates and

the company may incur significant costs and divert management attention in connection with evaluating and negotiating potential acquisitions, including ones that the company is subsequently unable to complete.

Any delay or failure on the company's part to identify, negotiate, finance and consummate such acquisitions in a timely manner and on favorable terms, or operate acquired properties to meet the company's financial expectations, could impede the company's growth and adversely affect its financial condition, results of operations, cash flow and trading price of the operating partnership units and Class A common stock.

***The company's option properties are subject to various risks and the company may not be able to acquire them.***

The company's option properties consist of 112-122 West 34th Street, an office property in midtown Manhattan that was 86.8% leased as of September 30, 2012 and that encompasses approximately 741,487 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 886,815 rentable square feet (inclusive of the

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retail space on the ground floor). 112-122 West 34th Street and 1400 Broadway will not be contributed to the company in the consolidation due to the ongoing litigation related to these properties.

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112 West 34th Street Associates L.L.C. and 1400 Broadway Associates L.L.C., the operating lessees of the company's option properties, are named as defendants in actions alleging that they undertook structural modifications to 112-122 West 34th Street and 1400 Broadway, respectively, without the required consent of the owner of the land on which 112 West 34th Street and 1400 Broadway were constructed (or the ground lessee, in the case of the portion of the 112-122 West 34th Street property that is owned by a private entity supervised by the supervisor and has been ground leased to such ground lessee and subleased to such private entity). Although the company does not intend to acquire 112-122 West 34th Street or 1400 Broadway as part of the consolidation, the operating partnership has entered into option agreements that allow it to acquire the interests in the option properties upon resolution of such litigation. The company's option properties are exposed to many of the same risks that may affect the other properties in its portfolio. The terms of the option agreements relating to the option properties were not determined by arm's length negotiations, and such terms may be less favorable to the company than those that may have been obtained through negotiations with third parties. It may become economically unattractive to exercise the company's options with respect to the option properties. These risks could cause the company to decide not to exercise its option to purchase these properties in the future.

The interests of the private entities that are supervised by the supervisor in the company's option properties, 112-122 West 34th Street and 1400 Broadway, are fee (in the case of a portion of 112-122 West 34th Street), 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 34th Street only) in the land and the improvements. The remaining terms of these long-term leases, including unilateral extension rights available to the company, are approximately 65 years (expiring June 10, 2077) and approximately 51 years (expiring December 31, 2063), respectively. Even if the company exercises its option to purchase the option properties upon resolution of the ongoing litigation, unless the company purchases the underlying fee interest in these properties or extends the terms of its leases for these properties before expiration on terms significantly comparable to its current leases, the company will lose its right to operate these properties and its leasehold interest in these properties upon expiration of the leases or the company may extend the leases on new terms that may result in reduced profitability, which may significantly adversely affect its results of operations at that time. 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 (and non-accredited investors are required to receive all cash), which may impact the company's ability to acquire the option properties. 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.

Additionally, Anthony E. Malkin has a conflict of interest because he, together with the Malkin Family controls and owns economic interests in the option properties. As a result, an exercise of such options by the company could economically benefit him.

***Competition for acquisitions may reduce the number of acquisition opportunities available to the company and increase the costs of those acquisitions, which may impede the company's growth.***

The company plans to continue to acquire properties as it is presented with attractive opportunities. The company may face significant competition for acquisition opportunities in the greater New York metropolitan area with other investors, particularly private investors who can incur more leverage, and this competition may adversely affect the company by subjecting it to the following risks:

an inability to acquire a desired property because of competition from other well-capitalized real estate investors, including publicly traded and privately held REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, sovereign wealth funds, pension trusts, commercial developers, partnerships and individual investors and

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an increase in the purchase price for such acquisition property, in the event the company is able to acquire such desired property. The significant competition for acquisitions of commercial office and retail properties in the greater New York metropolitan area may impede the company's growth.

***The observatory operations at the Empire State Building are not traditional real estate operations, and competition and changes in tourist trends may subject the company to additional risks, which could materially and adversely affect the Company.***

During the nine months ended September 30, 2012 and year ended December 31, 2011, the Empire State Building derived approximately \$68.5 million and \$80.6 million of revenue, respectively, from its observatory operations, representing approximately 40.1% and 40.5% of the Empire State Building's total revenue for these periods. Demand for the Empire State Building's observatory is highly dependent on domestic and overseas tourists. In addition, competition from observatory 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, could have a negative impact on revenues from the company's observatory operations. Adverse impacts on domestic travel and changes in foreign currency exchange rates may also decrease demand in the future which could have a material adverse effect on the company's results of operations, financial condition and ability to make distributions to its stockholders and holders of operating partnership units.

***The broadcasting operations at the Empire State Building are not traditional real estate operations, and competition and changes in the broadcasting of signals over air may subject the company to additional risks, which could materially and adversely affect the company.***

The Empire State Building and its broadcasting mast provides radio and data communications services and supports delivery of broadcasting signals to cable and satellite systems and television and radio receivers. The company licenses the use of the broadcasting mast to third party television and radio broadcasters. During the nine months ended September 30, 2012 and the year ended December 31, 2011, the company derived approximately \$15.9 million and \$20.6 million, respectively, of revenue from the Empire State Building's broadcasting licenses and related leased space, representing approximately 9.3% and 10.4% of the Empire State Building's total revenue for these periods. Competition from broadcasting operations in the planned property currently under construction at One World Trade Center and, to a lesser extent, from the existing broadcasting operations at Four Times Square, could have a negative impact on revenues from the company's broadcasting operations. The company's broadcast television and radio licensees also face a range of 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, also might materially and adversely affect the company's results of operations by reducing the demand for broadcast licenses. Among other things, the Plan urges Congress to make more spectrum available for wireless broadband service providers by encouraging over-the-air broadcast licensees to relinquish spectrum through a voluntary auction process, which raises many issues that could impact the broadcast industry. At this time the company cannot predict whether Congress or the FCC will adopt or implement any of the Plan's recommendations or the rule changes as proposed, or how any such actions might affect the company's broadcasting operations. Any of these risks might materially and adversely affect the company.

***Acquired properties may expose the company to unknown liability, which could adversely affect the company's results of operations, cash flow and the market value of its securities.***

The company may acquire properties subject to liabilities and without any recourse, or with only limited recourse, against the prior owners or other third parties with respect to unknown liabilities. As a result, if a liability were asserted against the company based upon ownership of those properties, the company might have to

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pay substantial sums to settle or contest it, which could adversely affect the company's results of operations, cash flow and the market value of its securities. Unknown liabilities with respect to acquired properties might include:

liabilities for clean-up of undisclosed environmental contamination;

claims by tenants, vendors or other persons against the former owners of the properties;

liabilities incurred in the ordinary course of business and

claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

***The company may acquire properties or portfolios of properties through tax deferred contribution transactions, which could result in stockholder dilution and limit the company's ability to sell such assets.***

In the future the company may acquire properties or portfolios of properties through tax deferred contribution transactions in exchange for partnership interests in the company's operating partnership, which may result in stockholder dilution. This acquisition structure may have the effect of, among other things, reducing the amount of tax depreciation the company could deduct over the tax life of the acquired properties, and may require that the company agrees to protect the contributors' ability to defer recognition of taxable gain through restrictions on the company's ability to dispose of the acquired properties and/or the allocation of partnership debt to the contributors to maintain their tax bases. These restrictions could limit the company's ability to sell an asset at a time, or on terms, that would be favorable absent such restrictions.

***Turmoil in the capital and credit markets could materially and adversely affect the company.***

Ongoing economic conditions have negatively impacted the capital and credit markets, particularly for real estate. The capital markets have witnessed significant adverse conditions, including a substantial reduction in the availability of and access to capital. The risk premium demanded by capital suppliers has increased markedly, as they are demanding greater compensation for credit risk. Lending spreads have widened from recent levels, and underwriting standards are being tightened. In addition, recent failures and consolidations of certain financial institutions have decreased the number of potential lenders, resulting in reduced lending levels available to the market. As a result, the company may not be able to obtain favorable debt financing in the future or at all. This may result in future acquisitions generating lower overall economic returns, which may adversely affect the company's results of operations and distributions to stockholders. Furthermore, any turmoil in the capital or credit markets could adversely impact the overall amount of capital and debt financing available to invest in real estate, which may result in decreases in price or value of real estate assets.

With the turmoil in the capital markets, an increasing number of financial institutions have sought federal assistance or failed. In the event of a failure of a lender or counterparty to a financial contract, obligations under the financial contract might not be honored and many forms of assets may be at risk and may not be fully returned to the company. Should a financial institution fail to fund its committed amounts when contractually obligated to do so, the company's ability to meet its obligations could be materially and adversely impacted.

***Should the company decide at some point in the future to expand into new markets, it may not be successful, which could adversely affect the company's financial condition, result of operations, cash flow and trading price of the operating partnership units and Class A common stock.***

If opportunities arise, the company may explore acquisitions of properties in new markets. Each of the risks applicable to the company's ability to acquire and integrate successfully and operate properties in its current markets is also applicable to the company's ability to acquire and integrate successfully and operate properties in new markets. In addition to these risks, the company will not possess the same level of familiarity with the dynamics and market conditions of any new markets that the company may enter, which could adversely affect the results of its expansion into those markets, and the company may be unable to build a significant market share or achieve a desired return on its investments in new markets. If the company is unsuccessful in expanding into new



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markets, it could adversely affect the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and ability to satisfy the company's principal and interest obligations and to make distributions to its stockholders and holders of operating partnership units.

*The company's growth depends on external sources of capital that are outside of its control, which may affect the company's ability to seize strategic opportunities, satisfy debt obligations and make distributions to its stockholders and holders of operating partnership units.*

In order to qualify as a REIT, the company must distribute to its stockholders, on an annual basis, at least 90% of its REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. In addition, the company will be subject to U.S. federal income tax at regular corporate rates to the extent that the company distributes less than 100% of its net taxable income (including net capital gains) and will be subject to a 4% nondeductible excise tax on the amount by which the company's distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. Because of these distribution requirements, the company may not be able to fund future capital needs, including any necessary acquisition financing, from operating cash flow. Consequently, the company may need to rely on third-party sources to fund its capital needs. The company may not be able to obtain financing on favorable terms, in the time period it desires, or at all. Any additional debt the company incurs will increase its leverage. The company's access to third-party sources of capital depends, in part, on:

general market conditions;

the market's perception of the company's growth potential;

the company's current debt levels;

the company's current and expected future earnings;

the company's cash flow and cash distributions and

the market price of the operating partnership units and the company's Class A common stock.

If the company cannot obtain capital from third-party sources, it may not be able to acquire or redevelop properties when strategic opportunities exist, satisfy its principal and interest obligations or make the cash distributions to the company's stockholders necessary to maintain its qualification as a REIT.

*If the company is unable to sell, dispose of or refinance one or more properties in the future, the company may be unable to realize its investment objectives and the company's business may be adversely affected.*

The real estate investments made, and to be made, by the company are relatively difficult to sell quickly. Return of capital and realization of gains from an investment generally will occur upon disposition or refinancing of the underlying property. In addition, the Code imposes restrictions on the ability of a REIT to dispose of properties that are not applicable to other types of real estate companies. The company may be unable to realize its investment objectives by sale, other disposition or refinancing at attractive prices within any given period of time or may otherwise be unable to complete any exit strategy. In particular, these risks could arise from weakness in or even the lack of an established market for a property, changes in the financial condition or prospects of prospective purchasers, changes in national or international economic conditions and changes in laws, regulations or fiscal policies of jurisdictions in which the company's properties are located.

*The company's outstanding indebtedness upon completion of the IPO reduces cash available for distribution and may expose the company to the risk of default under its debt obligations and may include covenants that restrict the company's ability to pay dividends.*



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Upon completion of the IPO, the company anticipates its pro forma total consolidated indebtedness will be approximately \$1.11 billion (which is only 21% of its total assets based on the appraised value of the company's properties set forth in the Appraisal prepared by the independent valuer for purposes of establishing aggregate

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exchange value), and the company may incur significant additional debt to finance future acquisition and redevelopment activities. In addition, the company expects to obtain an \$800.0 million secured revolving and term credit facility upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates. The company has obtained a commitment for \$400.0 million of availability under the secured revolving and term credit facility, subject to satisfaction of certain customary conditions precedent, from the representatives of the underwriters or their respective affiliates who have also agreed to use commercially reasonable efforts to syndicate the remainder of the facility. The company expects to use this secured revolving and term credit facility to, among other things, fully repay borrowings under its existing \$500.0 million term loan secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012, fund capital expenditures and tenant improvements and leasing commissions, potential acquisitions, general corporate matters and working capital. See Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Consolidated Indebtedness to be Outstanding After the IPO Description of Certain Debt Secured Revolving and Term Credit Facility.

Payments of principal and interest on borrowings may leave the company with insufficient cash resources to operate its properties or to pay the distributions currently contemplated or necessary to qualify as a REIT. The company's level of debt and the limitations imposed on the company by its loan documents could have significant adverse consequences, including the following:

the company's cash flow may be insufficient to meet its required principal and interest payments;

the company may be unable to borrow additional funds as needed or on favorable terms;

the company may be unable to refinance its indebtedness at maturity or the refinancing terms may be less favorable than the terms of the company's original indebtedness;

to the extent the company borrows debt that bears interest at variable rates, increases in interest rates could materially increase the company's interest expense;

the company may be forced to dispose of one or more of its properties, possibly on disadvantageous terms;

the company may default on its obligations or violate restrictive covenants, in which case the lenders or mortgagees may accelerate the company's debt obligations, foreclose on the properties that secure their loans and/or take control of the company's properties that secure their loans and collect rents and other property income;

the company may violate restrictive covenants in its loan documents, which would entitle the lenders to accelerate the company's debt obligations or reduce its ability to make, or prohibit it from making, distributions and

the company's default under any one of its mortgage loans with cross default provisions could result in a default on other indebtedness.

In addition, the secured revolving and term credit facility is expected to include covenants which may restrict the company's ability to pay dividends if the company fails to meet certain tests. See Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Consolidated Indebtedness to be Outstanding After the IPO Description of Certain Debt Secured Revolving and Term Credit Facility.

If any one of these events were to occur, the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to its stockholders could be adversely affected. In addition, in connection with the company's debt agreements it may enter into lockbox and cash management agreements pursuant to which substantially all of the income generated by the company's properties will be deposited directly into

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lockbox accounts and then swept into cash management accounts for the benefit of the company's various lenders and from which cash will be distributed to the company only after funding of improvement, leasing and maintenance reserves and the payment of principal and interest on the company's debt,

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insurance, taxes, operating expenses and extraordinary capital expenditures and leasing expenses. As a result, the company may be forced to borrow additional funds in order to make distributions to the company's stockholders (including, potentially, to make distributions necessary to allow the company to qualify as a REIT).

***Mortgage debt obligations expose the company to the possibility of foreclosure, which could result in the loss of the company's investment in a property or group of properties subject to mortgage debt.***

Incurring mortgage and other secured debt obligations increases the company's risk of property losses because defaults on indebtedness secured by properties may result in foreclosure actions initiated by lenders and ultimately the company's loss of the property securing any loans for which the company is in default. Any foreclosure on a mortgaged property or group of properties could adversely affect the overall value of the company's portfolio of properties. For tax purposes, a foreclosure of any of the company's properties that is subject to a nonrecourse mortgage loan would be treated as a sale of the property for a purchase price equal to the outstanding balance of the debt secured by the mortgage. If the outstanding balance of the debt secured by the mortgage exceeds the company's tax basis in the property, the company would recognize taxable income on foreclosure, but would not receive any cash proceeds, which could hinder the company's ability to meet the distribution requirements applicable to REITs under the Code. Foreclosures could also trigger the company's tax indemnification obligations under the terms of its agreements with certain investors with respect to sales of certain properties, and obligate the company to make certain levels of indebtedness available for them to guarantee which, among other things, allows them to defer the recognition of gain in connection with the consolidation.

***High mortgage rates and/or unavailability of mortgage debt may make it difficult for the company to finance or refinance properties, which could reduce the number of properties the company can acquire, its net income and the amount of cash distributions the company can make.***

If mortgage debt is unavailable at reasonable rates, the company may not be able to finance the purchase of properties. If the company places mortgage debt on properties, it may be unable to refinance the properties when the loans become due, or to refinance on favorable terms. If interest rates are higher when the company refinances its properties, the company's income could be reduced. If any of these events occur, the company's cash flow could be reduced. This, in turn, could reduce cash available for distribution to the company's stockholders and may hinder the company's ability to raise more capital by issuing more stock or by borrowing more money. In addition, to the extent the company is unable to refinance the properties when the loans become due, the company will have fewer debt guarantee opportunities available to offer under its tax protection agreement. If the company is unable to offer certain guarantee opportunities to the parties to the tax protection agreement, or otherwise is unable to allocate sufficient liabilities of the operating partnership to those parties, it could trigger an indemnification obligation of the company under the tax protection agreement.

***Some of the company's financing arrangements involve balloon payment obligations, which may adversely affect its ability to make distributions.***

Upon closing of the consolidation, the company will have pro forma total debt outstanding of approximately \$1.11 billion (which is only 21.0% of its total assets based on the appraised value of the company's properties set forth in the Appraisal prepared by the independent valuer for purposes of establishing aggregate exchange value), with a weighted average interest rate of 5.20%, a weighted average maturity of 3.4 years and 78.2% of which is fixed-rate indebtedness. Additionally, the company expects to have approximately \$304.1 million of available borrowing capacity under its loans on a pro forma basis (excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). The company has no debt maturing in the remainder of 2012 and approximately \$56.9 million maturing in 2013. As of September 30, 2012, the company had 23 mortgage loans outstanding secured by 17 of the company's properties. As of September 30, 2012, these loans had an aggregate estimated principal balance at maturity of approximately \$1.0 billion with maturity dates ranging from May 2013 through April 2018. Some of the company's financing arrangements require it to make a lump-sum or balloon payment at maturity. See Management's Discussion and Analysis of

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Financial Condition and Results of Operations of Empire State Realty Trust Consolidated Indebtedness to be Outstanding After the IPO for a description of the estimated principal balances at maturity, including lump-sum or balloon payments, of the company's indebtedness. The company's ability to make a balloon payment at maturity is uncertain and may depend upon the company's ability to obtain additional financing or its ability to sell the property. At the time the balloon payment is due, the company may or may not be able to refinance the existing financing on terms as favorable as the original loan or sell the property at a price sufficient to make the balloon payment. The effect of a refinancing or sale could affect the rate of return to stockholders and the projected time of disposition of the company's assets. In addition, payments of principal and interest made to service the company's debts may leave it with insufficient cash to make distributions necessary to meet the distribution requirements applicable to REITs under the Code.

***The company's degree of leverage and the lack of a limitation on the amount of indebtedness the company may incur could materially and adversely affect it.***

The company's organizational documents do not contain any limitation on the amount of indebtedness it may incur. Upon closing of the consolidation and on a pro forma basis for the year ended December 31, 2011, the company had a debt-to-EBITDA ratio of approximately 4.93x. For the year ended December 31, 2011 the company's pro forma EBITDA and pro forma net income, the most comparable GAAP measure, were approximately \$213.2 million and \$58.7 million, respectively. Any changes that increase the company's debt-to-EBITDA could be viewed negatively by investors. As a result, the company's stock price could decrease. The company also considers factors other than debt-to-EBITDA in making decisions regarding the incurrence of indebtedness, such as the purchase price of properties to be acquired with debt financing, the estimated market value of the company's properties upon refinancing and the ability of particular properties and the company's business as a whole to generate cash flow to cover expected debt service.

The company's degree of leverage could affect its ability to obtain additional financing for working capital, capital expenditures, acquisitions, development or other general corporate purposes. The company's degree of leverage could also make it more vulnerable to a downturn in business or the economy generally. If the company becomes more leveraged in the future, the resulting increase in debt service requirements could cause the company to default on its obligations, which could materially and adversely affect the company.

***The company's tax protection agreement could limit its ability either to sell certain properties, engage in a strategic transaction or to reduce its level of indebtedness, which could materially and adversely affect the company.***

As part of the consolidation, the operating partnership intends to enter into a tax protection agreement with Peter L. Malkin and Anthony E. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance, or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by those properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation. If the company's tax indemnification obligations were to be

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triggered under these agreements, the company would be required to pay damages for the resulting tax consequences to the Malkin Family, and the company has acknowledged that a calculation of damages will not be based on the time value of money or the time remaining within the restricted period. Moreover, these obligations may restrict the company's ability to engage in a strategic transaction. In addition, these obligations may require the company to maintain more or different indebtedness than the company would otherwise require for the company's business. See

The Consolidation Description of the Tax Protection Agreement. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

***The continuing threat of a terrorist event may materially and adversely affect the company's properties, their value and the company's ability to generate cash flow.***

There may be a decrease in demand for space in Manhattan and the greater New York metropolitan area because it is considered at risk for a future terrorist event, and this decrease may reduce the company's revenues from property rentals. In the aftermath of a terrorist event, tenants in Manhattan and the greater New York metropolitan area may choose to relocate their businesses to less populated, lower-profile areas of the United States that are not as likely to be targets of future terrorist activity. This in turn could trigger a decrease in the demand for space in Manhattan and the greater New York metropolitan area, which could increase vacancies in the company's properties and force the company to lease its properties on less favorable terms. Further, certain of the company's properties, including the Empire State Building, may be considered to be susceptible to increased risks of a future terrorist event due to the high-profile nature of the property. In addition, a terrorist event could cause insurance premiums at certain of the company's properties to increase significantly. As a result, the value of the company's properties and the level of its revenues could materially decline.

***Potential losses such as those from adverse weather conditions, natural disasters, terrorist events and title claims, may not be fully covered by the company's insurance policies, and such losses could materially and adversely affect the company.***

The company's business operations are susceptible to, and could be significantly affected by, adverse weather conditions, terrorist events and natural disasters that could cause significant damage to the properties in its portfolio. The company's insurance may not be adequate to cover business interruption or losses resulting from such events. In addition, the company's insurance policies include substantial self-insurance portions and significant deductibles and co-payments for such events, and recent hurricanes in the United States have affected the availability and price of such insurance. As a result, the company may incur significant costs in the event of adverse weather conditions, terrorist events and natural disasters. The company may discontinue certain insurance coverage on some or all of its properties in the future if the cost of premiums for any of these policies in the company's judgment exceeds the value of the coverage discounted for the risk of loss.

The company carries comprehensive liability, fire, extended coverage, earthquake, terrorism and rental loss insurance, covering all of its Manhattan properties and its greater New York metropolitan area properties under a blanket policy. The company carries additional all-risk property and business insurance, which includes terrorism insurance, on the Empire State Building through ESB Captive Insurance Company L.L.C., or ESB Captive Insurance, the company's wholly owned captive insurance company. ESB Captive Insurance covers terrorism insurance for \$700 million in losses in excess of \$800 million per occurrence suffered by the Empire State Building, providing the company with aggregate terrorism coverage of \$1.5 billion. ESB Captive Insurance fully reinsures the 15% coinsurance under the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) and the difference between the TRIPRA captive deductible and policy deductible of \$25,000 for non-Nuclear, Biological, Chemical and Radiological exposures. As a result, the company remains only liable for the 15% coinsurance under TRIPRA for Nuclear, Biological, Chemical and Radiological (NBCR) exposures, as well as a deductible equal to 20% of the prior year's premium, which premium was approximately \$429,000 in

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2011. As long as the company owns ESB Captive Insurance, the company is responsible for its liquidity and capital resources, and its accounts are part of the company's consolidated financial statements. If the company experiences a loss and its captive insurance company is required to pay under its insurance policy, the company would ultimately record the loss to the extent of its required payment.

Furthermore, the company does not carry insurance for certain losses, including, but not limited to, losses caused by war. In addition, while the company's title insurance policies insure for the current aggregate market value of the company's portfolio, the company does not intend to increase its title insurance policies as the market value of its portfolio increases. As a result, the company may not have sufficient coverage against all losses that it may experience, including from adverse title claims.

If the company experiences a loss that is uninsured or which exceeds its policy limits, the company could incur significant costs and lose the capital invested in the damaged properties as well as the anticipated future cash flows from those properties. In addition, if the damaged properties are subject to recourse indebtedness, the company would continue to be liable for the indebtedness, even if these properties were irreparably damaged.

In addition, certain of the company's properties could not be rebuilt to their existing height or size at their existing location under current land-use laws and policies. In the event that the company experiences a substantial or comprehensive loss of one of its properties, the company may not be able to rebuild such property to its existing specifications and otherwise may have to upgrade such property to meet current code requirements.

TRIA, which was enacted in November 2002, was renewed on December 31, 2007. Congress extended TRIA, now called TRIPRA (Terrorism Risk Insurance Program Reauthorization Act of 2007) until December 31, 2014. The law extends the federal Terrorism Risk Insurance Program that requires insurance companies to offer terrorism coverage and provides for compensation for insured losses resulting from acts of foreign and domestic terrorism. The company's debt instruments, consisting of mortgage loans secured by its properties (which are generally non-recourse to the company), ground leases and the company's secured term loan, contain customary covenants requiring the company to maintain insurance, including TRIPRA insurance. While the company does not believe it will be likely, there can be no assurance that the lenders or ground lessors under these instruments will not take the position that a total or partial exclusion from all-risk insurance coverage for losses due to terrorist acts is a breach of these debt and ground lease instruments that allows the lenders or ground lessors to declare an event of default and accelerate repayment of debt or recapture of ground lease positions for those properties in the portfolio which are not insured against terrorist events. In addition, if lenders insist on full coverage for these risks and prevail in asserting that the company is required to maintain such coverage, it could result in substantially higher insurance premiums.

Certain mortgages on the company's properties contain requirements concerning the financial ratings of the insurers who provide policies covering the property. The company provides the lenders on a regular basis with the identity of the insurance companies in its insurance programs. While the ratings of the company's insurers currently satisfy the rating requirements in some of its loan agreements, in the future, the company may be unable to obtain insurance with insurers which satisfy the rating requirements which could give rise to an event of default under such loan agreements. Additionally, in the future the company's ability to obtain debt financing secured by individual properties, or the terms of such financing, may be adversely affected if lenders generally insist on ratings for insurers which are difficult to obtain or which result in a commercially unreasonable premium.

***The company may become subject to liability relating to environmental and health and safety matters, which could have a material and adverse effect on it.***

Under various federal, state and/or local laws, ordinances and regulations, as a current or former owner or operator of real property, the company may be liable for costs and damages resulting from the presence or release of hazardous substances, waste, or petroleum products at, on, in, under or from such property, including costs for investigation or remediation, natural resource damages, or third party liability for personal injury or property damage. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the

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presence or release of such materials, and the liability may be joint and several. Some of the company's properties have been or may be impacted by contamination arising from current or prior uses of the property or adjacent properties for commercial, industrial or other purposes. Such contamination may arise from spills of petroleum or hazardous substances or releases from tanks used to store such materials. The company also may be liable for the costs of remediating contamination at off-site disposal or treatment facilities when the company arranges for disposal or treatment of hazardous substances at such facilities, without regard to whether the company complies with environmental laws in doing so. The presence of contamination or the failure to remediate contamination on the company's properties may adversely affect its ability to attract and/or retain tenants and its ability to develop or sell or borrow against those properties. In addition to potential liability for cleanup costs, private plaintiffs may bring claims for personal injury, property damage or for similar reasons. Environmental laws also may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on the company's properties, environmental laws may impose restrictions on the manner in which that property may be used or how businesses may be operated on that property. For example, the company's property at 69-97 Main Street is subject to an Environmental Land Use Restriction that imposes certain restrictions on the use, occupancy and activities of the affected land beneath the property. This restriction may prevent the company from conducting certain renovation activities at the property, which may adversely affect its resale value and may adversely affect the company's ability to finance or refinance this property. See "The Company Business and Properties Regulation Environmental Matters."

Some of the company's properties are adjacent to or near other properties used for industrial or commercial purposes or that have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. Releases from these properties could impact the company's properties. In addition, some of the company's properties have previously been used by former owners or tenants for commercial or industrial activities, e.g., gas stations and dry cleaners, and a portion of the Metro Tower site is currently used for automobile parking and fuelling that may release petroleum products or other hazardous or toxic substances at such properties or to surrounding properties.

In addition, the company's properties are subject to various federal, state and local environmental and health and safety laws and regulations. Noncompliance with these environmental and health and safety laws and regulations could subject the company or its tenants to liability. These liabilities could affect a tenant's ability to make rental payments to the company. Moreover, changes in laws could increase the potential costs of compliance with such laws and regulations or increase liability for noncompliance. This may result in significant unanticipated expenditures or may otherwise materially and adversely affect the company's operations, or those of its tenants, which could in turn have a material adverse effect on the company.

As the owner or operator of real property, the company may also incur liability based on various building conditions. For example, buildings and other structures on properties that the company currently owns or operates or those the company acquires or operates in the future contain, may contain, or may have contained, asbestos-containing material, or ACM. Environmental and health and safety laws require that ACM be properly managed and maintained and may impose fines or penalties on owners, operators or employers for non-compliance with those requirements. These requirements include special precautions, such as removal, abatement or air monitoring, if ACM would be disturbed during maintenance, renovation or demolition of a building, potentially resulting in substantial costs. In addition, the company may be subject to liability for personal injury or property damage sustained as a result of releases of ACM into the environment.

In addition, the company's properties may contain or develop harmful mold or suffer from other indoor air quality issues, which could lead to liability for adverse health effects or property damage or costs for remediation. When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the



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presence of significant mold or other airborne contaminants at any of the company's properties could require it to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose the company to liability from its tenants, employees of its tenants or others if property damage or personal injury occurs.

The company cannot assure you that costs or liabilities incurred as a result of environmental issues will not affect the company's ability to make distributions to its stockholders or holders of operating partnership units or that such costs, liabilities, or other remedial measures will not have a material adverse effect on the company's financial condition and results of operations.

***Potential environmental liabilities may exceed the company's environmental insurance coverage limits, which could have a material and adverse effect on it.***

The company carries environmental insurance to cover certain potential environmental liabilities associated with pollution conditions at certain of its properties. The company cannot assure you, however, that its insurance coverage will be sufficient or that the company's liability will not have a material adverse effect on its financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to the company's stockholders.

***The company may experience a decline in the fair value of its assets, which may have a material impact on the company's financial condition, liquidity and results of operations and adversely impact its stock price.***

A decline in the fair market value of the company's assets may require it to recognize an other-than-temporary impairment against such assets under GAAP if the company were to determine that, with respect to any assets in unrealized loss positions, it does not have the ability and intent to hold such assets to maturity or for a period of time sufficient to allow for recovery to the amortized cost of such assets. If such a determination were to be made, the company would recognize unrealized losses through earnings and write down the amortized cost of such assets to a new cost basis, based on the fair value of such assets on the date they are considered to be other-than-temporarily impaired. Such impairment charges reflect non-cash losses at the time of recognition; subsequent disposition or sale of such assets could further affect the company's future losses or gains, as they are based on the difference between the sale price received and adjusted amortized cost of such assets at the time of sale.

***Failure to hedge interest rates effectively could have a material and adverse effect on the company.***

Subject to the company's qualification as a REIT, the company may seek to manage its exposure to interest rate volatility by using interest rate hedging arrangements that involve risk, such as the risk that counterparties may fail to honor their obligations under these arrangements, and that these arrangements may not be effective in reducing the company's exposure to interest rate changes. Moreover, there can be no assurance that the company's hedging arrangements will qualify for hedge accounting or that the company's hedging activities will have the desired beneficial impact on the company's results of operations. Should the company desire to terminate a hedging agreement, there could be significant costs and cash requirements involved to fulfill the company's initial obligation under the hedging agreement. Failure to hedge effectively against interest rate changes may adversely affect the company's results of operations.

When a hedging agreement is required under the terms of a mortgage loan it is often a condition that the hedge counterparty maintains a specified credit rating. With the current volatility in the financial markets, there is an increased risk that hedge counterparties could have their credit rating downgraded to a level that would not be acceptable under the loan provisions. If the company were unable to renegotiate the credit rating condition with the lender or find an alternative counterparty with acceptable credit rating, the company could be in default under the loan and the lender could seize that property through foreclosure.

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***As a general contractor, Malkin Construction, the company's wholly-owned subsidiary, is subject to the various risks associated with construction that could have a material adverse effect on the company's business and results of operations.***

As a general contractor, Malkin Construction, the company's wholly-owned subsidiary, is subject to the various risks associated with construction (including, without limitation, shortages of labor and materials, work stoppages, labor disputes and weather interference) that could cause construction delays. The company is subject to the risk that it will be unable to complete construction at budgeted costs or be unable to fund any excess construction costs, which could have a material adverse effect on the company's business and results of operations.

***The company may incur significant costs complying with the ADA and similar laws, which could adversely affect the company's financial condition, results of operations, cash flow and trading price of the operating partnership units and Class A common stock.***

Under the Americans with Disabilities Act of 1990, or the ADA, all public accommodations must meet federal requirements related to access and use by disabled persons. The company has not conducted a recent audit or investigation of all of its properties to determine the company's compliance with the ADA. If one or more of the properties in the company's portfolio is not in compliance with the ADA, the company would be required to incur additional costs to bring the property into compliance. Additional federal, state and local laws also may require modifications to the company's properties, or restrict the company's ability to renovate its properties. The company cannot predict the ultimate cost of compliance with the ADA or other legislation. If the company incurs substantial costs to comply with the ADA and any other legislation, the company's financial condition, results of operations, cash flow, trading price of the operating partnership units and Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to the company's stockholders could be adversely affected.

***The company's property taxes could increase due to property tax rate changes or reassessment, which could impact the company's cash flows.***

Even if the company qualifies as a REIT for U.S. federal income tax purposes, the company will be required to pay state and local taxes on its properties. The real property taxes on the company's properties may increase as property tax rates change or as the company's properties are assessed or reassessed by taxing authorities. In particular, the company's portfolio of properties may be reassessed as a result of the IPO. Therefore, the amount of property taxes the company pays in the future may increase substantially from what the company has paid in the past. If the property taxes the company pays increase, the company's financial condition, results of operations, cash flows, trading price of the operating partnership units and Class A common stock and the company's ability to satisfy its principal and interest obligations and to make distributions to the company's stockholders could be adversely affected.

***The company may become subject to litigation, which could have a material and adverse effect on the company's financial condition, results of operations, cash flow and trading price of the operating partnership units and Class A common stock.***

In the future the company may become subject to litigation, including claims relating to its operations, offerings, and otherwise in the ordinary course of business. Some of these claims may result in significant defense costs and potentially significant judgments against the company, some of which are not, or cannot be, insured against. The company generally intends to defend itself vigorously; however, the company cannot be certain of the ultimate outcomes of any claims that may arise in the future. Resolution of these types of matters against the company may result in it having to pay significant fines, judgments, or settlements, which, if uninsured, or if the fines, judgments, and settlements exceed insured levels, could adversely impact the company's earnings and cash flows, thereby having an adverse effect on the company's financial condition, results of operations, cash flow and trading price of the operating partnership units and Class A common stock.

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Certain litigation or the resolution of certain litigation may affect the availability or cost of some of the company's insurance coverage, which could adversely impact the company's results of operations and cash flows, expose the company to increased risks that would be uninsured, and/or adversely impact the company's ability to attract officers and directors.

*Joint venture investments could be adversely affected by the company's lack of sole decision-making authority, its reliance on co-venturers financial condition and disputes between the company and its co-venturers.*

The company may co-invest in the future with third parties through partnerships, joint ventures or other entities, acquiring non-controlling interests in or sharing responsibility for managing the affairs of a property, partnership, joint venture or other entity. In such event, the company would not be in a position to exercise sole decision-making authority regarding the property, partnership, joint venture or other entity. Investments in partnerships, joint ventures or other entities may, under certain circumstances, involve risks not present were a third party not involved, including the possibility that partners or co-venturers might become bankrupt or fail to fund their share of required capital contributions. Partners or co-venturers may have economic or other business interests or goals which are inconsistent with the company's business interests or goals, and may be in a position to take actions contrary to the company's policies or objectives, and they may have competing interests in the company's markets that could create conflict of interest issues. Such investments may also have the potential risk of impasses on decisions, such as a sale, because neither the company nor the partner or co-venturer would have full control over the partnership or joint venture. In addition, prior consent of the company's joint venture partners may be required for a sale or transfer to a third party of the company's interests in the joint venture, which would restrict the company's ability to dispose of its interest in the joint venture. If the company becomes a limited partner or non-managing member in any partnership or limited liability company and such entity takes or expects to take actions that could jeopardize the company's status as a REIT or require it to pay tax, the company may be forced to dispose of its interest in such entity including at an unfavorable price. Disputes between the company and partners or co-venturers may result in litigation or arbitration that would increase the company's expenses and prevent its officers and/or directors from focusing their time and effort on the company's business. Consequently, actions by or disputes with partners or co-venturers might result in subjecting properties owned by the partnership or joint venture to additional risk. In addition, the company may in certain circumstances be liable for the actions of its third-party partners or co-venturers. The company's joint ventures may be subject to debt and, in any weakened credit market, the refinancing of such debt may require equity capital calls.

*Changes in accounting rules, assumptions and/or judgments could materially and adversely affect the company.*

Accounting rules for certain aspects of the company's anticipated operations are highly complex and involve significant judgment and assumptions. These complexities could lead to a delay in the preparation of the company's financial statements and the delivery of this information to the company's stockholders. Furthermore, changes in accounting rules or in the company's accounting assumptions and/or judgments, such as asset impairments, could materially impact its financial statements. Under any of these circumstances, the company could be materially and adversely affected.

*The company may incur significant costs complying with various regulatory requirements, which could materially and adversely affect its financial performance.*

The company's properties are subject to various federal, state and local regulatory requirements, such as state and local fire and life safety requirements. If the company fails to comply with these various requirements, it might incur governmental fines or private damage awards. In addition, existing requirements could change and future requirements might require the company to make significant unanticipated expenditures, which materially and adversely affect its financial performance.

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**Risks Related to the Tax Consequences of the Consolidation**

*A participant that receives common stock in the consolidation may recognize gain or loss for U.S. federal income tax purposes.*

If you receive solely Class A common stock, you generally will recognize gain or loss for U.S. federal income tax purposes with respect to your participation interest equal to the amount by which the fair market value of any shares of Class A common stock you receive in connection with the consolidation, plus the amount of liabilities allocable to your participation interest, exceeds your tax basis in your participation interest. In addition, if you are an individual or a partnership for New York State personal income tax purposes, any gain that you recognize in the consolidation will generally be treated as New York source income for New York State personal income tax purposes. As a result, you (or, if you are a partnership, any of your partners who are individuals) will generally be subject to New York State personal income tax on such gain even if you are treated as a New York nonresident for purposes of the New York State personal income tax. The New York City personal income tax should not apply to individuals who are treated as New York City nonresidents for purposes of the tax. You will recognize phantom income (i.e., income in excess of the value of any shares of common stock you receive) if you have a negative capital account with respect to your participation interest. If you elect to receive common stock and have gain for U.S. federal income tax purposes, you will need to satisfy any associated tax liabilities with cash from your other resources. The supervisor urges you to consult with your tax advisor to evaluate the tax consequences to you in your particular circumstances as a result of the consolidation. For a further discussion of the general U.S. federal income tax consequences of the transactions contemplated herein that may be relevant, you should carefully review the section entitled U.S. Federal Income Tax Considerations.

If you receive a combination of operating partnership units and common stock, you may also recognize gain or loss for U.S. federal income tax purposes, as more fully discussed under U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation. See also U.S. Federal Income Tax Considerations U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former Property Manager and Leasing Agent Legal Proceedings for a discussion of the tax consequences of the deemed receipt of shares of common stock under the voluntary pro rata reimbursement program.

*Tax consequences to holders of operating partnership units upon a sale or refinancing of the company's properties may cause the interests of certain members of the company's senior management team to differ from your own.*

As a result of the unrealized built-in gain attributable to a property at the time of contribution, some holders of operating partnership units, including Anthony E. Malkin and Peter L. Malkin, may suffer different and more adverse tax consequences than holders of common stock or other holders of operating partnership units upon the sale or refinancing of the properties owned by the operating partnership, including disproportionately greater allocations of items of taxable income and gain upon a realization event. As those holders will not receive a correspondingly greater distribution of cash proceeds, they may have different objectives regarding the appropriate pricing, timing and other material terms of any sale or refinancing of certain properties, or whether to sell or refinance such properties at all. As a result, the effect of certain transactions on Anthony E. Malkin and Peter L. Malkin may influence their decisions affecting these properties and may cause them to attempt to delay, defer or prevent a transaction that might otherwise be in the best interests of the company's other stockholders. In connection with the consolidation, the operating partnership intends to enter into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance, or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or

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(y) the death of both Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by those properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed). As a result of entering into the tax protection agreement, Anthony E. Malkin and Peter L. Malkin may have an incentive to cause the company to enter into transactions from which they may personally benefit.

***Participants may recognize taxable gain resulting from a reduction in their share of the operating partnership's liabilities and accordingly may recognize taxable gain even if they elect to receive solely operating partnership units in the consolidation.***

If you elect to receive solely operating partnership units in the consolidation, or a combination of (a) operating partnership units and (b) shares of common stock not in excess of your reimbursement amount, to the extent that the current mortgage debt on the subject LLC's property is maintained, or such mortgage debt is refinanced with similar mortgage debt, your share of the operating partnership's liabilities should generally be an amount sufficient to avoid your recognizing gain for U.S. federal income tax purposes as a result of the consolidation. However, there can be no assurance that this will be the case for all participants in each subject LLC.

In general, following the consolidation, the operating partnership generally intends to maintain a level of mortgage debt on the property currently held by the subject LLC, or to refinance such debt with similar debt. The operating partnership may, however, elect to pay down its indebtedness or refinance such indebtedness with unsecured debt following the consolidation, including mortgage indebtedness on property owned by the subject LLC which may reduce the amount of the operating partnership's liabilities allocable to a participant. In addition, the operating partnership's commitment pursuant to the tax protection agreement entered into with Peter L. Malkin and Anthony E. Malkin could result in less operating partnership liabilities available to be allocated to a participant as a result of such persons and the Wien group being offered opportunities to guarantee certain indebtedness of the operating partnership. Over time, property depreciation, capital improvements made to the properties and debt amortization and repayment, among other things, may reduce your share of the operating partnership's liabilities. A reduction in your share of the operating partnership's liabilities (either as a result of the consolidation, from a pay down of mortgage debt following the consolidation or over time) that exceeds your U.S. federal income tax basis in your operating partnership units is treated as taxable gain from the sale or exchange of your operating partnership units.

Participants should carefully review "U.S. Federal Income Tax Considerations" and "U.S. Federal Income Tax Consequences of the Consolidation" and consult their tax advisors with regard to liabilities associated with their participation interests and their share of the operating partnership's liabilities following the consolidation and in future periods.

***You will not receive tax protection against taxable gains.***

Generally, under applicable U.S. federal income tax laws and regulations, participants of a subject LLC would recognize gain or loss, for U.S. federal income tax purposes, with respect to their operating partnership

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units if, following the consolidation, the operating partnership were to sell a property previously owned by that subject LLC. Participants also would recognize taxable gain if participants were not allocated sufficient liabilities under U.S. federal tax rules with respect to their operating partnership units.

As part of the consolidation, the operating partnership intends to enter into a tax protection agreement with Peter L. Malkin and Anthony E. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value), to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares of common stock such investor received in the consolidation. For a further description of the tax protection agreement, see The Consolidation Description of the Tax Protection Agreement.

***Specific transactions or tax elections may cause you to recognize gain or otherwise affect your investment.***

As a general matter, the company, per the terms of the operating partnership agreement, will not be required to take into account tax consequences to the other partners of the operating partnership (including a holder of operating partnership units that received those units in connection with the consolidation) in deciding whether to cause the operating partnership to undertake specific transactions or make tax elections that could cause you to recognize gain. Consequently, any deferred tax gain allocable to the operating partnership units that you receive in connection with the consolidation could be triggered at any time, and your share of the liabilities of the operating partnership could be reduced at any time and no promise can be made to you that you will continue to enjoy the benefit of deferring any gain that would have otherwise been recognized had you received common stock in the consolidation.

***If the operating partnership were not to make an election under Section 754 of the Code to adjust its asset basis, a subsequent transferee of operating partnership units could be allocated more taxable income in respect of those operating partnership units prior to disposition than if such an election were made.***

The operating partnership currently intends to make an election to adjust asset basis under Section 754 of the Code. If no such election is made, there will generally be no adjustment to the basis of the assets of the operating partnership upon a subsequent transferee's acquisition of operating partnership units from a participant transferring operating partnership units, even if the purchase price for those operating partnership units is greater than the share of the aggregate tax basis of the operating partnership's assets attributable to those operating partnership units immediately prior to the acquisition. Consequently, upon a sale of an asset by the operating partnership, gain allocable to a holder of operating partnership units could include built-in gain in the asset existing at the time such subsequent holder acquired the operating partnership units, which built-in gain would otherwise generally be eliminated if a Section 754 election had been made. See U.S. Federal Income Tax Considerations Consequences of Holding Operating Partnership Units Section 754 Election.

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***The operating partnership cannot match transferors and transferees of Series 60, Series 250, or Series ES operating partnership units, and the operating partnership will therefore adopt certain income tax accounting positions that may not conform with all aspects of applicable tax requirements. The IRS may challenge this treatment, which could adversely affect the tax consequences, liquidity and market price of such operating partnership units.***

Because the operating partnership cannot match transferors and transferees of Series 60, Series 250, or Series ES operating partnership units, the operating partnership will adopt certain depreciation, amortization and other tax accounting positions that may not conform with all aspects of existing Treasury Regulations. A successful challenge to those positions could adversely affect the amount of tax benefit available or taxable income allocated to holders of such operating partnership units. It also could affect the timing of certain tax benefits or the amount of gain on the sale of such operating partnership units and could have a negative impact on the value of such operating partnership units or result in audits of and adjustments to the tax returns of holders of Series 60, Series 250, or Series ES operating partnership units.

In addition, the operating partnership's taxable income and losses will be determined and apportioned among investors using conventions the operating partnership regards as consistent with applicable law. As a result, if you transfer your operating partnership units, you may be allocated income, gain, loss and deduction realized by the operating partnership after the date of transfer. Similarly, a transferee may be allocated income, gain, loss and deduction realized by the operating partnership prior to the date of the transferee's acquisition of operating partnership units and, in certain circumstances, even if such a transferee receives no distributions. A transferee may also bear the cost of withholding tax imposed with respect to income allocated to a transferor through a reduction in the cash distributed to the transferee.

***The company's failure to qualify or remain qualified as a REIT would subject the company to U.S. federal income tax and applicable state and local taxes, which would reduce the amount of cash available for distribution to the company's stockholders.***

The company has been organized and intends to operate in a manner that will enable it to qualify as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013. The company has not requested and does not intend to request a ruling from the IRS that it qualifies as a REIT. Qualification as a REIT involves the application of highly technical and complex Code provisions and Treasury Regulations promulgated thereunder for which there are limited judicial and administrative interpretations. The complexity of these provisions and of applicable Treasury Regulations is greater in the case of a REIT that, like the company, holds its assets through partnerships. To qualify as a REIT, the company must meet, on an ongoing basis, various tests regarding the nature and diversification of its assets and the company's income, the ownership of its outstanding shares, and the amount of its distributions. The company's ability to satisfy these asset tests depends upon its analysis of the characterization and fair market values of its assets, some of which are not susceptible to a precise determination, and for which the company will not obtain independent appraisals. The company's compliance with the REIT income and quarterly asset requirements also depends upon the company's ability to manage successfully the composition of its income and assets on an ongoing basis. Moreover, new legislation, court decisions or administrative guidance, in each case possibly with retroactive effect, may make it more difficult or impossible for the company to qualify as a REIT. Thus, while the company intends to operate so that it will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in the company's circumstances, no assurance can be given that the company will so qualify for any particular year. These considerations also might restrict the types of assets that the company can acquire in the future.

If the company fails to qualify as a REIT in any taxable year, and it does not qualify for certain statutory relief provisions, it would be required to pay U.S. federal income tax, including any applicable alternative minimum tax, on its taxable income at regular corporate rates, and distributions to its stockholders would not be deductible by it in determining its taxable income. In such a case, the company might need to borrow money, sell assets, or reduce or even cease making distributions in order to pay its taxes. The company's payment of income tax would reduce

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significantly the amount of cash available for distribution to its stockholders. Furthermore, if the company fails to maintain its qualification as a REIT, it no longer would be required to distribute substantially all of its net taxable income to its stockholders. In addition, unless the company was eligible for certain statutory relief provisions, it could not re-elect to qualify as a REIT until the fifth calendar year following the year in which it failed to qualify.

***Complying with the REIT requirements may cause the company to forego and/or liquidate otherwise attractive investments.***

To qualify as a REIT, the company must ensure that it meets the REIT gross income tests annually. In addition, the company must ensure that, at the end of each calendar quarter, at least 75% of the value of its total assets consists of cash, cash items, government securities and qualified REIT real estate assets, including certain mortgage loans and certain kinds of mortgage-backed securities. The remainder of the company's investment in securities (other than government securities, securities of corporations that are treated as taxable REIT subsidiaries, or TRSs, and qualified REIT real estate assets) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer. In addition, in general, no more than 5% of the value of the company's assets (other than government securities and qualified real estate assets) can consist of the securities of any one issuer, and no more than 25% of the value of the company's total securities can be represented by securities of one or more TRSs. See U.S. Federal Income Tax Considerations Requirements for Qualification General Asset Tests. If the company fails to comply with these asset requirements at the end of any calendar quarter, it must correct the failure within 30 days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing its REIT qualification and suffering adverse tax consequences.

To meet these tests, the company may be required to take or forego taking actions that it would otherwise consider advantageous. For instance, in order to satisfy the gross income or asset tests applicable to REITs under the Code, the company may be required to forego investments that it otherwise would make. Furthermore, the company may be required to liquidate from its portfolio otherwise attractive investments. In addition, the company may be required to make distributions to stockholders at disadvantageous times or when the company does not have funds readily available for distribution. These actions could have the effect of reducing the company's income and amounts available for distribution to its stockholders and holders of operating partnership units. Thus, compliance with the REIT requirements may hinder the company's investment performance.

***The REIT distribution requirements could require the company to borrow funds during unfavorable market conditions or subject the company to tax, which would reduce the cash available for distribution to the company's stockholders.***

In order to qualify as a REIT, the company must distribute to its stockholders, on an annual basis, at least 90% of its REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. In addition, the company will be subject to U.S. federal income tax at regular corporate rates to the extent that it distributes less than 100% of its net taxable income, (including capital gains) and will be subject to a 4% nondeductible excise tax on the amount by which its distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. The company intends to distribute its net income to its stockholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax.

In addition, the company's taxable income may exceed its net income as determined by GAAP because, for example, realized capital losses will be deducted in determining the company's GAAP net income, but may not be deductible in computing the company's taxable income. In addition, the company may incur nondeductible capital expenditures or be required to make debt or amortization payments. As a result of the foregoing, the company may generate less cash flow than taxable income in a particular year and the company may incur U.S. federal income tax and the 4% nondeductible excise tax on that income if the company does not distribute such income to stockholders in that year. In that event, the company may be required to use cash reserves, incur debt or liquidate assets at rates or



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times that the company regards as unfavorable or make a taxable distribution of its shares in order to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax in that year.

***If the operating partnership is treated as a corporation for U.S. federal income tax purposes, the company will cease to qualify as a REIT.***

The company believes the operating partnership qualifies as a partnership for U.S. federal income tax purposes. Assuming that it qualifies as a partnership for U.S. federal income tax purposes, the operating partnership will not be subject to U.S. federal income tax on its income. Instead, each of its partners, including the company, is required to pay tax on its allocable share of the operating partnership's income. No assurance can be provided, however, that the IRS will not challenge the operating partnership's status as a partnership for U.S. federal income tax purposes, or that a court would not sustain such a challenge. If the IRS were successful in treating the operating partnership as a corporation for U.S. federal income tax purposes, the company would fail to meet the gross income tests and certain of the asset tests applicable to REITs and, therefore, cease to qualify as a REIT and the operating partnership would become subject to U.S. federal, state and local income tax. The payment by the operating partnership of income tax would reduce significantly the amount of cash available to the operating partnership to satisfy obligations to make principal and interest payments on its debt and to make distribution to its partners, including the company.

***Even if the company qualifies as a REIT, it may incur tax liabilities that reduce its cash flow.***

Even if the company qualifies for taxation as a REIT, it may be subject to certain U.S. federal, state and local taxes on its income and assets, including taxes on any undistributed income, taxes on income from some activities conducted as a result of a foreclosure, and state or local income, franchise, property and transfer taxes, including mortgage recording taxes. See U.S. Federal Income Tax Considerations Taxation of the Company Taxation of REITs in General. In addition, Empire State Realty Observatory TRS, LLC, a New York limited liability company, or Observatory TRS, Empire State Realty Holdings TRS, LLC, a Delaware limited liability company, or Holding TRS, and any other TRSs the company owns will be subject to U.S. federal, state and local corporate income taxes. In order to meet the REIT qualification requirements, or to avoid the imposition of a 100% tax that applies to certain gains derived by a REIT from sales of inventory or property held primarily for sale to customers in the ordinary course of business, the company will hold some of its assets through taxable C corporations, including TRSs. Any taxes paid by such subsidiary corporations would decrease the cash available for distribution to the company's stockholders.

***If the company is not able to lease the Empire State Building observatory to a TRS in a manner consistent with the ruling that the company has received from the IRS, or if the company is not able to maintain its broadcast licenses in a manner consistent with the ruling it has received from the IRS, it would be required to restructure its operations in a manner that could adversely affect the value of its stock.***

Rents from real property are generally not qualifying income for purposes of the REIT gross income tests if the rent is treated as related party rent. Related party rent generally includes (i) any rent paid by a corporation if the REIT (or any person who owns 10% or more of the stock of the REIT by value) directly or indirectly owns 10% or more of the stock of the corporation by vote or value and (ii) rent paid by a partnership if the REIT (or any person who owns 10% or more of the stock of the REIT by value) directly or indirectly owns an interest of 10% or more in the assets or net profits of the partnership. Under an exception to this rule, related party rent is treated as qualifying income for purposes of the REIT gross income tests if it is paid by a TRS of the REIT and (i) at least 90% of the leased space in the relevant property is rented to persons other than either TRSs or other related parties of the REIT, and (ii) the amounts paid to the REIT as rent from real property are substantially comparable to the rents paid by unrelated tenants of the REIT for comparable space.

Income from admissions to the Empire State Building observatory, and certain other income generated by the observatory, would not likely be qualifying income for purposes of the REIT gross income tests. The company will jointly elect with Observatory TRS, which is the current lessee and operator of the observatory and

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which will be wholly owned by the operating partnership following the completion of the IPO, for Observatory TRS to be treated as a TRS of the company for U.S. federal income tax purposes following the completion of the IPO. Observatory TRS will lease the Empire State Building observatory from the operating partnership pursuant to an existing lease that provides for fixed base rental payments and variable rental payments equal to certain percentages of Observatory TRS's gross receipts from the operation of the observatory. Given the unique nature of the real estate comprising the observatory, the company does not believe that there is any space in the Empire State Building or in the same geographic area as the Empire State Building that would likely be considered sufficiently comparable to the observatory for the purpose of applying the exception to related party rent described above. The company has received from the IRS a private letter ruling that the rent that the operating partnership will receive from Observatory TRS pursuant to the lease described above will be qualifying income for purposes of the REIT gross income tests.

In addition, following completion of the IPO, the operating partnership will acquire various license agreements (i) granting certain third party broadcasters the right to use space on the tower on the top of the Empire State Building for certain broadcasting and other communication purposes and (ii) granting certain third party vendors the right to operate concession stands in the observatory. The company has received from the IRS a private letter ruling that the license fees that the operating partnership will receive under the license agreements described above will be qualifying income for purposes of the REIT gross income tests.

The company is entitled to rely upon these private letter rulings only to the extent that it did not misstate or omit a material fact in the ruling request and that it continues to operate in accordance with the material facts described in such request, and no assurance can be given that the company will always be able to do so. If the company were not able to treat the rent that the operating partnership receives from Observatory TRS as qualifying income for purposes of the REIT gross income tests, the company would be required to restructure the manner in which it operates the observatory, which would likely require the company to cede operating control of the observatory by leasing the observatory to an affiliate or third party operator. If the company were not able to treat the license fees that the operating partnership will receive from the license agreements described above as qualifying income for purposes of the REIT gross income tests, the company would be required to enter into the license agreements described above through a TRS, which would cause the license fees to be subject to U.S. federal income tax and accordingly reduce the amount of the company's cash flow available to be distributed to its stockholders. In either case, if the company is not able to appropriately restructure its operations in a timely manner, it would likely realize significant income that does not qualify for the REIT gross income tests, which could cause the company to fail to qualify as a REIT.

***Although the company's use of TRSs may partially mitigate the impact of meeting certain requirements necessary to maintain its qualification as a REIT, there are limits on the company's ability to own TRSs, and a failure to comply with the limits would jeopardize the company's REIT qualification and may result in the application of a 100% excise tax.***

A REIT may own up to 100% of the stock of one or more TRSs. A TRS may hold assets and earn income that would not be qualifying assets or income if held or earned directly by a REIT. Both the subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 25% of the value of a REIT's assets may consist of securities of one or more TRSs. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. The rules also impose a 100% excise tax on certain transactions between a TRS and its parent REIT that are not conducted on an arm's-length basis.

The company will jointly elect with each of Observatory TRS and Holding TRS, which will be a newly formed Delaware limited liability company that will be wholly owned by the operating partnership following the completion of the consolidation, for each of Observatory TRS and Holding TRS to be treated as a TRS under the Code for U.S. federal income tax purposes following the completion of the consolidation. Observatory TRS,

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Holdings TRS, and any other TRSs that the company forms will pay U.S. federal, state and local income tax on their taxable income, and their after-tax net income will be available for distribution to the company but is not required to be distributed unless necessary to maintain the company's REIT qualification. Although the company will be monitoring the aggregate value of the securities of such TRSs and intends to conduct its affairs so that such securities will represent less than 25% of the value of its total assets, there can be no assurance that the company will be able to comply with the TRS limitation in all market conditions.

***Dividends payable by REITs have not qualified for the reduced tax rates applicable to dividend income from regular corporations in taxable years beginning before January 1, 2013, which could adversely affect the value of the company's Class A common stock if these tax rates are extended.***

For taxable years beginning prior to January 1, 2013, the maximum U.S. federal income tax rate for certain qualified dividends payable to U.S. stockholders that are individuals, trusts and estates is 15%. Dividends payable by REITs, however, are generally not eligible for the reduced rates and therefore may be subject to a 35% maximum U.S. federal income tax rate on ordinary income during this period. Absent legislative action, for taxable years beginning after December 31, 2012, all dividends payable to U.S. stockholders that are individuals, trusts and estates will be subject to a maximum U.S. federal income tax rate of 39.6%, regardless of whether the dividend is payable by a REIT. However, if legislation is passed extending the reduced tax rates in effect prior to 2013, the more favorable rates applicable to regular corporate dividends could cause investors who are individuals, trusts and estates to perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay dividends even though the reduced U.S. federal income tax rate applicable to dividend income from regular corporate dividends does not adversely affect the taxation of REITs or dividends paid by REITs. This could adversely affect the value of the shares of REITs, including the company's Class A common stock.

***Complying with REIT requirements may limit the company's ability to hedge effectively and may cause the company to incur tax liabilities.***

The REIT provisions of the Code may limit the company's ability to hedge its assets and operations. Under these provisions, any income that the company generates from transactions intended to hedge its interest rate risk will be excluded from gross income for purposes of the REIT 75% and 95% gross income tests if the instrument hedges interest rate risk on liabilities used to carry or acquire real estate assets, and such instrument is properly identified under applicable Treasury Regulations. Income from hedging transactions that do not meet these requirements will generally constitute non-qualifying income for purposes of both the REIT 75% and 95% gross income tests. See U.S. Federal Income Tax Considerations Requirements for Qualification Gross Income Tests and U.S. Federal Income Tax Considerations Requirements for Qualification Hedging Transactions. As a result of these rules, the company may have to limit its use of hedging techniques that might otherwise be advantageous or implement those hedges through a TRS. This could increase the cost of the company's hedging activities because the company's TRS would be subject to tax on gains or expose the company to greater risks associated with changes in interest rates than the company would otherwise want to bear. In addition, losses in the company's TRS will generally not provide any tax benefit, except for being carried forward against future taxable income in the TRS.

***The ability of the company's board of directors to revoke the company's REIT election without stockholder approval may cause adverse consequences to the company's stockholders.***

The company's charter provides that the board of directors may revoke or otherwise terminate the company's REIT election, without the approval of the company's stockholders, if the board determines that it is no longer in the company's best interest to continue to qualify as a REIT. If the company ceases to qualify as a REIT, it would become subject to U.S. federal income tax on its net taxable income and it generally would no longer be required to distribute any of its net taxable income to its stockholders, which may have adverse consequences on the company's total return to its stockholders.

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***Legislative or regulatory tax changes related to REITs could materially and adversely affect the company's business.***

At any time, the U.S. federal income tax laws or regulations governing REITs or the administrative interpretations of those laws or regulations may be changed, possibly with retroactive effect. The company cannot predict if or when any new U.S. federal income tax law, regulation or administrative interpretation, or any amendment to any existing U.S. federal income tax law, regulation or administrative interpretation, will be adopted, promulgated or become effective or whether any such law, regulation or interpretation may take effect retroactively. The company and its stockholders could be adversely affected by any such change in, or any new, U.S. federal income tax law, regulation or administrative interpretation.

***Your investment has various tax risks.***

Although provisions of the Code generally relevant to an investment in operating partnership units, Class A common stock or Class B common stock are described in U.S. Federal Income Tax Considerations, you should consult your tax advisor concerning the effects of U.S. federal, state, local and foreign tax laws to you with regard to an investment in operating partnership units, Class A common stock or Class B common stock.

***The company may inherit tax liabilities from the entities to be merged into the company or its subsidiaries in the consolidation.***

Pursuant to the consolidation, Malkin Properties of Connecticut, Inc., a Connecticut corporation, or Malkin Properties CT, and Malkin Construction Corp., a Connecticut corporation, or Malkin Construction, will merge with and into a subsidiary of the company, with the subsidiary surviving, in a transaction that is intended to be treated as a reorganization under the Code. Each of Malkin Properties CT and Malkin Construction has elected to be treated as an S Corporation for U.S. federal income tax purposes under Section 1361 of the Code. If either of Malkin Properties CT or Malkin Construction failed to qualify as an S corporation, the company could assume material U.S. federal income tax liabilities in connection with the consolidation and/or may be subject to certain other adverse tax consequences. In addition, to qualify as a REIT under these circumstances, the company would be required to distribute, prior to the close of its first taxable year in which it elected to be taxed as a REIT under the Code, any earnings and profits of these entities to which the company is deemed to succeed. No rulings from the IRS will be requested and no opinions of counsel will be rendered regarding the U.S. federal income tax treatment of any of Malkin Properties CT or Malkin Construction. Accordingly, no assurance can be given that Malkin Properties CT or Malkin Construction has qualified as an S corporation for U.S. federal income tax purposes, or that these entities do not have any other tax liabilities. In addition, the supervisor will merge with a subsidiary of the operating partnership in the consolidation, and as a result, the company may inherit any liabilities, including any tax liabilities, of the supervisor.

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**FORWARD-LOOKING STATEMENTS**

This prospectus/consent solicitation contains forward-looking statements. In particular, statements pertaining to the company's and the subject LLCs' capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, the company's unaudited pro forma financial statements and all the company's statements regarding anticipated growth in the company'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, preli approximately, intends, plans, pro forma, estimates, contemplates, aims, continues, would or anticipates or the negative of the 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 company and the supervisor do not guarantee that the transactions and events described will happen as described (or that they will happen at all). The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

the factors included in this prospectus/consent solicitation, including those set forth under the headings Risk Factors, Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust and The Company Business and Properties;

the effect of the credit crisis on general economic, business and financial conditions, and changes in the company's industry and changes in the real estate markets in particular, either nationally or in Manhattan or the greater New York metropolitan area;

resolution of the class action lawsuits;

the value of the operating partnership units and shares of common stock that you will receive in the consolidation;

reduced demand for office or retail space;

use of proceeds of the IPO;

general volatility of the capital and credit markets;

the market price of the operating partnership units and the company's Class A common stock issued to participants in the subject LLCs, including the amount of the discount of enterprise value to exchange value;

changes in the company's business strategy;

defaults on, early terminations of or non-renewal of leases by tenants;

bankruptcy or insolvency of a major tenant or a significant number of smaller tenants;

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fluctuations in interest rates and increased operating costs;

declining real estate valuations and impairment charges;

availability, terms and deployment of capital;

the company's failure to obtain necessary outside financing, including the company's expected new secured revolving and term credit facility;

the company's expected leverage;

decreased rental rates or increased vacancy rates;

the company's failure to generate sufficient cash flows to service its outstanding indebtedness;

the company's failure to redevelop, renovate and reposition properties successfully or on the anticipated timeline or at the anticipated costs;

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difficulties in identifying properties to acquire and completing acquisitions, including potentially the option properties described in this prospectus/consent solicitation;

risks of real estate acquisitions, dispositions and development (including the company's Metro Tower development site), including the cost of construction delays and cost overruns;

the company's failure to operate acquired properties and operations successfully;

the company's projected operating results;

the company's ability to manage its growth effectively;

estimates relating to the company's ability to make distributions to its stockholders in the future;

impact of changes in governmental regulations, tax law and rates and similar matters;

the failure of the operating partnership to maintain its status as a partnership for U.S. federal income tax purposes;

the company's failure to qualify as a REIT;

future terrorist events in the U.S.;

environmental uncertainties and risks related to adverse weather conditions and natural disasters;

lack or insufficient amounts of insurance;

financial market fluctuations;

availability of and the company's ability to attract and retain qualified personnel;

conflicts of interest with the company's senior management team;

the company's understanding of its competition;

changes in real estate and zoning laws and increases in real property tax rates and

the company's ability to comply with the laws, rules and regulations applicable to companies and, in particular, public companies. While forward-looking statements reflect the company's or the supervisor's, as applicable, good faith beliefs, they are not guarantees of future performance. The company and the supervisor disclaim any obligation publicly to 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 company's future results, performance or transactions, see the section above entitled "Risk Factors." You should not place undue reliance on any forward-looking statements, which are based only on information currently available to the company (or to third parties making the forward-looking statements).



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**BACKGROUND OF AND REASONS FOR THE CONSOLIDATION**

**Background of the Subject LLCs**

The three subject LLCs are publicly-registered limited liability companies originally formed as partnerships by principals of the supervisor from 1953 to 1961. The principals of the supervisor during this period consisted of Lawrence A. Wien, until his death in 1988 and, beginning in 1958, Mr. Wien's son-in-law Peter L. Malkin. Anthony E. Malkin, Mr. Wien's grandson, joined his father Peter L. Malkin as a principal in 1989. In exercising control, Peter L. Malkin and Anthony E. Malkin have been, and continue to be, subject to fiduciary duties owed to multiple sets of equity owners in each subject LLC and private entity. Each subject LLC was formed to acquire the fee title or long-term ground lease interest in an office property located in Manhattan and to lease the property to an operating lessee, which operates the property. The private entities, including the operating lessees were formed between 1953 and 2008 and own office properties, retail properties and, in one case, fully entitled land including a development site, in Manhattan and the greater New York metropolitan area. The supervisor and the Malkin Family provide supervisory and other services for each subject LLC, each operating lessee and the other private entities.

As lessor, each subject LLC receives from its operating lessee fixed basic rent (and, in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., primary additional rent), overage rent (equal to 50% of the operating lessee's net operating profit). In the case of Empire State Building Associates L.L.C., net operating profit is calculated as net operating profits in excess of \$1,000,000 per annum, which amount is retained by Empire State Building Company L.L.C., and in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., net operating profit is calculated as net operating profits in excess of \$1,053,800 per annum and \$752,000 per annum, respectively, of primary additional rent, which is paid by the operating lessee to the applicable subject LLC to the extent of net profits. Such amounts represent approximately 2.78%, 4.35% and 10.59%, respectively, of the original purchase price of each of the Empire State Building, One Grand Central Place and 250 West 57<sup>th</sup> Street. Each operating lessee was formed initially as a partnership, the partners of which included Lawrence A. Wien and Harry B. Helmsley, and later converted to a limited liability company. Under the operating lease, the subject LLC, as lessor, has no right to operate the property. The operating lessee does not require any approval from the subject LLC for any operating decision. As such, the operating lessee makes all decisions relating to the operations of the property, including decisions as to leasing the property and selection of tenants and timing of leasing; what repairs to make, how much to spend on them and how to maintain the property (consistent with its obligation to repair, maintain and replace the property, subject to the lessor's consent for certain alterations which must be reasonably given); whether to hire property management and leasing agents or to handle such work internally; how to use the cash flow from the property; whether to seek financing for major expenditures; and whether to use cash flow for property-related expenses or to establish reserves. Each subject LLC has the right to approve a sale or mortgage of the entire property. The control by the operating lessee affects the cash returns to a subject LLC above basic rent (and, in the case of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., primary additional rent) because, under the lease, the subject LLC and operating lessee have a 50/50 split of net operating profit above such specified amount.

A subject LLC, as lessor, cannot decide whether to take steps to maximize the value of the property or to undertake improvements or repairs and maintenance. A subject LLC, as lessor, also cannot determine to obtain additional financing to maximize cash flows and therefore distributions unless the operating lessee also agrees to the financing, because, in view of the operating lessee's rights under the operating lease, lenders generally could be expected to require in connection with any significant financing that the operating lessee subordinate its interest to the financing. A subject LLC, as lessor, has the right to sell its fee interest in the property without the operating lessee's consent. While the operating lessee does not have a contractual right to approve a sale of the property by the subject LLC, any property sale not agreed to by the operating lessee necessarily will be subject to the operating lease. The supervisor believes this limitation reduces the value of the subject LLCs unless sold with the operating lease position.

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The supervisor, which is related to the principals who formed the subject LLCs, was appointed as the supervisor of the subject LLCs pursuant to the original partnership agreements of each of the subject LLCs and is the only party which has performed, and is authorized to perform, this role under the subject LLCs' organizational documents. The members of the supervisor are Peter L. Malkin, Anthony E. Malkin, direct descendants of Peter L. Malkin, and trusts and entities, the beneficiaries and owners of which are Peter L. Malkin, his descendants and their spouses and, Thomas N. Keltner, Jr. The subject LLCs were originally established as general partnerships with no managing general partner or managing member and the supervisor is responsible for the operations and administrative functions on behalf of the subject LLCs. The supervisor, in its capacity as supervisor of each of the subject LLCs, provides all administrative and oversight services, such as maintaining the entity's records, including those related to participants, performing physical inspections of the property, providing or coordinating certain counsel services to the subject LLC, reviewing insurance coverage, arranging for financing, conducting annual supervisory review meetings, payment of monthly and additional distributions to the participants, payment of all other disbursements including real estate taxes, review of operations of the properties by the operating lessee, preparation and filing of tax returns, preparation of financial statements of the subject LLC and preparation of quarterly, annual and other periodic filings with the SEC and applicable state authorities and distribution of tax information and other information to the participants. The supervisor performs all of these services itself. In exchange for such services, the supervisor has received supervisory fees as described in the section entitled "Distributions and Compensation Paid to the Supervisor and its Affiliates" Compensation, Reimbursement and Distributions to the Supervisor and its Affiliates" in the supplement for each subject LLC. The supervisor currently receives supervisory fees at the rate of \$761,888, \$189,158, and \$107,190, per annum, from each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates, L.L.C., and 250 West 57th St. Associates, L.L.C., respectively, for such services, in addition to compensation at an hourly rate for special supervisory services. During 2011, the supervisor billed fees for special supervisory services (primarily relating to legal and accounting services) as follows: \$1,094,938 to Empire State Building Associates L.L.C. (\$93,693 regarding mortgage financing and \$1,001,245 regarding the proposed consolidation and IPO), \$228,603 to 60 East 42nd St. Associates L.L.C. (all regarding the proposed consolidation and IPO) and \$109,560 to 250 West 57th St. Associates L.L.C. (all regarding the proposed consolidation and IPO). The fees for basic and special supervisory services expected to be received over the 10 years ended 2020 were taken into account in determining the exchange value of the management companies. The fees for special supervisory services in connection with the consolidation and IPO were not included in determining the exchange value of the management companies. The supervisor also serves as supervisor of the private entities and in that capacity, in addition to providing the administrative functions similar to those it provides to the subject LLCs, it supervises all aspects of property operations, leasing, reporting and financing. The supervisor's supervisory services on behalf of the subject LLCs and the operating lessees are interrelated, as they have been since inception. The supervisor owes a fiduciary duty to the subject LLCs.

Principals of the supervisor have been partners, members or agents in the operating lessees from the origination of these entities, and in its capacity as supervisor of the operating lessees, the supervisor oversees the day-to-day operations of the operating lessees and the properties.

Each of the agents is a member of the subject LLCs with the right to approve actions requiring the consent of members of the subject LLCs, subject to approval of certain significant actions by participants to the extent required under the participating agreements and as described in the next paragraph and under "Comparison of Ownership of Participation Interests, Operating Partnership Units and Shares of Common Stock" Voting Rights. The agents, in their capacities as agents, have no economic interest in the subject LLCs. From inception, the agents have been persons who have been principals of, or are related to principals of, the supervisor. The supervisor has played the central role in administering the subject LLCs and the agents' role has been primarily performing ministerial functions and consenting to matters proposed by the supervisor for which the participants have given any required consent. The agents have a duty to comply with the participating agreements and the organizational documents of the subject LLCs and owe a fiduciary duty to the participants in their participation groups.

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The participants are divided into participating groups and the participants in each participating group have been granted participations in the membership interest of one of the agents. Under the participating agreements, the agent has the right to take all actions with respect to its membership interest, except for certain significant actions, such as sales, financings and amendment to the operating lease, that require the consent of the participants. For a more detailed list of such actions requiring consent of the participants, see Comparison of Ownership of Participation Interests, Operating Partnership Units and Shares of Common Stock Voting Rights. The agents distribute all amounts received by them to the participants in their participating group, pro rata in proportion to their participation interests.

The Malkin Holdings group and the Helmsley estate own, on an aggregate basis, the following interests in each of the subject LLCs, each of the operating lessees and the private entities (other than the operating lessees), as a group, based on exchange values and percentage of aggregate exchange value for the applicable entity:

Entity	Malkin Holdings group		Helmsley estate	
	Exchange Value	Percentage	Exchange Value	Percentage
<b>Empire State Building Associates L.L.C.</b>				
As holders of participation interests <sup>(1)</sup>	\$ 74,481,907	6.29%	\$ 971,410	0.08%
Override Interests <sup>(2)</sup>	\$ 108,143,382	9.14%		
<b>Total</b>	<b>\$ 182,625,289</b>	<b>15.43%</b>	<b>\$ 971,410</b>	<b>0.08%</b>
<b>60 East 42<sup>nd</sup> St. Associates L.L.C.</b>				
As holders of participation interests <sup>(3)</sup>	\$ 22,600,706	7.22%	\$ 1,207,974	0.39%
Override Interests <sup>(2)</sup>	\$ 31,208,953	9.97%		
<b>Total</b>	<b>\$ 53,809,659</b>	<b>17.19%</b>	<b>\$ 1,207,974</b>	<b>0.39%</b>
<b>250 West 57<sup>th</sup> St. Associates L.L.C.</b>				
As holders of participation interests	\$ 10,933,720	6.71%	\$ 452,957	0.28%
Override Interests <sup>(2)</sup>	\$ 12,207,951	7.49%		
<b>Total</b>	<b>\$ 23,141,671</b>	<b>14.19%</b>	<b>\$ 452,957</b>	<b>0.28%</b>
<b>Empire State Building Company L.L.C.</b>				
As holders of participation interests <sup>(4)</sup>	\$ 24,724,899	2.13%	\$ 740,862,007	63.75%
Override Interests <sup>(2)</sup>	\$ 52,889,643	4.55%		
<b>Total</b>	<b>\$ 77,614,543</b>	<b>6.68%</b>	<b>\$ 740,862,007</b>	<b>63.75%</b>
<b>Lincoln Building Associates L.L.C.</b>				
As holders of participation interests <sup>(5)</sup>	\$ 19,979,144	6.75%	\$ 79,916,576	27.00%
Override Interests <sup>(2)</sup>	\$ 29,598,732	10.0%		
<b>Total</b>	<b>\$ 49,577,876</b>	<b>16.75%</b>	<b>\$ 79,916,576</b>	<b>27.00%</b>
<b>Fisk Building Associates L.L.C.</b>				
As holders of participation interests	\$ 18,354,490	12.14%	\$ 47,611,871	31.50%
Override Interests <sup>(2)</sup>	\$ 31,851,768	21.07%		
<b>Total</b>	<b>\$ 50,206,258</b>	<b>33.22%</b>	<b>\$ 47,611,871</b>	<b>31.50%</b>
<b>Other Private Entities</b>				
As holders of participation interests <sup>(6)</sup>	\$ 239,052,294	26.65%	\$ 157,600,323	17.57%
Override Interests <sup>(2)</sup>	\$ 38,451,943	4.29%		
<b>Total</b>	<b>\$ 277,504,237</b>	<b>30.94%</b>	<b>\$ 157,600,323</b>	<b>17.57%</b>

- (1) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 0.15% of the participation interests of Empire State Building Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange

value of \$1,619,017.

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- (2) The percentage determined is based on the percentage of distributions that will be received based on the exchange values, which were determined as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values. In the case of Empire State Building Associates L.L.C. and 250 West 57th St. Associates L.L.C., the override interests included in the table represent a voluntary capital override, which was voluntarily agreed to by certain participants.
- (3) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 0.14% of the participation interests of 60 East 42<sup>nd</sup> St. Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$402,658.
- (4) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group either acts as agent for a participating group that owns the economic interests in the participation interests or is the general partner of a partnership that owns participation interests. In either case, the member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 23.75% of the participation interests of Empire State Building Company L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$180,266,284.
- (5) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group is the trustee of a trust that owns participation interests. The member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. These participation interests represent 5.0% of the participation interests of Lincoln Building Associates L.L.C. The economic interests in such participation interests are held by unaffiliated third parties and have an exchange value of \$13,319,429.
- (6) Does not include participation interests in which the Malkin Holdings group controls the vote, but does not have an economic interest. A member of the Malkin Holdings group either acts as agent for a participating group that owns the economic interests in the participation interests, is the general partner of a partnership that owns participation interests or is the trustee of a trust that owns participation interests in certain of the subject LLCs and private entities. In either case, the member of the Malkin Holdings group does not require the consent of the participants/partners to give its consent with respect to such participation interests. With respect to the other private entities, a member of the Malkin Holdings group serves as trustee for a trust that holds participation interests in one of the other private entities. These participation interests represent 1.1% of the participation interests in such private entity. The economic interests in such participation interests are held by unaffiliated third parties and have an aggregate exchange value of \$1,586,319.

The table below sets forth certain information concerning the original participants in the subject LLCs:

LLC	Entity Formed (Month/Year)	Total Capital Raised <sup>(1)</sup>	Date of Last Admission of Original Participants (Month/Year) <sup>(2)</sup>	Aggregate Distributions Through September 30, 2012	Aggregate Distributions per \$10,000 Original Investment September 30, 2012
60 East 42nd St. Associates L.L.C.	September 1958	\$ 7,000,000	September 1958	\$ 173,538,288	\$ 247,912
Empire State Building Associates L.L.C.	July 1961	\$ 33,000,000	January 1962	\$ 477,246,462	\$ 144,620
250 West 57th St. Associates L.L.C.	May 1953	\$ 3,600,000	September 1953	\$ 86,143,181	\$ 239,287

(1) All of the net proceeds from the original offerings of participation interests have been invested as planned.

(2) In 1954, the agents for the original participants acquired interests in One Grand Central Place as tenants-in-common for the benefit of the participants and the form of ownership was changed to ownership through a partnership in 1958.

The Manhattan office properties that will be included in the initial portfolio were acquired between 1950 and 1979 through the business ventures of Lawrence A. Wien in partnership with Harry B. Helmsley, and later with his son-in-law and the company's Chairman Emeritus Peter L. Malkin. Three properties, the Empire State Building, One Grand Central Place and 250 West 57th Street, were acquired by the subject LLCs from 1953 to 1961, following earlier transactions on structures developed by Lawrence A. Wien, which are credited as the first flow-through tax treatment real estate syndications ever conducted, including other Manhattan office properties, 1333 Broadway, 1350 Broadway, 1359 Broadway and 501 Seventh Avenue, which were acquired by the private entities from 1950 to 1979. With respect to the Manhattan office properties, Lawrence A. Wien and Peter L. Malkin were responsible for the syndication of the transactions, and Harry B. Helmsley was responsible for the identification of opportunities and the management and leasing of the properties once purchased. The principals of the supervisor during this period consisted of Lawrence A. Wien, until his death in 1988 and,

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beginning in 1958, Peter L. Malkin. Anthony E. Malkin joined Peter L. Malkin as a principal in 1989. All of the standalone retail assets and most of the Fairfield County and Westchester County office properties that will be included in the initial portfolio were acquired from 1989 to 2006 under the direction of Anthony E. Malkin.

The supervisor historically provided asset management services for most of the properties. The Manhattan office properties were managed, subject to the supervision of the supervisor, by the former property manager and leasing agent until 2002, in the case of One Grand Central Place, 250 West 57th Street and 501 Seventh Avenue; 2003, in the case of 1359 Broadway; and 2006, in the case of the Empire State Building, 1350 Broadway, 1333 Broadway and the option properties.

Over time, the supervisor observed and objected to a deterioration in the property management and leasing services provided by the former property manager and leasing agent to the properties owned by the subject LLCs and the other properties in which the supervisor and the Helmsley estate owned interests, which are referred to herein as the Manhattan office properties, resulting in deferred maintenance, reduced occupancy and/or rents and reduced tenant quality. The supervisor brought legal action to remove the former property manager and leasing agent as property manager and leasing agent of the properties owned by the subject LLCs (after it was sold by entities controlled by Leona M. Helmsley) of these properties both for cause and based on contractual removal rights. The resolutions of the ensuing arbitrations and litigations resulted in a gradual transfer of day-to-day management away from the former property manager and leasing agent beginning in 2002 and were fully settled in 2006. Upon such transfer, the supervisor conceived and designed a renovation and repositioning program for the Manhattan office properties, and a majority of the work on such program has taken place since 2008. The supervisor has overseen the engagement of third-party property management and leasing agents for these properties, and eventually the transformation of the Empire State Building to a self-managed structure, retaining a third party agent only for leasing.

Separately, entities organized and supervised by the supervisor acquired certain office, city-center retail and multi-family residential properties outside of Manhattan and organized and manage mezzanine and industrial funds, which other than the greater New York metropolitan area properties, will not be part of the portfolio upon completion of the consolidation. It developed and implemented a branding strategy for brokers and tenants for this portfolio. The branded portfolio provides tenants with a consistently high quality level of services, installations, maintenance and amenities and has built strong relationships with the broker community.

As the former property manager and leasing agent legal proceedings progressed and were resolved, the supervisor conceived, planned and executed a comprehensive program to renovate and improve the Manhattan office properties in the portfolio with a combination of operating cash flow and debt financing. The improvements included restored and improved or new lobbies; elevator modernization; common hallway upgrades; bathroom renovations; roof and façade restorations; new windows; and building-wide systems upgrades. As each property renovation was put in place, the supervisor established its brand by deploying the same branding strategy with tenants and brokers as had succeeded with the office and retail properties in Fairfield County, Connecticut and Westchester County, New York.

### **Investment Objectives of the Subject LLCs**

The investment objective of each subject LLC was to acquire and hold for the long term the fee or master lease interest in the property it now owns and for which it receives rental income. The supervisor believes that the investment objectives of the subject LLCs have been met. The offering documents for each subject LLC's interests did not describe an exit strategy for the subject LLCs. The supervisor does not believe that a transfer of the subject LLC's property interest in an individual sale would be in the best interest of the subject LLC, because it believes a buyer would discount substantially the value of the subject LLC's interest if sold without the operating lessee in view of these factors:

- (a) The subject LLC has no say in property operations, improvements, leasing, repairs, maintenance or the other decisions which govern operation of real estate;

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- (b) The operating lessee controls the application of property cash flow and thus the amount of overage rent payable each year to such buyer;
- (c) A subject LLC cannot decide whether to take steps to maximize the value of the property or to undertake improvements or repairs and maintenance;
- (d) A subject LLC also cannot determine to obtain additional financing to maximize cash flows and therefore distributions unless the operating lessee also agrees to the financing, because, in view of the operating lessee's rights under the operating lease, lenders generally could be expected to require in connection with any significant financing that the operating lessee subordinate its interest to the financing and
- (e) The operating lease remains in effect in each case for a term, including agreed renewals, which currently ranges from 74 to 91 years, and the operating lease is likely to be required to be extended in order to obtain the operating lessee's necessary cooperation for property improvements and financing as noted above.

Accordingly, the supervisor does not believe that original investors in the subject LLCs contemplated that the subject LLCs would sell the property without an agreement of the operating lessee to join in the sale. There is no precedent for the supervisor submitting for consent for a sale of a two-tier ownership structure unless the sale included both the lessor and the operating lessee. Since the operating lease does not address the allocation of sales proceeds between the subject LLC and the operating lessee or give the subject LLC the right to require the operating lessee to join in a sale, any sale of the property in a single transaction, free and clear of the operating lease, requires an agreement between the subject LLC and the operating lessee, including provision for the allocation of sale proceeds. In cases where similar positions have been sold in the past, the supervisor has arranged for an independent valuation of the interests to be combined to provide for a fair division of sales proceeds.

The subject LLCs are authorized to sell their interests in the properties upon receiving in each case the required consent of the participants. In keeping with prior practice, the supervisor believes that to maximize the return on a sale, the operating lessee would be required to join in such sale. The supervisor has in the past concluded the sale of properties owned in two-tier structures similar to the properties owned by the subject LLCs, including the sale of three office properties in New York City in the past fifteen years, 200 Fifth Avenue (known as the International Toy Center), 498 Seventh Avenue and 500-512 Seventh Avenue. See Reports, Opinions and Appraisal Supervisor's Reasons for Representation as to 50/50 Allocation. In each instance those properties were sold in a sale of the property interests of both the lessor and the operating lessee. Proceeds to a subject LLC from such disposition must be distributed to the participants in the subject LLC according to the terms of the subject LLC's operating agreement. As noted above, in cases when there have been sales, the operating lessee has joined in the sale and the proceeds of the sale of the property have been allocated between the subject LLC and the operating lessee on such terms as have been recommended pursuant to an independent valuation and agreed to by the subject LLC and the operating lessee. While the net proceeds of a sale for cash generally have not been reinvested in other properties in investment programs the supervisor, Peter L. Malkin and Anthony E. Malkin have supervised, the subject LLCs could reinvest proceeds or invest in new properties. In a consent for refinancing in 2008, Empire State Building Associates L.L.C. participants consented to the supervisor using proceeds from a financing of up to 50% of Empire State Building Associates L.L.C.'s value to purchase another property.

Historically, in accordance with prior practice for investment programs organized by the supervisor, Peter L. Malkin and Anthony E. Malkin, net proceeds of a sale available for distribution have been distributed to the participants in accordance with each subject LLC's operating agreement. Each operating agreement provides that the subject LLC will continue until it has disposed of all its assets.

**Chronology of the Consolidation**

Initially, Lawrence A. Wien, then Lawrence A. Wien together with Peter L. Malkin, and subsequently Peter L. Malkin together with Anthony E. Malkin, maintained for more than 70 years an ongoing program of

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raising money from private investors to invest in real estate. Their affiliated entity, now named Malkin Holdings LLC, has always acted as supervisor of every investment they have originated, including the Manhattan portfolio of properties including the Manhattan office properties, which is referred to herein as the Manhattan Portfolio and the properties in the greater New York metropolitan area.

From time to time, for various reasons, the supervisor has pursued sales of properties in the Manhattan Portfolio where the supervisor believed a sale would produce a higher return than continuing to hold the property. Sometimes, sales were pursued because of a perceived property risk due to market conditions and disputes, but until recently, the supervisor did not believe that conditions favored either a sale or consolidation of the properties. See The Supervisor's Reasons for Proposing the Consolidation.

From the first settlement with the Helmsley estate in 1997 concerning the legal proceedings relating to the removal of the former property manager and leasing agent, relations between the supervisor and the Helmsley estate as the two major investors in certain properties in the Manhattan Portfolio, steadily improved. After the last properties involved in the resolution of disputes between Peter L. Malkin and the supervisor, on the one hand, and the former property manager and leasing agent, on the other, had completed transitioning their operation and leasing away from the former property manager and leasing agent to a new property manager and leasing agent, the supervisor considered options in the market, and the supervisor and the Helmsley estate consulted with each other concerning a possible sale of the Empire State Building. After the death of Leona Helmsley in August 2007, the supervisor briefly considered, and had discussions with representatives of the Helmsley estate concerning, the possible sale of the Empire State Building. It was ultimately decided that there was greater value for Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. in holding, improving, and repositioning the Empire State Building rather than selling the Empire State Building in its then-current condition. The property was not marketed and no proposals from potential purchasers were received.

In 2008, the supervisor solicited and received the consent of participants in Empire State Building Associates L.L.C. for mortgage financing, on the basis that the mortgage debt on the Empire State Building cannot exceed 50% of the appraised value of the property subject to the mortgage, and Peter L. Malkin and Anthony E. Malkin at their discretion can use the money towards certain investments for the account of Empire State Building Associates L.L.C., and no further action by the participants of Empire State Building Associates L.L.C. is required for them to act. At no time has Empire State Building Company L.L.C., the operating lessee, joined in any similar consent. For Empire State Building Company L.L.C. to take any such action will, like every other of its decisions, require the agreement of the Malkin Holdings group and whoever is the owner of the interest presently owned by the Helmsley estate. To date, the supervisor has not pursued any such investments.

On July 26, 2011, pursuant to such consent for financing property improvements, Empire State Building Associates L.L.C. entered into a three-year term loan, or secured term loan, under which the lenders provided it with an initial advance of \$159.0 million and, subject to conditions in the secured term loan agreement as amended, agreed to provide it with additional advances of up to \$141.0 million, of which \$60.0 million was subsequently advanced. The loan agreement was amended on October 11, 2012 to increase the aggregate commitments to \$500.0 million. A condition to the lenders' obligation to loan the additional amounts (in addition to the other conditions in the loan agreement) is that the loan-to-value ratio (as defined therein), based on an updated appraisal, does not then exceed 50%. This secured term loan, which had a balance of \$219.0 million as of September 30, 2012, will be repaid and retired using the secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates.

In 2008, the supervisor negotiated a potential joint venture with an institutional investor, which is a global financial services firm, with respect to the properties in the greater New York metropolitan area outside of Manhattan, but such venture was not concluded. The proposed transaction had been initiated by Anthony E. Malkin and substantially negotiated, but the institutional investor eventually determined not to proceed with transaction on the terms then offered.



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Beginning in 2008, Anthony E. Malkin and Peter L. Malkin began to consider transactions to address issues inherent in the structure of the subject LLCs and the private entities, including consent requirements, single-property entities, two-tier ownership, and lack of a trading market for participation interests, all of which impaired the efficient operation of the properties, the opportunity for liquidity and the realization of the full value of the participation interests which have been sought by numerous investors over time. In addition, Anthony E. Malkin and Peter L. Malkin considered the likely sale by Helmsley of its interests in the subject LLCs and the private entities, including the operating lessees of the subject LLCs, based on their understanding that the Helmsley estate was required to sell such interests to diversify their holdings under the will of Leona M. Helmsley. They considered that in the event of such a sale, the supervisor and the other participants in the subject LLCs and the private entities will not be able to influence or control the selection of the purchaser and that since an operating lessee controls the operations of its property, such purchaser may take actions which adversely affect the value and distributions for the Empire State Building Associates L.L.C. and its participants and could influence materially the activities in the other two subject LLCs.

In 2010, Anthony E. Malkin and Peter L. Malkin, as principals of the supervisor, met with the executors of the Helmsley estate, as a significant investor, to discuss the merits of a consolidation of several properties, including the subject LLCs, and a subsequent initial public offering of the consolidated entity.

Thereafter, Anthony E. Malkin and Peter L. Malkin, as principals of the supervisor, began to investigate the feasibility of such a consolidation and IPO. Over a period of about six months, the supervisor interviewed numerous candidates and ultimately retained selected firms as counsel, accountants, investment bankers and valuation firm, all to assist in the process of evaluating a consolidation and IPO and then implementing the transactions if the supervisor decided to pursue them.

In April 2010, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., general counsel and a member of the supervisor, on behalf of the supervisor, met with representatives of Proskauer Rose LLP concerning the firm's retention as counsel to represent the supervisor in its consideration of a consolidation and alternatives. They discussed the mechanics of the consolidation and Proskauer Rose LLP's experience. In April 2010, the supervisor retained Proskauer Rose LLP.

In May 2010, through various conference calls and meetings, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, and a representative of Skadden, Arps, Slate, Meagher & Flom LLP, or Skadden Arps, on behalf of the Helmsley estate, and a representative of Proskauer Rose LLP, on behalf of the supervisor, met with representatives of several investment banks to discuss the feasibility of a potential IPO of a REIT organized pursuant to the consolidation and their serving as lead book runners in connection with such an IPO. Following such meetings and conference calls, the supervisor in June, 2010, selected two leading investment banks to act as lead book runners for the potential IPO.

In June 2010, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, and a representative of Skadden Arps, on behalf of the Helmsley estate, and a representative of Proskauer Rose LLP, on behalf of the supervisor, met with representatives of Clifford Chance US LLP concerning the firm's retention as counsel to the company in connection with such a consolidation and IPO. They discussed the mechanics of the IPO and Clifford Chance US LLP's experience. In July 2010, the supervisor retained Clifford Chance US LLP as counsel to the company.

In June and July 2010, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, met with several independent registered public accountants concerning their retention as independent registered public accountants to audit the financial statements of the company. On August 2, 2010, the supervisor retained Ernst & Young LLP for the audit; and on August 17, 2010, the supervisor retained Ernst & Young LLP to assist with certain tax analysis.

During August and September 2010, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, and a representative of Skadden Arps, on behalf of the Helmsley estate, and a

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representative of Proskauer Rose LLP, on behalf of the supervisor, had several conference calls and meetings with representatives of several real estate valuation firms to discuss their retention to appraise the assets of the subject LLCs, the private entities and the management companies and to provide a fairness opinion. They discussed the firms' experience in connection with consolidations and the valuation process. After several meetings and conference calls, on September 27, 2010, the supervisor retained Duff & Phelps as independent valuer.

In November 2010, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, met with several firms concerning their retention to provide advisory and consulting services in connection with the solicitation process. On December 8, 2010, the supervisor retained MacKenzie Partners, Inc. to provide these services.

In January 2011, Anthony E. Malkin and Thomas N. Keltner, Jr., on behalf of the supervisor, met with several public relations firms concerning their retention. On February 18, 2011, the supervisor retained Sard Verbinnen & Co as public relations firm for the company.

Representatives of the supervisor met regularly (in person or via conference call) during the period commencing July 2010 with counsel for the supervisor and counsel for the company to discuss the terms of the consolidation and the IPO. These meetings generally took place weekly. Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr. generally participated in these meetings. These meetings included attorneys from Proskauer Rose LLP, and attorneys from Clifford Chance US LLP also participated in a substantial number of these meetings. At these meetings a variety of topics relating to the consolidation and the IPO were discussed and a substantial portion of the meetings was devoted to logistics of the consolidation and IPO. The principal topics discussed at these meetings included the following:

Commencing in September 2010, the structure of the transaction, including the separation of the transaction into a two-step transaction with the initial solicitation of the participants in the private entities in a transaction exempt from registration under the Securities Act by virtue of Regulation D and the solicitation of the participants in the subject LLCs after completion of the solicitation of the participants in the private entities.

Commencing in September 2010, the role of the Helmsley estate in the process.

Commencing in September 2010, the structure of the transaction as it relates to the terms of the cash election that was to be made available to participants, including the effect of transfer taxes and the granting of a cash election to the Helmsley estate to address the overhang resulting from the significant block held by the Helmsley estate and its desire to obtain liquidity to diversify its holdings.

Commencing in September 2010, which properties would be included in the consolidation and which properties would be excluded assets, the treatment of the option properties and the management arrangements with respect to the excluded properties and the option properties.

Commencing in September 2010, the process of valuing the assets to be included in the consolidation.

Commencing in September 2010, the capital structure, whether to borrow additional amounts prior to the IPO and whether to use IPO proceeds to repay debt.

Commencing in September 2010, the governance structure of the company, the terms of the lock-ups and registration rights, including addressing the structure to address the effect of the size of the Helmsley estate's interest and the Helmsley estate's desire to obtain liquidity to diversify its holdings.

Commencing in October 2010, the Registration Statements on Form S-4 and Form S-11.

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Commencing in January 2011, the terms of the options for the option properties.

Throughout the period, the terms of the consolidation and the IPO.

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Representatives of the supervisor also met (in person or via conference call) regularly during the period with representatives of the Helmsley estate. These meetings or conference calls generally took place weekly. Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr. generally participated in these meetings. A representative of Proskauer Rose LLP also participated in these meetings. The executors of the Helmsley estate and a representative of Skadden Arps, as well other representatives from time to time, generally participated in these meetings on behalf of the Helmsley estate. The topics covered in these meetings were similar to those covered in the meetings that the supervisor held with its counsel.

From time to time during the period from October 2010 to November 2011, some or all of Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr., as representatives of the supervisor, met in person or via conference call with representatives of the underwriters to discuss the terms of the IPO and the consolidation. At certain of these meetings, attorneys from Hogan Lovells US LLP, counsel to the underwriters, and attorneys from Proskauer Rose LLP and attorneys from Clifford Chance US LLP, were also present. These discussions included obtaining the underwriters' view of various business issues relating to the consolidation and IPO.

Representatives of the supervisor met in person or via conference call with the independent valuer from time to time during the period from April 2011 to November 2011 to discuss the Appraisal being prepared by the independent valuer and its methodology. The topics discussed at these meetings included the assumptions being used in the Appraisal, factual questions concerning the operations of the properties, factual questions concerning the assumptions, valuations of management companies and overrides.

The supervisor met in person or via conference call with representatives of Pearson Partners, Inc. and CB Richard Ellis, advisors to the Helmsley estate, from time to time during the period from April 2011 to November 2011. The topics discussed included review and discussion of the cash flow models for the properties, valuations and allocations provided by the independent valuer. These discussions included, among other things, discussions of the assumptions used in preparing cash flow models, valuations and allocations and comments concerning the factual basis for the Appraisal.

Following the delivery by the independent valuer of preliminary valuations to the supervisor in September 2011, representatives of the supervisor, including Anthony E. Malkin, John Hogg, Thomas P. Durels, Fred Posniak and Thomas N. Keltner, Jr., and representatives of Pearson Partners, Inc., an advisor to the Helmsley estate, also met in person and via conference call with the independent valuer from time to time during the period from September 20 through November 17 to review and discuss the preliminary valuations and allocations of consideration prepared by the independent valuer. These discussions included, among other things, discussions of the assumptions used in preparing the preliminary valuations and allocations, and comments concerning the factual basis for the Appraisal.

During the period from November 2010 through November 2011, the supervisor discussed the risk of third parties making offers to acquire interests of the subject LLCs, such as through partial tender offers, that could have the purpose and effect of blocking a subject LLC's participation in the consolidation. The supervisor determined at a meeting held in November 2011 to amend the limited liability company agreement of each of the subject LLCs to provide protections in the event of a third party acquisition of participation interests in the subject LLCs similar to that provided by shareholders' rights plans.

The supervisor during the period from March 2011 to November 2011 considered and determined to include in the consent solicitation to the subject LLCs and private entities a proposal to participants to authorize the supervisor to approve a portfolio transaction as a potential alternative to the consolidation. The supervisor during May 2011 met in person or via conference call with the lead book runners for the potential IPO to discuss the effect of this proposal on the IPO.

On November 5, 2010 and February 10, 2011, Anthony E. Malkin and Peter L. Malkin, as principals of the supervisor, reviewed and discussed each of the alternatives to the consolidation listed in the prospectus/consent solicitation under "Alternatives to the Consolidation". The alternatives were also discussed from time to time.

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as part of other discussions of the consolidation. During such discussion each of the alternatives described in the consent solicitation/prospectus was discussed, but none of such alternatives was considered to be preferable to the consolidation and IPO. Thomas N. Keltner, Jr. and Proskauer Rose LLP, counsel to the supervisor, also participated in the meetings.

On November 22, 2011, Anthony E. Malkin and Peter L. Malkin, principals of the supervisor, met in person or via conference call to discuss the consolidation. Thomas N. Keltner, Jr., representatives of Proskauer Rose LLP and representatives of the independent valuer also participated in the meeting. The representatives of the independent valuer described their preliminary valuation and their fairness analysis. The supervisor concluded that none of the alternatives was more beneficial to the participants than the consolidation and determined to pursue the consolidation.

In 2010 and in November 2011, Anthony E. Malkin and Peter L. Malkin also discussed the potential consolidation with Lester S. Morse, Jr., Douglas A. Morse and Mitchell J. Nelson, who are members of the Wien group, and Sanford Bluestein and Joan Konner, who are investors in Empire State Building Company L.L.C. The discussions were informal. In the discussions in 2010, Anthony E. Malkin and Peter L. Malkin informed them of the potential consolidation transaction, but did not discuss specific terms of the proposed transaction. The discussions in November 2011 preceded the mailing of the solicitation to the private investors and Messrs. Malkin provided details of the proposed consolidation transaction.

The supervisor commenced solicitation of consents of the participants in the private entities in November 2011. The solicitation was completed in January 2012, and contribution of the assets of each of the private entities to the company pursuant to the consolidation was approved by the required consent, if any, of participants in each of the private entities.

The supervisor in February 2012 determined to file with the SEC the Registration Statement on Form S-4 relating to the consolidation and the Registration Statement on Form S-11 relating to the IPO.

A purported class action litigation which is described under [The Company Business and Properties](#) [Legal Proceedings](#) was commenced in March 2012. Counsel for the supervisor met with counsel for the plaintiff class during the period from March 2012 to September 2012 to discuss the claims and address a settlement of the purported class action. A stipulation of settlement was entered into on September 28, 2012.

Richard Edelman and Steven Edelman have organized conference calls, organized volunteers and other persons that they have paid to call participants in the subject LLCs and established a website in opposition to the consolidation. In the course of their activities, they have suggested as alternatives to the consolidation that Empire State Building Associates L.L.C. should obtain financing to buyout the Helmsley Estate's interest and convert Empire State Building Associates L.L.C. to a stand-alone REIT or should create a new stand-alone REIT for the Empire State Building. The supervisor reviewed their proposals and, as described under [Alternatives to the Consolidation](#), believes that they are unrealistic proposals that could not be implemented. The supervisor repeatedly offered to meet with Steven Edelman, but he declined.

Based on statements it has heard and seen, and as reported to it by others, the supervisor also believes that Richard Edelman and Steven Edelman and certain of the persons paid and volunteering on their behalf have provided information that includes false and misleading statements. Beginning in July 2012, the supervisor delivered cease and desist notices (identifying in certain of such letters the specific statements considered to be false and misleading) to seek to prevent them from continuing to provide information which the supervisor believes to be false and misleading information to investors. The supervisor also asked that they preserve all information relating to this matter, which would include information as to who provided such information.

In addition, on October 22, 2012, representatives of Clifford Chance US LLP, Dewey Pegno & Kramarsky LLP, Proskauer Rose LLP, along with representatives of the supervisor met with Martin B. Cowan (accompanied

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by his attorney ), who was participating in the Edelmann communications and whose distribution analysis was included in their website and discussed during their conference calls. The supervisor discussed with him material error in his analysis and requested that he cease his participation in their communications.

The agents for the participating groups are principals of the supervisor, and in their capacity as principals of the supervisor, were actively involved in the discussions relating to, and the structuring of, the consolidation. They consented to the consolidation, subject to receiving the required participant consents.

The operating lessees do not have executive officers and are supervised by the supervisor. The principals of the supervisor were involved in the discussions relating to, and the structuring of, the consolidation.

Because of the Helmsley estate's significant ownership interest in certain of the private entities, including the operating lessees of the subject LLCs, representatives of the supervisor met with the Helmsley estate on a regular basis to discuss the consolidation, the treatment of the option properties and the proposal to authorize the supervisor to approve a portfolio sale transaction. The Helmsley estate participated in these meetings because of its significant membership interest in certain of the private entities, including the operating lessees of the subject LLCs, and the legal requirement for its consent to proceed with the consolidation. The Helmsley estate was not representing the interests of other participants.

### **The Supervisor's Reasons for Proposing the Consolidation**

The supervisor proposed the consolidation and recommends that you vote **FOR** the consolidation. Affiliates of the supervisor will receive substantial benefits from the consolidation and have conflicts of interest in making this recommendation. The supervisor believes that the consolidation of your subject LLC into the company is the best way for you to maximize the value of your investment in your subject LLC and to have the option to receive the benefit of increased liquidity through ownership of operating partnership units (which are exchangeable for Class A common stock or cash as described herein) and/or shares of Class A common stock, in each case, expected to be listed on the NYSE, which investors may sell from time to time as and when they so desire (subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation).

The supervisor believes the consolidation is the logical next step for the subject LLCs after the successful replacement of Helmsley-Spear, Inc., the former property manager and leasing agent, the creation of the renovation and repositioning turnaround program, the creation and implementation of the branding of the subject LLCs as part of a well regarded portfolio brand and improvement of the credit quality of tenants at the subject LLCs' properties.

Following the consolidation, certain executives of the supervisor will be members of the senior management team and Anthony E. Malkin, an executive and principal of the supervisor, will be Chairman, Chief Executive Officer, President and a director of the company. The supervisor is a recognized operator of office and retail properties in Manhattan and the greater New York metropolitan area and has developed a comprehensive knowledge of its markets that has been acquired through substantial experience. Additionally, at any point after the consolidation, the IPO and expiration of the lock-up described in the section entitled "The Consolidation Lock-Up Agreements," participants will have the ability to sell their shares of Class A common stock at the time of their choice on the NYSE without limitation or need for any additional action. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, which also are expected to be listed on the NYSE, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each

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subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

The Helmsley estate has expressed its intention that, if the consolidation and IPO do not occur, it will liquidate its interests in the private entities, including each of the operating lessees. The supervisor believes that such liquidation by the Helmsley estate is required pursuant to the specific terms of Leona Helmsley's will.

In the event of such a liquidation, the supervisor and the other participants in the subject LLCs and the private entities will not be able to influence or control the selection of the purchaser. Such purchaser would own the Helmsley estate's current position in the operating lessee of the Empire State Building, which would provide it with the ability to veto all decisions, and a large percentage of each of the other two operating lessees.

The Malkin Family and the Helmsley estate each effectively has an ability to veto actions by Empire State Building Company L.L.C., because under the operating agreement of Empire State Building Company L.L.C., full administrative and operational control of all matters connected with the business of Empire State Building Company L.L.C., including all matters connected with the operation, management, leasing, maintenance, repair and improvement of the Empire State Building, require the consent of 80% in interest of the participants in Empire State Building Company L.L.C. The Helmsley estate (or its successor) owns 63.75% of the participation interests while principals of the supervisor have the right to vote as to 23.75% of the participation interests. Because the consent of each of the supervisor and the Helmsley estate is needed for such actions, the potential for a stalemate is created. The Helmsley estate is required to sell its interests in the private entities, including the operating lessees of the subject LLCs, pursuant to the will of Leona M. Helmsley. As a result, the status quo, which consists of the current working arrangement between the supervisor and the Helmsley estate, will not continue and the supervisor and any transferee of the Helmsley estate's interest may not reach agreement on actions to be taken to operate the Empire State Building.

Since an operating lessee controls all aspects of the operations of its property, and that control allows it to make decisions that affect property performance and the availability of profits which are shared 50/50 with the subject LLCs, such purchaser may take actions which adversely affect the value and distributions for the Empire State Building Associates L.L.C. and its participants and could influence materially the activities in the other two subject LLCs.

The consolidation and IPO would permit the Helmsley estate to monetize a significant portion of its interests at the IPO price without creating such a potentially adverse event. Further, it would also provide a liquid trading market for the Helmsley estate to monetize the remainder of its interests in an efficient manner that will be transparent to the public markets.

The supervisor believes it is in the best interests of the participants and the company to provide to the Helmsley estate the right to receive an allocation of excess IPO proceeds in exchange for their interests in the private entities, to the extent available after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds. This would include proceeds from any upsized IPO and any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock.

The supervisor believes that, for the reasons described under "Alternatives to the Consolidation," the consolidation of the subject LLCs and the private entities is more beneficial than continuing to operate the subject LLCs and the private entities, seeking separately to sell the interests in the properties the subject LLCs own or other alternatives the supervisor considered. The supervisor also believes that the consolidation will eliminate inefficiencies resulting from the current owner-operating lessee structure of the properties and create a diversified investment for the participants. The inefficiencies include the additional costs resulting from separately maintaining the two entities, including SEC reporting, consents for financings, tax filings, maintenance of books and records and financial statements.

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The supervisor believes that the consolidation will provide you with the following benefits:

*Tax-Deferred Transaction.* The consolidation offers participants the opportunity to participate in a transaction expected to be tax-deferred for U.S. federal income tax purposes. These are the same terms as those offered to participants in the private entities that are accredited investors and to the Malkin Family. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation. Participants are urged to consult with their tax advisor as to the tax consequences of the consolidation in light of their particular circumstances.

*Liquidity.* The supervisor believes that the consolidation will provide you with increased liquidity. The market for the participation interests that participants own is very limited. The supervisor believes that this results from each participant's owning an interest in an entity that owns only an interest in a single property subject to an operating lease and because the participation interests are not listed on a national securities exchange. Therefore, there is only limited demand for the participation interests, and a potential buyer has only a limited basis upon which to value the participation interests. As a holder of a participation interest that has only a limited market, the pool of potential buyers for the participation interest is limited and, to the extent there is a willing buyer, the buyer likely would acquire the participation interest at a substantial discount. After the consolidation, participants will own operating partnership units and Class A common stock, which are expected to be listed on the NYSE, and therefore will be publicly valued and freely tradable. In addition, the consolidation offers participants that receive operating partnership units the opportunity, beginning 12 months after the completion of the IPO, to exchange their operating partnership units, for cash or, at the company's election, shares of Class A common stock. Participants will be able to achieve liquidity by selling all or part of their shares of Class A common stock, subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

*Risk Diversification.* The consolidation will result in a more diversified investment than your investment in your subject LLC. The company will own a large number of quality office and retail properties in the Manhattan and the greater New York metropolitan area and have much broader tenant diversification than your subject LLC, which owns an interest in a single property. This diversification will reduce the dependence of your investment upon the performance of, and the exposure to the risks associated with, the property interest your subject LLC owns, and allow for more stable cash flows for distributions. Your subject LLC owns an interest in a single property subject to a long term operating lease and does not participate in the operation of the property. Your subject LLC is exposed to all of the risks associated with ownership of an interest in a single property, including risks relating to loss of a significant tenant, adverse events that affect that property or the area where the property is located and casualties affecting that property.

*Regular Quarterly Cash Distributions.* Similar to the subject LLCs' present method of operation, the supervisor expects that the company and the operating partnership will make regular quarterly cash distributions on the operating partnership units and common stock, which will include distributions of at least 90% of the company's annual REIT taxable income (determined without regard to the dividends paid, and excluding net capital gains), which is required for REIT qualification. 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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The expected regular quarterly dividends to stockholders in the company will be based on the performance of a portfolio of properties rather than just one property and 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 the company's qualification as a REIT. The supervisor believes that participants have greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC from improved performance of the properties, potential growth from acquisitions and a better capital structure made possible by the combined balance sheet of all the properties. There is no assurance, however, that the company's dividends will increase over time or be greater than the historical distributions made to participants in a subject LLC.

*More Efficient Decision-Making.* Each subject LLC currently requires several internal procedural steps to undertake major transactions, which affects its ability to take timely advantage of favorable opportunities. Financing and sales require costly and time consuming steps to obtain consent of a very high percentage of the participants in a subject LLC.

*Improved Capital Structure by Eliminating Two-Tier Ownership.* Except for very small loans supported by basic rent, the relationship between the subject LLCs and the operating lessees requires that any additional financing placed on an entire property requires the agreement of both the operating lessee and the subject LLCs.

*Easier Access to Financing.* A subject LLC cannot require the operating lessee to obtain or utilize financing to maximize its cash flow and therefore overage rent available for additional distributions to participants in the subject LLCs. Each operating lessee controls all aspects of property operations, leasing, and investment and has broad discretion to use cash flow from the property for purposes related to the applicable property. Operating lessee decisions can result in little or no overage rent to the corresponding subject LLC, and additional distributions to the subject LLC's participants are contingent on overage rent.

*Eliminates Two-Tier Ownership Impact on Borrowing.* In the past, decisions by operating lessees have resulted in uneven payments of overage rent to the subject LLCs from year to year. Without the cooperation of the operating lessee, there is very limited opportunity for financing by the subject LLCs to provide funds for distributions. It is likely that any lender would require agreement of the operating lessee before making any loan to a subject LLC.

*Shared Motivations to Reinvest and Maintain Properties.* Additionally, the operating leases between the subject LLCs and the operating lessees do not address reinvestment by the operating lessees in capital improvements for the properties. To induce reinvestment by their operating lessees, two of the subject LLCs (60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C.) have agreed, in accordance with their participants' consent and the supervisor's recommendation, to extend the operating leases. These extensions have been coupled with consents by the operating lessees to allow financing on the entire property, which minimized the impact of reinvestment on operating profit and allowed for additional distributions from overage rent.

In connection with these extension and financing agreements, the basic rent has been increased by the amount of the increase in debt service arising from the financing, and such increase in basic rent is deducted in calculating overage rent, ultimately resulting in the debt service being shared 50/50 between each such subject LLC and its operating lessee. In the case of the Empire State Building, because of the pendency of this proposed consolidation, there has been no such lease extension request, though the operating lessee has consented to limited advances under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances. If the consolidation does not go forward, the operating lessee has indicated it will request additional lease extensions as a condition for subordination to additional mortgage advances at that time.

*Broader Markets for Property Sales.* Finally, as described under "The Supervisor's Reasons for Proposing the Consolidation," the supervisor believes that, unless the operating lessee joins with the corresponding subject LLC in a sale of the property, such a sale would not maximize the value of the such subject LLC's interests in the property.

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*Modern Governance Structure.* The company will have a modern governance structure. Capital reinvestment and financing decisions will be based on what is considered to be best for the company, and there will be no need to secure approvals of operating lessees or subject LLCs. Such decisions will be made under a corporate governance structure governed by a board of directors, with six of seven directors being independent.

*Quarterly Distributions of a Minimum of 90% of REIT Taxable Income.* The supervisor expects that the company and the operating partnership will make regular quarterly cash distributions on the operating partnership units and common stock, which will include distributions of at least a minimum of 90% of the company's annual REIT taxable income (determined without regard to the deduction for dividends paid, and excluding any net capital gains), as required for REIT qualification. REIT taxable income will be determined by the performance of the portfolio of the company's properties and unaffected by its stock price. Such distributions will be based on a portfolio of properties, rather than investors being dependent on a single property. The subject LLCs generally have been required to maintain property-level reserves to meet potential future expenditures, including those relating to repairs, maintenance and capital improvement, and such reserves generally have been, and in the future, if the consolidation is not consummated, are expected to be, required under the subject LLCs' loan agreements. The supervisor does not believe that property-level reserves will be required to be maintained by the company and, as a result, additional cash should be available to the company for distribution.

*Risk of Reduction in Distributions if Consolidation is Not Consummated.* Distributions from your subject LLC come from payments made by the operating lessee. Your operating lessee is required to pay a low basic rent to your subject LLC. Any payment you receive above that comes from the profits from your operating lessee's performance and comes in the form of payment of overage rent out of profits from the operating lessee's operations of the property. The operating lessee makes all decisions relating to the operations of the property.

Decisions over which the operating lessee has control which directly impact whether or not there is overage rent from which you may receive additional distributions include whether or not to lease, whether or not to improve the property, whether to use the cash flow from the property or to seek financing for capital expenditures, and whether to use cash flow for property-related expenses. From the overage rent which is paid, the supervisor maintains reserves for expenses. The balance, if any, is paid out as a distribution from overage rent. In recent years, overage rent has been made possible from time to time through the operating lessee working with your subject LLC to gain consents for financing, the operating lessee agreeing to borrow, and the proceeds of borrowing being used to pay for expenses rather than relying exclusively on cash flow from the property.

In the past, when the operating lessee for your subject LLC has not used financing, overage rent has decreased or ceased. If the operating lessee for your subject LLC exercises its right to use cash flow to fund future capital improvements, tenant installation costs, commissions and other expenses rather than to use financing, your distributions from overage rent may again decrease or cease. If the operating lessee for your subject LLC has a deadlock in operating decision-making, it may make decisions or take actions which meaningfully reduce the prospects of your subject LLC's receipt of overage rent in the future. In the case of the Empire State Building, because of the pendency of this proposed consolidation, Empire State Building Company, L.L.C., the operating lessee, has consented to advances of up to the current outstanding principal amount under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances, as required by the lender, without having requested an extension of the term of the operating lease beyond any extension provided for in the operating lease.

At the two other properties involved in this consent solicitation, 250 West 57th Street and One Grand Central Place, their improvement and financing programs were linked to extensions of their operating leases. If the consolidation does not go forward, it is possible that the operating lessee of the Empire State Building may not approve additional advances under the loan agreement unless Empire State Building Associates L.L.C. approves lease extensions, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures.

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Decisions as to whether to use cash flow or financing are made by the operating lessees from time to time and no decision has been made by any of the operating lessees involved in this consent. Any decision by the operating lessees for 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C. would require the consent of members of the Malkin Holdings group and/or the Helmsley estate or their successor in interest. Any decision by the operating lessee of the Empire State Building would require the consent of the members of both the Malkin Holdings group and the Helmsley estate or their successor in interest.

*Increased Accountability.* As a result of the governance structure of a company with Class A common stock and operating partnership units expected to be listed on the NYSE, stockholders will benefit from the oversight by a board of directors consisting predominantly of independent directors.

*Growth Potential.* The supervisor believes that there is greater potential for increased distributions and capital appreciation to you as a unitholder or stockholder than there would be for you as a participant in your subject LLC. This growth potential results from several factors:

The supervisor expects that the company will be able to realize future benefits from the existing portfolio of properties that have not yet been fully realized. These benefits include:

Continuing to lease at higher rents, since, as of September 30, 2012, the company had approximately 1.6 million rentable square feet of vacant office space and 91,872 rentable square feet of vacant retail space (in each case, excluding leases signed but not yet commenced) and leases representing 3.3% and 5.9% of the square footage of the properties in the company's portfolio will expire in the remainder of 2012 (including month-to-month leases) and in 2013, respectively;

Continuing the program of renovating and repositioning the properties, including energy efficiency retrofitting sustainability initiatives, from which the full benefits in enhanced market appeal and rental rates have not yet been fully realized, to create operating efficiencies and attract higher credit-quality tenants;

Implementing the branding strategy for a consolidated portfolio in Manhattan and the balance of the greater New York metropolitan area;

Developing the site at the Stamford Transportation Center which will support the development of an approximately 380,000 square foot office building and garage. This site is adjacent to the Metro Center property;

The supervisor believes that substantial opportunities will exist for the company to acquire additional properties which would be expected to be accretive in value to stockholders. As a result of the company's ability to use cash, common stock, operating partnership units or indebtedness to acquire additional properties, the company will have a greater degree of flexibility than the subject LLCs in making future acquisitions on advantageous economic terms. Participants in Empire State Building Associates L.L.C. have approved additional financing and consented to the supervisor using such financing for additional acquisitions, thus recognizing the benefits of additional investments. While participants in Empire State Building Associates L.L.C. could realize some of the benefit of growth through such investment, the supervisor believes that the consolidation is the best way for investors in the subject LLCs, including the Empire State Building, to realize this benefit;

The company also will be able to take advantage of its structure as an UPREIT, to acquire additional portfolios of properties by using operating partnership units as consideration. The use of operating partnership units enables the company to make acquisitions in a structure that permits the seller to defer the recognition of U.S. federal taxes due on the transfer, while providing the seller similar opportunities to participate in the company's growth as those stockholders have and

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The supervisor believes the company will have greater flexibility than the subject LLCs in obtaining financing, both to fund further property renovations and to fund acquisitions. The consolidation will result in increased flexibility in obtaining financing, including the ability to borrow on a portfolio basis, rather than just single asset borrowings.

*Greater and More Efficient Access to Capital.* The company will have a larger base of assets and the supervisor believes that it will have a greater variety of options and ability to access the capital markets and the built-up equity value in its base of assets than any of the subject LLCs individually. As a result, the company expects to have greater and more efficient access to the capital necessary to fund its operations, fund renovations to the properties and consummate acquisitions than would be available to any of the subject LLCs individually. The supervisor believes that it would be extremely difficult, for the subject LLCs to obtain similar access to capital due to their size and ownership structure. The company anticipates that it also will have greater flexibility in obtaining financing because financing could be obtained by the company on a portfolio-wide basis, and the company also could raise capital or obtain financing through the issuance of additional shares of common stock, preferred stock, operating partnership units or unsecured debt securities. If not consolidated, each subject LLC and private entity in need of capital individually would be required to obtain standalone financing, which could be less efficient and more expensive to obtain. This greater access to capital should provide greater financial stability to the company and provide funding for growth through future acquisitions.

*Elimination of Risk and Discount in Value from Subject LLCs – Passive Ownership of the Property Interests.* Each subject LLC owns an interest in a single property subject to an operating lease, the operating lessee operates the property and the subject LLC does not participate in the operations. The market for the interest held by each subject LLC is smaller than that for, and the subject LLC's interests are less valuable than the entire property, and the operating lessee already has agreed to participate in the consolidation. Following the consolidation, ownership and operation of the properties owned by the subject LLCs and the private entities will be integrated.

*Valuable Synergies.* The subject LLCs presently benefit from being part of a common brand awareness with a portfolio of properties. However, under the current structure, there are major obstacles to obtaining true synergies and realization of value, such as combining financings, movements of tenants from one building to another, sharing of employees and management and oversight. The consolidation will remove such obstacles and free up access to value creation.

*Position in Highly Desirable Marketplace.* The properties owned by the subject LLCs and the private entities are concentrated in Manhattan and the greater New York metropolitan area. The supervisor believes this is one of the most highly desired markets in the world for office and retail properties.

*Reduced Conflicts of Interest.* From inception, the supervisor has represented many different ownership interests, and the subject LLCs and the private entities, therefore, have been exposed to conflicts of interest. For example, the supervisor and persons associated with the supervisor act as an external manager for all of the entities (including the subject LLCs and the operating lessees), serve as agents for the participants in the subject LLCs and certain of the private entities, determine when to make recommendations on sales, financings and operations of the properties, and make or recommend all operating and leasing decisions in all operating entities and all decisions of the subject LLCs. Decisions made by the supervisor in its capacity as supervisor of the operating lessees with regard to property operations dictate the cash available for distribution to the subject LLCs, which are also supervised by the supervisor. The company, on the other hand, will be managed by its officers, subject to the direction and control of its board of directors, which will consist predominantly of independent directors, and all the properties will be owned directly or indirectly by a single entity, without a division of interests. There will not be separate interests of different groups of owners and there will not be a role for, or requirement of, an outside supervisor. Accordingly, the supervisor believes this consolidated structure eliminates the conflicts inherent in the structure which have been there from inception of the subject LLCs and the private entities and more closely aligns the interests among the stockholders and management. The persons

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engaged to manage the company will be employees of the company. They will not be employees of a separate management company whose activities could be determined by objectives and goals inconsistent with the company's financial objectives.

*Election to Receive Operating Partnership Units, Class A Common Stock and/or Class B Common Stock.* Each participant in a subject LLC will have the option to receive operating partnership units in a transaction expected to be tax-deferred for U.S. federal income tax purposes. Each participant will receive operating partnership units, unless such participant elects to receive shares of Class A common stock or, to a limited extent, Class B common stock. Each participant may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The Malkin Holdings group will receive its consideration as follows: 97.00% in operating partnership units, 1.03% in Class A common stock and 1.97% in Class B common stock. The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group) and in a separate series to the participants in the private entities receiving operating partnership units and the Wien group. Each series of operating partnership units will have identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership.

For all these reasons, the supervisor believes that the consolidation, rather than continuation of the subject LLCs or a sale of each interest in the property each subject LLC owns, will result a higher possible value for your investment for you and the other participants.

### **Alternatives to the Consolidation**

Before deciding to recommend the consolidation, the supervisor considered several alternatives in an effort to achieve maximum investor return and give a choice to participants. These alternatives were:

Sale by each subject LLC of its interests in its property, either individually or as part of third-party portfolio transaction, followed by a distribution of the net proceeds to its participants;

Continued management of the subject LLCs as currently structured;

Conversion of each subject LLC into a separate REIT;

Listing of each subject LLC's participation interests on a national securities exchange; or

Other means of producing liquidity for the participants, such as cash tender offers to acquire participation interests from participants or borrowing by the subject LLCs secured by its interests in its property to provide funds for distribution to participants.

Set forth below are the supervisor's conclusions regarding its belief that the consolidation is more beneficial to participants than the alternatives.

*Liquidation of the subject LLCs.* An alternative available to the supervisor is to proceed with a sale of the interest in the property each subject LLC owns separately and distribute the net proceeds to its participants and holders of override interests. Through these sales, participants investments in the subject LLCs would be concluded.

The supervisor believes that there would be advantages to a liquidation of the subject LLCs, including:

Liquidation provides participants liquidity from a sale of the interest in the property of the subject LLC. Participants would receive their share of the net proceeds obtained from a sale of the interest in the property of the participant's subject LLC;



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The amount that a participant would receive would not depend on the stock market's valuation of the company, but rather a participant's share of the consideration received from a sale of the interests in the property of the subject LLC and

Participants would avoid the risks of continued ownership in their subject LLC and ownership of common stock. The supervisor believes that there would be disadvantages to a liquidation of the subject LLCs, including:

The interest in the property owned by the subject LLC on its own may not create demand from investors, may not be attractive for financing for investors to acquire the property and has a higher risk profile than the interest in the property as a portfolio;

Participants would not participate in potential increases in value resulting from anticipated operating efficiencies, marketing efficiencies, capital market efficiencies and an improved governance structure;

Participants would not participate in potential increases in value resulting from (a) enhanced performance of the existing portfolio due to leasing available and expiring space at higher rents following the recent renovations and repositioning of the initial properties operated as a branded portfolio and (b) potential additional investments;

The combination of a subject LLC's interest with the operating lessee's interest as part of a larger portfolio of properties would provide greater value than selling that subject LLC's interest in its property separately. There is no precedent for the supervisor, which supervises both the subject LLCs and their operating lessees and has the authority to solicit consents in connection with the sale of any operating lessee, submitting for consent for a sale of a two-tier ownership structure unless the sale included both the lessor and the operating lessee. The supervisor believes that in view of fact that the subject LLCs own the interest in the property, but the operating lessees operate the properties, it would not be in the best interests of the subject LLCs to sell their interests in the properties separate from a sale by the operating lessees. The private entities (including the operating lessees), with the required consent of their participants have agreed to transfer their interests in the properties, including their interests in the operating lessees, as part of the consolidation and

Participants would lose benefits from the consolidation, such as:

The potential realization of value due to the factors described under The Supervisor's Reasons for Proposing the Consolidation and

Permitting participants who do not wish to liquidate their investment to continue to hold an investment managed by the principals of the supervisor until the participants determine that a sale of their investment is appropriate for their individual investment strategy.

*Continuation of the subject LLCs.* An alternative to the consolidation is to continue the current operations of the subject LLCs, the subject LLCs do not need to liquidate to satisfy debt obligations or other current liabilities or to avert defaults, foreclosures or other adverse business developments. The subject LLCs would remain separate legal entities with their own assets and liabilities, governed by their existing operating agreements.

The supervisor believes there would be advantages to the continued operation of the subject LLCs, including:

The participants would continue to receive regular monthly distributions from 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 subject LLCs eventually may sell their interests in the properties and distribute the net proceeds, although the supervisor does not believe that such a sale would optimize the value of the participants' participation interests;

Continuing a subject LLC without change avoids the risks related to the consolidation as described in this prospectus/consent solicitation and



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Each subject LLC would retain the individual benefits of ownership of its interest in its property, such as, in the case of the Empire State Building, sharing income from the observatory and broadcast antenna licenses.

The supervisor believes there would be disadvantages to the continued operation of the subject LLCs, including:

Illiquidity of participation interests on a current basis due to the lack of a large and established secondary market;

Difficulty in valuing the investment due to the limited secondary market for participation interests;

Risk of reduction in distributions if consolidation is not consummated. Distributions from your subject LLC come from payments made by the operating lessee. Your operating lessee is required to pay a low basic rent to your subject LLC. Any payment you receive above that comes from the profits from your operating lessee's performance and comes in the form of payment of overage rent out of profits from the operating lessee's operations of the property. The operating lessee makes all decisions relating to the operations of the property.

Decisions over which the operating lessee has control which directly impact whether or not there is overage rent from which you may receive additional distributions include whether or not to lease, whether or not to improve the property, whether to use the cash flow from the property or to seek financing for capital expenditures, and whether to use cash flow for property-related expenses. From the overage rent which is paid, the supervisor maintains reserves for expenses. The balance, if any, is paid out as a distribution from overage rent. In recent years, overage rent has been made possible from time to time through the operating lessee working with your subject LLC to gain consents for financing, the operating lessee agreeing to borrow, and the proceeds of borrowing being used to pay for expenses rather than relying exclusively on cash flow from the property.

In the past, when the operating lessee for your subject LLC has not used financing, overage rent has decreased or ceased. If the operating lessee for your subject LLC exercises its right to use cash flow to fund future capital improvements, tenant installation costs, commissions and other expenses rather than to use financing, your distributions from overage rent may again decrease or cease. If the operating lessee for your subject LLC has a deadlock in operating decision-making, it may make decisions or take actions which meaningfully reduce the prospects of your subject LLC's receipt of overage rent in the future. In the case of the Empire State Building, because of the pendency of this proposed consolidation, Empire State Building Company, L.L.C., the operating lessee, has consented to advances of up to the current outstanding principal amount under a property mortgage loan made to Empire State Building Associates L.L.C. and has subordinated the operating lease to such advances, as required by the lender, without having requested an extension of the term of the operating lease beyond any extension provided for in the operating lease.

At the two other properties involved in this consent solicitation, 250 West 57th Street and One Grand Central Place, their improvement and financing programs were linked to extensions of their operating leases. If the consolidation does not go forward, it is possible that the operating lessee of the Empire State Building may not approve additional advances under the loan agreement unless Empire State Building Associates L.L.C. approves lease extensions, in which case the operating lessee may use cash flow for expenditures to improve the building and conclude leases, resulting in immediate and sustained reductions or cessation of overage rent, or may either defer or not make such expenditures.

Decisions as to whether to use cash flow or financing are made by the operating lessees from time to time and no decision has been made by any of the operating lessees involved in this consent. Any decision by the operating lessees for 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C. would require the consent of members of the Malkin Holdings group and/or the

Helmsley estate or their successor in interest. Any decision by the operating lessee of the Empire State Building would require the consent of the members of both the Malkin Holdings group and the Helmsley estate or their successor in interest;

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The Helmsley estate's requirement under Leona Helmsley's will to sell its interest in the private entities that are the operating lessees of the subject LLCs. Because the consent of both the Malkin Holdings group and the Helmsley estate is required for action by Empire State Building Company L.L.C., the potential for deadlock exists, particularly after a sale of the Helmsley estate's interest. In addition, the Helmsley estate owns a 35% interest in the operating lessee of 250 West 57th St. Associates L.L.C. and 30% in the operating lessee of 60 East 42nd St. Associates L.L.C. Any purchaser of the Helmsley estate interests will be able to block any decision of the operating lessee of the Empire State Building and will have influence over decisions made by the operating lessees of 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C.;

Inefficiencies which result from the current structure:

Presently, property management, leasing and financial reporting for each of the 23 ownership groups covering 18 different office and retail properties and one development site are provided by third party managers, third party leasing agents and outside accountants under the supervision of the supervisor. This is inefficient and that inefficiency causes distraction and requires time and effort. The supervisor believes that the consolidation will enable the company to centralize operations and leasing, which will be more efficient and enhance the competitive position of the properties. Combining the properties in a single entity with a modern corporate structure will also help the company attract qualified management and property leasing and management personnel (to the extent needed by the company) for management succession;

The current two-tier structure is archaic, complicates operations, financial reporting and financing of the subject LLCs and is inefficient and costly in general. The consolidation will create a modern governance structure in which participants will share in the ownership of a portfolio of properties by a single entity;

Cumbersome and costly approval process for the subject LLCs, due to need to obtain high percentages of participant approvals for actions that may be required, such as selling the interests in the property or obtaining additional mortgage financing;

Difficulty in making decisions concerning the properties due to the two-tier owner-operating lessee structure, as a result of which the subject LLCs, as fee owners, either do not have the right to take an action or the action may require the consent of the operating lessee, and, in some cases, its participants;

Conflicting position of fee owner and operating lessee, because actions that benefit the operating lessee could reduce distributions to participants in the subject LLCs;

Less diversification;

Loss of ability to access capital markets or finance on a portfolio-wide basis to obtain capital for future renovations of the properties. As a result, financing may be more costly or the subject LLCs might be required to reduce distributions to participants to fund future property renovations. However, as described under "Background of and Reasons for the Consolidation" "Chronology of the Consolidation," Empire State Building Associates L.L.C. recently has obtained significant financing;

Receipt of a Schedule K-1 for your subject LLC and each other subject LLC or private entity in which you own participation interests is a process which is complex and time consuming for both the supervisor and the participants. Separate financial statements and tax returns need to be prepared for each entity. With increasingly complex filing requirements, it has become unrealistic to complete all the necessary financial statements and tax returns required to complete and deliver Schedules K-1 to participants in time to file their federal income tax returns by April 15, causing participants to have to file their tax returns on extension. After the consolidation, tax returns will be required only for the company and the operating partnership. Participants who receive operating

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partnership units will receive only one Schedule K-1. Participants who receive only common stock in the consolidation will receive one Form 1099 for all their interests. The supervisor believes that the simplified financial

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reporting and tax filings will allow for faster completion and distribution of Forms 1099 and Schedules K-1 for participants and allow participants to file their taxes by April 15 of each year and

Loss of benefits from the consolidation described under The Supervisor's Reasons for Proposing the Consolidation.

*Conversion of the subject LLCs into individual REITs.* The supervisor considered the possibility of converting each subject LLC into a separate REIT that would list its shares on a national securities exchange. The supervisor believes that a REIT with a relatively small capitalization that is advised by an outside advisor and owns an interest in the ground lessor of a single property with most of its cash flow dependent on overage rent under the operating lease would not be well-received by traditional open-market purchasers of REIT common stock. The supervisor, therefore, believes that this alternative would not fulfill the objectives of participants in the subject LLCs.

*Listing of the participation interests on a national securities exchange.* The supervisor believes there would be limited trading interest in the presently outstanding participation interests due to, among other things, (i) the fact that the subject LLCs have a relatively small capitalization, own an interest in a property which is operated by an operating lessee that has significant decision-making authority with respect to the property; and (ii) the two-tier subject LLC structure, including the relative lack of certain corporate governance attributes, such as the ability to elect directors.

*Other means of producing liquidity.* The supervisor also considered other means of producing liquidity for the participants, such as cash tender offers to acquire participation interests from participants or borrowing by the subject LLCs secured by their interests in properties to provide funds for distribution to participants. The supervisor believes that cash tender offers are costly and would not yield a good value for participants and that borrowing to fund added distributions is not a feasible alternative given that most of its cash flow is dependent on overage rent under the operating lease.

The supervisor believes that cash tender offers would not be desirable because the price that could be offered to participants would be adversely affected by the current two-tier owner-lessee structure through which the subject LLCs own their interests in the properties and the limited resale market for participation interests.

The supervisor believes that it would be difficult for a subject LLC to borrow to fund added distributions because, among other things, such financing would require the operating lessee's consent and agreement to join in the financing. Additionally, increasing the leverage on the properties would result in increased risks to the participants in the subject LLCs.

While the supervisor did not perform a detailed financial analysis of all these alternatives, other than continued operations of the subject LLCs and liquidation of the subject LLCs, the supervisor believes that these alternatives would not be as beneficial to participants as the consolidation.

*Certain potential alternatives as to Empire State Building Associates L.L.C. not considered viable by the supervisor.*

*Empire State Building stand-alone REIT.* The supervisor does not believe a REIT which includes only the Empire State Building is a feasible alternative. Any Empire State Building-only REIT would require the consent of Empire State Building Company L.L.C. which is controlled by the Malkin Family and the Helmsley estate. The Malkin Family and the Helmsley estate have consented only to the proposed consolidation and believe that a single-asset REIT would not be desirable.

The supervisor believes that a single-asset REIT is not typical and that the potential REIT investors (the great majority of which are institutional investors) would not react favorably to such a REIT. Moreover, a stand-

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alone Empire State Building REIT, even if consented to, would have certain risks resulting from lack of diversification and risks relating specifically to the Empire State Building and bear many of the same ongoing expenses of a company with a security listed on a national securities exchange without other properties to share them.

The proposed consolidation provides benefits, which, as described under *Background of and Reasons for the Consolidation* The Supervisor's Reasons for Proposing the Consolidation, would not be provided by a stand-alone Empire State Building REIT. In addition, a stand-alone Empire State Building REIT would have management which also continues to manage, separate from the REIT, the other subject LLCs and the private entities they currently supervise, which the supervisor believes would not be viewed favorably by institutional investors and would create continuing conflicts of interest.

*Borrowing to buy out the Helmsley estate's interest in Empire State Building Company L.L.C.* The supervisor also did not consider borrowing funds to buy the Helmsley estate's interest in Empire State Building Company L.L.C. to be a feasible alternative to the consolidation. For a number of reasons, the supervisor believes that based on its knowledge of the loan markets, a loan for these purposes would be improbable at this time on any reasonable terms. The supervisor does not believe that a lender would make the necessary loan of this size on top of the borrowing required to upgrade the Empire State Building, install tenants, and pay leasing commissions, with the building in its current state of repositioning, to buy out an existing investor. Empire State Building Company L.L.C. would have to join in the loan or otherwise Empire State Building Associates L.L.C. would be reliant on basic and overage rent from Empire State Building Company L.L.C. to cover costs to service and repay the loan. Empire State Building Company L.L.C. is not required to apply cash flow in such a way as to make any additional rent payment above basic rent. Moreover, both the controlling partners in Empire State Building Company L.L.C., Peter L. Malkin and the Helmsley estate, have committed to the consolidation and the IPO. Additionally, buying the Helmsley estate's interest would not create the benefits the supervisor believes would result from the consolidation and IPO, which benefits are described under *Background of and Reasons for the Consolidation* The Supervisor's Reasons for Proposing the Consolidation.

## **Comparison of Alternatives**

The supervisor has not provided an estimate of the going concern values and liquidation values of the subject LLCs and the private entities for the reasons set forth below. As explained below, the supervisor believes these values would be in the same range as, or lower than, the exchange values. These values may be more or less than the value of the consideration that you will receive in the consolidation.

*Continuance as a Going-Concern.* The supervisor considered the going-concern value of each subject LLC. The purpose of a going-concern analysis is to determine the estimated value of each subject LLC, assuming that each subject LLC continues to operate as a separate legal entity with its own assets and liabilities and governed by its organizational documents. A going-concern analysis differs from a liquidation analysis in that a liquidation analysis assumes that a subject LLC immediately commences an orderly disposition of its interest in the property and distributes the net liquidation proceeds, to the members and participants holding participation interests and to the supervisor on account of overrides and voluntary reimbursement payments. The going-concern analysis estimates the present value of the participation interests in each subject LLC, assuming that each subject LLC was operated as an independent standalone entity during an assumed ten-year holding period, and sold its interest in the property at the end of the ten-year period.

The supervisor believes that, based on, among other things, advice of the independent valuer, the going concern value of the participation interests in the subject LLCs pursuant to a going concern analysis, which would assume continued operation and eventual sale, is in the same range as the exchange value. The exchange value is based on (i) the appraised values of the properties owned by the subject LLCs and private entities which was based on the income approach taking into account, among other things, the expected financial performance such as estimated revenues, operating expenses, general and administrative costs, capital expenditures and

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leasing costs for the property, and operating cash flow of the properties, and (ii) the allocation of such appraised values to the participants in each subject LLC and each private entity as described in Reports, Opinions, and Appraisals Fairness Opinion. Similarly, a going concern analysis would determine the value of the equity interest in a partnership or limited liability company by estimating the present value of distributions to such interests in the going concern entity. The supervisor believes that, based on advice from the independent valuer, the methodology used to determine the value of an equity interest in a partnership or a limited liability company, as was performed in the Appraisal, is a generally accepted valuation and analytical technique, and, when performed using the same underlying assumptions, can be expected to yield a result in approximately the same range as the going concern analysis.

*Liquidation of the subject LLCs and the private entities.* Since another available alternative is to proceed with a sale of the interest in the property each subject LLC owns and to distribute the net proceeds to its participants, the supervisor has considered the liquidation value of each subject LLC. The supervisor believes that, based on advice from the independent valuer, using the discounted cash flow method used in the Appraisal is a reasonable way to estimate the price at which the property could be sold for purposes of a liquidation value analysis. The difference between the exchange values and the liquidation value would be the deduction of assumed selling and liquidation costs (real estate commissions and legal and other closing costs) in calculating the liquidation value, which the supervisor estimates would equal approximately 2.5% to 5.0% of the appraised real estate value. The supervisor believes that the costs relating to liquidation, including costs of soliciting participants consent and legal fees, could exceed this percentage. This alternative also assumes that non-real estate assets are sold at their estimated realizable value determined on a basis consistent with the independent valuer's Appraisal.

However, while the Appraisal is not necessarily indicative of the price at which the assets would sell, the real estate appraisal assumes that the interest in the property of each subject LLC is sold in an orderly manner and is not sold in forced or distressed sales where sellers might be expected to dispose of their interests at substantial discounts to their actual value. See Reports, Opinions and Appraisals Appraisal.

The supervisor believes that the value of the participation interests in the subject LLCs and private entities in a liquidation would be lower than the exchange values because the value in a liquidation would be determined based on the appraised values of the properties owned by the subject LLCs and private entities (as described under Reports, Opinions, and Appraisals Appraisal ), reduced by the transaction costs associated with marketing and selling a property, and the costs of soliciting participants consent and legal fees. Such fees and expenses were not deducted in calculating the exchange value because they are being borne by the company. The liquidation value would also not incorporate any prepayment penalties that would be due upon the sale of a property, which is not expected to be payable, to the same extent, in the consolidation. Such fees and expenses would reduce the amounts distributable to the participants in the subject LLCs and the private entities in a liquidation to a level below the exchange values. Additionally, participants might not have the opportunity to receive consideration in a tax-deferred transaction as they have in the consolidation.

*Secondary Market Prices.* Participation interests in the subject LLCs are not traded on any national securities exchange. There is no established trading market for participation interests and it is not anticipated that any market will develop for the purchase and sale of the participation interests. There is only a limited market for the participation interests in the subject LLCs, and the supervisor believes the highest price for past sales of participation interests is substantially below the value of the shares of common stock or operating partnership units that you will receive, based on the enterprise value.

*Sales transactions for participation interests have been limited and sporadic.* The supervisor is aware of sales made which were not arranged by it because it acts as transfer agent for the participation interests. In some cases, the supervisor receives information regarding the prices at which secondary sale transactions of participation interests have been effectuated but, in many instances, the supervisor is not aware of the prices at which transactions have been made. Affiliates of the supervisor have arranged for purchases of participation

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interests, from time to time, as an accommodation to participants that desired to sell their participation interests. The supervisor also is aware of third-party appraisals that were performed for participants. The supervisor generally used methodology similar to that in these appraisals in determining the price to be offered to participants that requested that the supervisor arrange sales of their participation interests as an accommodation. In making such purchases of participation interests as an accommodation to participants, the supervisor generally determined the purchase price by applying capitalization rates to annual distributions out of basic rent and overage rent, applying a discount because the interest is an illiquid minority interest and, since 2008, applying a further discount because of the instability of the economy. The supervisor believes that these prices are less than the long-term value of the participation interests and the supervisor so advised each participant who requested that the supervisor arrange a sale. The extent of the participation interest sales transactions between willing buyers and willing sellers, each having access to relevant information regarding the financial affairs of the subject LLCs, the expected value of their assets and their prospects for the future is unknown. Many participation interest sales transactions are believed to be distressed sales where sellers are highly motivated to dispose of the interests and, to facilitate the sales are willing to accept substantial discounts from what might otherwise be regarded as the fair value of the interest being sold.

The supervisor is not aware of any tender offers during the period from January 1, 2009 through the date of this prospectus/consent solicitation.

Affiliates of the supervisor made the following purchases of participation interests in the subject LLCs from participants during the period from January 1, 2009 through September 30, 2012:

<b>Subject LLC</b>	<b>Date of Transfer (Mo./Day/Yr.)</b>	<b>Amount of Purchase (Based on Original Investment)</b>	<b>Amount of Consideration Paid per \$10,000 Original Investment</b>
Empire State Building Associates L.L.C.	2/02/11	\$ 10,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	10/02/10	\$ 5,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	9/02/10	\$ 1,666.67	\$ 15,000.00
Empire State Building Associates L.L.C.	3/02/10	\$ 2,500.00	\$ 15,000.00
Empire State Building Associates L.L.C.	1/02/10	\$ 5,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	11/02/09	\$ 10,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	11/02/09	\$ 10,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	11/02/09	\$ 10,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	10/02/09	\$ 7,500.00	\$ 15,000.00
Empire State Building Associates L.L.C.	10/02/09	\$ 5,000.00	\$ 15,000.00
Empire State Building Associates L.L.C.	9/02/09	\$ 6,666.66	\$ 15,000.00
Empire State Building Associates L.L.C.	5/02/09	\$ 5,000.00	\$ 29,400.00
60 East 42nd St. Associates L.L.C.	9/02/10	\$ 3,333.34	\$ 15,000.00
60 East 42nd St. Associates L.L.C.	5/02/10	\$ 6,666.67	\$ 15,000.00
60 East 42nd St. Associates L.L.C.	4/02/10	\$ 15,000.00	\$ 14,666.70
60 East 42nd St. Associates L.L.C.	10/02/09	\$ 5,000.00	\$ 15,000.00
60 East 42nd St. Associates L.L.C.	9/02/09	\$ 1,666.66	\$ 15,000.10
250 West 57th St. Associates L.L.C.	9/02/10	\$ 1,666.67	\$ 40,001.90
250 West 57th St. Associates L.L.C.	5/02/10	\$ 5,000.00	\$ 40,000.00
250 West 57th St. Associates L.L.C.	3/02/10	\$ 10,000.00	\$ 40,000.00
250 West 57th St. Associates L.L.C.	7/02/09	\$ 5,000.00	\$ 40,000.00

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The supervisor also is aware of the prices on the following additional purchases of participation interests by third parties in the subject LLCs during the period from January 1, 2009 through September 30, 2012:

<b>Subject LLC</b>	<b>Date of Transfer (Mo./Day/Yr.)</b>	<b>Amount of Purchase (Based on Original Investment)</b>	<b>Amount of Consideration Paid per \$10,000 Original Investment</b>
Empire State Building Associates L.L.C.	4/02/10	\$ 10,000.00	\$ 17,000.00
Empire State Building Associates L.L.C.	3/02/09	\$ 10,000.00	\$ 29,400.00
Empire State Building Associates L.L.C.	3/02/09	\$ 5,000.00	\$ 29,400.00
Empire State Building Associates L.L.C.	1/02/09	\$ 2,500.00	\$ 50,000.00
60 East 42nd St. Associates L.L.C.	3/02/11	\$ 5,000.00	\$ 16,000.00
60 East 42nd St. Associates L.L.C.	2/02/11	\$ 2,500.00	\$ 15,000.00
250 West 57th St. Associates L.L.C.	1/02/10	\$ 2,500.00	\$ 50,000.00

*Assumptions, Limitations and Qualifications.* The prices at which the operating partnership units and Class A common stock initially trades may be affected, among other things, by: general market conditions, including the extent to which a secondary market develops for the Class A common stock following the IPO, the extent of institutional investor interest in the company, the general reputation of REITs and the attractiveness of their equity securities in comparison to other equity securities (including securities issued by other real estate-based companies), the company's financial performance and general stock and bond market conditions.

It is impossible to predict how these factors will impact the price of the operating partnership units and Class A common stock. The price may be either lower or higher than those used in computing the range of estimated values.

*Distribution Comparison.* The supervisor has considered the potential impact of the consolidation upon distributions that would be made to the participants that exchange their participation interests for common stock. The following table compares the average annual distributions for the years ending December 31, 2007-2011 for each subject LLC with the estimated initial dividends that will be received by participants in the subject LLCs per \$10,000 investment by stockholders of the company assuming all subject LLCs and private entities participate in the consolidation (maximum participation).



**Table of Contents****Comparison of Distributions by the Subject LLCs and the Company****Comparison**

The following table sets forth a comparison of the distributions by the subject LLCs and by the company.

Subject LLC	Average Annual Distribution for the years ending December 31, 2007-2011 Per \$10,000 Original Investment	Estimated Initial Distribution of the Company to Former Participants for the year ending September 30, 2013 Per \$10,000 Original Investment <sup>(1)</sup>
<b>Empire State Building Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,179	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(3)</sup>	\$ 140	
Overage rent distributions attributable to operations	\$ 1,791	
<b>Total distributions</b>	<b>\$ 3,110</b>	<b>\$ 5,866<sup>(2)</sup></b>
<b>60 East 42nd St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 1,495	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(3)</sup>	\$ 1,498	
Overage rent distributions attributable to operations	\$ 3,317	
<b>Total distributions</b>	<b>\$ 6,310</b>	<b>\$ 7,294</b>
<b>250 West 57th St. Associates L.L.C.</b>		
Distributions out of basic rent	\$ 2,000	
Distributions out of overage rent		
Overage rent distributions attributable to borrowing <sup>(3)</sup>	\$ 3,308	
Overage rent distributions attributable to extraordinary lease cancellation payment <sup>(4)</sup>	\$ 652	
Overage rent distributions attributable to operations	\$ 5,016	
<b>Total distributions</b>	<b>\$ 10,976</b>	<b>\$ 7,421<sup>(2)</sup></b>

(1) The calculation of the estimated annual distributions to stockholders of the company is determined in accordance with the table below under Distributions by the Company. The estimated initial distribution per \$10,000 original investment was calculated based on the percentage interest that a holder of a \$10,000 original investment would hold of the number of shares of common stock of the company outstanding after the IPO on a fully diluted basis. The estimated annual distribution per \$10,000 original investment was calculated by dividing the aggregate distribution to shareholders of the company in the table below under Distributions by the Company by the estimated number of shares that would be outstanding on a fully diluted basis after the IPO. That amount was then multiplied by the number of shares per \$10,000 original investment in each subject LLC that a participant would receive. The company estimated the number of shares of common stock on a fully diluted basis outstanding after the IPO to be equal to the sum of:

- (i) the number of shares of common stock on a fully diluted basis issuable in the consolidation (calculated without reduction for cash paid to participants in the private entities in lieu of common stock or operating partnership units), as set forth in table under Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values, plus
- (ii) 1,500,000 LTIP units/shares of restricted Class A common stock estimated to be issued as equity compensation at the IPO, plus
- (iii) a number of shares issuable in the IPO (assuming no exercise of the underwriters' option to purchase additional shares of the company's Class A common stock) equal to: (a) the portion of the gross proceeds from the IPO used to pay expenses of the consolidation and IPO and underwriting

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discounts (other than underwriting discounts that are deducted in calculating the cash payable to charitable organizations who are participants in the private entities, including the Helmsley estate, on exercise of their cash election), which is estimated to equal \$47,662,141, (b) divided by the IPO price, assuming that the IPO price equals the hypothetical \$10 per share (used solely for illustrative purposes).

By way of explanation, the portion of the proceeds from the IPO used to pay cash to participants in the private entities is excluded because shares of Class A common stock issuable in the IPO that are used for such purpose do not increase the common stock outstanding on a fully diluted basis from that which would have been outstanding if all participants received operating partnership units or common stock instead of cash, because the number of shares of common stock on a fully diluted basis otherwise issuable to participants in the consolidation is reduced on a one-for-one basis.

The estimate of the initial distribution per \$10,000 may be more or less than that set forth herein to the extent that the actual amounts are more or less than the estimated amounts set forth herein or to the extent that the number of shares under clauses (i), (ii) and (iii) are different due to the difference between exchange value and enterprise value, which will not be known until the pricing of the IPO, or would be affected by the IPO price being more or less than \$10 per share.

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- (2) Assumes that a participant is subject to the voluntary override.
- (3) The distributions attributable to borrowings resulted from borrowings used to fund capital expenditures which would otherwise have been funded from operations and reduced overage rent.
- (4) In 2010, the operating lessee received an extraordinary lease cancellation payment from a space tenant in the amount of \$7.9 million, which contributed to \$3,259 per \$10,000 original investment of overage rent distributions in that year (or \$652 per \$10,000 original investment of average annual overage rent distributions over the period).

**Distributions by the Subject LLCs**

The following table sets forth the amount of annual distributions, per \$10,000 original investment, of each subject LLC for each of the five years in the period ended December 31, 2011 and the amount of distributions, per \$10,000 original investment, for the nine months ended September 30, 2012. The original cost per unit was \$10,000, in the case of Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C., and \$5,000, in the case of 250 West 57<sup>th</sup> St. Associates L.L.C.

Empire State Building Associates L.L.C.

	Nine Months Ended September 30,					
	2012	2011	2010	2009	2008	2007
Distributions out of basic rent	\$ 884	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179	\$ 1,179
Distributions out of overage rent						
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$ 5,255	\$	\$ 679	\$	\$	\$
Overage rent distributions attributable to operations	\$	\$	\$ 339	\$	\$ 4,051	\$ 4,589
<b>Total distributions out of overage rent</b>	<b>\$ 5,255</b>	<b>\$</b>	<b>\$ 1,018</b>	<b>\$</b>	<b>\$ 4,051</b>	<b>\$ 4,589</b>
<b>Total distributions</b>	<b>\$ 6,139</b>	<b>\$ 1,179</b>	<b>\$ 2,197</b>	<b>\$ 1,179</b>	<b>\$ 5,230</b>	<b>\$ 5,768</b>

250 West 57th St. Associates L.L.C.

	Nine Months Ended September 30,					
	2012	2011	2010	2009	2008	2007
Distributions out of basic rent	\$ 1,500	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Distributions out of overage rent <sup>(2)</sup>						
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$	\$ 3,829	\$ 4,111	\$ 3,019	\$ 709	\$ 4,889
Overage rent distributions attributable to extraordinary lease cancellation payment <sup>(3)</sup>	\$	\$	\$ 3,259	\$	\$	\$
Overage rent distributions attributable to operations	\$	\$ 3,290	\$ 6,711	\$ 8,599	\$ 6,875	\$ 2,849
<b>Total distributions out of overage rent</b>	<b>\$</b>	<b>\$ 7,119</b>	<b>\$ 10,822</b>	<b>\$ 11,618</b>	<b>\$ 7,584</b>	<b>\$ 7,738</b>
<b>Total distributions</b>	<b>\$ 1,500</b>	<b>\$ 9,119</b>	<b>\$ 12,822</b>	<b>\$ 13,618</b>	<b>\$ 9,584</b>	<b>\$ 9,738</b>

60 East 42nd St. Associates L.L.C.

	Nine Months Ended September 30,					
	2011	2010	2009	2008	2007	

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	2012						
Distributions out of basic rent	\$	1,121	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495	\$ 1,495
Distributions out of overage rent <sup>(4)</sup>							
Overage rent distributions attributable to borrowing <sup>(1)</sup>	\$		\$	\$	\$	\$ 520	\$ 6,979
Overage rent distributions attributable to operations	\$		\$	\$	\$ 3,057	\$ 8,288	\$ 5,230
<b>Total distributions out of overage rent</b>	\$		\$	\$	\$ 3,057	\$ 8,808	\$ 12,209
<b>Total distributions</b>	\$	<b>1,121</b>	<b>\$ 1,495</b>	<b>\$ 1,495</b>	<b>\$ 4,552</b>	<b>\$ 10,303</b>	<b>\$ 13,704</b>

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- (1) The distributions attributable to borrowings resulted from borrowings used to fund capital expenditures which would otherwise have been funded from operations and reduced overage rent.
  - (2) In addition, subsequent to September 30, 2012, 250 West 57th St. Associates L.L.C. paid distributions out of overage rent relating to the 12 months ended September 30, 2012 of \$5,139 per \$10,000 original investment, all of which was attributable to borrowing.
  - (3) In 2010, the operating lessee received an extraordinary lease cancellation payment from a space tenant in the amount of \$7.9 million, which contributed to \$3,259 per \$10,000 original investment of overage rent distributions attributable to operations in that year.
  - (4) In addition, subsequent to September 30, 2012, 60 East 42nd St. Associates L.L.C. paid distributions out of overage rent relating to the 12 months ended September 30, 2012 of \$4,118 per \$10,000 original investment, of which \$2,662 per \$10,000 original investment was attributable to borrowing.
- Distributions each year consist of small regular monthly distributions out of basic rent and larger, but variable, distributions out of overage rent. The amount of distributions out of overage rent varies from year to year depending on factors such as:

capital expenditures funded out of operating cash flow which reduced distributions;

borrowings to fund capital expenditures which must be agreed to by the operating lessees of each subject LLC and which would otherwise have been paid out of operating cash flow, which increases overage rent and the amount available for distribution; and

non-recurring events that generate additional cash, such as early lease cancellations, which may increase distributions and non-recurring events that require expenditure of funds, which may decrease distributions.

Accordingly, participants should not treat the amount distributed in any year as indicative of the amount that they would have received in future years if the subject LLC continued its operations. After the consolidation, a diverse collection of properties will be combined with more efficient access to capital and, as a result, the supervisor expects that overall distributions should be more consistent with less fluctuation due to these factors.

**Distributions by the Company**

The company's intended annual rate of initial distribution with respect to the period commencing on completion of the IPO and ending 12 months after completion of the IPO will be established based on its estimate of cash available for distribution for such 12-month period calculated based on adjustments to its pro forma income before non-controlling interests for such period. Assuming that the IPO was completed on July 1, 2012, the company's estimated cash available for distribution for the 12-month period ending September 30, 2013 would be as set forth in the table below. In estimating its cash available for distribution for the 12 months ending September 30, 2013, the company has made certain assumptions as reflected in the table and footnotes below, including that there will be no terminations of existing leases in its portfolio after September 30, 2012 (other than scheduled lease expirations) or lease renewals or new leases (other than month-to-month leases) after September 30, 2012 unless a new or renewal lease has been entered into prior to the date of this prospectus/consent solicitation.

The company's estimate of cash available for distribution does not reflect the effect of any changes in its working capital after September 30, 2012, other than the amount of cash estimated to be used for tenant improvement and leasing commission costs related to leases that may be entered into prior to the date of this prospectus/consent solicitation. It also does not reflect the amount of cash estimated to be used for investing activities for acquisition and other activities, other than estimated capital expenditures, or the amount of cash estimated to be used for financing activities, other than the refinancing of the loan at the Empire State Building and scheduled mortgage loan principal repayments on mortgage indebtedness that will be outstanding upon consummation of the IPO. Although the company has included all material investing and financing activities that it has commitments to undertake as of September 30, 2012, the company may undertake other investing and/or financing activities in the future. Any such investing and/or financing activities may have a material effect on the company's estimate of cash available for distribution. Because the company has made the assumptions set forth above in estimating cash available for distribution, it does not intend this estimate to be a projection or forecast of its actual results of operations or liquidity. The company's estimate of cash available for distribution should not

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be considered as an alternative to cash flow from operating activities (computed in accordance with GAAP) or as an indicator of its liquidity or ability to pay dividends or make distributions. In addition, the methodology upon which the company made the adjustments described below is not necessarily intended to be a basis for calculating cash available for distribution.

Notwithstanding the estimate set forth below, any distributions the company pays in the future will depend upon its actual results of operations, economic conditions and other factors that could differ materially from the company's current expectations. The company's actual results of operations will be affected by a number of factors, including the revenue it receives from its properties, its operating expenses, interest expense, the ability of its tenants to meet their obligations and the amount and timing of expenditures. For more information regarding risk factors that could materially adversely affect the company's actual results of operations, see Risk Factors. Distributions declared by the company will be authorized by the company's board of directors in its sole discretion out of funds legally available therefore and will be dependent upon a number of factors, including restrictions under applicable law, the capital requirements of the company and the distribution requirements necessary to maintain the company's qualification as a REIT, the distributable income generated by operations, the principal and interest payments on debt, capital expenditure levels, the company's policy with respect to cash distributions and the capitalization and asset composition of the company, which will vary based on the private entities and the subject LLCs that ultimately participate in the consolidation. No assurance can be given that the company's estimate of cash flow available for distribution will prove accurate, and actual distributions may therefore be significantly different from the expected distributions. Unless the company's operating cash flow increases, it may be required to fund distributions from working capital or borrow to provide funds for such distributions or it may choose to make a portion of the required distributions in the form of a taxable stock dividend to preserve the company's cash balance or reduce its distribution. However, the company currently has no intention to use the net proceeds from the IPO to make distributions nor does it currently intend to make distributions using shares of the company's common stock.

Actual annual distributions on the operating partnership units and common stock will depend on the market conditions at the time of the IPO and the company's cash available for distribution at the time of the IPO. For more information regarding risk factors that could materially adversely affect the company's actual results of operations, see Risk Factors.

In order to qualify as a REIT, the company must distribute to its stockholders, on an annual basis, at least 90% of the company's REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. For more information, see Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Distribution Policy and U.S. Federal Income Tax Considerations.

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The following table describes the company's pro forma net income available to holders of common stock of the company and operating partnership units for the 12 months ended December 31, 2011, and the adjustments the company has made thereto in order to estimate its initial cash available for distribution for the 12 months ending September 30, 2013 (amounts in thousands except share data, per share data, square footage data and percentages). These calculations do not assume any changes to the company's operations or any acquisitions or dispositions or other developments or occurrences which could affect its operating results and cash flows, or changes in the company's outstanding shares of Class A and Class B common stock or the operating partnership's operating partnership units. Holders of operating partnership units and stockholders of the company will have the same rights to distributions. The company cannot assure you that its actual results will be the same as or comparable to the calculations below.

<b>Pro forma net income for the 12 months ended December 31, 2011</b>	\$ 58,653
<b>Less: Pro forma net income for the nine months ended September 30, 2011</b>	(47,745)
<b>Add: Pro forma net income for the nine months ended September 30, 2012</b>	60,163
<b>Pro forma net income for the 12 months ended September 30, 2012</b>	\$ 71,071
<b>Add: Pro forma real estate depreciation and amortization<sup>(1)</sup></b>	93,198
<b>Add: Net increases in contractual rent income<sup>(2)</sup></b>	37,145
<b>Less: Net decreases in contractual rent income due to lease expirations, assuming no renewals<sup>(3)</sup></b>	(24,818)
<b>Less: Net effects of straight-line rent adjustments to tenant leases<sup>(4)</sup></b>	(23,782)
<b>Add: Net effects of above- and below-market rent adjustments<sup>(5)</sup></b>	(8,465)
<b>Add: Non-cash compensation expense<sup>(6)</sup></b>	3,906
<b>Add: Non-cash interest expense<sup>(7)</sup></b>	2,814
<b>Less: Additional interest expense under the company's expected new secured revolving and term credit facility<sup>(8)</sup></b>	(233)
<b>Add: Non-cash ground rent expense</b>	1,657
<b>Estimated cash flow from operating activities for the 12 months ending September 30, 2013</b>	\$ 152,493
<b>Less: Estimated provision for recurring capital expenditures<sup>(9)</sup></b>	(11,480)
<b>Less: Estimated provision for tenant improvements and leasing commission costs not associated with the company's renovation program<sup>(10)</sup></b>	(11,089)
<b>Less: Estimated provision for tenant improvements and leasing commission costs associated with the renovation program and not expected to be funded under the company's expected secured revolving and term credit facility<sup>(10)</sup></b>	(6,313)
<b>Total estimated cash flows used in investing activities</b>	\$ (28,882)
<b>Estimated cash flow used in financing activities</b>	
<b>Less: Scheduled mortgage loan principal repayments<sup>(11)</sup></b>	(15,002)
<b>Estimated cash flow used in financing activities for the 12 months ending September 30, 2013</b>	\$ (15,002)
<b>Estimated cash available for distribution for the 12 months ending September 30, 2013</b>	\$ 108,609
<b>Allocation of cash available for distribution:</b>	
<b>The company's share of estimated cash available for distribution available to the operating partnership (30.50%)<sup>(12)</sup></b>	33,126
<b>Non-controlling interests' share of estimated cash available for distribution available to the operating partnership (69.50%)<sup>(12)</sup></b>	75,483
<b>Estimated cash available for distribution for the 12 months ending September 30, 2013</b>	\$ 108,609
<b>Estimated initial distribution:</b>	
<b>Total estimated initial annual distribution to holders of operating partnership units (other than the company)</b>	\$ 55,600
<b>Total estimated initial annual distribution to stockholders</b>	24,400
<b>Total estimated initial annual distribution</b>	\$ 80,000

<b>Payout ratio based on the company's share of estimated cash available for distribution<sup>(1)</sup></b>	<b>73.7%</b>
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- (1) Included in real estate depreciation and amortization is acquired in-place lease asset amortization, which was calculated by the independent valuer based upon assumed absorption periods ranging from 1 - 10 months for the leased premises.



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	Empire State Building	1350 Broadway	1333 Broadway	501 Seventh	Total
Total lease in place value	\$ 93,309	\$ 7,011	\$ 6,704	\$ 12,088	\$ 119,112
Amortization for 12 months ended September 30, 2012	\$ 14,106	\$ 1,496	\$ 728	\$ 2,357	\$ 18,687
Absorption (# of months)	1 10	5 8	5 - 8	5 8	

- (2) Represents the net increases in contractual rental income net of expenses from existing leases and from new leases and renewals through the date hereof that were not in effect for the entire 12-month period ended September 30, 2012 or that were signed prior to the date of this prospectus/consent solicitation but that will go into effect during the 12 months ending September 30, 2013.
- (3) Assumes no lease renewals or new leases (other than month-to-month leases) for leases expiring after September 30, 2012 unless a new or renewal lease had been entered into prior to the date of this prospectus/consent solicitation.
- (4) Represents the conversion of estimated rental revenues for the 12 months ending September 30, 2013 from a straight-line accrual basis to a cash basis of revenue recognition.
- (5) Represents the elimination of non-cash adjustments for above-market and below-market leases for the 12 months ended September 30, 2012. This is calculated as follows:

	12 months ended September 30, 2012
Add: Net effects of above- and below-market rent adjustments	\$ (8,465)(a)
(a) Calculated as follows:	
Effects of above-market rent adjustments	\$ 11,618
Effects of below-market rent adjustments	(20,083)
	\$ (8,465)

- (6) Pro forma non-cash compensation expense related to LTIP units/shares of restricted Class A common stock that the company intends to issue to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees in connection with the IPO.
- (7) Pro forma non-cash interest expense for the 12 months ended September 30, 2012 includes: (i) amortization of financing costs on the mortgage loans assumed by the company in the consolidation transaction; and (ii) amortization of the acquisition premium for debt assumed in the consolidation transaction.
- (8) Represents estimated interest expense associated with borrowings under the expected new secured revolving and term credit facility (described in (9) and (10) below) to cover non-recurring capital expenditures, certain tenant improvements and leasing commissions, costs of the expected new credit facility and refinance the existing term loan at the Empire State Building net of interest expense associated with the existing term loan for the 12 months ending September 30, 2013. These amounts are calculated on the basis that the principal and accrued interest on the existing term loan was repaid with proceeds from the expected new credit facility on October 1, 2012 and that additional drawdowns under the expected new credit facility to fund capital expenditures will occur equally over the subsequent four quarters.
- (9) Represents recurring capital expenditures consisting of capital expenditures that are intended to maintain the company's properties and are not intended to be value enhancing capital improvements (but excluding tenant improvements and leasing commissions). For the purposes of calculating the distribution in the above table, the company has assumed, based on its current estimate, that it will incur approximately \$11.5 million of estimated recurring capital expenditures (excluding costs of tenant improvements and leasing commissions) over the 12 month period ending September 30, 2013. For the purposes of calculating the distribution in the above table, the company has assumed, based on its current estimate, that it will incur approximately \$99.4 million of estimated non-recurring capital expenditures (excluding costs of tenant improvements and leasing commissions) associated with the company's renovation program of its Manhattan office properties over the 12 month period ending September 30, 2013. Historically, the company has not tracked capital expenditures as either recurring or non-recurring and the company believes that the capital expenditures associated with the company's renovation program would be considered to be non-recurring due to the extensive amount of capital spent on renovation, repositioning and deferred maintenance (at the time the renovation and repositioning program began) at the company's Manhattan office properties. The company's historical weighted average aggregate recurring and non-recurring annual capital expenditures incurred during the years ended December 31, 2009, 2010 and 2011 and the nine months ended September 30, 2012 was approximately \$43.5 million, which is lower than the company's estimated non-recurring and recurring capital expenditures over the 12 month period ending September 30, 2013. The company intends to fund the non-recurring capital expenditures with an expected new \$800.0 million secured revolving and term credit facility, or the new credit facility, which the company expects to have in place upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates. As of the date of this prospectus/consent solicitation, the company has obtained a commitment for \$400.0 million of availability under the new credit facility, subject to satisfaction of certain customary conditions precedent, from the representatives of the underwriters of the IPO or their respective affiliates who have also agreed to use commercially reasonable efforts to syndicate the remainder of the facility. In connection with entering into the new credit facility, the company will be required to pay off in full the existing term loan currently secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012.
- (10) For purposes of calculating the distribution in the above table, the company has assumed it will incur approximately \$95.3 million of tenant improvements and leasing commission costs related solely to tenant improvements and leasing commission costs incurred or expected to be incurred in the 12 months ending September 30, 2013 that the company is contractually obligated to provide pursuant to 115 leases entered into prior to the date of this

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prospectus/consent solicitation. While the company is contractually obligated to perform the renovation work relating to these leases, the company has estimated the costs to complete such work based on its current budgets. Of

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these, tenant improvements of approximately \$84.2 million, relating to 65 of such leases, or the renovation leases, including 24 leases at the Empire State Building (with a cost of approximately \$73.1 million), represent costs in connection with leases where the company has completed, or is in the process of completing, its renovation and repositioning efforts. Many of the renovation leases have commencement dates significantly after October 1, 2012 and therefore will recognize significantly less revenue in the twelve months ending September 30, 2013 than if the lease commenced on October 1, 2012. However, the company will recognize substantially all of the tenant improvements and leasing commission costs associated with such leases in this twelve month period. These renovation leases entail putting a tenant into the renovated space, which are spaces that were substantially demolished and demised, for its first time and is distinguishable from normal tenant improvements and leasing commission costs which are associated with re-tenanting vacated space. In many of the cases, there were significant vacancy costs associated with the time in which the space was renovated and with time in which the company did not renew leases in anticipation of the start of the renovation activities. In certain of the cases, there were significant vacancy costs associated with the time in which the company left the space vacated in anticipation of not only renovating the space but renovating a larger aggregated space. Further, certain of these costs were associated with designing renovated space in relation to the needs of a new tenant on a post-renovation basis. As such, these costs are distinguishable from normal costs associated with taking on a new tenant. For purposes of calculating the distribution in the above table, the company has assumed that approximately \$77.9 million of the \$84.2 million of tenant improvements costs associated with these renovation leases will be funded with the new credit facility and the remaining approximately \$4.3 million of tenant improvements costs and \$6.8 million of leasing commission costs which are not associated with these renovation leases will be funded from operating cash flow.

- (11) Represents scheduled payments of mortgage loan principal due during the 12 months ending September 30, 2013. Does not include \$55.7 million of debt maturities during the 12 months ending September 30, 2013 based on the assumptions that the company will be able to renew those mortgage loans under terms similar to those currently in place.
- (12) Based on a total of 132,533,203 shares of the company's Class A common stock, 2,143,774 shares of the company's Class B common stock and 306,957,713 operating partnership units to be outstanding after the IPO. Shares of the company's Class A common stock will consist of 100,000,000 shares to be sold in the IPO, assuming no exercise of the underwriters' option to purchase additional shares, 31,059,143 shares of Class A common stock to be issued in the consolidation, and 1,500,000 LTIP units/shares of restricted Class A common stock to be issued upon completion of the IPO to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees. Shares of the company's Class B common stock will consist of 2,143,774 shares of Class B common stock issued to participants in the consolidation. Units of the operating partnership will consist of 306,957,713 operating partnership units issued in the consolidation and IPO. The amounts utilized in this footnote are preliminary and subject to change and assumes the enterprise value equals the exchange value, \$1.0 billion of shares of Class A common stock are sold in the IPO and the IPO price equals \$10 per share. The number of operating partnership units and shares of common stock presented in this prospectus/consent solicitation is based on the hypothetical \$10 per share exchange value arbitrarily assigned by the supervisor to illustrate the number of operating partnership units and/or shares of common stock that a participant would receive if the enterprise value of the company determined in connection with the IPO were the same as the aggregate exchange value and the IPO price were \$10 per share. The actual number of operating partnership units and shares of common stock, on a fully-diluted basis, issued in the consolidation will equal the enterprise value divided by the actual IPO price upon 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.

- (13) Calculated as estimated initial annual distribution per Class A and Class B share divided by the company's share of estimated cash available for distribution per share for the 12 months ending September 30, 2013.

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**RECOMMENDATION AND FAIRNESS DETERMINATION**

**General**

The supervisor believes the consolidation to be fair to, and in the best interests of, each subject LLC and its respective participants. After careful evaluation, the supervisor concluded that the consolidation is the best way to maximize the value of your investment in the subject LLC. The supervisor of the subject LLCs recommends that you and the other participants vote **FOR** the consolidation. Affiliates of the supervisor will receive substantial benefits from the consolidation and have conflicts of interest making this recommendation.

Based upon the supervisor's analysis of the consolidation, it believes that:

the terms of the consolidation are fair to you and the other participants;

the operating partnership units and common stock offered to the participants were allocated fairly and constitute fair consideration for their participation interests in the subject LLCs and

after comparing the potential benefits and detriments of the consolidation with those of several alternatives, the consolidation is the best way for you to maximize the value of your investment in the subject LLC.

The supervisor's beliefs are based upon its analysis of the terms of the consolidation, an assessment of its potential economic impact upon you and the other participants, a comparison of the potential benefits and detriments of the consolidation and alternatives to the consolidation and a review of the financial condition and performance of the subject LLCs, the private entities and the management companies and the proposed operations of the company.

The supervisor believes that the consolidation is fair to all participants in each subject LLC and as a whole, regardless of which particular combination of entities participates in the consolidation and that a fairness opinion on all possible combinations is not necessary. Even if less than all of the subject LLCs participate in the consolidation, the supervisor believes that the participants in the subject LLCs that do participate will realize the benefits described under Summary Benefits of Participation in the Consolidation. There are no material differences among the subject LLCs (such as with respect to types of assets owned or investment objectives) that affect the reasons why the supervisor believes that the consolidation is fair to you. While the supervisor believes that it would be more beneficial to participants if all of the subject LLCs participate in the consolidation, the supervisor believes that, through a combination of the properties of the private entities, for which necessary approvals have been obtained, and the property interests of Empire State Building Associates L.L.C. and Empire State Building Company L.L.C., the company will be of sufficient size and have sufficient assets to allow participants to realize the benefits described under Summary Benefits of Participation in the Consolidation even if one or both of 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C. do not participate in the consolidation.

In considering fairness, the supervisor considered the following:

The tax protection agreement, which the supervisor believes is consistent with market practice for transactions of this type and generally would require payment only if the company took or failed to take certain actions, which it does not currently intend to take or fail to take, as the case may be, with respect to the protected properties;

The option agreements, which the supervisor believes benefit the company by providing it with the right to acquire attractive properties complementary to the company's portfolio on terms which the company believes are reasonable and, with respect to which any determination to be made by the company will be made by the company's independent directors; and

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The agreements to indemnify the principals of the supervisor for certain liabilities relating to the subject LLCs and the private entities; the supervisor believes it is reasonable for a REIT which is being

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formed to assume indemnification obligations relating to the operations of entities whose assets are being acquired. Under the organizational documents of the subject LLCs and private entities and applicable law, the principals of the supervisor are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence.

The supervisor also took into account the terms of the compensation payable to persons in the Malkin Holdings group by the company after the closing of the consolidation as set forth under Management Executive Compensation, which the supervisor believes are on terms customary for similar publicly-traded REITs and are based on recommendations of a compensation consultant.

The supervisor also took into account the effects of the IPO. The supervisor believes that the issuance of shares of Class A common stock in the IPO will benefit participants because it will result in a more liquid market with more investment by institutional investors. In addition, the proceeds from the IPO will, among other things, provide cash to pay expenses from the consolidation and provide cash to buy out a portion of the Class A common stock otherwise issuable to the Helmsley estate. Following the consummation of the consolidation and the IPO, the Helmsley estate is anticipated to continue to own a sizeable position in the company. Therefore, in light of the Helmsley estate's desire, and requirement, to sell all or a significant portion of its post-IPO position, which could adversely affect the market price of the company's Class A common stock following the IPO, the supervisor structured elements of the consolidation and the IPO, including this cash option, to minimize the Helmsley estate's post-IPO position. The company also has provided that the net proceeds from any potential upsizing of the IPO or any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock would also be applied to the Helmsley estate's cash election to further reduce the Helmsley estate's position in the company. Such reduction of the Helmsley estate's overhang would be viewed favorably by the market and would provide for a better trading market in the company's Class A common stock following the IPO for the benefit of all stockholders.

The supervisor also believes that the consolidation is procedurally fair. First, the consolidation is required to be approved by a supermajority of the outstanding participation interests of the subject LLC and is subject to conditions set forth in The Consolidation Conditions to the Consolidation. Second, participants will be given the option to receive operating partnership units, Class A common stock, or, to a limited extent, as described herein, Class B common stock. These options allow participants to receive the same form of consideration as the participants in the private entities and the Malkin Family. Third, the supervisor believes that the exchange value of the subject LLCs has been determined according to a process that is fair because the process involved an appraisal of all of the subject LLCs' property interests, the private entities' property interests and the business of the management companies by the same appraisal firm, Duff & Phelps, LLC, thereby maximizing consistency among the valuation of the property portfolio. Finally, Duff & Phelps, LLC, the independent valuer, a recognized independent investment banking firm, has delivered its opinion to the effect that, subject to the assumptions, limitations and qualifications contained in its fairness opinion, the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) (i) among each subject LLC, each private entity and the management companies and (ii) to the participants in each subject LLC and each private entity is fair to the participants in the subject LLC from a financial point of view (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities). While the subject LLCs' exchange values have been determined based on the Appraisal by the independent valuer, which has also delivered a fairness opinion as described above, no independent representative was retained to negotiate on behalf of the participants. There are 23 subject LLCs and private entities and groups with different interests in many of these entities. The supervisor does not believe that a single independent representative could have represented the interests of all participants and believes that to locate and retain an independent and equally competent and qualified representative for each separate interest in the consolidation is not possible. The supervisor represents the interests of all participants in the subject LLCs and private entities. The supervisor has served the same role in the past for sales of other properties with different groups of participants, which included the sale of three office properties in New York City in the past fifteen years, 200 Fifth Avenue (known as the International Toy Center), 498 Seventh Avenue

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and 500-512 Seventh Avenue (see Reports, Opinions and Appraisal Supervisor's Reasons for Representation as to 50/50 Allocation ) and believes it is not required to retain any independent representative on behalf of each group of participants or all of the participants as a whole. The supervisor believes the Appraisal prepared by the independent valuer serves the purposes of representing all parties fairly and that the consolidation is fair to all participants regardless of the absence of any such independent representative.

The supervisor does not believe that the buyout right relating to participation interests held by participants in Empire State Building Associates L.L.C. or 60 East 42nd St. Associates L.L.C. affects the procedural fairness of the consolidation, because such buyout was provided for in the organizational documents of such subject LLCs at the time of their formation and requires a supermajority vote in order to be triggered. In addition, participants in such subject LLCs who have voted against the consolidation (or abstained), have the right to change their vote within ten days of receiving notice that consents from participants holding the required percentage interest in their participating group have been received, in which case their participation interests will not be purchased.

Although the supervisor believes the terms of the consolidation are fair to you and the other participants, the supervisor and its affiliates have conflicts of interest with respect to the consolidation. These conflicts include, among others, its realization of substantial economic benefits upon completion of the consolidation. For a further discussion of the conflicts of interest and potential benefits of the consolidation to the supervisor, see Conflicts of Interest Substantial Benefits to the Supervisor and its Affiliates. While the supervisor has conflicts of interest which are described under Conflicts of Interest, the supervisor does not believe that these conflicts of interests affected its fairness determination. To understand the actual benefits that the supervisor will receive if your subject LLC approves the consolidation, please review the supplement accompanying this prospectus/consent solicitation.

Notwithstanding the recommendation of the supervisor, each participant must make its own determination as to whether to vote for the consolidation and whether to elect to receive operating partnership units, Class A common stock or Class B common stock based upon its personal situation, and such decision should be based upon a careful examination of personal finances, investment objectives, liquidity needs and expectations as to the company's future growth.

### **Material Factors Underlying Belief as to Fairness**

The following is a discussion of the material factors underlying the supervisor's belief that the terms of the consolidation are fair to you and the other participants.

1. *Consideration Allocated.* The supervisor believes that the consideration offered to the subject LLCs and the participants constitute fair value for their participation interests. The allocation of the operating partnership units and common stock to participants is based on the same valuation methodology and Appraisal which was consistently applied to each subject LLC and each private entity. The allocation of the shares of common stock and operating partnership units with respect to the management companies was based on an Appraisal by the independent valuer. Therefore, the supervisor believes that the exchange values take into account the relative values of each subject LLC, each private entity and the management companies.

2. *Independent Appraisal and Fairness Opinion.* The supervisor's belief as to the fairness of the consolidation to the participants and the statements above regarding the material terms underlying its belief as to fairness partially are based upon the Appraisal of each subject LLC's interest in a property that the independent valuer prepared and upon the fairness opinion the independent valuer provided to the supervisor. The supervisor attributed significant weight to the Appraisal and the fairness opinion of the independent valuer, which the supervisor believes support its belief that the consolidation is fair to the participants. The supervisor does not know of any factor that would materially alter the conclusions made in the Appraisal or the fairness opinion of the independent valuer, including developments or trends that have materially affected or are reasonably likely to materially affect their conclusions. The supervisor believes that the engagement of the independent valuer to

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provide the Appraisal of each subject LLC's property and to provide the fairness opinion assisted it in the fulfillment of its fiduciary duties to the subject LLCs and the agents' fiduciary duties to the participants, although the independent valuer received fees for its services and is entitled to indemnification. See Reports, Opinions and Appraisals Fairness Opinion.

In rendering its opinions with respect to the fairness, from a financial point of view, to each subject LLC and each private entity and the participants in each subject LLC and each private entity, of the allocation of consideration (Class A common stock, Class B common stock, operating partnership units in the operating partnership or cash consideration) (i) among each subject LLC, each private entity and the management companies and (ii) to the participants in each subject LLC and each private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities), the independent valuer did not address or render any opinion with respect to any other aspect of the consolidation, including, but not limited to:

the impact of the consolidation with respect to tax consequences for the participants in the subject LLCs or private entities;

the market price or value of the company, either before or after the completion of the consolidation or the IPO;

any potential incremental value attributable to the portfolio of assets taken as a whole after giving effect to the consolidation and

the effects of variations in aggregate values attributed to the portfolio of assets after giving effect to the consolidation on relative values of such portfolio of assets.

The fairness opinion assumes that all entities are included in the consolidation and has not addressed the fairness of other possible combinations where one or more of such entities is not included. If less than all of the subject LLCs participate in the consolidation, the fairness of such a consolidation will not have been addressed by the fairness opinion.

In addition, the independent valuer was not requested to, and did not, solicit the interest of any other party in acquiring the subject LLCs or their respective assets. The independent valuer's opinion also does not compare the relative merits of the consolidation with those of any other transaction or business strategy which were or might have been considered by the supervisor as alternatives to the consolidation.

The independent valuer's fairness opinion does not constitute a recommendation to you as to how to vote on the consolidation or as to whether you should elect to receive operating partnership units or receive shares of Class A common stock or shares of Class B common stock.

**3. Increased Liquidity** While there is no assurance that the IPO price will be equal to or greater than the exchange value per share or that the Class A common stock or operating partnership units will trade at a price equal to or greater than the IPO price following consummation of the consolidation and IPO, the supervisor believes that the increased liquidity will offer participants in the subject LLCs the opportunity to achieve liquidity by selling all or part of their shares of Class A common stock, subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period. The shares of Class A common stock are expected to be listed on the NYSE. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, which also are expected to be listed on the NYSE, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock.

In addition, after 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



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50% of both the operating partnership units and common stock received in the consolidation at any time after the 180th day following the IPO pricing date and the balance of the operating partnership units and common stock 12 months after the IPO pricing date. This includes Class A common stock issuable in exchange for operating partnership units, which are only issuable in exchange for operating partnership units beginning 12 months after the completion of the IPO, and Class B common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

Each participant must make its own determination as to the form of consideration best suiting its personal situation. Such decision should be based upon a careful examination of the participant's personal finances, investment objectives, liquidity needs, tax situation and expectations as to the company's future growth.

4. *Consideration of Alternatives.* The supervisor considered alternatives to the consolidation including the continuation of the subject LLCs without change and the liquidation of the subject LLCs and the distributions of the net proceeds to participants. The supervisor does not believe that the subject LLCs could realize their allocable share of the value of the properties through a sale of the interests in the properties held by them. The supervisor believes that, over time, the likely value of the interest you will receive in the consolidation will be higher than the value of the consideration a participant would receive from any of the other alternatives as a result of increased efficiencies, growth opportunities, more efficient access to financing and other opportunities for value enhancement.

5. *Market Value.* To the extent there is trading in the participation interests, such trading takes place in an informal secondary market. A direct comparison of the current or historical prices of the Class A common stock and operating partnership units and the participation interests cannot be made because there is no current or historical market price information available with respect to the Class A common stock or operating partnership units, which will not be issued or traded prior to the consolidation. Therefore, the determination of the consideration to be received by participants is based upon the valuation of the subject LLCs as described under "Background of and Reasons for the Consolidation" "Derivation of Exchange Values" and is not based upon the current or historical market prices of the participation interests. Because there is no active trading market for the participation interests, the supervisor believes that historical sales prices of the participation interests in the secondary market are lower than, and not indicative of, the value of the underlying assets of the subject LLCs and the private entities.

6. *Participant's Choice of Investment - Operating Partnership Units, Class A Common Stock and/or Class B Common Stock.* Offering participants in the subject LLCs a choice to exchange their participation interests for operating partnership units, Class A common stock and, to a limited extent, Class B common stock enhances the procedural fairness of the consolidation by giving all participants in the subject LLCs the opportunity to elect to receive operating partnership units, Class A common stock or Class B common stock. Through this element of the consolidation, the supervisor is attempting to accommodate the possibly different investment objectives of the participants in the subject LLCs.

7. *Cash Available for Distribution Before and After the Consolidation.* The supervisor's belief as to the fairness of the consolidation took into account the effect of the consolidation on the aggregate cash available for distribution to you and the other participants. The effect of the consolidation and the cash available for distribution will vary among the subject LLCs. The estimated initial distribution that participants will receive as stockholders of the company for the year ending September 30, 2013 per \$10,000 original investment in each of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. is greater than the average annual distribution per \$10,000 original investment in each of such subject LLCs for the five years ending

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December 31, 2011 that they received (for Empire State Building Associates L.L.C., \$5,866 of estimated initial distributions as a stockholder of the company as compared to \$3,110 of average annual distributions (including \$140 of overage rent distributions attributable to borrowings) as a participant in Empire State Building Associates L.L.C., and for 60 East 42nd St. Associates L.L.C., \$7,294 of estimated initial distributions as a stockholder of the company as compared to \$6,310 of average annual distributions (including \$1,498 of overage rent distributions attributable to borrowings) as a participant in 60 East 42nd St. Associates L.L.C.). The estimated initial distribution that participants will receive as stockholders of the company for the year ending September 30, 2013 per \$10,000 original investment in 250 West 57th St. Associates L.L.C. is less than the average annual distribution per \$10,000 original investment for such subject LLC for the five years ending December 31, 2011 that they received. The total average annual distributions for 250 West 57th St. Associates L.L.C. of \$10,976 includes \$3,308 of distributions attributable to borrowing and \$652 of distributions attributable to an extraordinary lease cancellation payment. The extraordinary lease cancellation payment was a one-time event and the supervisor does not believe that 250 West 57th St. Associates L.L.C. could continue to borrow on an on-going basis to enable it to pay distributions at such level. In the absence of distributions from these sources, the remaining average annual distributions out of operations of \$7,016, which is less than the estimated initial distribution of the company of \$7,421 per \$10,000 original investment. The supervisor believes that participants in each of the subject LLCs have greater potential for increased distributions as a holder of operating partnership units or common stock than as a participant in a subject LLC from improved performance of the properties, potential growth from acquisitions and a better capital structure made possible by the combined balance sheet of all the properties. There is no assurance, however, that the company's dividends will increase over time or be greater than the historical distributions made to participants in a subject LLC. The estimated annual distribution is based on certain assumptions. See Background of and Reasons for the Consolidation Comparison of Distributions by the Subject LLCs and the Company Distributions by the Company.

8. *Other Benefits from the Consolidation.* In addition to the receipt of cash available for distribution, you and the other participants whose subject LLCs participate in the consolidation will be able to benefit from the potential growth of the company and also will receive investment liquidity through the public market by selling all or part of the shares of Class A common stock, subject to the restrictions of applicable U.S. federal and state securities laws and after expiration of the lock-up period described herein. The shares of Class A common stock are expected to be listed on the NYSE. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to such restrictions. Participants in the subject LLCs who receive operating partnership units may also sell operating partnership units, which also are expected to be listed on the NYSE, which they may sell, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

9. *Net Book Value of the Subject LLCs.* The supervisor calculated the net book value of each subject LLC under GAAP, as of September 30, 2012, per \$10,000 original investment. Since the calculation of the book value was done on a GAAP basis, it is based primarily on depreciated historical cost and, therefore, is not indicative of the fair market value of the subject LLCs. This figure was compared to the exchange value per \$10,000 original investment.

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(per \$10,000 original investment (except as otherwise noted))

<b>Entity</b>	<b>Exchange Value<sup>(1)</sup></b>	<b>GAAP Net Book Value (Deficit) as of September 30, 2012</b>
Empire State Building Associates L.L.C.		
Participants (subject to voluntary override)	\$ 323,803	(\$ 2,853)
Participants (not subject to voluntary override)	\$ 358,670	(\$ 2,853)
60 East 42nd St. Associates L.L.C.		
Participants	\$ 402,658	(\$ 13,607)
250 West 57th St. Associates L.L.C.		
Participants (subject to voluntary override)	\$ 409,662	(\$ 7,497)
Participants (not subject to voluntary override)	\$ 452,957	(\$ 7,497)

- (1) The exchange value of each subject LLC is based in part on each subject LLC's assets and liabilities included in the quarterly balance sheets of the subject LLC as of June 30, 2012. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation.

**Relative Weight Assigned to Material Factors**

The supervisor gave greatest weight to the factors set forth in paragraphs one, two, three, four and eight above in reaching its conclusions as to the fairness of the consolidation.

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**CONSIDERATION**

If your subject LLC participates in the consolidation, meaning that it contributes its assets to the company, you will be allocated operating partnership units and/or shares of common stock. If your subject LLC votes **AGAINST** the consolidation and the consolidation closes, your subject LLC will continue as an independent entity with the company or one of the company's subsidiaries as supervisor.

*Operating Partnership Units.* You will receive operating partnership units, unless you elect to receive, in exchange for your participation interests, Class A common stock, or, to a limited extent, as described below, Class B common stock. The operating partnership units will be issued in three separate series to the participants in each of the three subject LLCs, other than the Wien group. Each series of operating partnership units has identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership.

*Class A Common Stock.* If you elect to receive Class A common stock in lieu of operating partnership units issuable to you, you will receive one share of Class A common stock for each operating partnership unit you would have otherwise been entitled to receive.

*Class B Common Stock.* Participants may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and holders of shares of Class A common stock and Class B common stock will vote together as a single class. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock.

You can elect the form of consideration in the consent form accompanying this prospectus/consent solicitation.

*Supervisor.* The supervisor and the Malkin Holdings group have override interests in the subject LLCs and in the private entities, which are the rights to receive a portion of the distributions in excess of a base amount distributable to participants in the subject LLCs and the private entities. The override interests allocable to the supervisor for Empire State Building Associates L.L.C. and 250 West 57th St. Associates L.L.C. will be distributed in operating partnership units and will be allocated to participants that have consented to a distribution to the supervisor pursuant to a voluntary program out of their share of distributions. The override interest with respect to 60 East 42nd St. Associates L.L.C. was determined in accordance with the organizational documents, as described under Exchange Values Allocation of Common Stock and Operating Partnership Units. The amount of distributions payable to the supervisor and the Malkin Holdings group in respect of the override interests initially has been determined based on the exchange value for the subject LLC. The final amount will be determined based on the value of the operating partnership units and shares of Class A common stock issued to the subject LLCs at the price per share of the Class A common stock in the IPO.

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**THE CONSOLIDATION**

*To effect the consolidation, the subject LLCs that vote in favor of the consolidation will contribute their assets subject to their liabilities to the operating partnership of the company or a subsidiary of the operating partnership. As described above, you will receive operating partnership units, unless you elect to receive shares of Class A common stock or, to a limited extent, as described herein, Class B common stock in lieu of operating partnership units issuable to you. The following is an overview of the principal components and other key aspects of the consolidation. The description below also includes a summary of the material provisions of the contribution agreements between the company, the operating partnership and each subject LLC. Such description does not purport to be complete and is subject to and qualified in its entirety by reference to the contribution agreement. A copy of the contribution agreement for your subject LLC is attached to the supplement accompanying this prospectus/consent solicitation as Appendix B. By reference to this contribution agreement, the company is incorporating the contribution agreement for your subject LLC into this prospectus/consent solicitation as required by the federal securities laws.*

**Principal Components of the Consolidation**

The consolidation will consist of the following principal components:

*The subject LLCs will consolidate into the company.* The subject LLCs in which participants holding the required percentage of the subject LLC's participation interests approve the consolidation will contribute their assets to the operating partnership or a subsidiary of the operating partnership as more fully described in *The Consolidation Vote Required for Approval of the Consolidation*. Consequently, the company will own, through the operating partnership and its subsidiaries, the acquired subject LLCs' property interests and certain other assets after the completion of the consolidation. In addition, the operating partnership or a subsidiary company generally will assume the liabilities of the subject LLCs. The number of subject LLCs that will approve the consolidation currently is unknown. Operating partnership units, Class A common stock or Class B common stock, as applicable, will be issued by the company to the subject LLCs which, in turn, will distribute them in accordance with participants' elections. The subject LLCs will also distribute any available cash held by the subject LLCs, promptly following the closing of the consolidation. See *Distributions*. These distributions will be liquidating distributions and the business of each of the subject LLCs will be liquidated and wound up promptly following the closing. Following the contribution of each of the subject LLCs' interests in the properties to the company, the agents of each of the subject LLCs have the authority under the participating agreements to liquidate the subject LLCs without consent of the participants. The operating partnership units, Class A common stock and Class B common stock issuable to the participants in the subject LLCs are registered pursuant to the Registration Statement on Form S-4, of which this prospectus/consent solicitation is a part and, therefore, fully transferable after expiration of the lock-up period. The Class A common stock issuable in exchange for the operating partnership units may only be issued if the Class A common stock is registered under the Securities Act or an exemption is available therefrom. Pursuant to a registration rights agreement, the company has agreed to register such Class A common stock. See *Registration Rights Agreement*.

The company also has entered into a contribution agreement with the supervisor and the Wien group pursuant to which (i) the supervisor will contribute to the operating partnership all of the supervisor's override interests in the subject LLCs in exchange for operating partnership units and (ii) the Wien group will contribute their participation interests in the subject LLCs to the operating partnership in exchange for operating partnership units and Class B common stock.

*The company will acquire the properties of the private entities.* To the extent required under their organizational documents, the participants in each private entity have consented to the consolidation. The company has entered into agreements with the private entities described under *Summary of the Subject LLCs, the Private Entities and the Management Companies* pursuant to which each private entity has agreed to

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contribute its property interests and other assets, other than interests in excluded properties and excluded businesses, to the operating partnership or a subsidiary or merge with the operating partnership or a subsidiary of the operating partnership, conditioned on (i) the closing of the IPO and the listing of the operating partnership units and Class A common stock on the NYSE or another national securities exchange; (ii) the closing of the consolidation no later than December 31, 2014; (iii) the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building; (iv) delivery of a fairness opinion by the independent valuer and (v) other customary conditions. The contribution by the private entity will be made in exchange for operating partnership units, Class A common stock, Class B common stock and cash. Based on the hypothetical exchange value of \$10 per share which the supervisor has established for illustrative purposes, the company will issue to participants and holders of override interests in the private entities 129,080,462 operating partnership units having an exchange value of \$1,290,804,624; 6,974,722 shares of Class A common stock having an exchange value of \$69,747,222; and 1,007,830 shares of Class B common stock having an exchange value of \$10,078,299 (not including any additional shares of Class A common stock that may be issued to charitable organizations as described below). Of the consideration issuable to the private entities, the Malkin Holdings group will receive 44,575,277 operating partnership units; 8,578 shares of Class A common stock; and 906,436 shares of Class B common stock having an aggregate exchange value of \$454,902,914; including in respect of their overrides. In addition, participants in the private entities who are non-accredited investors who would have been entitled to 8,530,581 shares of common stock on a fully diluted basis having an exchange value of \$85,305,810, will receive cash at a price per share equal to the offering price in the IPO. Participants in the private entities who are charitable organizations, including the Helmsley estate, who would have been entitled in the aggregate to 105,032,439 shares of common stock on a fully diluted basis having an exchange value of \$1,050,324,394 that have made a cash election will receive cash, subject to a cut back (at a price per share equal to the IPO price reduced by the underwriting discount per share paid by the company in the IPO) and will receive Class A common stock for the balance. Of the consideration issuable to the charitable organizations the Helmsley estate will receive Class A common stock, Class B common stock and/or operating partnership units and cash having an aggregate exchange value of \$1,025,990,777. In addition, the operating partnership or one or more of its subsidiaries will be subject to all the liabilities of the private entities. The Malkin Holdings group and the Helmsley estate will receive the largest amount of consideration in the consolidation, because they hold participation interests and, in the case of the Malkin Holdings group, overrides, issued to them or their predecessors during a period of more than 60 years in respect of their cumulative cash investments and their roles in the entity formation and property operations with respect to (a) all of the entities and properties in the case of the Malkin Holdings group including the activities of Lawrence A. Wien, Peter L. Malkin and Anthony E. Malkin for many decades and (b) a large number of them in the case of the Helmsley estate.

The private entities own interests in an aggregate of 18 properties that will be included in the consolidation, and include three private entities which are the operating lessees of the properties that the subject LLCs own. There can be no assurance that the company will acquire all of these properties, whether as a result of conditions in the contribution agreements for the private entities not being met or for other reasons.

*The company will acquire the management companies.* The company will acquire the supervisor and the other management companies that provide asset management and property management and leasing services to the subject LLCs and private entities and construction services. The company will issue to equity holders in the management companies 866,222 operating partnership units having an exchange value of \$8,662,220; 746,300 shares of Class A common stock having an exchange value of \$7,463,000; and 17,678 shares of Class B common stock having an exchange value of \$176,780. The management companies, which are controlled by Peter L. Malkin and Anthony E. Malkin, consist of Malkin Holdings LLC, which is the supervisor, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc. and Malkin Construction Corp. Malkin Holdings LLC, Malkin Properties, L.L.C., and Malkin Properties of New York, L.L.C. each will merge into a separate wholly-owned subsidiary of the operating partnership and the holders of limited liability company interests in these entities will receive operating partnership units and Class B common stock in

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exchange for the interests in these entities. Malkin Properties of Connecticut, Inc. and Malkin Construction Corp. each will merge into a wholly-owned subsidiary of the company and the holders of stock in such entities will receive Class A common stock in exchange for the interests in these entities.

*Excluded Properties and Businesses.* In addition to the interests in the properties being acquired from the subject LLCs and the private entities or entities organized by them, the Malkin Family owns non-controlling interests in, and Anthony E. Malkin and Peter L. Malkin control the general partners or managers of, the entities that own interests in six multi-family properties, five net leased retail properties, one former post office property which is subject to rezoning before it will be converted into a single tenant retail property, and a development parcel that is zoned for residential use. The Malkin Family also owns non-controlling interests in one Manhattan office property, two Manhattan retail properties and several retail properties outside of Manhattan, none of which will be contributed to the company in the consolidation. The non-controlling interests described above are referred to collectively herein as the excluded properties. In addition, the Malkin Family owns interests in six mezzanine and senior equity funds, two industrial funds, five residential property managers and a registered broker dealer, none of which will be contributed to the company in the consolidation, and which is referred collectively herein as the excluded businesses. The Malkin Family owns certain non-real estate family investments that will not be contributed to the company in the consolidation. The company does not believe that the excluded properties or the excluded businesses are consistent with its portfolio geographic or property type composition, management or strategic direction. Pursuant to management and/or services agreements with the owners of interests in those excluded properties and services agreements with the five residential property managers and the managers of certain other excluded businesses which historically were managed by the supervisor and its affiliates, the company will be designated as the manager of the excluded properties and will provide services to the owners of certain of the excluded properties and the five residential property managers and provide services and access to office space to the existing managers of the other excluded businesses (other than with respect to the registered broker dealer). As the manager or service provider, the company will be paid a management or other fee with respect to those excluded properties and excluded businesses (other than with respect to the registered broker dealer) where the supervisor and its affiliates had previously received a management fee on the same terms as the fee paid the supervisor and its affiliates, and reimbursed for costs in providing the management and other services to those excluded properties and businesses where the supervisor and its affiliates had not previously received a management fee. The company's management of the excluded properties and provision of services to the owners of certain of the excluded properties, the five residential property managers and the existing managers of the other excluded businesses will represent a minimal portion of its overall business. There is no established time period in which the company will manage such properties or provide services to such entities and Peter L. Malkin and Anthony E. Malkin expect to sell certain of these properties or unwind certain of these businesses over time.

*TRS Election.* The company will jointly elect with Observatory TRS, which is the current lessee and operator of the observatory and which will be wholly owned by the operating partnership following the completion of the IPO and the consolidation, for Observatory TRS to be treated as a TRS under the Code for U.S. federal income tax purposes following the completion of the IPO and the consolidation. Observatory TRS will lease the Empire State Building observatory from the operating partnership pursuant to an existing lease that provides for fixed base rental payments and variable rental payments equal to certain percentages of Observatory TRS's gross receipts from the operation of the observatory. In addition, the company will jointly elect with Holding TRS, which will be wholly owned by the operating partnership following the completion of the IPO, for Holding TRS to be treated as a TRS under the Code for U.S. federal income tax purposes following the completion of the IPO. Holding TRS and/or its wholly owned subsidiaries will provide certain construction services to third parties and will provide certain services to the tenants of the company's properties.

*Issuance of Shares of Class A Common Stock, Class B Common Stock and Operating Partnership Units.* As described above, the company and the operating partnership, as applicable, will issue shares of Class A common stock, Class B common stock, operating partnership units and/or cash in connection with the consolidations with the subject LLCs, the private entities and the management companies. See Consideration. Each operating

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partnership unit provides generally the same rights to distributions as one share of Class A common stock and will be exchangeable for cash or, at the company's election, exchangeable for one share of Class A common stock, beginning 12 months after the completion of the IPO, subject to certain specified conditions.

The operating partnership units to be issued to participants in the subject LLCs will be issued in three separate series to the participants in each of the three subject LLCs (other than the Wien group), each of which will be listed and traded separately. Because the operating partnership units are in separate series, there will be fewer holders of each series. While each of the series has the same rights, the tax consequences to a participant that receives, and a subsequent purchaser of, operating partnership units of a particular series will be different than those to a participant that receives, and a subsequent purchaser of, operating partnership units of another series (based on different and unique tax attributes of the properties being contributed by each of the subject LLCs). These factors may adversely affect the market for operating partnership units. To avoid such factors and to achieve liquidity, holders of operating partnership units may elect to exercise their redemption rights with respect to such operating partnership units, which commence 12 months after the completion of the IPO, and, if applicable, sell the Class A common stock received in exchange.

Each share of Class A common stock entitles the holder to one vote. Operating partnership units have economic rights similar to the Class A common stock but do not have the right to vote on matters presented to holders of Class A common stock and Class B common stock. The participants in the subject LLCs have an option to elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participant would otherwise receive in the consolidation. Accredited investors in the private entities and the management companies had the same option at the time they made their election of consideration in the private solicitation. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each outstanding share of Class B common stock entitles the holder to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and holders of shares of Class A common stock and Class B common stock will vote together as a single class. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. One share of Class B common stock may be converted into one share of Class A common stock at any time, and one share of Class B common stock is subject to automatic conversion into one share of Class A common stock upon a direct or indirect transfer of such share of Class B common stock or certain transfers of the operating partnership units held by the holder of Class B common stock (or a permitted transferee) to a person other than a permitted transferee.

The shares of common stock and operating partnership units issuable to the private entities and the holders of interests in the management companies and to the Wien group are not registered pursuant to the Registration Statement on Form S-4 of which this prospectus/consent solicitation is a part. Persons holding operating partnership units will have rights beginning 12 months after the completion of the consolidation, to cause the operating partnership to redeem each of their operating partnership units for a cash amount equal to the then-current market value of one share of Class A common stock per operating partnership unit or, at the company's election, to exchange their operating partnership units for shares of Class A common stock on a one-for-one basis. The company will agree to use commercially reasonable efforts to file a registration statement covering the issuance of Class A common stock upon the exchange of operating partnership units, the resale of all shares of Class A common stock into which the operating partnership units are exchangeable or Class B common stock is convertible, and all shares of common stock issued to holders of participation interests in the private entities as part of the consolidation within 12 months after the closing of the IPO.

*Cash option for participants in private entities.* Charitable organizations, including the Helmsley estate were granted a cash option in connection with their interests in the private entities. These charitable organizations had the option to receive cash at a price per share equal to the IPO price per share (reduced by the underwriting discount per share paid by the company in the IPO) to the extent of cash available from the IPO for this purpose, after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds. To the



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extent that there is not sufficient available cash to pay in full the cash payable to electing charitable organizations, there will be a pro rata reduction in the cash received by each electing charitable organization and the balance will be in the form of Class A common stock.

The Helmsley estate and other charitable organizations have exercised the cash option as to all of the operating partnership units issuable to them by the private entities in the consolidation (which based on the exchange values represents 24.53% for the Helmsley estate and 0.58% for the other charitable organizations, respectively, of the common stock on a fully-diluted basis or \$1.050 billion of the exchange value in the aggregate) and will receive Class A common stock, Class B common stock and/or operating partnership units to the extent that the cash available for this purpose is insufficient to pay all of the consideration in cash. The Helmsley estate will also receive an amount equal to any New York City transfer tax savings resulting from its status as a charitable organization. In addition, the company and the Helmsley estate have also agreed that if the IPO is upsized after the effective time of the registration statement filed in connection with the IPO or if the underwriters in the IPO exercise their option to purchase additional shares of Class A common stock, all additional net proceeds from the sale of shares of Class A common stock issued by the company in such upsize or option will be allocated solely to the Helmsley estate for purposes of the consolidation at the same value as the cash option described above.

The company has provided the Helmsley estate with a cash option as described above. Following the consummation of the consolidation and the IPO, the Helmsley estate is anticipated to continue to own a sizeable position in the company. Therefore, in light of the Helmsley estate's desire, and requirement, to sell all or a significant portion of its post-IPO position, which could adversely affect the market price of the company's Class A common stock following the IPO, the supervisor structured elements of the consolidation and the IPO, including this cash option, to minimize the Helmsley estate's post-IPO position. The company also has provided that the net proceeds from any potential upsizing of the IPO or any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock would also be applied to the Helmsley estate's cash election to further reduce the Helmsley estate's position in the company. Such reduction of the Helmsley estate's overhang would be viewed favorably by the market and would provide for a better trading market in the company's Class A common stock following the IPO for the benefit of all stockholders. The company has also provided registration rights to the Helmsley estate to provide for an efficient and transparent process for the Helmsley estate to sell all or a portion of its remaining interest in the company following the IPO.

*The company has filed a registration statement with respect to the IPO and upon the closing of the IPO, the Class A common stock is expected to be listed on the NYSE. The company will provide liquidity and a trading market for the shares of common stock by listing the common stock for trading on the NYSE upon completion of the IPO, which will be concurrent with the consummation of the consolidation.*

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**Pre- and Post-Consolidation Structure**

The following charts reflect the organizational structure of each subject LLC before the consolidation:

**Empire State Building Associates L.L.C.**

- (1) Represents a voluntary capital override agreed to by approximately 94% of the participants and documented individually with each participant who granted the override, which provides the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of their original investment. The supervisor will receive distributions on the voluntary capital overrides with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such overrides would comprise approximately 9.14% of the economic value of Empire State Building Associates L.L.C. These voluntary capital overrides were solicited pursuant to consent solicitation statements dated September 13, 1991, September 14, 2001 and June 9, 2008.
- (2) This override, which is not a voluntary override, is payable pursuant to the original offering documents for Empire State Building Associates L.L.C. and provides the supervisor the right to receive additional payments equal to 6% of any distributions of overage rent received under the operating lease, 6% of 50% of the amount of the reduction in mortgage charges due to the repayment of the purchase money mortgage placed at the time of the original acquisition by Empire State Building Associates L.L.C. of its interest in the Empire State Building and 6% of 50% of certain scheduled reductions in ground rent payable by Empire State Building Associates L.L.C. under the operating lease.

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**60 East 42nd St. Associates L.L.C.**

- (1) The override, which is not a voluntary override, represents a contractual obligation of the subject LLC payable pursuant to a consent of participants in 1968 and provides that supervisor is entitled to receive 10% of all additional amounts paid out (without specifying the source of distributions) after the members have received distributions equal to a return at the rate of 14% on their cash investment in the year in which the distribution is made. The supervisor will receive distributions on the override with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such override would comprise approximately 9.97% of the economic value of 60 East 42<sup>nd</sup> St. Associates L.L.C.

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**250 West 57th St. Associates L.L.C.**

- (1) Represents a voluntary capital override agreed to by approximately 78% of the participants and documented individually with each participant who granted the override, which provides the supervisor with 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of twice the amount of their original investment. The supervisor will receive distributions on the voluntary capital overrides with respect to the consideration from the consolidation, because such consideration constitutes capital proceeds. Assuming that the enterprise value determined in connection with the IPO were the same as the aggregate exchange value, such overrides would comprise approximately 7.49% of the economic value of 250 West 57<sup>th</sup> St. Associates L.L.C. These voluntary capital overrides were solicited pursuant to consent solicitation statements dated March 10, 2004 and May 17, 2006. All of these override interests are owned by the Malkin Holdings group.
- (2) The override, which is not a voluntary override, is payable pursuant to a consent of participants in 1968, represents the right to receive 10% of all cash distributions (other than from mortgage, sale or condemnation proceeds) in excess of 15% on the remaining cash investment in any one year.

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The following chart shows the percentage ownership of the common stock on a fully diluted basis in the company (assuming exchange of all operating partnership units for Class A common stock, conversion of all Class B common stock into Class A common stock, and that no cash is paid to any participants in the private entities) after closing of the consolidation but prior to closing of the IPO, allocable to each of the entities shown in the table (including the Helmsley estate, which has made a cash election as described under Related Party Transactions Transactions Relating to the Consolidation ), and assuming the consolidation is approved by all three subject LLCs:

- (1) 15.43% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.08% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (2) 6.68% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 63.75% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (3) 17.19% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.39% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (4) 16.75% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 27.00% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (5) 14.19% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 0.28% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (6) 33.22% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Malkin Holdings group and 31.50% of the shares of common stock on a fully diluted basis issuable to the entity is allocable to the Helmsley estate.
- (7) 30.94% of the shares of common stock on a fully diluted basis issuable to the other private entities is allocable to the Malkin Holdings group and 17.57% of the shares of common stock on a fully diluted basis issuable to the other private entities is allocable to the Helmsley estate.
- (8) All of the shares of common stock on a fully diluted basis issuable to the entity are allocated to the Malkin Holdings group.
- (9) 17.47% of the shares of common stock on a fully diluted basis is allocable to the Malkin Holdings group and 24.59% of the shares of common stock on a fully diluted basis is allocable to the Helmsley estate.

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The following charts show, for each of the properties owned by the subject LLCs, the relative exchange value of the applicable property attributable to the subject LLC, the operating lessee, and, for each of the subject LLCs and operating lessees, the participants' interests and override interests associated with the subject LLCs and operating lessees' override interests, except as otherwise noted, are held by the Malkin Holdings group:

- (1) Voluntary capital transaction override.
- (2) \$53,218,257 of the overrides are paid to persons other than the Malkin Holdings group. Of the additional overrides not owned by the Malkin Holdings group, \$42,851,487 are owned primarily by members of the Wien group (who are not members of the Malkin Family). Such overrides were created under agreements with participants who acquired their interests from Lawrence A. Wien, and they were transferred to members of the Wien group as descendants of Lawrence A. Wien. In addition, a portion of the overrides held by persons other than the Malkin Holdings group are held by other persons not members of the Wien group who sold their participation interests, but retained an override interest.

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- (1) Voluntary capital transaction override.
- (2) \$13,826,125 of the overrides are paid to persons other than the Malkin Holdings group. The additional overrides not owned by the Malkin Holdings group are owned by members of the Wien group (who are not members of the Malkin Family). The override interests were created under the agreements in which participants received their interests from Lawrence A. Wien and were transferred to members of the Wien group as descendants of Lawrence A. Wien.



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The following chart shows the organization of the company after the consolidation and the IPO, assuming the consolidation is approved by all three subject LLCs, that each participant in the subject LLCs elects to receive Class A common stock, Class B common stock and operating partnership units in the same proportion as participants (other than the Malkin Family and the Helmsley estate) in the private entities, that 100 million shares of Class A common stock are issued in the IPO at a purchase price of \$10 per share, that net proceeds from the IPO are used as set forth in the pro forma financial statements (unaudited) of the company and that cash is paid to participants in the private entities that are non-accredited investors or charitable organizations (including the Helmsley estate) that elected cash. The operating partnership units and common stock issuable to the Helmsley estate assumes the Helmsley estate receives cash in lieu of 69,360,195 shares of common stock on exercise of its cash election and does not give effect to any additional cash that the Helmsley estate may receive as a result of any exercise of the underwriters' option to purchase additional shares of the Company's Class A common stock in the IPO.

The Class A common stock, Class B common stock and operating partnership units represent 30.0%, 0.5% and 69.5%, respectively, of the common stock, on a fully diluted basis.

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The following tables show the ownership of participation interests, at September 30, 2012, in each of Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C., by persons who may be deemed to be directors or executive officers of each subject LLC and by other members of the Malkin Holdings group. At September 30, 2012, no person owned of record or was known by Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C. or 250 West 57<sup>th</sup> St. Associates L.L.C., as applicable, to own beneficially more than 5% of the participation interests in Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C., or 250 West 57<sup>th</sup> St. Associates L.L.C.

Empire State Building Associates L.L.C.:

Title of Class	Name & Address of Beneficial Owners	Amount of Beneficial Ownership of Participation Interests (based on original invested capital)	Percent of Class
Participation Interests	Anthony E. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 23,333	0.07%
	Thomas N. Keltner, Jr.		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 17,709	0.05%
	Peter L. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 65,833 <sup>(1)</sup>	0.20%
	Peter L. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 80,833 <sup>(2)</sup>	0.24%
	Entities, the beneficial owners		
	of which are members of Peter		
	L. Malkin's family	\$ 1,064,583 <sup>(3)</sup>	3.23%
	Anthony E. Malkin	\$ 187,500 <sup>(4)</sup>	0.57%

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One Grand Central Place

60 East 42<sup>nd</sup> Street

New York, New York 10165

Trusts for the benefit of members of Anthony E. Malkin's family	\$	85,833 <sup>(5)</sup>	0.26%
Members of Thomas N. Keltner, Jr.'s family	\$	6,667 <sup>(6)</sup>	0.02%
Other members of the supervisor, members of their families, trusts for the benefit of the foregoing, and entities, the beneficial owners of which consist of the foregoing	\$	810,614	2.45%
TOTAL	\$	2,342,905	7.09% <sup>(7)</sup>

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- (1) Such participation interests are owned of record as trustee or co-trustee but not beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests.
- (2) Such participation interests are owned of record as trustee and beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests.
- (3) Such participation interests are owned of record and beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests, except that related family trusts and entities are required to complete scheduled payments to him.
- (4) Such participation interests are owned of record as trustee or co-trustee but not beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (5) Such participation interests are owned of record and beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (6) Such participation interests are owned of record and beneficially. Thomas N. Keltner, Jr. disclaims any beneficial ownership of such participation interests.
- (7) In addition to participation interests, the supervisor holds override interests in Empire State Building Associates L.L.C.  
60 East 42<sup>nd</sup> St. Associates L.L.C.:

Title of Class	Name & Address of Beneficial Owners	Amount of Beneficial Ownership of Participation Interests (based on original invested capital)	Percent of Class
Participation Interests	Anthony E. Malkin  One Grand Central Place  60 East 42 <sup>nd</sup> Street  New York, New York 10165	\$ 25,833	0.37%
	Peter L. Malkin  One Grand Central Place  60 East 42 <sup>nd</sup> Street  New York, New York 10165	\$ 33,334 <sup>(1)</sup>	0.48%
	Entities, the beneficial owners		
	of which are members of Peter L. Malkin's family	\$ 160,000 <sup>(2)</sup>	2.29%
	Anthony E. Malkin  One Grand Central Place  60 East 42 <sup>nd</sup> Street  New York, New York 10165	\$ 80,000 <sup>(3)</sup>	1.14%
	Trusts for the benefit of  members of Anthony E.  Malkin's family	\$ 65,000 <sup>(4)</sup>	0.93%
	Other members of the	\$ 194,621	2.78%

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supervisor, members of their  
families, trusts for the benefit  
of the foregoing, and entities,  
the beneficial owners of which  
consist of the foregoing

TOTAL	\$	558,788	7.98% <sup>(5)</sup>
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- (1) Such participation interests are owned of record as trustee or co-trustee but not beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests.
- (2) Such participation interests are owned of record and beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests, except that related trusts are required to complete scheduled payments to him.
- (3) Such participation interests are owned of record as trustee but not beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (4) Such participation interests are owned of record and beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (5) In addition to participation interests, the supervisor holds override interests in 60 East 42<sup>nd</sup> St. Associates L.L.C.

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Title of Class	Name & Address of Beneficial Owners	Amount of Beneficial Ownership of Participation Interests (based on original invested capital)	Percent of Class
Participation Interests	Anthony E. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 8,333 <sup>(1)</sup>	0.23%
	Anthony E. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 8,333 <sup>(2)</sup>	0.23%
	Entities, the beneficial owners		
	of which are members of Peter L. Malkin's family	\$ 167,500 <sup>(3)</sup>	4.65%
	Peter L. Malkin		
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		
	New York, New York 10165	\$ 7,500 <sup>(4)</sup>	0.21%
	Other members of the supervisor, members of their families, trusts for the benefit of the foregoing, and entities, the beneficial owners of which		
	consist of the foregoing	\$ 59,167	1.64%
	Thomas N. Keltner, Jr.	\$ 2,500	0.07%
	One Grand Central Place		
	60 East 42 <sup>nd</sup> Street		

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New York, New York 10165

TOTAL	\$	253,333	7.03% <sup>(5)</sup>
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- (1) Such participation interests are owned of record as trustee but not beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (2) Such participation interests are owned of record and beneficially. Anthony E. Malkin disclaims any beneficial ownership of such participation interests.
- (3) Such participation interests are owned of record and beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests, except that trusts related to such entities are required to complete scheduled payments to him.
- (4) Such participation interests are owned of record as trustee but not beneficially. Peter L. Malkin disclaims any beneficial ownership of such participation interests.
- (5) In addition to participation interests, the supervisor holds override interests in 250 West 57<sup>th</sup> St. Associates L.L.C.

## ***Operating Partnership***

Following the consummation of the IPO and the consolidation, substantially all of the company's assets will be held, directly or indirectly, by, and the company's operations will run through, the operating partnership. The company will contribute the net proceeds from the IPO to the operating partnership in exchange for operating partnership units. The company's interest in the operating partnership will entitle the company to share in cash distributions from, and in the profits and losses of, the operating partnership in proportion to the company's percentage ownership. As the sole general partner of the operating partnership, the company generally will have

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the exclusive power under the operating partnership agreement to manage and conduct its business, subject to certain limited approval and voting rights of the other limited partners described more fully below in Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership. The company's board of directors will manage the affairs of the company by directing the affairs of the operating partnership.

Beginning on or after the date which is 12 months after the consummation of the IPO, limited partners of the operating partnership have the right to require the operating partnership to redeem part or all of their operating partnership units for cash or, at the company's election, shares of Class A common stock, based upon the fair market value of an equivalent number of shares of Class A common stock at the time of the redemption, subject to the ownership limits set forth in the company's charter and described under the section entitled Description of Capital Stock Restrictions on Ownership and Transfer. With each exchange of operating partnership units, the company will increase its percentage ownership interest in the operating partnership and its share of the operating partnership's cash distributions and profits and losses. See Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership.

### ***Management Companies***

The management companies (or their successors) or another subsidiary of the operating partnership will manage all the company's properties and assets. The management services will include oversight in marketing, leasing, insurance, capital and operating budgets and routine administrative tasks such as reports and tax and compliance filings. The management companies (or their successors) also may act as a general contractor with respect to construction and repair work for the properties the company acquires and their tenants.

### **Conditions to the Consolidation**

The company and the supervisor have established conditions that must be satisfied for the consolidation of each of the subject LLCs to be consummated, including the following:

requisite consent of the participants in the subject LLC must have been received;

the IPO must close and the operating partnership units and Class A common stock must be approved for listing on the NYSE or another national securities exchange prior to or concurrently with the consummation of the consolidation and the closing of the IPO;

the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building;

the consolidation must have been completed by December 31, 2014 and

the consolidation will be subject to other customary conditions as set forth in Section 2.1 of the Contribution Agreement attached to the supplement for each subject LLC as Appendix B.

### **Distributions**

Promptly following the closing of the IPO, as described under Related Party Transactions Cash Amounts, the subject LLCs, the private entities and the management companies will distribute their cash (in the case of the subject LLCs and the private entities, excluding from such distributable cash, any reserves on deposit with lenders for escrow accounts; amounts attributable to certain prepayments of rent, management fees or other income streams or expense reimbursements; and amounts held by the subject LLCs and the private entities as security deposits or amounts otherwise required to be reserved by the subject LLCs or the private entities pursuant to existing agreements with third parties) to the participants or equity owners of such subject LLC, private entity or the management companies in accordance with the provisions of the applicable organizational





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documents of each such subject LLC, private entity or the management companies; provided that cash will only be distributed by any entity to the extent that it exceeds the normalized level of net working capital for such entity, as determined by the supervisor (determined based on the most recent quarterly financial statements). Net working capital as used herein is defined as current assets (excluding cash and cash equivalents), less current liabilities (excluding the current portion of debt). Generally, any such distribution of cash will reduce a participant's adjusted tax basis (but not below zero), determined for U.S. federal income tax purposes, in its participation interest immediately prior to the consolidation by the amount of cash received, which, as a general matter, will result in a correspondingly lower tax basis in the operating partnership units that such participant receives in connection with the consolidation. As a general matter, a distribution of cash in excess of a participant's tax basis generally would result in taxable gain to the extent of such excess.

The subject LLCs will distribute promptly following the closing any excess cash held by them at the time of the closing of the consolidation. The cash to be distributed by a subject LLC will be (i) any cash held by such entity at the closing in excess of the normalized level of net working capital for such entity, as determined by the supervisor, (ii) the consolidation expenses reimbursed by the operating partnership to the subject LLC at the closing of the consolidation out of proceeds of the IPO and (iii) overage rent that will have accrued through the date of the closing of the consolidation.

The following table shows, for each of the subject LLCs, the amount of cash at September 30, 2012 which would have been available for distribution by the subject LLCs (in addition to any amounts that would have been distributable out of accrued overage rent) had the closing occurred on such date; the amount of reimbursement for costs incurred in connection with the consolidation and the IPO out of the proceeds of the IPO entitled to be received by the subject LLCs as of September 30, 2012; total distributions by each subject LLC and to each participant per \$10,000 original investment out of such excess cash (including such reimbursements); the payment under the voluntary pro rata reimbursement program per \$10,000 original investment; the amount of cash distributions that would be received by participants who consent to the voluntary pro rata reimbursement program per \$10,000 original investment and the additional proceeds to be received by participants from the class action settlement per \$10,000 original investment.

	Available Cash	Reimbursement of Costs in Connection with the Consolidation and IPO	Total Distribution to Participants	Total Distribution to Participants per \$10,000 Original Investment <sup>(1)</sup>	Payment under Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Distribution to Participants Who Consent to the Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Additional Proceeds to be Received by Participants from the Class Action Settlement per \$10,000 Original Investment <sup>(2)</sup>
Empire State Building Associates L.L.C.	\$ 3,350,000	\$ 15,500,000	\$ 18,850,000	\$ 5,012	\$ 1,029	\$ 3,983	\$ 9,840 <sup>(3)</sup>
60 East 42nd St. Associates L.L.C.	\$ 150,000	\$ 3,600,000	\$ 3,750,000	\$ 5,357	\$ 2,410	\$ 2,947	\$ 6,530
250 West 57th St. Associates L.L.C.	\$ 380,000	\$ 1,800,000	\$ 2,180,000	\$ 6,055	\$ 2,080	\$ 3,975	\$ 6,370 <sup>(4)</sup>

- (1) The actual amount of distributions will be based on cash available at closing of the consolidation and no assurance can be given that these cash amounts will be available for distribution.
- (2) The allocation of settlement proceeds from the class action settlement is in addition to the distributions shown elsewhere in this table. The allocation of net settlement proceeds (that is, net of any court-awarded attorneys' fees and expenses) shown in the table is based on the current plan of allocation proposed by counsel for the class plaintiffs. The settlement and the allocation of settlement proceeds are approximate and subject to court approval, and the proposed allocation is subject to revision by counsel for the class. They are not effective until such court approval is final, including the resolution of any appeal.
- (3) \$8,350 per \$10,000 original investment for participants not subject to voluntary capital override.
- (4) \$4,700 per \$10,000 original investment for participants not subject to voluntary capital override.

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It is expected that any distributions of excess cash held by the subject LLCs and any distributions of overage rent accrued through the date of the closing of the consolidation should be treated as distributions of cash from your subject LLC prior to the liquidation of your subject LLC. Accordingly, you should not generally be taxable for U.S. federal income tax purposes on any such distribution to the extent such distribution does not exceed your basis in your participation interest in the subject LLC immediately prior to the liquidation of the subject LLC, and your basis in your participation interest in your subject LLC should be reduced (but not below zero) by the amount of such distribution. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Termination of the Subject LLCs and Distribution of Cash from the Subject LLCs.

If you receive solely shares of Class A common stock in the consolidation, any distribution to you of consolidation expenses that the operating partnership pays to your subject LLC should generally increase your amount realized in the consolidation, and accordingly should increase the amount of gain or decrease the amount of loss you recognize in the consolidation. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Class A Common Stock Solely Class A Common Stock.

If you receive solely operating partnership units or a combination of operating partnership units and shares of common stock in the consolidation, it is expected that your share of any payment the operating partnership makes to your subject LLC as a reimbursement of consolidation expenses should be treated as a reimbursement of capital expenditures to which the disguised sale rules should not apply to the extent that such payment does not exceed certain qualified capital expenditures incurred by your subject LLC, and the distribution to you of any such amounts should be treated as additional consideration in the consolidation. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Consequences of the Consolidation Receipt of Operating Partnership Units Potential Application of the Disguised Sale Rules.

Each of the subject LLCs, the private entities and management companies has agreed that other than the distributions by the subject LLCs, the private entities and management companies contemplated by the consolidation, such subject LLC, such private entity or the management companies shall not take any action not in the ordinary course consistent with past practice to increase current assets or reduce current liabilities, including by increasing long-term liabilities, decreasing long-term assets, changing reserves or otherwise.

## **Contribution Agreements**

If your subject LLC approves the consolidation, that approval also constitutes consent to the contribution of your subject LLC's interest in its property to the operating partnership or its subsidiaries pursuant to the terms and conditions of your subject LLC's contribution agreement which was entered into prior to the date of this prospectus/consent solicitation. Each contribution agreement provides that the subject LLC will contribute its assets subject to its liabilities to the company and the operating partnership or its subsidiary in exchange for the consideration under Consideration. The operating partnership or a subsidiary will assume the mortgage loans on the properties. At the time the consolidation occurs, all of the properties and other assets and the liabilities of each participating subject LLC will be deemed to have been transferred to the company.

The contribution agreements also provide that the properties and assets may be acquired in an alternative transaction, which may include the acquisitions being preceded by an actual or de facto recapitalization of a subject LLC, provided that the alternative transaction or the recapitalization, as the case may be, does not change the consideration a participant would receive or the anticipated tax consequences of the transaction.

A recapitalization may be effected through a transfer of the assets to a newly organized entity and occur on the same day as, but before, the closing of the consolidation.

An alternative transaction also may take the form of a merger of the subject LLC with and into the company or a subsidiary of the company, or a merger of the company or a subsidiary of the company with and into the subject LLCs, or any other transaction pursuant to which the economic benefits (taking into account the tax treatment of such alternative transaction) to the company and the participants are not adversely affected by such alternative transaction as compared to the economic benefits to be received by the company and the participants.

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The supervisor currently expects to effect a recapitalization pursuant to which the supervisor would be issued interests in the subject LLC (or its successor) in exchange for its override interests prior to the closing of the consolidation. The limited liability company interests would provide the supervisor with the same distributions as it would have received on account of its override interests, described under Allocation of Common Stock and Operating Partnership Units. The recapitalization would be effected so that the ownership of interests in the subject LLC would reflect the distributions that each participant and the supervisor would be entitled to receive in the consolidation, in accordance with historic arrangements among the participants of the subject LLC and the supervisor and the exchange values determined by the independent valuer and approved by the supervisor.

The consideration allocated to each subject LLC will be increased by the amount of any working capital (determined based on the most recent quarterly financial statements), after the cash distributions described under Distributions above in excess of the normalized level of working capital for the subject LLC, as determined by the supervisor. Conversely, the consideration allocated to each subject LLC will be decreased by the amount of any negative working capital (determined based on the most recent quarterly financial statement) that is less than the normalized level of working capital for the subject LLC, as determined by the supervisor.

*Representations and warranties of each subject LLC.* Each subject LLC will make customary warranties and representations including representations that it is duly organized and validly existing and in good standing; that the contribution agreement has been duly and validly authorized, executed and delivered; that it has the power and authority to transfer, sell, assign and convey its participation interests to the operating partnership, and that there is no other right to purchase such participation interests; that, except as disclosed to the operating partnership, no consent, waiver, approval or authorization is required to complete the consolidation transaction; that the execution, delivery and performance of the contribution agreement will not result in a breach of the subject LLC's organizational documents, any agreement to which the subject LLC is a party or any term or provision of any judgment, order, writ, injunction or decree binding on the subject LLC (or its assets or properties) and that there is no litigation pending against the subject LLC with respect to its participation interests and representations concerning the property and its operations. Such representations and warranties will survive the closing of the consolidation; however, neither the subject LLCs nor any of their members, managers, officers or employees, to the extent applicable, will be liable for any breaches of the representations or warranties contained in the contribution agreement.

*Covenants of the subject LLCs.* Each subject LLC will covenant that it will not sell, transfer or otherwise dispose of all or any portion of its participation interests; mortgage, pledge, hypothecate or encumber (or permit to become encumbered) all or any portion of such participation interests; authorize or consent to, or cause any person or entity to take, any of the actions prohibited by the contribution agreements, amend the organizational documents of the subject LLC or adopt a plan of liquidation, dissolution, merger, consolidation, restructuring, recapitalization or reorganization with respect to the subject LLC or exercise rights, if any, under applicable organizational documents to initiate any buy-sell procedures or to commence any process to market and sell the property held by the subject LLC. Such covenants will not survive the closing of the consolidation.

*Conditions to Closing.* The following conditions must be satisfied to consummate the consolidation of the subject LLC: (i) requisite consent of the participants in the subject LLC must have been received; (ii) the closing of the IPO and the listing of the operating partnership units and Class A common stock on the NYSE or another national securities exchange; (iii) the closing of the consolidation no later than December 31, 2014; (iv) the contribution to the company of the property interests in the Empire State Building owned by Empire State Building Associates L.L.C., which owns the fee interest and the underlying land, and Empire State Building Company L.L.C., the private entity which is the operating lessee with respect to the Empire State Building and (v) other customary conditions as set forth in Section 2.1 of the Contribution Agreement attached to the supplement for each subject LLC as Appendix B.

*Amendment.* The contribution agreement may be amended prior to the closing of the IPO, without the consent of a participant, provided that such amendment does not adversely affect the economic benefits to the participants (taking into account the tax treatment of such amendment).

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If your subject LLC approves the consolidation, it also will have consented to all actions necessary or appropriate to accomplish the consolidation.

### **Other Consolidation Transaction Agreements**

*Merger agreements with the management companies.* The company will acquire through merger the supervisor and the other management companies, which are owned by the same persons as own the supervisor. On November 28, 2011, the company entered into a merger agreement with the supervisor and each other management company on substantially the same terms and conditions as the contribution agreements with each subject LLC, as described above, except that in connection with the consolidation: (i) the holders of interests in the management companies that were limited liability companies will receive operating partnership units and the option to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units they would otherwise receive in exchange for their interests in such entities and (ii) the holders of interests in the management companies that were corporations will receive shares of Class A common stock or Class B common stock in exchange for their interests in such entities.

*Contribution agreement with the Wien group.* On November 28, 2011, the company entered into a contribution agreement with the supervisor and the Wien group pursuant to which, upon closing of the consolidation, the Wien group will contribute its participation interests in the subject LLCs and the supervisor will contribute its override interests in the subject LLCs to the operating partnership, each in exchange for operating partnership units and the option to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units they would otherwise receive. Under this contribution agreement, the supervisor and the Wien group are entitled to receive the same amount of consideration they otherwise would have received (but in the form set forth in the preceding sentence) in the absence of such contribution agreement as a participant in the subject LLCs and as a holder of override interests, respectively, under the organization documents of the subject LLCs. Pursuant to this contribution agreement, the Wien group agreed to consent irrevocably to the consolidation with respect to each of the subject LLCs in which it holds participation interests.

The Wien group made customary representations and warranties with respect to itself and its participation interests.

The conditions to consummate the consolidation of each subject LLC in which the Wien group owns a participation interest must be satisfied in order for the closing of the Wien group's contribution of its participation interests in such subject LLC to occur. In addition, the contribution agreement is subject to the satisfaction of other customary conditions, such as the accuracy in all material respects of the representations and warranties and the performance in all material respects of all agreements and covenants required by the contribution agreement.

*Contribution agreements with the private entities.* On November 28, 2011, the company entered into a contribution agreement with each private entity on substantially the same terms and conditions as each subject LLC, as described above, except that in connection with the consolidation: (i) the accredited investors in each private entity may receive operating partnership units as consideration for their participation interests, and also had the option to receive (A) one share of Class A common stock instead of one operating partnership unit and/or (B) one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units such participants would otherwise receive in the consolidation (*i.e.*, they will receive one share of Class B common stock and 49 operating partnership units) and (ii) the non-accredited investors in each private entity will receive cash at a price per operating partnership unit equal to the IPO price (without reduction for underwriting discounts) instead of the operating partnership units that they otherwise would have received in the consolidation in order to comply with federal securities law requirements.

*Contribution agreement with certain entities affiliated with the Helmsley estate.* On November 28, 2011, the company entered into a contribution agreement with the Helmsley estate, which the company has amended, pursuant to which the Helmsley estate will contribute all of its participation interests in the private entities to the

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company and the operating partnership or a subsidiary in exchange for Class A common stock, Class B common stock and/or operating partnership units and cash at a price per share equal to the IPO price per share (reduced by the underwriting discount per share paid by the company in the IPO) to the extent of cash available from the IPO for this purpose after providing cash to redeem non-accredited investors in the private entities and other uses of proceeds. Under this contribution agreement, the Helmsley estate is entitled to the same consideration that it otherwise would have received (but in the form set forth in the preceding sentence) in the absence of such contribution agreement as a member or participant of the private entity plus an amount equal to any New York City transfer tax savings resulting from its status as a charitable organization. In addition, pursuant to this contribution agreement, the company and the Helmsley estate have also agreed that if the underwriters in the IPO exercise their option to purchase additional shares of Class A common stock or if the IPO is upsized after the effective time of the registration statement filed in connection with the IPO, all additional net proceeds from the sale of Class A common stock issued by the company in such option or upsize will be allocated solely to the Helmsley estate for purposes of the consolidation at the same value as the cash option. Pursuant to this contribution agreement, the Helmsley estate agreed to consent irrevocably to the consolidation with respect to each of the private entities in which it holds participation interests.

The Helmsley estate made customary representations and warranties with respect to itself and its participation interests.

The conditions to consummate the consolidation of each private entity in which the Helmsley estate owns a participation interest must be satisfied in order for the closing of the Helmsley estate's contribution of its participation interests in such private entity to occur. In addition, the contribution agreement is subject to the satisfaction of other customary conditions, such as the accuracy in all material respects of the representations and warranties and the performance in all material respects of all agreements and covenants required by the contribution agreement.

## **Lock-Up Agreements**

Pursuant to lock-up agreements, each participant in the subject LLCs and private entities may not sell or otherwise transfer or encumber shares of common stock or operating partnership units (i) with respect to 50% of the operating partnership units and common stock owned by them at completion of the IPO, for a period of 180 days after the IPO pricing date and (ii) with respect to any remaining operating partnership units and shares of common stock, for a period of one year after the IPO pricing date, in each case without first obtaining the written consent of the representatives of the underwriters in the IPO. This includes Class A common stock issuable in exchange for the operating partnership units, which are only issuable in exchange for operating partnership units beginning 12 months after the completion of the IPO, and Class B common stock. In addition, each participant in Empire State Building Associates L.L.C. that receives operating partnership units may, immediately following the consolidation and the IPO, sell his or her pro rata portion of the greater of 1,100,000 operating partnership units and \$40.0 million in value of operating partnership units (based on the IPO price of the Class A common stock), and each participant in 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C. that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to the same percentage as the percentage of each participant's operating partnership units that can be sold by participants in Empire State Building Associates L.L.C. immediately following the consolidation and the IPO. Therefore, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.

However, the Malkin Family and the company's directors and senior management team members may not sell any of the shares of common stock or securities convertible or exchangeable into Class A common stock (including operating partnership units) held by any of them until one year after the IPO pricing date. In addition,

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the company has agreed with the representatives of the underwriters, subject to certain exceptions, not to sell or otherwise transfer or encumber any such shares or securities (including operating partnership units) owned by it at the completion of the IPO for a period of 180 days after the IPO pricing date without the prior written consent of the representatives of such underwriters.

The second stage of the lock-up period will expire after one year, which applies only to the last 50% of the operating partnership units and common stock owned by all parties at completion of the IPO:

offer, pledge, sell or contract to sell any common stock;

sell any option or contract to purchase any common stock;

purchase any option or contract to sell any common stock;

grant any option, right or warrant for the sale of any common stock;

otherwise dispose of or transfer any common stock;

request or demand that the company file a registration statement related to the common stock;

enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock (including operating partnership units). It also applies to operating partnership units and common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. In the event that either (x) during the last 17 days of any lock-up period referred to above, the company issues an earnings release or material news or a material event relating to the company occurs or (y) prior to the expiration of the lock-up periods referred to above, the company announces that it will release earnings results or become aware that material news or a material event will occur during the 16-day period beginning on the last day of the applicable lock-up period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

## **Registration Rights Agreement**

Upon completion of the IPO, the company will enter into a registration rights agreement with participants in the consolidation. Under the registration rights agreement, subject to certain limitations, not later than 12 months from the beginning of the first full calendar month following the completion of the IPO, the company will file one or more registration statements, which are referred to herein as the resale shelf registration statements, covering the resale of all shares of Class A common stock issued in the consolidation (to the extent not already registered), all shares of Class A common stock issued to the company's independent directors, all shares of Class A common stock issued to members of the company's senior management team pursuant to the equity incentive plan, and all shares of Class A common stock that may be issued upon the exchange of operating partnership units or upon conversion of Class B common stock, or collectively the registrable shares. The company may, at its option, satisfy its obligation to prepare and file a resale shelf registration statement with respect to shares of Class A common stock issued upon the exchange of operating partnership units or issued upon conversion of shares of Class B common stock by filing one or more issuer shelf registration statements, which, collectively with the resale shelf registration statements, are referred to as the shelf registration statements, registering the issuance by the company of shares of Class A common stock under the Securities Act, provided that the company will be obligated to file an issuer shelf registration statement with respect to shares of its Class A common stock issued upon the exchange of operating partnership units or shares of Class B common stock to participants in the subject LLCs. The company has agreed to use its commercially reasonable efforts to cause each shelf registration statement to be declared effective within 120 days of filing, which is referred

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to as the shelf effective date. Commencing upon the shelf effective date, under certain circumstances, the company will also be required to undertake an underwritten offering upon the written request of the Helmsley estate or the



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Malkin Family, which are referred to in this discussion as the holders, provided (i) the registrable shares to be registered in such offering will have a market value of at least \$150 million, except that with respect to the fourth underwritten offering described in subclause (iii) below which is requested by the Helmsley estate, the registrable securities to be registered in such offering will have a market value of at least \$100 million; (ii) the company will not be obligated to effect more than two underwritten offerings during any 12-month period following the resale shelf effective date; and (iii) no holder will have the ability to effect more than four underwritten offerings. In addition, commencing six months after the completion of the IPO and ending on the shelf effective date (unless the resale shelf registration statement has not been declared effective on the shelf effective date, in which case during each 180 day period following the shelf effective date), the holders will have demand rights to require the company, subject to certain limitations, to undertake an underwritten offering with respect to the registrable shares having a market value of at least \$150 million under a registration statement, provided, however, that any such registration shall not be counted for purposes of determining the four underwritten offerings described in the preceding sentence. In addition, if the company files a registration statement with respect to an underwritten offering for its own account or on behalf of a holder, each holder will have the right, subject to certain limitations, to register such number of registrable shares held by him, her or it as each such holder requests. With respect to underwritten offerings on behalf of a holder, the company will have the right to register such number of primary shares as the company requests; provided, however, that if cut backs are required by the managing underwriters of such an offering, the company's primary shares shall be cut back first (but in no event will the company's shares be cut back to less than \$25 million).

The company has also agreed to indemnify the persons receiving rights against specified liabilities, including certain potential liabilities arising under the Securities Act, or to contribute to the payments such persons may be required to make in respect thereof. The company has agreed to pay all of the expenses relating to the registration and any underwritten offerings of such securities, including, without limitation, all registration, listing, filing and stock exchange or FINRA fees, all fees and expenses of complying with securities or blue sky laws, all printing expenses and all fees and disbursements of counsel and independent public accountants retained by the company, but excluding underwriting discounts and commissions, any participant's out-of-pocket expenses (except the company will pay any holder's out-of-pocket fees (including disbursements of such holder's of counsel, accountants and other advisors) up to \$25,000 in the aggregate for each underwritten offering and each filing of a resale shelf registration statement or demand registration statement), and any transfer taxes.

### **Option to Acquire Two Additional Properties**

The operating partnership has entered into option agreements with three private entities supervised by the supervisor, one of which is the ground lessee of the property located at 112-120 West 34th Street and fee owner of the property located at 122 West 34th Street, one of which is the operating lessee of 112-122 West 34th Street and one of which is the ground lessee of 1400 Broadway, pursuant to which each of these private entities has granted to the operating partnership an option to acquire its property interest and other assets in exchange for operating partnership units, shares of common stock and/or cash following the settlement of, or final judgment not subject to further appeal with respect to, a litigation related to the properties owned by these private entities. 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.

These private entities are parties to litigation with the third party ground lessor of the properties they own and the uncertainty resulting from the litigation could affect the valuations of these entities so long as the litigation is pending. The exchange values for these entities set forth in this prospectus/consent solicitation do not reflect any reduction for the effect of this litigation. In September 2011, the court before which these litigations are pending granted summary judgment dismissing the ground lessor's claims with respect to 112-122 West 34th

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Street. The ground lessor appealed the grant of summary judgment. By Decision and Order dated May 8, 2012, the Appellate Division, First Department, unanimously affirmed the decision and judgment. The ground lessor has filed a motion in the Appellate Division for leave to appeal to the Court of Appeals from that decision. The supervisor has opposed the motion. In November 2011, the supervisor filed a similar summary judgment motion with respect to the other property. At a hearing on June 7, 2012, the court granted the supervisor's motion for summary judgment.

The option is exercisable by the operating partnership with respect to either or both of the properties until the later of (i) 12 months after notice of settlement of the litigation or of final, non-appealable judgment in litigation or (ii) six months after completion of the valuation referred to in the next paragraph, but not later than seven years from the completion of the IPO. The determination to exercise the option will be made by the independent directors and affiliates of the supervisors will not participate in the decision.

The purchase price for each of these property interests will be determined based on an appraisal by independent third parties, unless the private entities, with the consent of the Helmsley estate, and the company 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 the consideration will be determined based on the exchange values determined by the independent valuer.

The consideration will consist of operating partnership units or common stock for accredited investors and cash for non-accredited investors, except that the company may elect to pay cash instead of common stock or operating partnership units to accredited investors if the market price of the Class A common stock (based on the average of the 20 trading days prior to the option closing) is below the IPO price or to accredited investors that have made cash elections. Additionally, the Helmsley estate will have the right to elect to receive cash.

### **Pricing Committee**

The company will establish a pricing committee in connection with the IPO, which will meet on March 31, 2013 and December 31, 2013 if the consolidation and IPO have not yet closed, and will have the authority to evaluate market conditions and determine the desirability of continuing to pursue the consolidation and IPO. The pricing committee will have the authority to approve the price and terms of the IPO and will consist of representatives of the supervisor and a representative of the Helmsley estate. All actions of the pricing committee will require unanimous approval.

### **Description of the Tax Protection Agreement**

Under the Code, taxable gain or loss recognized upon a sale of an asset contributed to a partnership must be allocated to the contributing partner in a manner that takes into account the variation between the tax basis and the fair market value of the asset at the time of the contribution. This requirement may result in a significant allocation of taxable gain to the contributing partner, without any increased cash distribution to the contributing partner. In addition, when a partner contributes an asset subject to a liability to a partnership, any reduction in the partner's share of partnership liabilities may result in taxable gain to the contributing partner.

The operating partnership intends to enter into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin that is intended to protect the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain of the tax consequences described above to a limited extent. First, this agreement will provide that the operating partnership will not sell, exchange, transfer or otherwise dispose of four specified properties, which are referred to in this section as protected assets, or any interest in a protected asset for a period of 12 years, with respect to First Stamford Place and the later of (x) eight years or (y) the death of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other protected assets unless:

- (1) Anthony E. Malkin consents to the sale, exchange, transfer or other disposition; or
- (2) the operating partnership delivers to each protected party thereunder, a cash payment intended to approximate the tax liability arising from the recognition of the pre-contribution built-in gain resulting

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from the sale, exchange, transfer or other disposition of such protected asset (with the pre-contribution built-in gain being not more than the taxable gain that would have been recognized by such protected party had the protected asset been sold for fair market value in a taxable transaction at the time of the consolidation transaction) plus an additional amount so that, after the payment of all taxes on amounts received pursuant to the agreement (including any tax liability incurred as a result of receiving such payment), the protected party retains an amount equal to such protected party's total tax liability incurred as a result of the recognition of the pre-contribution built-in gain pursuant to such sale, exchange, transfer or other disposition; or

(3) the disposition does not result in a recognition of any built-in gain by the protected party.

Second, with respect to the Wien group, including Anthony E. Malkin and Peter L. Malkin, and one additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property), to protect against gain recognition resulting from a reduction in each such investor's share of the operating liabilities, the agreement also will provide that during the period from the closing of the IPO until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares it received in the consolidation, which is referred to in this section as the tax protection period, the operating partnership will (i) refrain from prepaying any amounts outstanding under any indebtedness secured by the protected assets and (ii) use its commercially reasonable efforts to refinance such indebtedness at or prior to maturity at its current principal amount, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible. The agreement also will provide that, during the tax protection period, the operating partnership will make available to such investors the opportunity to (1) to enter into a bottom dollar guarantee of their allocable share of \$160 million of aggregate indebtedness of the operating partnership meeting certain requirements or (2) in the event the operating partnership has recourse debt outstanding and the investor agrees in lieu of guaranteeing debt pursuant to clause (1) above, to enter into a deficit restoration obligation, in each case, in a manner intended to provide an allocation of operating partnership liabilities to the investor. In the event that an investor guarantees debt of the operating partnership, such investor will be responsible, under certain circumstances, for the repayment of the guaranteed amount to the lender in the event that the lender would otherwise recognize a loss on the loan, such as, for example, if property securing the loan was foreclosed and the value was not sufficient to repay a certain amount of the debt. A deficit restoration obligation is an obligation of such investor, under certain circumstances, to contribute a designated amount of capital to the operating partnership upon the operating partnership's liquidation in the event that the assets of the operating partnership are insufficient to repay the operating partnership liabilities.

Because the company expects that the operating partnership will have at all times sufficient liabilities to allow it to meet its obligations to allocate liabilities to its partners that are protected parties under the tax protection agreement, the operating partnership's indemnification obligation with respect to certain tax liabilities would generally arise only in the event that the operating partnership disposes of a protected asset in a taxable transaction within the period specified above in a taxable transaction. In the event of such a disposition, the amount of the operating partnership's indemnification obligation would depend on several factors, including the amount of built-in gain, if any, recognized and allocated to the indemnified partners with respect to such disposition and the effective tax rate to be applied to such gain at the time of such disposition. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

The operating partnership agreement requires that allocations with respect to such acquired property be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of allocating book-tax differences. Under the tax protection agreement, the operating partnership has agreed to use the traditional method for accounting for

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book-tax differences for the properties acquired by the operating partnership in the consolidation. Under the traditional method, which is the least favorable method from the company's perspective, the carryover basis of the acquired properties in the hands of the operating partnership (1) may cause the company to be allocated lower amounts of depreciation and other deductions for tax purposes than would be allocated to the company if all of the acquired properties were to have a tax basis equal to their fair market value at the time of acquisition and (2) in the event of a sale of such properties, could cause the company to be allocated gain in excess of its corresponding economic or book gain (or taxable loss that is less than its economic or book loss), with a corresponding benefit to the partners transferring such properties to the operating partnership for interests in the operating partnership.

Participants in the private entities who are not protected under the tax protection agreement and who currently own an interest in a protected asset may benefit from the prohibition on disposing of such assets to the extent the prohibition prevents the operating partnership from recognizing gain. However, unlike the Wien group, such participants will not be parties to the tax protection agreement and will not be entitled to indemnification from the operating partnership if a protected asset is sold, nor is their consent required to dispose of a protected asset. In addition, a disposition of an existing property that is not a protected asset would not be subject to the tax protection agreement and could cause participants, including the Wien group, to recognize gain. The company currently has no intention to sell or otherwise dispose of the protected assets or interest therein in taxable transactions during the restriction period.

The company believes that it is consistent with market practice for significant contributing unitholders, such as the Malkin Group and the one additional third party investor in Metro Center, to be indemnified against certain tax liabilities as set forth in the tax protection agreement. Accordingly, the company believes it is appropriate to enter into a tax protection agreement.

The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction.

## **Representation, Warranty and Indemnity Agreement**

Anthony E. Malkin, Scott D. Malkin and Cynthia M. Blumenthal have entered into a separate representation, warranty and indemnity agreement with the company and the operating partnership in which they made limited representations and warranties to the company and the operating partnership with respect to the condition and operations of the entities, properties and assets to be contributed to the company. Anthony E. Malkin, Scott D. Malkin and Cynthia M. Blumenthal, jointly and severally have agreed to indemnify the operating partnership for breach of such representations and warranties until 12 months after the closing of the IPO, subject to a deductible of \$1 million and a cap of \$25 million. Anthony E. Malkin, Scott D. Malkin and Cynthia M. Blumenthal have pledged operating partnership units and common stock to the operating partnership with a value, based on the price per share of Class A common stock in the IPO (before the deduction of underwriting and other fees and expenses), equal to \$25 million, to secure their indemnity obligation, and such operating partnership units are the sole recourse and sole remedy of the operating partnership in the case of a breach of representation or warranty or other claim for indemnification.

## **No Fractional Share of Common Stock**

The company will not issue fractional shares of common stock in the consolidation. Each participant that otherwise would be entitled to a fractional share of common stock will receive one share of common stock for each fractional share of common stock of 0.50 or greater. The company will not issue a share of common stock for any fractional share of common stock of less than 0.50. The maximum amount which a participant could forfeit if such participant's fractional share was 0.49 is approximately \$4.90, based on the hypothetical exchange value of \$10 per share arbitrarily assigned by the supervisor for illustrative purposes.

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**Effect of the Consolidation or a Third-Party Portfolio Transaction on Participants Who Vote Against the Consolidation or the Third-Party Portfolio Proposal and Who Do Not Change Their Vote After Receipt of the Buyout Notice**

If you vote **AGAINST** the consolidation or the third-party portfolio proposal, **ABSTAIN** or do not submit a consent form, you do not have a statutory right to elect to be paid the appraised value of your participation interest in the subject LLC for cash.

If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve the consolidation or third-party portfolio proposal, as shown in the tabulation of consents by MacKenzie Partners, Inc., pursuant to a buyout right included in the participating agreements since inception of the subject LLCs, the agent of any such participating group will purchase on behalf of the subject LLC the participation interest of any participant in such participating group that voted **AGAINST** the consolidation or the third-party portfolio proposal or **ABSTAINED**, as applicable, or that did not submit a consent form, even if the proposal is not approved by the other participating groups in such subject LLC, unless such participant consents to the proposal within ten days after receiving written notice that the required supermajority consent has been received by such participant's participating group, at a price that would be substantially lower than the exchange value. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42nd St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42nd St. Associates L.L.C., respectively.

If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve the third-party portfolio proposal, the agent of any such participating group will purchase on behalf of the subject LLC the participation interest of any participant in such participating group that voted **AGAINST** the third-party portfolio proposal or **ABSTAINED** or that did not submit a consent form, unless such participant consents to the proposal within ten days after receiving written notice that the required supermajority vote has been received, at a price that would be substantially lower than the exchange value.

Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of either the consolidation or third-party portfolio transaction proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received, as described below.

Prior to an agent purchasing the participation interests of non-consenting participants in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C., an agent will give such participants not less than ten days' notice after the required supermajority consent is received by the applicable participating group in such subject LLC to permit them to consent to the consolidation or the third-party portfolio proposal, as applicable, in which case their participation interests will not be purchased. The agents will purchase the participation interests for the benefit of the subject LLC and not for their own account and will be reimbursed by the subject LLC for the cost of such buyout. If the agent purchases these participation interests, the requirement for consent of participants holding 100% of the participation interests of that participating group will be satisfied.

The agents, who are the members of your subject LLCs, recently created a new class of membership interests, which were divided into series. A separate series was deemed to be distributed to holders of each participating group in your subject LLC. Each new series provides protections similar to those under a

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shareholder rights plan for a corporation. Each new series corresponds to a participating group for which a member acts as agent. The new series will not affect voting rights, except with respect to any person or group that acquires 6%, 3%, or 7.5% or more, respectively, of the outstanding participation interests in the applicable participating group (an acquiring person ) for each of 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 there is an acquiring person, the effect of the new series is that approval of the consolidation proposal and the third-party portfolio proposal by a participating group will require approval by the requisite consent of the participants in the participating group, as holders of the new series of membership interests, excluding the acquiring person.

The buyout is described under the section entitled Voting Procedures for the Consolidation Proposal and the Third-Party Portfolio Proposal.

### **Effect of Consolidation on Subject LLCs not Acquired**

If the company does not acquire your subject LLC's assets in the consolidation and a third-party portfolio transaction is not consummated with respect to your subject LLC, your subject LLC will continue to operate as a separate limited liability company with its own assets and liabilities and will bear its proportionate share of the expenses of the consolidation. If the consolidation is not consummated, there will be no change in your subject LLC's investment objectives and it will remain subject to the terms of its organizational documents.

### **Consolidation and IPO Expenses**

If the company acquires the property of your subject LLC in the consolidation, the company will bear all consolidation and IPO expenses.

If the consolidation does not close, each subject LLC and private entity will bear its proportionate share of the consolidation and IPO expenses based on their respective exchange values. If the consolidation closes, but your subject LLC does not participate in the consolidation, your subject LLC will bear its proportionate share of all consolidation and IPO expenses incurred through the date of termination of the contribution agreement. The supervisor does not know whether the acquiror in a third-party portfolio transaction will agree to pay any of the consolidation or IPO expenses.

### **Accounting Treatment**

The consolidation of the subject LLCs, the private entities and the management companies, other than the non-controlling interests in the four office properties for which the supervisor acts as supervisor and not previously controlled by Peter L. Malkin, Anthony E. Malkin or the Malkin Family, will be accounted for at historical cost as a transfer of assets under common control. The acquisition of the controlling interests in the four office properties for which the supervisor acts as supervisor but which are not controlled by Peter L. Malkin, Anthony E. Malkin or the Malkin Family will be accounted for as purchase acquisitions, with the assets acquired and liabilities assumed recorded at the estimated fair value at the acquisition date.

### **Subsequent Modifications to Offering Terms**

The company may make changes (including changes that may be deemed material) to the information described in this prospectus/consent solicitation, the supplement for your subject LLC accompanying this prospectus/consent solicitation, as well as to the forms of the agreements attached as appendices hereto and contained in the supplement. The contribution agreement attached to the supplement accompanying this prospectus/consent solicitation as Appendix B provides that each subject LLC (i) agrees and confirms that the terms of the operating partnership units and common stock described in this prospectus/consent solicitation, the applicable supplement and the appendices and exhibits thereto are not final and may be modified prior to the completion of the consolidation, depending in part on the prevailing market conditions at the time of the IPO, (ii) understands that, as of the date of the contribution agreement, the company does not know the value of the

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operating partnership units and common stock and that such value will depend on the company's enterprise value in connection with the IPO and the IPO price and the number of shares outstanding, on a fully-diluted basis, immediately prior to the IPO may be higher or lower than that set forth herein and the IPO price may be higher or lower than the hypothetical \$10 per share exchange value which the supervisor has arbitrarily selected and is used herein for illustrative purposes only, (iii) authorizes the company to, and understands and agrees that the company may, make changes (including changes that may be deemed material) to the charter and bylaws of the company, the limited partnership agreement of the operating partnership, the contribution agreements, the representation, warranty and indemnity agreement, the lock-up agreements, the tax protection agreement and this prospectus/consent solicitation, and that the subject LLC agrees to receive operating partnership units and/or shares of Class A common stock with such final terms and conditions as the company determines and (iv) acknowledges that the subject LLC understands that the information presented in this prospectus/consent solicitation is preliminary and is subject to change (particularly the company management's discussion and analysis of the financial condition and results of operation, the financial statements and footnotes thereto, the preliminary pro forma financial statements and footnotes thereto, the property information, the assumed IPO price and the assumed entity valuations) in connection with the review and comments of the SEC and in reaction to investor feedback during the course of the IPO and the subject LLCs' agreement to participate in the consolidation will not be affected by any such changes. The federal securities laws may require the subject LLCs to resolicit the consent of participants under certain facts or circumstances.

## **Initial Public Offering**

The closing of the consolidation is conditioned on the closing of the IPO. The company will contribute the net proceeds of the IPO to the operating partnership in exchange for operating partnership units, with the value of each operating partnership unit being treated as equivalent to one share of Class A common stock at the IPO price. The operating partnership will use a portion of the net proceeds to provide cash to non-accredited participants in the private entities and to accredited participants in the private entities that are charitable organizations as described under "The Consolidation - Principal Components of the Consolidation."

The IPO price of the Class A common stock will be determined based on investor demand for the Class A common stock and in consultation with the underwriters in the IPO. Among the factors that influence the pricing of the IPO are the company's record of operations; its management; its estimated net income; its estimated funds from operations; its estimated cash available for distribution; its anticipated dividend yield; its growth prospects; the current market valuations for comparable REITs; financial performance and dividend yields of publicly traded companies considered by the company and the underwriters to be comparable to the company and the state of the commercial real estate industry and the economy as a whole. The IPO price does not and will not necessarily bear any relationship to the company's book value or the fair market value of the company's assets.

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**THIRD-PARTY PORTFOLIO PROPOSAL**

As a potential alternative to the consolidation, you also are being asked to consent to the sale or contribution of the subject LLC's property interest as part of a sale or contribution of the properties owned by the subject LLCs, the private entities and the management companies as a portfolio to an unaffiliated third party. Through solicitation of consents, for the first time the properties owned by the subject LLCs and the private entities can be joined as a single portfolio. While the supervisor believes the consolidation and IPO represent the best opportunity for participants in the subject LLCs and the private entities to achieve liquidity and to maximize the value of their respective investments, the supervisor also believes it is in the best interest of all participants for the supervisor to be able to approve offers for the portfolio as a whole.

Market forces are dynamic, unpredictable, and subject to volatility. Should the public awareness of the proposed consolidation and IPO produce potential compelling offers from unaffiliated third parties to purchase the consolidated portfolio, it will be costly and time consuming to solicit consents to allow a sale or contribution of the portfolio to a third party, and there is considerable risk that any opportunity which might appear would be lost without the requested consent in place. Therefore, the supervisor believes that it is advisable to have the flexibility and discretion, subject to certain conditions, to accept an offer for the entire portfolio of properties from an unaffiliated third party, rather than pursue the consolidation and IPO, if the supervisor determines the offer price includes what the supervisor believes is an adequate premium above the value that is expected to be realized over time from the consolidation. The supervisor will consider an offer from an unaffiliated third-party only for the entire portfolio of properties owned by all of the subject LLCs and all of the private entities (including the operating lessees of the subject LLCs), excluding (a) the option properties, (b) certain properties owned by the private entities that are not included in the consolidation, (c) any property interest as to which the required consent is not received, and (d) any property interest as to which customary contract conditions, such as absence of a material adverse change, are not satisfied. A third-party portfolio transaction also will include the management companies. A sale of less than the entire portfolio of properties owned by the subject LLCs and the private entities (excluding the option properties and any properties not being contributed to the company in the consolidation) would occur only if consents are not received with respect to a particular property interest or if customary contract conditions are not satisfied with respect to a particular property interest. The supervisor is not undertaking or engaged in any current negotiations with respect to a third-party portfolio transaction, nor does the supervisor have any agreement in principle with any party relating to a third-party portfolio transaction.

The third-party portfolio transaction would be undertaken only if the aggregate consideration payable in the third-party portfolio transaction is at least 115% of the aggregate exchange value for the subject LLCs, the private entities and the management companies included in the third-party portfolio transaction. If such a third-party portfolio transaction were to proceed, the consideration will be allocated among the subject LLCs, the private entities and the management companies on a basis consistent with the exchange values.

A third-party portfolio transaction would be on the following terms:

The proposal must provide for all cash, payable in full at closing. There will be no purchase price adjustments, earn-outs, or any other similar or contingent payments.

The proposal may provide for an option for all participants to elect to receive securities as an alternative to cash. If the proposal provides for a securities option:

The Malkin Family, affiliates of the subject LLCs and private entities and participants in the subject LLCs and private entities will have the right to elect to receive securities only on the same proportional basis as other participants.

Any securities in a third-party portfolio transaction will be issued pursuant to a registration statement of the issuer, which will describe the securities and their terms.

Any securities issued in a third-party portfolio transaction would be valued on the following basis. Common stock would be issued only if it is listed on a national securities exchange and would be





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valued at a price equal to the market price on a date or for a period set forth in the agreement relating to the third-party portfolio transaction. Any securities other than common stock would be issued only if such securities are exchangeable for common stock (meeting the conditions in this bullet) no later than one year after the date of issuance on substantially the same basis as the operating partnership units. Any such securities will be valued at the market price for the common stock for which they are exchangeable, determined as described in this paragraph.

No member of the Malkin Family, and no other affiliate of the subject LLCs or the private entities will be an affiliate, consultant, employee, officer or director of the acquiror or any of its affiliates or subsidiaries before or after the closing or receive any compensation or any other consideration from the acquiror or any of its subsidiaries or affiliates (other than their pro rata share of the consideration that they will receive in the third-party portfolio transaction).

There will be no representations, warranties or indemnification obligations that survive the closing and there will be no holdback or escrow of any of the consideration.

If the supervisor accepts a third-party portfolio offer that meets the above conditions and is in accordance with the terms described above, such an offer would not be subject to any further approval or action by the participants. A third-party portfolio transaction would trigger the voluntary capital transaction overrides agreed to by certain participants in Empire State Building Associates L.L.C. and 250 West 57<sup>th</sup> St. Associates L.L.C. and the override payable by 60 East 42<sup>nd</sup> St. Associates L.L.C.

The third-party portfolio transaction will be in the form of a transfer or sale of all of the assets of each of the subject LLCs, private entities (including the operating lessees of the subject LLCs) and the management companies, subject to all of their liabilities.

If securities will be issued in a third-party portfolio transaction, the form of consideration that each participant will receive will be determined in accordance with such participant's election. Each participant will be provided at least 20 business days to make such election after the prospectus relating to the securities to be issued is sent to participants.

If participants in the subject LLCs have an option to receive securities instead of cash, the Malkin Family will receive cash to the extent that receiving equity securities would result in it being an affiliate of the acquiror. The Malkin Family would receive equity securities only if its percentage interest in the acquiror was sufficiently small so that it was not an affiliate or there was another arrangement, such as issuance to the Malkin Family of non-voting securities which otherwise had the same rights as equity securities issued to other participants, in such a manner that the Malkin Family will not be considered an affiliate.

The consideration received in the third-party portfolio transaction will be distributed promptly by each of the subject LLCs and private entities to its participants. Any excess cash not included in the assets transferred in connection with the third-party portfolio transaction will also be distributed to the participants, and the subject LLCs and private entities will be promptly liquidated. Following the consummation of a third-party portfolio sale, the agents of each of the subject LLCs have the authority under the participating agreements to liquidate the subject LLCs without consent of the participants.

Employees of the supervisor, other than the Malkin Family, could become officers, directors, and/or employees of the acquiring entity after a third-party portfolio transaction.

At the time you vote on the third-party portfolio transaction, no information will be available regarding negotiations or solicitations of competing transactions; termination fees in, or termination, non-competition, non-solicitation and financing provisions relating to, the transaction; tax matters relating to, or accounting treatment of, the transaction; or the identity of the acquiror. As described above, any third-party portfolio offer must

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provide for cash consideration, but may include an option for participants to elect to receive securities. Unlike with respect to the consolidation proposal, it is not possible to know at this time or at the time you vote on the third-party portfolio proposal whether the third-party portfolio offer will include an option to receive securities, and therefore estimated distributions cannot be calculated at this time. However, if securities are to be issued in connection with the third-party portfolio transaction, any such securities must be listed on a national securities exchange as described above, and information regarding the historical distributions on such securities will be available.

Because of the inability to act without consent of the subject LLCs and certain of the private entities, the supervisor intends to inform any unaffiliated third-party which expresses interest in making a third-party offer that it will not consider any offer until after completion of the solicitation of consents of the subject LLCs. If a bona fide offer is submitted during the solicitation period, the supervisor will provide information regarding the proposal to participants, to assist them in their decision regarding the consolidation.

The supervisor has agreed that it will not accept a third-party offer unless it is unanimously approved by a committee which will include representatives of the supervisor and a representative of the Helmsley estate. This committee will also meet on March 31, 2013, January 1, 2014 and January 1, 2015 if an agreement relating to a third-party portfolio transaction has not been entered into, and determine unanimously whether to continue to pursue a third-party portfolio transaction. The supervisor will be authorized to approve offers only if a definitive agreement is entered into prior to December 31, 2015 or such earlier date as the supervisor may set with or without notice or public announcement. The tax protection agreement will not apply to a third-party portfolio transaction.

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**VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM FOR EXPENSES OF LEGAL PROCEEDINGS WITH FORMER PROPERTY MANAGER AND LEASING AGENT**

The supervisor is requesting that each participant consent to a voluntary pro rata reimbursement program to reimburse the supervisor and Peter L. Malkin, a principal of the supervisor, for his or her pro rata share of all costs advanced, plus interest, incurred in connection with the legal proceedings required to remove and replace the former property manager and leasing agent. The supervisor and the agents had the authority to commence the legal proceedings without consents from participants so no authorization was sought. No challenge has been raised about the supervisor's authority. In commencing the litigation, Peter L. Malkin believed that participants would understand the value from his and the supervisor's actions and voluntarily agree to the reimbursement. While the supervisor believes it could have effected reimbursement by the subject LLCs and the private entities to the supervisor and Peter L. Malkin, it will not seek such reimbursement from participants who do not consent to the voluntary pro rata reimbursement program to make such reimbursement. The supervisor believes that the voluntary pro rata reimbursement program is fair and reasonable because the successful resolution of the legal proceedings allowed the property to participate in a renovation and repositioning turnaround program, conceived and implemented by the supervisor. The Helmsley estate, as part of an agreement with the supervisor covering this and other matters, has paid the voluntary pro rata reimbursement to the supervisor for its pro rata share of costs advanced, plus interest, which totaled \$5,021,048 with respect to its interest in all the subject LLCs and private entities.

Lawrence A. Wien and Peter L. Malkin, affiliates of the supervisor, organized the subject LLCs, from 1953 to 1961.

The supervisor provided asset management services for, and supervised the operations of, the subject LLCs and the private entities that are the operating lessees. The properties owned by the subject LLCs and leased to the operating lessees were managed by Helmsley-Spear, Inc., the former property manager and leasing agent, from the subject LLCs' formation until 2002 in the case of 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. and until 2006 in the case of Empire State Building Associates L.L.C., all subject to the supervisor's supervision.

Over time, the supervisor observed and objected to deterioration in the property management provided by the former property manager and leasing agent to the properties owned by the subject LLCs and the Manhattan office properties, resulting in such problems as deferred maintenance, reduced occupancy and reduced quality of tenants. For that reason, the supervisor brought action to remove the former property manager and leasing agent (after it was sold by entities controlled by Leona M. Helmsley) as property manager and leasing agent of the properties owned by the subject LLCs both for cause and based on contractual removal rights. The ensuing lengthy legal proceedings included a ruling in favor of the supervisor and Peter L. Malkin in the United States Supreme Court. A gradual transfer of day-to-day management away from the former property manager and leasing agent began in 2002 by votes of the private entities and the remaining litigation was fully settled in 2006. In accordance with a separate litigation against Harry B. Helmsley's widow, Leona M. Helmsley, which was settled in 1997, the supervisor has overseen the engagement of third-party property management and leasing agents beginning in 2002 for these properties, and the transformation of the Empire State Building to a self-management structure, retaining a third-party agent only for leasing.

The supervisor believes that its efforts for the participants in the subject LLCs and the investors in the Manhattan office properties in respect of the legal proceedings against the former property manager and leasing agent enhanced the monitoring of the former property manager and leasing agent's conduct and contributed to the former property manager and leasing agent's replacement by effective property manager and leasing agents, thereby preventing the loss of the investment value of all the parties subject to the former property manager and leasing agent legal proceedings, including the subject LLCs.

While the supervisor has believed from inception that the supervisor and Peter L. Malkin are entitled to be reimbursed for these litigation and arbitration expenses, they advanced all costs pending the outcome of the

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former property manager and leasing agent legal proceedings. The supervisor also added engineering, marketing and tax/accounting staff to compensate for the former property manager and leasing agent's deficiency. After the settlement, the supervisor was able to deploy its branding strategy for the Manhattan office properties and pursue a program of renovating and repositioning the Manhattan office properties. Now, with the impending consolidation, the supervisor requests of each participant in each subject LLC, on a voluntary and individual basis, consent to the voluntary pro rata reimbursement program.

The same voluntary pro rata reimbursement program has been approved by holders representing 72.36% of the interests in the 13 private entities and other entities supervised by the supervisor to which the proposal has been made. These approvals include the Helmsley estate, which as part of an agreement with the supervisor covering this and other matters has paid the voluntary pro rata reimbursement to the supervisor for its pro rata share of costs advanced, plus interest, which totaled \$5,021,048. Accordingly, no additional amounts will be deducted from any distributions payable to it or from the consideration payable to it in the consolidation or a third-party portfolio transaction. If you fail to return a signed consent form by the end of the solicitation period, you will be deemed to have not consented to the voluntary pro rata reimbursement program.

If you consent to the voluntary pro rata reimbursement program, the supervisor and Peter L. Malkin will be reimbursed for your pro rata share of costs, plus interest, previously incurred out of your share of the excess cash of your subject LLC that is being distributed to participants, and, to the extent that is insufficient, the consideration that you would receive in the consolidation or the consideration that you would receive in a third-party portfolio transaction, as applicable, will be reduced by the balance and such balance would be paid to the supervisor and Peter L. Malkin in shares of Class A common stock, if the consolidation is consummated, or out of distributions that you would receive from the proceeds of a third-party portfolio transaction, if consummated. Such excess cash consists of (i) any cash held by such entity at the closing in excess of the normalized level of net working capital for such entity, as determined by the supervisor, (ii) the consolidation expenses reimbursed by the operating partnership to the subject LLC at the closing of the consolidation out of proceeds of the IPO and (iii) overage rent that will have accrued through the date of the closing of the consolidation.

The following table shows, for each of the subject LLCs, the amount of cash at September 30, 2012 which would have been available for distribution by the subject LLCs (in addition to any amounts that would have been distributable out of accrued overage rent) had the closing occurred on such date; the amount of reimbursement for costs incurred in connection with the consolidation and the IPO out of the proceeds of the IPO entitled to be received by the subject LLCs as of September 30, 2012; total distributions by each subject LLC and to each participant per \$10,000 original investment out of such excess cash (including such reimbursements); the payment under the voluntary pro rata reimbursement program per \$10,000 original investment; the amount of cash distributions that would be received by participants who consent to the voluntary pro rata reimbursement program per \$10,000 original investment and the additional proceeds to be received by participants from the class action settlement per \$10,000 original investment.

	Available Cash	Reimbursement of Costs in Connection with the Consolidation and IPO	Total Distribution to Participants	Total Distribution to Participants per \$10,000 Original Investment <sup>(1)</sup>	Payment under Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Distribution to Participants Who Consent to the Voluntary Pro Rata Reimbursement Program per \$10,000 Original Investment	Additional Proceeds to be Received by Participants from the Class Action Settlement per \$10,000 Original Investment <sup>(2)</sup>
Empire State Building Associates L.L.C. 60 East 42nd St. Associates L.L.C.	\$ 3,350,000	\$ 15,500,000	\$ 18,850,000	\$ 5,012	\$ 1,029	\$ 3,983	\$ 9,840 <sup>(3)</sup>
250 West 57th St. Associates L.L.C.	\$ 380,000	\$ 1,800,000	\$ 2,180,000	\$ 6,055	\$ 2,080	\$ 3,975	\$ 6,370 <sup>(4)</sup>

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- (1) The actual amount of distributions will be based on cash available at closing of the consolidation and no assurance can be given that these cash amounts will be available for distribution.
- (2) The allocation of settlement proceeds from the class action settlement is in addition to the distributions shown elsewhere in this table. The allocation of net settlement proceeds (that is, net of any court-awarded attorneys' fees and expenses) shown in the table is based on the current plan of allocation proposed by counsel for the class plaintiffs. The settlement and the allocation of settlement proceeds are approximate and subject to court approval, and the proposed allocation is subject to revision by counsel for the class. They are not effective until such court approval is final, including the resolution of any appeal.
- (3) \$8,350 per \$10,000 original investment for participants not subject to voluntary capital override.
- (4) \$4,700 per \$10,000 original investment for participants not subject to voluntary capital override.

The actual amount of distributions will be based on cash available at closing of the consolidation and no assurance can be given that these cash amounts will be available for distribution. To the extent that the supervisor and Peter L. Malkin have not otherwise been reimbursed from distributions in connection with the consolidation, 50% of any distributions to be paid to you in excess of your share of aggregate distributions by the subject LLC equal to \$3,889,333 per annum, \$1,046,320 per annum and \$720,000 per annum, respectively, for Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. for the period commencing January 1, 2008 (including any cumulative deficiency from prior months) will be applied to reimburse the supervisor and Peter L. Malkin for a pro rata share of such advances, including interest at prime from the date of each such advance, until your pro rata share of the costs is paid in full. Cumulative distributions equal to the target amount have been made for the period from January 1, 2008 through the date hereof and therefore there are no past cumulative deficiencies.

Each subject LLC's and private entity's share of these costs, which aggregate \$20,927,638 for all subject LLCs and private entities including interest at prime from the date of each advance through November 1, 2011 was determined based upon the property's percentage of rentable area of all the Manhattan office properties held by the private entities and the subject LLCs. Each subject LLC's share will then be allocated to you based on your investment percentage among all participants in the subject LLC. Thus, advances by the supervisor and Peter L. Malkin would be allocated 14.15285% to Empire State Building Associates L.L.C., 7.0292% to 60 East 42nd St. Associates L.L.C. and 3.11945% to 250 West 57th St. Associates L.L.C. (with the balance allocated to the private entities that hold Manhattan office properties), in each case by rentable area, and then allocated to you in accordance with the participation interest held by you. The table below shows the amount to be received by the supervisor from the subject LLC (assuming that all participants have consented to the voluntary reimbursement) and for each \$10,000 of original investment by a participant pursuant to the voluntary pro rata reimbursement program:

	<b>Voluntary Reimbursement Per \$10,000 Original Investment<sup>(1)</sup></b>	<b>Total Potential Reimbursement with 100% Participation</b>
Empire State Building Associates L.L.C.	\$ 1,029	\$ 3,396,880
60 East 42nd St. Associates L.L.C.	\$ 2,410	\$ 1,687,101
250 West 57th St. Associates L.L.C.	\$ 2,080	\$ 748,704

- (1) Empire State Building Associates L.L.C.'s, 60 East 42nd St. Associates L.L.C.'s and 250 West 57th St. Associates L.L.C.'s share of the aggregate voluntary reimbursement (before any reimbursements) is \$3,150,896, \$1,564,930, and \$694,487, respectively, plus interest. The amount shown in the table includes accrued interest through September 30, 2012 and does not include interest which will accrue subsequent to September 30, 2012.

97% of the potential voluntary reimbursement is attributable to advances by Peter L. Malkin for payments to unaffiliated third parties, with interest thereon at prime, and 3% is for amounts to be paid to the supervisor for work it performed.

The supervisor requests that each participant consent to the voluntary pro rata reimbursement program on the consent form accompanying this prospectus/consent solicitation. If you consent to the voluntary pro rata

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reimbursement program and the consolidation or a third-party portfolio transaction is consummated, your share of distributions will be reduced by your pro rata share of the costs, plus interest, advanced by the supervisor and Peter L. Malkin for the former property manager and leasing agent legal proceedings plus interest. If you give such consent but your subject LLC does not participate in the consolidation, your pro rata share of the former property manager and leasing agent legal proceedings advanced costs will be deducted from any future distributions until your pro rata share is paid in full.

**The voluntary pro rata reimbursement program is an independent program. Your consent, withheld consent, or failure to consent to the voluntary pro rata reimbursement program will not have any effect on whether or not your subject LLC participates in the consolidation or a third-party portfolio transaction. Your withholding your consent or failure to consent to the voluntary pro rata reimbursement program will not result in any buyout of your participation interests.**

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**REPORTS, OPINIONS AND APPRAISALS**

**General**

The exchange values were determined as of June 30, 2012 by Duff & Phelps, LLC, the independent valuer, and have been assigned to each subject LLC, each private entity and the management companies solely to establish a consistent method of allocating the consideration among the participating entities for purposes of the consolidation. The exchange values were based on the Appraisal of the subject LLCs, the private entities, the supervisor and the management companies by the independent valuer.

The independent valuer has delivered to the supervisor a copy of its report, based upon the review, analysis, scope, assumptions, qualifications and limitations described therein, as to the estimated fair market value of the properties owned by the subject LLCs and the private entities as of June 30, 2012 (the Appraisal). The Appraisal, which contains a description of the assumptions and qualifications made, matters considered and limitations on the review and analysis, is attached to this prospectus/consent solicitation as Appendix B and should be read in its entirety.

The Appraisal and the Exchange Values, which were both as of June 30, 2012, have not been updated since that date. The supervisor has represented to the independent valuer that, since June 30, 2012, there have been no changes in the operations or performance for the subject LLCs, the private entities, the supervisor or the management companies that materially affect the projections used in connection with the Appraisal, which are attached as Appendix C to this prospectus/consent solicitation, and there have been no material changes in any of those projections. Based on this representation, and the independent valuer's view that there have been no material changes since June 30, 2012 in the discount or capitalization rates upon which it based the Appraisal, the independent valuer has advised the supervisor that it believes there would have been no material change to either the Appraisal or to the Exchange Values if the Appraisal and the Exchange Values had been updated after June 30, 2012.

The independent valuer has also delivered to the supervisor and each of the subject LLCs and the private entities its opinion, dated 2012, to the effect that, as of that date and subject to the assumptions, limitations and qualifications contained therein, the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) (i) among each subject LLC, each private entity and the management companies was fair from a financial point of view to each such subject LLC, each such private entity and the participants in each such subject LLC and each such private entity, and (ii) to the participants in each subject LLC and each private entity, was fair from a financial point of view to the participants in each such subject LLC and each such private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities). In this regard, the fairness opinion addressed the fairness of the consolidation assuming that each subject LLC and each private entity would participate in the proposed consolidation and did not address the fairness of all possible combinations in the proposed consolidation. The supervisor believes that, for reasons stated under Recommendation and Fairness Determination Material Factors Underlying Belief as to Fairness, such opinion addressing the fairness of all possible combinations in the proposed consolidation is not necessary because the supervisor believes that the consolidation is fair, regardless of which particular combination of entities participates in the consolidation among any such combination.

Duff & Phelps was engaged based on its experience as a leading global independent provider of financial advisory, real estate, and investment banking services. Duff & Phelps delivers advice principally in the areas of valuation, transactions, financial restructuring, dispute and taxation. Since 2005, Duff & Phelps has completed hundreds of valuations in the real estate investment trust and real estate operating company industry and rendered over 342 fairness opinions in transactions aggregating over \$105 billion. Duff & Phelps has also rendered over 250 solvency opinions in transactions aggregating over \$1.1 trillion.

The subject LLCs and the private entities have agreed to pay the independent valuer an aggregate fee of \$1.8 million for preparing the Appraisal and for rendering a fairness opinion, none of which is contingent upon



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consummation of the consolidation. In addition, the independent valuer is entitled to reimbursement for certain reasonable legal, travel and out-of-pocket expenses incurred in making site visits and preparing the Appraisal and the fairness opinion. The independent valuer also is entitled to indemnification against liabilities, including liabilities under federal securities laws, from the subject LLCs and the private entities. The fee was negotiated between the subject LLCs, the private entities and the independent valuer and payment thereof is not dependent upon completion of the consolidation. In addition, the independent valuer was separately engaged by the supervisor to provide financial services to assist the supervisor with an allocation of the purchase price for financial reporting purposes, for which services the independent valuer has been paid fees in the amount of approximately \$178,000 and for which the independent valuer expects to receive additional customary fees through completion of such services. The independent valuer has not received any fees during the past two years from the supervisor, the subject LLCs or the private entities other than as described in this paragraph.

## **Appraisal**

*Summary of Methodology.* In traditional valuation theory, the three approaches to estimating the value of an asset are the cost approach, sales comparison approach, and income capitalization approach. Each approach assumes valuation of the property at the property's highest and best use. From the indications of these analyses, an opinion of value is reached based upon expert judgment within the outline of the appraisal process.

### **Income Approach**

The income capitalization approach ( income approach ) simulates the reasoning of an investor who views the cash flows that would result from the anticipated revenue and expense on a property throughout its lifetime. The net income ( NOI ) developed in its analysis is the balance of potential income remaining after vacancy and collection loss, and operating expenses. This net income is then capitalized at an appropriate rate to derive an estimate of value or discounted by an appropriate yield rate over a typical projection period in a discounted cash flow analysis. Thus, two key steps are involved: (1) estimating the net income applicable to the subject and (2) choosing appropriate capitalization rates and discount rates.

The discounted cash flow ( DCF ) analysis focuses on the operating cash flows expected from the property and the anticipated proceeds of a hypothetical sale at the end of an assumed holding period. These amounts are then discounted to their present value. The discounted present values of the income stream and the reversion are added to obtain a value indication. Because benefits to be received in the future are worth less than the same benefits received in the present, this method weights income projected in the early years more heavily than the income and the sale proceeds to be received later.

With respect to the DCF analysis, the independent valuer used financial projections of the supervisor and the management companies, in each case provided to the independent valuer by management of the supervisor. In addition, the independent valuer used financial projections of the subject LLCs and private entities and the properties owned by the subject LLCs and private entities. These financial projections were (i) presented by the independent valuer based on the Information (as defined below) provided by management of the supervisor and analysis performed by the independent valuer and (ii) reviewed and approved by management of the supervisor.

The independent valuer relied primarily on the DCF method to determine the market value of the operating properties owned by the subject LLCs and private entities. The independent valuer relied on the sales comparison approach to value the Stamford, CT land. However, the independent valuer corroborated its results through an analysis of the implied capitalization rate for each property. The independent valuer analyzed the implied capitalization rate based on the value determined via the DCF and the first several years of projected NOI.

The income approach was relied upon in determining the market value of the properties owned by the subject LLCs and private entities. This is the approach the independent valuer believes utilized by typical investors and other market participants in the local market of the properties owned by the subject LLCs and private entities, and was therefore determined to be the most reliable indicator of market value.

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**Cost Approach**

The cost approach considers the cost to replace the existing improvements, less accrued depreciation, plus the market value of the land. The cost approach is based on the understanding that market participants relate value to cost. The value of the property is derived by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation in the structure from all causes. Profit for coordination by the entrepreneur is included in the value indication.

The cost approach was omitted from the independent valuer’s analysis, as it is not an approach typically utilized by investors in the local market of the properties owned by the subject LLCs and private entities. Additionally, a portion of the properties owned by the subject LLCs and private entities are unique and historic buildings. The reproduction of the improvements would not be possible in many cases, and a replacement of the improvements would not necessarily constitute an adequate substitute, given their unique and historic nature.

**Sales Comparison Approach**

The sales comparison approach estimates value based on what other purchasers and sellers in the market have agreed to as price for comparable properties. This approach is based upon the principle of substitution, which states that the limits of prices, rents, and rates tend to be set by the prevailing prices, rents, and rates of equally desirable substitutes. In conducting the sales comparison approach, the independent valuer gathered data on reasonably substitutable properties and makes adjustments for transactional and property characteristics. The resulting adjusted prices lead to an estimate of the price one might expect to realize upon sale of the property.

The sales comparison approach was considered but omitted from its analysis (with the exception of the Stamford, CT land and the excess land at 500 Mamaroneck Avenue), as the income approach was deemed by the independent valuer to be a more reliable indicator of market value, as it is the typical approach utilized by investors in the local market of the properties owned by the subject LLCs and private entities. Sales comparables were used to corroborate the independent valuer’s value conclusions arrived at using the income approach.

**Ground Lease and Operating Lease Methodology**

The following table shows the individual properties that are subject to ground leases or operating leases:

<b>Property</b>	<b>Ground Lease Type</b>
The Empire State Building	Operating Lease with Private Entity
One Grand Central Place	Operating Lease with Private Entity
250 W 57th Street	Operating Lease with Private Entity
1350 Broadway	Third-Party
501 Seventh Avenue	Operating Lease with Private Entity
<b><u>Operating Leases</u></b>	

Four of the properties owned by the subject LLCs and private entities listed above are subject to operating leases with a private entity. A subsidiary of Malkin Holdings LLC is supervisor of both the property owner or ground lessee with a third-party and the operating lessee.

One of the properties (which is owned by a private entity) listed above is subject to a third-party ground lease, which is a standard ground lease in which a third-party owns the land, and the private entity or a subsidiary thereof is the lessee of the land and the owner of the building, until ground lease expiration when building ownership reverts back to the ground lessor. The private entity that is the ground lessee makes contractual ground rent payments to the third-party land owner for these properties.

As some of the properties owned by the subject LLCs and private entities are subject to operating leases, the independent valuer determined the value for the private entity or subject LLC that is the property owner or

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ground lessee with a third-party and the private entity that is the operating lessee. In order to determine the market value of the land and building, the independent valuer used the same discounted cash flow technique highlighted above to estimate the value of the unencumbered property. Secondly, the independent valuer deducted the present value of the fixed rent payments. Lastly, as more fully described in the

Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values section, the independent valuer split the adjusted value evenly between the private entity or subject LLC that is the property owner or ground lessee with a third-party and the private entity that is the operating lessee.

The allocated exchange value (determined after deducting the present value of the fixed lease payments) was allocated 50% to the property owner and 50% to the operating lessee in a two tier entity instead of being allocated in accordance with discounted cash flow based on representations of the supervisor as to the original intent to treat the two tier entities as equivalent to a joint venture and the historical treatment of the two tier entities in this manner. The supervisor has represented that historically, agreements have been entered into to share capital expenditure and financing costs, and the operating leases have been extended in connection therewith. As a result, such allocated exchange value has been allocated equally to the property owner and operating lessee, rather than in proportion to the value indicated by the discounted cash flow analysis, which would have resulted in a significantly higher allocation to Empire State Building Associates L.L.C.

**Supervisor's Reasons for Representation as to 50/50 Allocation**

The supervisor made this representation to the independent valuer for the following reasons:

When Lawrence A. Wien, and subsequently Lawrence A. Wien and Peter L. Malkin, structured the transactions involving the subject LLCs and the operating lessees, prepared the agreements establishing the structure, and marketed these investments, the intent of those who created the structure and drafted the agreements related thereto from the beginning was to achieve the economic attributes of a 50/50 joint venture. The primary objective of the unique format of the documents established by Mr. Wien, and then Mr. Wien and Mr. Peter Malkin, from the initiation of the investment groups by the supervisor was to establish a joint venture treatment which would offer the subject LLC investors favorable, flow-through tax treatment for U.S. federal income tax purposes while at the same time protecting the passive investors in the subject LLCs from general partner liability for building operations. The facts at the time dictated the transaction structure.

When the subject LLCs were formed, the only entity structure which allowed flow-through tax treatment for U.S. federal income tax purposes was a general partnership which exposed investors to general partner liability. Limited partnerships with corporate characteristics subject to entity-level tax as corporations for U.S. federal income tax purposes, and limited liability companies had not yet been created. Lawrence A. Wien created the operating lease legal structure to produce the desirable result of flow-through tax treatment while protecting the investors against general partner liability for operations. His unique deal structure helped him raise money from the small investors who invested with him. This information is the understanding of persons still associated with the supervisor who were involved in the original structuring, and is reflected in the economic realities of the terms of the operating leases.

When each property was acquired, a large group of passive investors invested in participations in member interests under partnership agreements through agents, who were members of, related to, or close business partners of the supervisor. Each partnership (holding either the fee title or ground leasehold of the property) became the lessor, which was supervised by the supervisor. Lawrence A. Wien, and later Lawrence A. Wien and Peter L. Malkin, formed in each case a small group of participants who created the entity known as the operating lessee. These individuals functioned as managing partners and were supervised by the supervisor. From the inception of each subject LLC and disclosed to every investor from inception, Lawrence A. Wien, then Lawrence A. Wien and Peter L. Malkin, then Peter L. Malkin and Anthony E. Malkin, have controlled the supervisor, had interests in the lessor, and had interests in and/ or controlled the operating lessee. Part of the presentation of the

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subject LLCs by Mr. Wien and Mr. Peter L. Malkin when marketing the subject entity to investors was that both of the two entities were supervised by Mr. Wien and/or Mr. Peter L. Malkin and that Mr. Wien and Mr. Malkin were also investors in the operating lessee of each subject property.

This two-tier operating lessee/lessor arrangement synthesized a conventional joint venture waterfall while protecting investors from taxes at the entity level and general partner liability. After a fixed annual priority distribution of income (equal to basic rent of \$6,018,750, \$28,000 and \$24,000 (in addition to amounts attributable to debt service), respectively, and in the case of 60 East 42nd St. Associates, L.L.C. and 250 West 57th St. Associates, L.L.C., \$1,053,800 and \$752,000, respectively, as primary additional rent, as provided in the operating lease for each of Empire State Building Associates, L.L.C., 60 East 42nd St. Associates, L.L.C., and 250 West 57th St. Associates, L.L.C.) to the passive investors in the lessor position, who had provided cash for the acquisition (this initial allocation of income was referred to as basic rent), in the case of Empire State Building Associates L.L.C., income in the amount of \$1,000,000 is allocated to the operating lessee (*i.e.*, the managing partners), and in the case of 60 East 42nd St. Associates, L.L.C. and 250 West 57th St. Associates, L.L.C., income in the amount of \$1,053,800 and \$752,000, respectively, is allocated to the fee owner as primary additional rent out of profits, and then, in each case, the remaining income is shared 50/50 between the investors (*i.e.* managing partners) in the operating lessee and the cash investors in the lessor through coverage rent equal to 50% of the remaining property profits.

Consistent with this structure, for the third party ground lease and acquisition mortgage in effect at inception of the investment at the Empire State Building, the operating lease provided for reducing the operating lessee's basic rent to the lessor by 50% of any reduction in the lessor's required payments to third parties for such ground lease rent and such mortgage, all to maintain the 50/50 sharing in such two-tier arrangement.

The residual interest in the property owned by each subject LLC as lessor (*i.e.*, the value after expiration of the operating lease) was not viewed as having any material additional value (in excess of the present value of the basic rent to be received under the operating lease), because the scheduled lease terms (with renewals) were fixed to continue for more than 100 years in the future. Even then, the parties' relative positions in the structure have fostered a practice of lease term extensions. Each subject LLC would be entitled to 100% of the remaining value only if the lease were terminated.

Pursuant to the operating lease, the lessor has no say in property operations, improvements, leasing, repairs, maintenance, insurance, real estate tax protests, or any other decision regarding the operation of real estate. Only the operating lessee controls the operations of the property. Cooperation of the lessor and the operating lessee is required to mortgage the property efficiently, because both positions are generally required as collateral for any financing of size. Thus, the parties were from inception placed in structural positions of economic and management interdependence, and by design the supervisor represents both parties and can make this relationship function.

The lessor can not sell the entire property without the cooperation of the operating lessee. While the lessor can sell its fee interest in the property without the operating lessee's consent, the lessor does not have any right to sell the property free of the operating lease. Because any sale by the lessor alone is subject to the operating lease, a buyer would be subject to the operating lessee's continuing to determine leasing, capital expenditure, property operation, and all issues which determine property performance and distributions to the lessor as noted above. Thus, the decision to sell the entire property and the sharing of any resulting sale proceeds requires joint action between the subject LLC and operating lessee.

Under the supervisor, the lessors and the operating lessees subject to this structure have historically shared the costs of required building improvements. This was the original intention of Mr. Wien, and later Mr. Wien and Mr. Peter L. Malkin, because of the mutual benefit to the lessor and the operating lessee from any such improvement. These arrangements flow from the terms of the operating leases, under which (a) any expenditure after payment of the basic rent reduces the operating lessee's profit, and only that excess profit is split 50/50 with the lessor and (b) the operating lessee has full control over the property, and has the obligation to repair, maintain and replace the property, but is not required to make



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capital improvements. The lease terms express and mandate an interdependence between the lessor and the operating lessee for the capital improvements which are necessary to maximize the long-term value of the property an interdependence expressed by 50/50 cost-sharing, debt financing and improvement programs between the lessor and the operating lessee, typically including lease extension to induce the operating lessee to join in such long-term reinvestment in the property.

In connection with such joint financing for capital and other improvements, the lessor and the operating lessee give effect to 50/50 sharing of the resulting debt service by (a) increasing the basic rent under the operating lease by an amount equal to such debt service and (b) allowing such increase in basic rent to be deducted in calculating profits for payment of 50% overage rent. Thus, the lessor receives additional basic rent to pay the debt service, but its overage rent receipts are reduced by an amount equal to 50% of such debt service yielding an overall 50/50 sharing of the new debt service burden between the lessor and the operating lessee. If debt service thereafter is reduced, such basic rent is correspondingly reduced, to maintain such 50/50 sharing. In each case, the amendment to the operating lease recites that the proceeds of the financing will be used to pay for property improvements, including the capital improvements program. Accordingly, the lessor and the operating lessee are effectively sharing the costs of property improvements 50/50.

Generally, the operating leases have been extended in connection with the joint programs for sharing of costs of improvements and related financing. Such extensions were made in similar circumstances for other two-tier properties, including those owned by One Grand Central Place and 250 West 57th Street. However, for the current phase of improvements at the Empire State Building, other factors recently in place, including the prospect of the proposed consolidation and planning for transfer tax efficiency, caused the parties to defer any action on lease extension. While the lessor at the Empire State Building has granted the supervisor unilateral authority to enter into mortgage financing for up to 50% of the value of all interests subordinated to the mortgage (which would include the operating lessee's interest with its consent), the operating lessee at the Empire State Building has consented to only a small amount of financing. If the operating lessee does not approve more financing, requirements for capital improvement and upgrade may result in material diminishment and/or suspension of overage rent. The supervisor will recommend that the operating lessee require an extension of its operating lease (as in other properties) if the proposed consolidation is not consummated before it is determined how additional improvement work is financed.

The independent valuer initially provided a preliminary draft valuation that allocated the property value based upon the lease agreements between the lessor and the operating lessee using a discounted cash flow analysis. Such draft valuation allocated additional value to the lessor by attributing value to the residual interest (that is, the value of the property at the expiration of the operating lease), which the independent valuer determined on a discounted cash flow basis by (a) applying an assumed inflation rate to forecast such residual value and (b) then computing the net present value of that residual by applying a discount rate.

The independent valuer's preliminary draft valuation also allocated all of the debt to the lessor. Pursuant to the operating lease terms as amended for each financing, the debt service is a shared expense between the lessor and the operating lessee, but the principal amount due on maturity is contractually only an obligation of the lessor. In contrast, the final method allocated all debt as shared financing costs which were allocated 50% to the lessor and 50% to the operating lessee, except for \$60,500,000 of debt of Empire State Building Associates L.L.C. relating to financing costs incurred by Empire State Building Associates L.L.C in connection with the acquisition of the fee interest, which benefited Empire State Building Associates L.L.C as it was relieved of the obligation to pay the ground rent.

As compared with the final method used to allocate the appraised value between the lessor and the operating lessee, such preliminary draft valuation, which was prepared on a discounted cash flow basis and resulted in residual value allocated to the lessor, had the effect of allocating a greater amount of appraised value after such debt allocation (a) to the lessor at the Empire State Building and (b) to the operating lessee at the other four two-tier properties, as shown in the table below.

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As discussed above, the independent valuer initially provided a preliminary draft valuation which used a discounted cash flow method to determine the value of the residual. For the reasons described above, preliminary exchange values shown in this prospectus/consent solicitation were determined by the independent valuer based on the representation of the supervisor described above treating the two-tier entities on a basis consistent with the economic attributes of a 50/50 joint venture.

Set forth below is a comparison of the allocation of value of each of the subject LLCs and their operating lessees using the joint venture methodology ( JV ) and the discounted cash flow method for calculating the residual ( DCF ).

Each of the valuations has been calculated based on the valuation inputs used to calculate the exchange values shown in this prospectus/consent solicitation.

The valuation based on the discounted cash flow method, as set forth below, was calculated by the independent valuer. The supervisor requested the independent valuer in September 2012 to calculate the exchange values using the discounted cash flow methodology on this basis solely for illustrative purposes to show participants the effect of the different methods. This illustrative valuation prepared by the independent valuer and summarized below was not prepared based on the same valuation inputs as the original valuation using the discounted cash flow methodology prepared by the independent valuer. The original discounted cash flow methodology had been prepared on the basis of valuation inputs that were not yet final.

The supervisor requested that the independent valuer prepare the illustrative valuation using the discounted cash flow methodology using the same valuation inputs that were used to prepare the exchange values shown in this prospectus/consent solicitation to show participants the effect of the application of the discounted cash flow method for valuing the residual interest in the properties owned by the subject LLCs. Calculation on this basis resulted in an increase in the difference between the exchange values of Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. from the original calculation using the discounted cash flow method.

A copy of this illustrative valuation prepared by the independent valuer, which is attached as Exhibit 99.48 to the Registration Statement on Form S-4, of which this prospectus/consent solicitation is a part, may be obtained without charge by you or your representative (who has been so designated in writing) upon written request to MacKenzie Partners, Inc., the company's vote tabulator, at 105 Madison Avenue, NY, NY 10016 or by calling toll free at (888) 410-7850.

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Entity	Appraised Property Value	Debt Obligations	Cash for Improvements	Present Value of Supervisory Fees	Unpaid Cash Overrides	Total Exchange Value	Per \$10,000 Original investment (after voluntary override for Empire State Building Associates L.L.C. and 250 West 57 <sup>th</sup> St. Associates L.L.C.)
<b>Empire State Building</b>							
Empire State Building Associates L.L.C. (Lessor)							
JV	\$ 1,306,500,000 <sup>(1)</sup>	(\$ 124,750,000)	\$ 7,000,000	(\$ 5,137,451)	\$ 0	\$ 1,183,612,549	\$ 323,803
DCF	\$ 1,458,000,000	(\$ 189,000,000)	\$ 7,000,000	(\$ 5,137,451)	\$ 0	\$ 1,270,862,549	\$ 347,599
Empire State Building Company L.L.C. (Operating Lessee)							
JV	\$ 1,223,500,000 <sup>(1)</sup>	(\$ 64,250,000)	\$ 7,000,000	(\$ 4,113,518)	\$ 0	\$ 1,162,136,482	N/A
DCF	\$ 1,072,000,000	\$ 0	\$ 7,000,000	(\$ 4,113,518)	\$ 0	\$ 1,074,886,482	N/A
<b>One Grand Central Place</b>							
60 East 42nd St. Associates L.L.C. (Lessor)							
JV	\$ 359,500,000 <sup>(1)</sup>	(\$ 45,155,119)	\$ 0	(\$ 1,275,348)	\$ 0	\$ 313,069,533	\$ 402,658
DCF	\$ 392,000,000	(\$ 90,310,237)	\$ 0	(\$ 1,275,348)	\$ 0	\$ 300,414,415	\$ 386,387
Lincoln Building Associates L.L.C. (Operating Lessee)							
JV	\$ 344,500,000 <sup>(1)</sup>	(\$ 45,155,119)	\$ 0	(\$ 2,739,564)	(\$ 618,000)	\$ 295,987,317	N/A
DCF	\$ 312,000,000	\$ 0	\$ 0	(\$ 2,739,564)	(\$ 618,000)	\$ 308,642,436	N/A
<b>250 West 57th St.</b>							
250 West 57th St. Associates L.L.C. (Lessor)							
JV	\$ 186,000,000 <sup>(1)</sup>	(\$ 22,212,606)	\$ 0	(\$ 722,787)	\$ 0	\$ 163,064,607	\$ 409,662
DCF	\$ 197,000,000	(\$ 44,425,212)	\$ 0	(\$ 722,787)	\$ 0	\$ 151,852,001	\$ 381,630
Fisk Building Associates L.L.C. (Operating Lessee)							
JV	\$ 175,000,000 <sup>(1)</sup>	(\$ 22,212,606)	\$ 0	(\$ 729,597)	(\$ 909,000)	\$ 151,148,797	N/A
DCF	\$ 164,000,000	\$ 0	\$ 0	(\$ 729,597)	(\$ 909,000)	\$ 162,361,403	N/A

- (1) Represents, for the joint venture method, the allocation of the appraised value determined by the independent valuer 50% to the subject LLC and 50% to the operating lessee after deducting the present value of the base rent from the appraised value and adding the present value of base rent to the appraised value of the subject LLC.

The supervisor did not believe that the sharing ratio shown in such preliminary draft valuation was appropriate, because:

- (a) It was inconsistent with the original intent of those who created the structure and drafted the agreements related thereto, to achieve the economic attributes of a 50/50 joint venture and practice (as described above).
- (b) It would have yielded a sharing ratio substantially dissimilar to that which was provided by other independent valuers in sales over the past decades of other two-tier properties supervised by the supervisor and was approved by investors in both the entities parallel to the subject LLCs and their operating lessees. The sharing ratios under the discounted cash flow analysis



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were 54.5% for Empire State Building Associates L.L.C. and 45.5% for Empire State Building Company L.L.C., 48.3% for 60 East 42nd St. Associates L.L.C. and 51.7% for Lincoln Building Associates L.L.C., and 48.6% for 250 West 57th St. Associates L.L.C. and 51.4% for Fisk Building Associates L.L.C. Since 1989, from which time the supervisor has comprehensive records of sales transactions, the supervisor has proposed to investors, and investors have approved, three sales of two-tier office properties. In each case, the sale included both the lessor and lessee, and the allocation of the purchase price was based on a sharing ratio that was determined based on a report by an independent third party experienced in valuing real property and was approved by the investors as part of their consent to the sale. The supervisor believes that the preliminary draft value initially provided by the independent third party (which determined the value of the residual interest in the property after expiration of the lease on a discounted cash flow basis) was inconsistent with the allocations in these prior sales of two-tier properties.

In one of these transactions, 200 Fifth Avenue (known as the International Toy Center), the independent third party determined that 52% of the purchase price should be allocated to the fee owner of the property and 48% of the purchase price should be allocated to the operating lessee. The independent third party based its determination on the present value of contractual lease payments under the operating lease, including agreed upon extensions. The independent third party's report stated that it also gave weight to the motivation of the investors at the origination of the investment, as well as noting that the lessee's operating control adds some marginal value to its position. Based on the analysis in the report, the supervisor does not believe that the independent third party attributed any value to the lessor's residual interest in the property after expiration of the lease.

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The second transaction involved the sale of ground leasehold and operating subleasehold interests in a property known as 500-512 Seventh Avenue. An unaffiliated third party which owned the fee interest was the ground lessor and did not join in the sale. The sellers, both supervised by the supervisor, were the ground lessee and the operating sublessee, both subject to expiration of their leasehold interest on the same day. Thus, there was no residual interest. The independent third party determined that the ground lessee would be allocated 46.32% - 48.20% of the purchase price and the operating sublessee would be allocated 51.80% - 53.68% of the purchase price (with a greater percentage being allocated to the sublessee as the purchase price increased).

The third transaction involved a distressed property known as 498 Seventh Avenue, where the operating lessee was in default under the operating lease due to a failure to pay real estate taxes. In addition, the property had no significant cash flow, so any leasing costs would be borne directly and solely by the operating lessee. Due to these special circumstances, a substantial portion of the proceeds (60% to 80%, depending on the purchase price) were allocated to the fee owner.

- (c) The supervisor believes such preliminary draft allocation overvalued the residual and does not believe that an independent third party in an arms length market transaction would pay what the independent valuer determined to be the residual value of the Empire State Building. The supervisor's belief is based on (i) its experience in the prior transactions referred to in (b) above, (ii) its experience in real estate markets, and its discussions with others in the real estate industry as to the valuation of a fee interest subject to a long-term operating lease and (iii) the purchase price paid by Empire State Building Associates L.L.C. to acquire the fee interest from an independent third party.
- (d) The supervisor believes, based on its experience with its two-tier properties as discussed above, that in the absence of the proposed consolidation it is likely the operating lease term will be extended at the Empire State Building as part of joint improvement and financing agreements between the lessor and the operating lessee. (As noted previously, such extensions had arisen in similar circumstances for other two-tier properties, including those owned by the other subject LLCs, One Grand Central Place and 250 West 57<sup>th</sup> Street.)
- (e) The supervisor believes that the properties, particularly in view of their age, will continue to require building improvement and reinvestment over time, which will continue to require additional financing and likely result in additional lease extensions to maintain the operating lessee's incentive to join in such improvements and financing. Such lease extensions would reduce any value attributed to the residual interest in the building by making the residual more remote in time. Even without such lease extensions, improvements made decades into the future will reduce the cash flows to the lessor by the extent to which the operating lessee's spending decreases cash available for distribution. Finally, in the absence of such lease extensions, the supervisor believes the operating lessee would not join in the improvements and financing needed to make the necessary building improvements to prevent obsolescence, thereby reducing such residual value.
- (f) The operating lease does not address allocation of sale proceeds between the lessor and the operating lessee if sold together (which the supervisor believes is the best way to maximize such proceeds). Any such allocation would have to be made by negotiated agreement, and the supervisor believes that that negotiation would not result in a sharing ratio like the one set forth in the independent valuer's preliminary draft valuation.

Accordingly, the supervisor concluded and represented to the independent valuer that the allocation of value between the lessor and the operating lessee should be determined by conforming to the economic format of a joint venture which shares excess profits 50/50, parallel to the existing operating lease format for sharing excess profits 50/50 including a corresponding allocation of the joint financing.

The supervisor does not view such conclusion as contradicting any statement in the original offering documents or operating lease to the effect that the operating lease is not a joint venture. Any such statements were intended only to reinforce the desire to avoid the tax and liability characteristics of a joint venture where it was felt needed in the face of having created de facto in the operating lease the economic characteristics of a joint venture.

Third-Party Ground Leases

For the property subject to a third-party ground lease, the independent valuer estimated the value of the private entity that is the ground lessee by calculating the present value of the future cash flows through the contractual term including all potential extensions noting that the reversion of the building would flow to the third-party ground lessor.

**Table of Contents**Application of Discounted Cash Flow

In applying the discounted cash flow technique, the independent valuer estimated the operating results over a hypothetical 10-year holding period and assumed the properties owned by the subject LLCs and private entities would be sold at the end of the final year for a price calculated by capitalizing the following year's projected net operating income. The independent valuer averaged the 1<sup>st</sup>, 12<sup>th</sup> and 13<sup>th</sup> years to account for any inconsistencies in cash flow. The independent valuer then discounted the cash flows at rates ranging from 6.75% to 9.00%, and used terminal capitalization rates ranging from 5.75% to 7.00%.

*Conclusion as to Value.* Based on the valuation methodology described above, the independent valuer estimated the value of properties owned by the subject LLCs and the private entities, before deducting mortgage indebtedness and other liabilities, and the business of the management companies as follows:

<b>Property<sup>(1)</sup></b>	<b>Real Estate or (for the Management Companies) Business Value Conclusion, Before Deducting Mortgage Indebtedness and Other Liabilities<sup>(2)</sup></b>
Empire State Building	\$ 2,530,000,000
One Grand Central Place	\$ 704,000,000
250 West 57th Street	\$ 361,000,000
1333 Broadway	\$ 209,000,000
1350 Broadway <sup>(3)</sup>	\$ 187,000,000
1359 Broadway	\$ 206,000,000
501 Seventh Avenue	\$ 178,000,000
69-97 Main St.	\$ 31,000,000
77 West 55th Street & 1010 Third Avenue	\$ 85,000,000
Metro Center	\$ 157,000,000
10 Union Square	\$ 105,000,000
103-107 Main Street	\$ 7,000,000
100, 200 & 300 First Stamford Place	\$ 266,000,000
10 Bank Street	\$ 50,000,000
1542 Third Avenue	\$ 41,000,000
383 Main St.	\$ 37,000,000
500 Mamaroneck Avenue	\$ 52,000,000
BBSF LLC	\$ 14,600,000
Supervisor and Management Companies <sup>(4)</sup>	\$ 16,302,000

- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an appraised value of \$776,000,000 (after reduction for the third-party ground lease). The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The appraised values of such properties are the appraised values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities.
- (2) Represents the fee simple values, except as otherwise noted, which have been allocated to the subject LLCs and the private entities as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock.
- (3) Reflects the interest in the leasehold only.
- (4) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.

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The independent valuer's estimated value of the properties owned by each of the entities is as of June 30, 2012. They do not necessarily reflect the sales prices of the properties or portfolio that would be realized in actual sales of the properties or portfolio. These prices could be higher or lower than the appraised value of the properties or portfolio.

**Table of Contents****Properties Proposed For Inclusion In Consolidation**

The following table provides, as of September 30, 2012, descriptive information regarding the properties covered by the Appraisal and proposed to be included in the consolidation. The aggregate value of the properties pursuant to the Appraisal is \$5.2 billion and the aggregate value of such properties pursuant to the Appraisal net of mortgage indebtedness is \$4.2 billion, including, in each case, \$15 million relating to the management companies.

Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized Base Rent Per Leased Square Foot <sup>(5)</sup>	Net Effective Rent Per Leased Square Foot <sup>(6)</sup>	Number of Leases <sup>(7)</sup>
<b>Manhattan Office Properties</b>								
The Empire State Building	Penn Station-							
	Times Sq. South	1931/ In process					\$ 43.80	
Office <sup>(8)</sup>			2,696,316	67.4%	\$ 70,119,745	\$ 38.60		247
Retail <sup>(9)</sup>			169,215	85.9%	\$ 15,234,691	\$ 104.82		25
One Grand Central Place	Grand Central	1930/ In process					\$ 47.67	
Office			1,181,327	79.1%	\$ 41,949,725	\$ 44.89		297
Retail			68,005	92.9%	\$ 6,313,878	\$ 99.97		19
250 West 57th Street	Columbus Circle-West Side	1921/ In process					\$ 45.02	
Office			476,574	86.0%	\$ 16,794,389	\$ 40.99		165
Retail			52,247	100.0%	\$ 4,566,250	\$ 87.40		7
501 Seventh Avenue	Penn Station-Times Sq. South	1923/ In process					\$ 35.79	
Office			441,203	87.3%	\$ 13,487,847	\$ 35.03		31
Retail			35,502	100.0%	\$ 1,784,676	\$ 50.27		10
1359 Broadway	Penn Station-Times Sq. South	1924/ In process					\$ 39.41	
Office			441,022	93.0%	\$ 15,407,047	\$ 37.58		31
Retail			27,618	40.3%	\$ 1,510,342	\$ 135.59		5
1350 Broadway <sup>(10)</sup>	Penn Station-Times Sq. South	1929/ In process					\$ 55.80	
Office			368,323	81.7%	\$ 12,154,203	\$ 40.41		73
Retail			30,895	100.0%	\$ 5,730,477	\$ 185.48		6
1333 Broadway	Penn Station-Times Sq. South	1915/ In process					\$ 43.96	
Office			302,277	96.6%	\$ 11,996,983	\$ 41.09		10
Retail			50,063	6.4%	\$ 745,713	\$ 233.11		3
<b>Sub-Total / Weighted Average</b>								
<b>Manhattan Office Properties</b>			<b>6,340,587</b>	<b>77.1%</b>	<b>\$ 217,795,966</b>	<b>\$ 44.54</b>	<b>\$ 44.46</b>	<b>929</b>
<b>Office</b>			<b>5,907,042</b>	<b>77.0%</b>	<b>\$ 181,909,939</b>	<b>\$ 39.99</b>		<b>854</b>
<b>Retail</b>			<b>433,545</b>	<b>78.8%</b>	<b>\$ 35,886,027</b>	<b>\$ 105.09</b>		<b>75</b>
<b>Greater New York Metropolitan Area Office Properties</b>								
First Stamford Place <sup>(11)</sup>	Stamford, Connecticut <sup>(12)</sup>	1986/2003	785,945	88.6%	\$ 26,824,272	\$ 38.53	\$ 39.54	38
Metro Center	Stamford, Connecticut <sup>(12)</sup>	1987/1999	275,758	98.6%	\$ 12,855,443	\$ 47.28	\$ 47.28	26
383 Main Avenue	Norwalk, Connecticut <sup>(13)</sup>	1985/1996	259,856	81.3%	\$ 5,787,139	\$ 27.39	\$ 27.94	18
500 Mamaroneck Avenue	Harrison, New York <sup>(14)</sup>	1986/2004	289,711	88.5%	\$ 6,950,955	\$ 27.12	\$ 26.74	29
10 Bank Street		1989/2001	228,994	85.4%	\$ 6,485,766	\$ 33.15	\$ 33.71	28

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White Plains,  
New York<sup>(15)</sup>

<b>Sub-Total / Weighted Average Greater New York Metropolitan Area Office Properties</b>	<b>1,840,264</b>	<b>88.6%</b>	<b>\$ 58,903,574</b>	<b>\$ 36.11</b>	<b>\$ 36.62</b>	<b>139</b>
<b>Total / Weighted Average Office Properties</b>	<b>7,747,306</b>	<b>79.8%</b>	<b>\$ 240,813,514</b>	<b>\$ 38.97</b>		<b>993</b>

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Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized Base Rent Per Leased Square Foot <sup>(5)</sup>	Net Effective Rent Per Leased Square Foot <sup>(6)</sup>	Number of Leases <sup>(7)</sup>
<b>Standalone Retail Properties</b>								
10 Union Square	Union Square	1988/1997	58,005	100.0%	\$ 4,731,292	\$ 81.57	\$ 81.95	13
1542 Third Avenue	Upper East Side	1993 <sup>(16)</sup>	56,250	100.0%	\$ 2,775,618	\$ 49.34	\$ 47.71	3
1010 Third Avenue	Upper East Side	1963/2007 <sup>(17)</sup>	44,662	100.0%	\$ 3,048,085	\$ 68.25	\$ 65.88	2
77 West 55th Street	Midtown	1962 <sup>(16)</sup>	24,102	100.0%	\$ 2,244,516	\$ 93.13	\$ 79.62	3
69-97 Main Street	Westport, Connecticut	1922/2005	17,103	100.0% <sup>(18)</sup>	\$ 1,513,984	\$ 88.52	\$ 90.79	5
103-107 Main Street	Westport, Connecticut	1900 <sup>(16)</sup>	4,330	100.0%	\$ 423,696	\$ 97.85	\$ 94.69	3
<b>Sub-Total / Weighted Average Standalone Retail Properties</b>			<b>204,452</b>	<b>100.0%</b>	<b>\$ 14,737,192</b>	<b>\$ 72.08</b>	<b>\$ 69.75</b>	<b>29</b>
<b>Total / Weighted Average Retail Properties<sup>(19)</sup></b>			<b>637,997</b>	<b>85.6%</b>	<b>\$ 50,623,218</b>	<b>\$ 92.73</b>		<b>104</b>
<b>Portfolio Total</b>			<b>8,385,303</b>	<b>80.2%</b>	<b>\$ 291,436,731</b>	<b>\$ 43.33</b>	<b>\$ 43.33</b>	<b>1,097</b>

- (1) For more information regarding the status of ongoing renovations at certain of the company's properties, see "The Company Business and Properties - Description of the Company's Properties."
- (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) 119,437 square feet of space across the company's portfolio attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.
- (3) Based on leases signed and commenced as of September 30, 2012 and calculated as (i) rentable square feet less available square feet divided by (ii) rentable square feet.
- (4) Annualized base rent for office properties 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 the office properties for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$10,441,248. Total annualized base rent, net of abatements and free rent, for the company's office properties is \$230,372,265. Annualized base rent for retail properties (including the retail space in the company's Manhattan office properties) is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12. Total abatements, tenant reimbursements and free rent with respect to the retail properties (including the retail space in the company's Manhattan office properties) for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$243,517. Total annualized base rent, net of abatements, tenant reimbursements and free rent, for the company's retail properties is \$50,379,701. Annualized base rent data for the company's office and retail properties is as of September 30, 2012 and does not reflect scheduled lease expirations for the 12 months ending September 30, 2013.
- (5) Represents Annualized Base Rent under leases commenced as of September 30, 2012 divided by leased square feet.
- (6) Net effective rent per leased square foot represents (i) the contractual base rent for office and retail leases in place as of September 30, 2012, 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 September 30, 2012.
- (7) Represents the number of leases at each property or on a portfolio basis. If a tenant has more than one lease, whether or not at the same property, but with different expirations, the number of leases is calculated equal to the number of leases with different expirations.
- (8) Includes 85,812 rentable square feet of space leased by the company's broadcasting tenants.
- (9) Includes 6,180 rentable square feet of space leased by Host Services of New York, a licensee of the company's observatory.
- (10) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to the company, of approximately 39 years (expiring July 31, 2050).
- (11) First Stamford Place consists of three buildings.
- (12) This submarket is part of the Stamford, Connecticut central business district (CBD) submarket as defined by RCG. See "Economic and Market Overview."
- (13) This submarket is part of the South Central Stamford, Connecticut submarket as defined by RCG. See "Economic and Market Overview."
- (14) This submarket is part of the Eastern Westchester County submarket as defined by RCG. See "Economic and Market Overview."
- (15) This submarket is part of the White Plains, New York CBD submarket as defined by RCG. See "Economic and Market Overview."
- (16) No major renovation activity was undertaken at this property.
- (17) This property underwent major renovations in 2007 to coincide with the signing of a significant retail lease.
- (18) 100% leased, including leases signed but not yet commenced.
- (19) Includes 433,545 rentable square feet of retail space in the company's Manhattan office properties.





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### **Fairness Opinion**

The independent valuer has delivered to the supervisor and each of the subject LLCs and the private entities its opinion, dated \_\_\_\_\_, 2012, to the effect that, as of that date and subject to the assumptions, limitations and qualifications contained therein, the allocation of consideration (Class A common stock, Class B common stock, operating partnership units in the operating partnership or cash consideration) (i) among each subject LLC, each private entity and the management companies was fair from a financial point of view to each such subject LLC, each such private entity and the participants in each such subject LLC and each such private entity, and (ii) to the participants in each subject LLC and each private entity, was fair from a financial point of view to the participants in each such subject LLC and each such private entity (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities). The fairness opinion did not take into account the effects of the IPO upon the consolidation.

The fairness opinion addressed the fairness of the consolidation assuming that each subject LLC and each private entity would participate in the proposed consolidation and did not address the fairness of all possible combinations in the proposed consolidation. Accordingly, if the consolidation is completed with less than all of the subject LLCs participating, no report, opinion or appraisal concerning the fairness of the transaction will have been obtained as to such a consolidation. The supervisor believes that, for reasons stated under Recommendation and Fairness Determination Material Factors Underlying Belief as to Fairness, an opinion addressing the fairness of all possible combinations in the proposed consolidation is not necessary because the supervisor believes that the consolidation is fair, regardless of which particular combination of entities participates in the consolidation among any such combination.

The consideration to which each participant or member of the subject LLCs and private entities is entitled was determined by the supervisor based on the appraisals by the independent valuer and the exchange value determined by the independent valuer, because the supervisor believes that it is appropriate to rely on the independent valuer's determination of exchange value to allocate consideration. Since each subject LLC will receive capital transaction proceeds from its contribution of assets to the company and distribute such proceeds to all its interest holders including the participants and the supervisor, as holder of the override interests, the consideration allocable to the supervisor, as holder of the override interests, will be determined based on the amount to which it is entitled under such constituent documents in connection with a distribution by each subject LLC of capital transaction proceeds. Accordingly, the amounts of consideration to each participant will take into account the override interests held by the supervisor for each of the subject LLCs. The fairness opinion took those override interests into account in addressing the fairness of the allocation of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) to the participants in each subject LLC and each private entity.

In rendering its opinion as to the fairness from a financial point of view of the allocation of the consideration to the participants in the consolidation, the independent valuer relied on information provided by the management of the company concerning the terms of the constituent documents of the subject LLCs and the private entities which are applicable to distributions of capital proceeds to the participants.

The fairness opinion, dated \_\_\_\_\_, 2012, is attached as Appendix A to this prospectus/consent solicitation. You should read the independent valuer's opinion in its entirety with respect to the assumptions made, matters considered and limits of the review undertaken by the independent valuer in rendering its opinion. Certain of the material assumptions and limitations to the fairness opinion are described below, but this does not purport to be a complete description of the analyses used by the independent valuer in rendering the fairness opinion. Arriving at a fairness opinion is a complex analytical process not necessarily susceptible to partial analysis or amenable to summary description. Except as described below, the supervisor did not impose any limitations on the scope of the investigation conducted by the independent valuer in rendering its opinion.

*Selection of the Fairness Opinion Provider.* The supervisor selected the independent valuer because of its experience in real estate valuation and its reputation in valuing real estate assets and real estate entities. The compensation payable by the subject LLCs and private entities to the independent valuer in connection with the rendering of the fairness opinion is not contingent on the approval or completion of the consolidation.

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### *Summary of Materials Considered and Analysis Performed.*

In connection with its fairness opinion, the independent valuer has made such reviews, analyses and inquiries as it has deemed necessary and appropriate under the circumstances. The independent valuer also took into account its assessment of general economic, market and financial conditions, as well as its experience in securities, business, and real estate valuation, in general, and with respect to similar transactions, in particular. The independent valuer's procedures, investigations, and financial analysis with respect to the preparation of its fairness opinion included, but were not limited to, the items summarized below:

1. Reviewed the following documents:

- a. a draft of this prospectus/consent solicitation in substantially the form intended to be sent to participants in the private entities;
- b. a draft of the private consent solicitation in substantially the form intended to be provided to the participants in the private entities;
- c. audited financial statements, or to the extent not available, unaudited financial statements, for the subject LLCs and private entities, the supervisor and the management companies for the years ended December 31, 2010 and 2011 and unaudited financial statements for the subject LLCs and private entities, the supervisor and the management companies for the six months ended June 30, 2012, in each case, provided to the independent valuer by the supervisor;
- d. historical operating and financial information including property-level financial data relating to the business, financial condition and results of operations of the subject LLCs and private entities, the properties owned by the subject LLCs and private entities, the supervisor, and the management companies, in each case, provided to the independent valuer by the supervisor;
- e. other internal documents relating to the history, current operations, current budgets, and probable future outlook of the subject LLCs and private entities, the properties owned by the subject LLCs and private entities, the supervisor, and the management companies, including financial projections of the supervisor, and the management companies, in each case provided to the independent valuer by management of the supervisor, and financial projections of the subject LLCs and private entities and the properties owned by the subject LLCs and private entities, which financial projections were (i) presented by the independent valuer based on the Information (as defined below) provided by management of the supervisor and analysis performed by the independent valuer and (ii) reviewed and approved by management of the supervisor. A copy of such financial projections which were finalized in September 2012 is attached to this prospectus/consent solicitation as Appendix C;
- f. a letter dated \_\_\_\_\_, 2012 from the supervisor to the independent valuer which made certain representations as to historical financial statements, financial projections and the underlying assumptions for the subject LLCs and private entities, the properties owned by the subject LLCs and private entities, the supervisor, and the management companies, the allocation of fee simple value among certain entities which are ground lessees or operating lessees, and the equity interest allocation worksheets for the subject LLCs and private entities;
- g. other documents and information related to the properties owned by the subject LLCs and prepared by management of the supervisor, including: floor plans, re-measurement projections, stacking plans, present market rental package including market rents and concessions, rent rolls, lease abstracts, property tax cards, capital expenditure projections stabilization estimates for the properties, Argus files prepared by the supervisor and operating expense estimates (collectively, the Information );
- h. organizational and related documents of the subject LLCs and the private entities and
- i. the schedule setting forth the allocation of consideration provided from the supervisor to the independent valuer.

2. Discussed the information referred to above and the background, other elements of the consolidation, conditions in property markets, conditions in the market for sales or acquisitions of properties similar to the

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properties owned by the subject LLCs and private entities, current and projected operations and performance, financial condition, and future prospects of such properties, the supervisor, and the management companies with the supervisor and professionals from Pearson Partners, Inc. and CBRE Group, Inc., both as representatives of the Helmsley estate, a significant investor in certain of the subject LLCs and the private entities;

3. Reviewed the historical trading price and trading volume of the publicly traded securities of certain other companies that the independent valuer deemed relevant;

4. With respect to the supervisor and the management companies, performed certain valuation and comparative analyses using generally accepted valuation and analytical techniques including a discounted cash flow analysis, and an analysis of selected public companies that the independent valuer deemed relevant;

5. With respect to the properties owned by the subject LLCs and the private entities, conducted independent valuations using generally accepted valuation and analytical techniques that the independent valuer deemed relevant;

6. Performed site visits for each of the properties owned by the subject LLCs and the private entities, with the exception of the properties located in Westport, CT at 69-97 Main Street and 103-107 Main Street and

7. Conducted such other analyses and considered such other factors as the independent valuer deemed appropriate.

*Summary of Analysis.* The following is a summary of financial analyses conducted by the independent valuer in connection with, and in support of, the fairness opinion. The summary of the opinion and analysis of the independent valuer set forth in this prospectus/consent solicitation is qualified in its entirety by reference to the full text of such opinion.

*Appraisal.* In preparing its opinion, the independent valuer's scope of work included an investigation, analysis, and valuation of the properties owned by the subject LLCs and the private entities. More specifically, it included inspecting the interior and exterior of the properties owned by the subject LLCs and the private entities (with the exception of 69-97 Main Street and 103-107 Main Street), and examining local and regional market data. The independent valuer spoke with the supervisor's asset managers and the property managers for the properties and consulted local real estate professionals and databases for comparable rentals and sales. Additionally, the independent valuer analyzed local market conditions as well as competitive metrics, economics and yields and placed primary reliance on the income approach to determine the fair market value of the properties owned by the subject LLCs and the private entities as of June 30, 2012.

*Supervisor and Management Companies Business Enterprise Valuations.* The independent valuer estimated the operating business values of each of the management companies and the supervisor. In estimating the operating business values for each of the management companies and the supervisor, the independent valuer utilized a discounted cash flow analysis. In addition, the independent valuer used a selected public companies analysis as a second indication of operating business value for Malkin Construction Corp. The exchange value ascribed to the supervisor and the management companies was derived by reducing their enterprise values by the net liabilities of each of the businesses, as described more fully in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.

*Discounted Cash Flow Analysis.* The independent valuer performed a discounted cash flow analysis of the projected free cash flows of the supervisor and the management companies, with free cash flow defined as cash that is available either to reinvest or to distribute to security holders. The discounted cash flow analysis provided an indication of the operating business value by discounting the future free cash flows utilizing a weighted average cost of capital for the discount rate. The projected free cash flows were based on financial projections and assumptions provided by the supervisor for the years ended December 31, 2012 through 2020.

The independent valuer estimated the present value of all cash flows after 2020, referred to herein as the terminal value, of the supervisor and the management companies by utilizing a perpetuity formula, a commonly

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accepted terminal value approach, based on the projected free cash flow in 2020. For Malkin Properties, the independent valuer normalized the projected 2020 free cash flow to reflect normalized levels of leasing, financing and other fees.

The independent valuer assumed an 11.5% to 13.5% weighted average cost of capital to discount the projected free cash flows and terminal value for the property management companies and the supervisor. The independent valuer assumed a 15.5% to 17.5% weighted average cost of capital to discount the projected free cash flows and terminal value for Malkin Construction Corp. The discount rates used are equivalent to the rates of return that security holders could expect to realize on alternative investment opportunities with risk profiles similar to those of the management companies and the supervisor.

Based on its assumptions, and the projected financials provided by the supervisor, the independent valuer's discounted cash flow analysis indicated a range of operating business value for the property management companies of \$5.15 million to \$5.85 million, a range of operating business value for the supervisor of \$4.0 million to \$4.75 million, and a range of operating business value for Malkin Construction Corp of \$4.69 million to \$5.40 million. The operating business value of the supervisor excludes the value of any of its or its affiliates overrides in the properties owned by the subject LLCs and the private entities, which are included in the consideration received by the Malkin Holdings group from the subject LLCs and private entities.

*Selected Publicly Traded Companies Analysis.* The independent valuer compared certain financial metrics of Malkin Construction Corp. to corresponding data and ratios from similar construction companies. For purposes of its analysis, the independent valuer used certain publicly available historical financial data and consensus equity analyst estimates for the selected publicly traded companies. This analysis produced valuation multiples of selected financial metrics which indicated an estimate of the operating business value of Malkin Construction Corp. The five companies included in the selected publicly traded companies analysis were:

Bird Construction Inc.

Balfour Beatty plc

Churchill Corp.

Kier Group plc

Tutor Perini Corporation

The independent valuer selected these companies for its selected publicly traded companies analysis based on its familiarity with companies in the construction industry and their relative similarity, primarily in terms of business model, to that of Malkin Construction Corp.

The table below reflects the observed trading multiples and the historical and projected financial performance, on an aggregate basis, of the peer group.

	EV / 2012E EBITDA	EV / 2013E EBITDA	EV / 2012E Revenue	Revenue Growth 3-YR CAGR	2012E	2013E	EBITDA Margin 2012E	2012E
Minimum	3.7x	3.5x	0.15x	-13.1%	2.7%	0.0%	3.6%	3.7%
Maximum	5.5x	4.6x	0.38x	22.8%	31.1%	8.7%	6.8%	7.7%
Mean	4.6x	4.1x	0.24x	1.8%	12.2%	4.8%	5.0%	5.5%
Median	4.4x	4.1x	0.24x	-2.1%	5.7%	5.4%	5.2%	5.6%

CAGR = Compounded Annual Growth Rate

## Edgar Filing: Empire State Realty Trust, Inc. - Form S-4/A

Enterprise Value ( EV ) = (Market Capitalization) + (Debt + Preferred Stock + Minority Interest) (Cash & Equivalents)

EBITDA = Earnings Before Interest, Taxes, Depreciation and Amortization

Note: Financial data as of June 30, 2012.

Source: Bloomberg, Capital IQ, SEC filings

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In order to estimate a range of operating business values for Malkin Construction Corp, the independent valuer selected and applied valuation multiples of projected 2013 EBITDA ranging from 4.0x to 5.0x and projected 2012 revenue multiples ranging from 0.10x to 0.12x based on the historical and projected financial performance of Malkin Construction Corp. as compared to the selected publicly traded companies. As a result of these selected valuation multiples, the selected publicly traded companies analysis indicated an estimated operating business value for Malkin Construction Corp. of \$4.2 million to \$5.1 million.

None of the companies utilized for comparative purposes in the independent valuer's analysis were identical to Malkin Construction Corp. Accordingly, a complete valuation analysis cannot be limited to a quantitative review of the selected publicly traded companies, and involves complex considerations and judgments concerning differences in financial and operating characteristics of such companies, as well as other factors that could affect their value relative to that of Malkin Construction Corp.

*Exchange Value and Allocation.* The independent valuer's evaluation of the fairness from a financial point of view of the allocations of Class A common stock, Class B common stock, operating partnership units or cash consideration among the subject LLCs, private entities, the supervisor, and the management companies employed comparisons of the exchange value of each individual interest to the aggregate exchange value of all such interests. The exchange values are based on the appraised values of the properties owned by the subject LLCs and private entities, the supervisor, and the management companies and is more fully described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.

Relying on these exchange values, the independent valuer observed that the allocation of Class A common stock, Class B common stock, operating partnership units or cash consideration among the subject LLCs, private entities, the supervisor, and the management companies, reflects the net value of the assets contributed in the consolidation.

*Assumptions, Qualifications and Limiting Conditions.* In performing its analyses and rendering its fairness opinion with respect to the consolidation, the independent valuer, with the supervisors' consent relied on certain assumption stated in its fairness opinion, including the following:

1. Relied upon the accuracy, completeness, and fair presentation of the Information and all other information, data, advice, opinions and representations obtained from public sources or provided to it from private sources, including management of the supervisor, and did not independently verify any of the Information or such information;
2. Assumed that any estimates, evaluations, forecasts, projections, documents and information related to the properties owned by the subject LLCs and the private entities prepared by the management of the supervisor and the schedule setting forth the allocation of consideration among the holders of interest in each subject LLC and private entity furnished to the independent valuer were reasonably prepared and based upon the best information currently available to, and the good faith judgment of, the person furnishing the same;
3. Assumed that information supplied and representations made by management of the supervisor are substantially accurate regarding the supervisor and the consolidation;
4. Assumed that the factual statements concerning the subject LLCs, the private entities and their properties made in this prospectus/consent solicitation and in the offering memorandum/consent solicitation (other than descriptions of the Appraisal supplied by the independent valuer) in the solicitation of participants in the private entities do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
5. Assumed that there has been no material change in the assets, financial condition, business, or prospects of the subject LLCs or private entities, the properties they own, the supervisor or the





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management companies since the date of the most recent financial statements and other information made available to the independent valuer;

6. Assumed that each of the subject LLCs and private entities will consent to the consolidation, and that the company will acquire all of assets and liabilities of the subject LLCs and private entities, the supervisor, and the management companies (other than certain specific excluded assets);
7. Assumed that, for the purposes of its analysis, the values of each form of consideration (Class A common stock, Class B common stock, operating partnership units or cash) are equivalent;
8. Assumed at the direction of the supervisor that, for the purpose of its analysis, the value of each form of consideration (Class A common stock, Class B common stock, operating partnership units or cash consideration) is equivalent;
9. Assumed that all of the conditions required to implement the consolidation will be satisfied and that the consolidation will be completed in accordance with the prospectus/consent solicitation and the offering memorandum/consent solicitation for the private entities without any amendments thereto or any waivers of any terms or conditions thereof; and
10. Assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the consolidation will be obtained without any adverse effect on the company, the supervisor, or the management companies.

*Limitations and Qualifications of Fairness Opinion.* To the extent that any of the foregoing assumptions or any of the facts on which the fairness opinion is based prove to be untrue in any material respect, the fairness opinion cannot and should not be relied upon. Furthermore, in the independent valuer's analysis and in connection with the preparation of the fairness opinion, the independent valuer has made numerous assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond the control of any party involved in the consolidation. In rendering its opinion as to the fairness from a financial point of view of the allocation of the consideration to the participants in the consolidation, the independent valuer relied on information provided by the management of the company concerning the terms of the constituent documents of the subject LLCs and the private entities which are applicable to distributions of capital proceeds to the participants.

The independent valuer has prepared the Appraisal of the subject LLCs and private entities, their properties, the supervisor and the management companies as of June 30, 2012 and assumes (i) no responsibility for changes in market conditions and (ii) no obligation to revise its analysis to reflect any such changes which occurred subsequent June 30, 2012. The independent valuer's fairness opinion was dated as of 2012. The fairness opinion was necessarily based upon market, economic, financial and other conditions as they exist and can be evaluated as of 2012, and the independent valuer disclaims any undertaking or obligation to advise any person of any change in any fact or matter affecting the fairness opinion which may come or be brought to the attention of the independent valuer after the date hereof.

The independent valuer has not been requested to, and did not, (i) initiate any discussions with, or solicit any indications of interest from, third parties with respect to the consolidation, the assets, businesses or operations of the properties owned by the subject LLCs and private entities, the supervisor, or the management companies, or (ii) advise the supervisor or any other party with respect to alternatives to the consolidation.

The independent valuer is not expressing any opinion as to the market price or value of the company, including the price at which the Class A common stock or any other securities of the company or the operating partnership may trade at any time, or, except as set forth in the valuation analysis, any particular property, the supervisor or the management companies, either before or after the completion of the consolidation or the IPO. In this regard, the fairness opinion addresses the relative percentage of the consideration that each of the subject LLCs, the private entities and the management companies is to receive in the consolidation, and not the market

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price or value of the consideration upon completion of the consolidation and the IPO. The independent valuer fairness opinion is based on its valuation analyses of the properties owned by the subject LLCs and private entities, the subject LLCs and private entities, and the management companies as of June 30, 2012. The independent valuer's analysis did not take into account (i) the impact of the consolidation with respect to tax consequences for the participants in the subject LLCs or private entities; (ii) the market price or value of the company or, except as set forth in the valuation analysis, any particular property, the supervisor or the management companies, either before or after the completion of the consolidation or the IPO; (iii) any potential incremental value attributable to the portfolio of assets taken as a whole after giving effect to the consolidation and (iv) the effects of variations in aggregate values attributed to the portfolio assets after giving effect to the consolidation on relative values of such portfolio assets. The fairness opinion should not be construed as a valuation opinion, credit rating, solvency opinion, an analysis of the supervisor's credit worthiness, as tax advice, or as accounting advice. The independent valuer has not made, and assumes no responsibility to make, any representation, or render any opinion, as to any legal matter.

The fairness opinion is for the information of the supervisor, its officers, managers and members of the subject LLCs and private entities in connection with their consideration of the consolidation and may not be used for any other purpose without the independent valuer's prior written consent. The basis and methodology for the fairness opinion have been designed specifically for the express purposes of the supervisor, the subject LLCs, the private entities and the management companies and may not translate to any other purposes. The fairness opinion (i) does not address the merits of the underlying business decision to enter into the consolidation versus any alternative strategy or transaction, (ii) is not a recommendation as to how the participants of subject LLCs and private entities should vote or act with respect to any matters relating to the consolidation, and (iii) does not address whether the participants of subject LLCs and private entities should elect to receive common stock, limited partnership interests in the operating partnership, or cash, or whether to proceed with the consolidation or any related transaction. The ultimate decision to participate in the consolidation or any related transaction must be made by each subject LLC or private entity and will need to take into account factors unrelated to the financial analysis on which the fairness opinion is based. The fairness opinion should not be construed as creating any fiduciary duty on the part of Duff & Phelps to any party.

A copy of the Project Legacy Fairness Analysis dated September 2012, prepared by the independent valuer, which is attached as Exhibit 99.58 to the Registration Statement on Form S-4, of which this prospectus/consent solicitation is a part, and describes in more detail the valuation and fairness analysis, may be obtained without charge by you or your representative (who has been so designated in writing) upon written request to MacKenzie Partners, Inc., the company's vote tabulator, at 105 Madison Avenue, NY, NY 10016 or by calling toll free at (888) 410-7850.

### **Prior Independent Valuer Work Papers and Analysis**

During the period from September 16, 2011 through the submission of the final preliminary valuation prior to commencement of the solicitation of consents from participants in the private entities in November 2011, the independent valuer provided to the supervisor for its review interim preliminary work papers with respect to property valuations and allocations of consideration. These interim preliminary work papers were submitted for review and verification and were not intended to and did not reflect the final work product or advice or conclusions of the independent valuer. The interim preliminary work papers containing material differences from the final preliminary valuation are filed as Exhibits 99.52, 99.53, 99.54, 99.55, 99.56 and 99.57 to the Registration Statement on Form S-4.

The material differences from these interim work papers reflected in the final preliminary valuation are as follows: revisions to the property allocations to reflect corrections provided by the supervisor for the calculation of the overage rent payable under operating leases to conform to the various governing documents; adjustment in the management fees the independent valuer applied in respect to certain of the non-New York City properties to the actual management fees paid by the private entities that own such properties; changes in the property valuations and allocations to reflect the change in the valuation methodology from valuing the residual interest in

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a two-tier property on the basis of the discounted cash flow method to valuing it on the basis of the 50/50 joint venture method and, in connection therewith, to change the allocation of debt from 100% to the subject LLCs to 50% to the subject LLCs and 50% to the operating lessees, except for \$60,500,000 of debt of Empire State Building Associates L.L.C. incurred in connection with the acquisition of the fee interest, which was allocated 100% to Empire State Building Associates L.L.C; changes in the allocations to reflect changes in the property values; and changes in the discount rates and terminal capitalization rates.

The final preliminary valuation was submitted by the independent valuer in November 2011. This preliminary valuation was included in the documents relating to the solicitation of consents of participants in the private entities. A copy of the Fairness Analysis relating to the preliminary valuation dated November 2011 is attached as Exhibit 99.47 to the Registration Statement on Form S-4, of which this prospectus/consent solicitation is a part. The preliminary exchange values based on such valuations and the financial projections used by the independent valuer in connection with such preliminary exchange values are attached to this prospectus/consent solicitation as Appendix C-2. The material differences between the preliminary exchange values and the final exchange values reflected in this prospectus/consent solicitation resulted from changes occurring between the dates as of which the valuations were made. The principal changes were changes in the leasing market and sales market, which have resulted in a compression of cap rates and discount rates, increasing property values; significant increase in the retail markets and the value of retail properties; and changes in the performance of individual properties, including leasing activity, resulting in changes in their projected cash flow.

Copies of the interim preliminary work papers and the Fairness Analysis relating to the preliminary valuation dated November 2011 may be obtained without charge by you or your representative (who has been so designated in writing) upon written request to MacKenzie Partners, Inc., the company's vote tabulator, at 105 Madison Avenue, NY, NY 10016 or by calling toll free at (888) 410-7850.

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**EXCHANGE VALUE AND ALLOCATION OF OPERATING PARTNERSHIP UNITS  
AND COMMON STOCK**

**Exchange Value Allocation of Operating Partnership Units and Common Stock**

*General.* The exchange value for each subject LLC, each private entity and the management companies was determined as of June 30, 2012 to establish a consistent method of allocating common stock and operating partnership units for purposes of the consolidation. The shares of common stock and operating partnership units to be issued to each subject LLC, private entity and the management companies will be allocated based on their respective share of the aggregate exchange value. The number of shares of common stock, on a fully-diluted basis, to be issued in the consolidation, as presented in this prospectus/consent solicitation, was determined by dividing the aggregate exchange value by \$10 and each subject LLC's share of the common stock, on a fully-diluted basis, is equal to its exchange value divided by \$10. The hypothetical value per share of \$10 was an arbitrary amount chosen by the supervisor for the sole purpose of illustrating the allocation of common stock and operating partnership units.

The fair market value of the consideration that you receive will not be known until the pricing of the IPO, which will occur after you vote upon the approval of the consolidation transaction. The value of the consideration will be based on the enterprise value determined in connection with the pricing of the IPO. The actual number of shares of common stock, on a fully-diluted basis, issued in the consolidation will equal the enterprise value of the company in connection with the IPO (which will be allocated in proportion to the relative share of the aggregate exchange value) divided by the IPO price. Additionally, the IPO price may be more or less than the hypothetical \$10 per share exchange value arbitrarily assigned by the supervisor for illustrative purposes and, after the offering, the shares of Class A common stock may trade above or below the IPO price. See Risk Factors. Accordingly, both the number of operating partnership units and shares of common stock and the value of the operating partnership units and shares of common stock that each participant will receive for each \$10,000 of original investment could be higher or lower than the hypothetical amounts set forth in this prospectus/consent solicitation. The number of shares of Class A common stock, Class B common stock, and operating partnership units issued in the consolidation will be determined based on the company's enterprise value, which will be determined based on the IPO price, without giving effect to shares of Class A common stock issued in 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

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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.

No fractional share of operating partnership unit or common stock will be issued by the company in connection with the consolidation. See No Fractional Share of Common Stock.

*Adjustments to Exchange Value and Allocation of Operating Partnership Units and Shares of Common Stock.* All determinations of the exchange value for purposes of allocating the common stock and operating partnership units among the subject LLCs, the private entities and the management companies were determined as of June 30, 2012 in the manner described below under Derivation of Exchange Values. No adjustment will be made to the allocations of any of the subject LLCs, private entities or the management companies. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC or private entity to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation. As of the date of this prospectus/consent solicitation, the supervisor does not know of any material change regarding any subject LLC, any private entity or the management companies that will affect materially the exchange value for that entity.

### **Derivation of Exchange Values**

The exchange value has been determined for each subject LLC, each private entity and the management companies, as described below.

*The subject LLCs and the private entities for two tier properties in which there is a property owner and an operating lessee* the exchange value of each subject LLC or private entity is determined as follows:

the total allocable value as described below has been allocated equally between the property owner and operating lessee:

the total allocable value equals:

the sum of:

the appraised value, on a fee simple basis, of a subject LLC's or private entity's property, as determined by the independent valuer's Appraisal of such property, as of June 30, 2012 and

the amount by which the actual net working capital of the subject LLC and the private entity exceeds (such value being negative if it is exceeded by) the normalized level of net working capital required to operate the property owned by the subject LLC or private entity, except for cash in excess of the normalized level of working capital which will be retained by the subject LLC and the private entity and distributed to their participants. Net working capital as used in this allocation is defined as current assets (excluding cash and cash equivalents, except to the extent required to maintain the normalized levels of working capital), less current liabilities (excluding the current portion of debt). As of June 30, 2012 the supervisor determined that there was no excess or deficit in the net working capital over the normalized level of working capital at any of the subject LLCs or private entities, with the exception of the unpaid cash overrides addressed below and

the amount of cash held by the subject LLC and private entity that is expressly designated for property improvements, as of June 30, 2012, as provided by the supervisor;



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reduced by:

the face value of shared mortgage debt obligations, which are mortgage debt obligations of the property owner that are serviced by basic rent paid by the operating lessee, as of June 30, 2012 and

the present value of the base operating lease payments from the operating lessee to the property owner.

fifty percent of such allocable value is allocated to the property owner and is adjusted as follows to estimate the exchange value of the property owner:

subtract the after-tax present value of supervisory fees paid to the supervisor and unpaid cash flow overrides as of June 30, 2012;

subtract the property owner debt obligations that are not shared mortgage debt obligations serviced with basic rent paid by the operating lessee as of June 30, 2012 and

add the present value of the base operating lease payments from the operating lessee to the property owner.

fifty percent of such allocable value is allocated to the operating lessee and is adjusted as follows to estimate the exchange value of the operating lessee:

subtract the after-tax net present value of the supervisory fees paid to the supervisor and the unpaid cash overrides as of June 30, 2012.

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

*The private entities for fee simple properties, properties with co-tenancy arrangements and properties with third-party ground leases* the exchange value of each private entity is determined as follows:

the sum of:

the appraised value of a private entity's (i) property on a fee simple basis when such property is owned, or (ii) leasehold when the lessor of such leasehold is a third party, as determined by the independent valuer's Appraisal of such property or leasehold as of June 30, 2012;

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the amount by which the actual net working capital exceeds (such value being negative if it is exceeded by) the normalized level of net working capital required to operate the property owned by the subject LLC or private entity and

the amount of cash held in the subject LLC or private entity that is expressly designated for property improvements as of June 30, 2012, as provided by the supervisor;

reduced by:

the face value of its mortgage debt balance as of June 30, 2012 and

the after-tax net present value of the supervisory fees paid to the supervisor.

*The supervisor and management companies* The exchange value of the supervisor and the management companies was determined based on the independent valuer's Appraisal of such entities operating business values, as summarized in the following table as of June 30, 2012.



**Table of Contents****Appraised Value of the Management Companies**

	<b>Concluded Operating Business Value</b>		
	<b>Low</b>	<b>High</b>	<b>Midpoint</b>
Malkin Holdings, LLC <sup>(1)</sup>	\$ 4,000,000	\$4,750,000	\$ 4,250,000
Malkin Properties	\$ 5,150,000	\$5,850,000	\$ 5,500,000
Malkin Construction Corp.	\$ 4,688,000	\$5,400,000	\$ 5,025,000

(1) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.

The exchange value of the management companies was then computed as the operating business value determined by the independent valuer as of June 30, 2012 plus, in the case of the supervisor, the value of the unpaid cash overrides that are accrued but unpaid. The increases in the fees payable to the supervisor (described under Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Results of Operations Third-Party Management and Other Fees ) increased the appraised value of the supervisor because the appraised value of the supervisor was calculated based on its discounted cash flow, as described under Reports, Opinions and Appraisals Fairness Opinion Supervisor and Management Companies Business Enterprise Valuations. The management fees payable by the private entities and subject LLCs increased from \$821,655 to \$2,483,000. The increase in fees was approved by participants in those private entities in which such consent was required under the operative documents. With respect to the subject LLCs, the increase was approved by the agents. No consent of the participants was required under the participating agreements. The supervisor believes that increases in the fees, which were based in each case solely on a cost of living adjustment from the date the current fees were set, results in reasonable levels of compensation in effect, leaving the earlier fee unchanged except to adjust for inflation. Accordingly, it does not result in the supervisor receiving an amount in excess of its fair value.

**Table of Contents****Derivation of Exchange Value**

The derivation of the exchange value of each subject LLC, each private entity, the supervisor and the management companies, is summarized in the following tables.

The following table shows the derivation of the total allocable value which is the value that, in the case of Two Tier Properties, is shared equally by the property owner and ground lessee or operating lessee:

Entity <sup>(1)</sup>	Appraised Property Value <sup>(2)</sup>	Shared Debt Obligations <sup>(3)</sup>	Present Value of Base Operating Rent <sup>(4)</sup>	Cash for Improvements	Total Allocable Value <sup>(5)</sup>
Empire State Building	\$ 2,530,000,000	(\$ 128,500,000)	(\$ 83,000,000)	\$ 14,000,000	
Empire State Building Associates L.L.C.					\$ 1,166,250,000
Empire State Building Company L.L.C.					\$ 1,166,250,000
<b>Total</b>	<b>\$ 2,530,000,000</b>	<b>(\$ 128,500,000)</b>	<b>(\$ 83,000,000)</b>	<b>\$ 14,000,000</b>	<b>\$ 2,332,500,000</b>
One Grand Central Place	\$ 704,000,000	(\$ 90,310,237)	(\$ 15,000,000)	\$ 0	
60 East 42nd St. Associates L.L.C.					\$ 299,344,882
Lincoln Building Associates L.L.C.					\$ 299,344,882
<b>Total</b>	<b>\$ 704,000,000</b>	<b>(\$ 90,310,237)</b>	<b>(\$ 15,000,000)</b>	<b>\$ 0</b>	<b>\$ 598,689,763</b>
250 West 57th St.	\$ 361,000,000	(\$ 44,425,212)	(\$ 11,000,000)	\$ 0	
250 West 57th St. Associates L.L.C.					\$ 152,787,394
Fisk Building Associates L.L.C.					\$ 152,787,394
<b>Total</b>	<b>\$ 361,000,000</b>	<b>(\$ 44,425,212)</b>	<b>(\$ 11,000,000)</b>	<b>\$ 0</b>	<b>\$ 305,574,788</b>
1333 Broadway					
1333 Broadway Associates L.L.C.	\$ 209,000,000	(\$ 71,200,000)	\$ 0	\$ 18,914,650	\$ 156,714,650
1350 Broadway <sup>(6)</sup>					
1350 Broadway Associates L.L.C.	\$ 187,000,000	(\$ 50,427,335)	\$ 0	\$ 0	\$ 136,572,665
1359 Broadway					
Marlboro Building Associates L.L.C.	\$ 206,000,000	(\$ 47,001,233)	\$ 0	\$ 0	\$ 158,998,767
501 Seventh Avenue	\$ 178,000,000	(\$ 47,154,079)	(\$ 4,000,000)	\$ 0	
Seventh & 37th Building Associates L.L.C.					\$ 63,422,961
501 Seventh Avenue Associates L.L.C.					\$ 63,422,961
<b>Total</b>	<b>\$ 178,000,000</b>	<b>(\$ 47,154,079)</b>	<b>(\$ 4,000,000)</b>	<b>\$ 0</b>	<b>\$ 126,845,921</b>
69-97 Main Street					
Soundview Plaza Associates II L.L.C.	\$ 31,000,000	(\$ 9,284,389)	\$ 0	\$ 0	\$ 21,715,611
1010 Third Avenue and 79 West 55th Street					
East West Manhattan Retail Portfolio L.P.	\$ 85,000,000	(\$ 28,796,975)	\$ 0	\$ 0	\$ 56,203,025
Metro Center					
One Station Place, Limited Partnership	\$ 157,000,000	(\$ 99,097,038)	\$ 0	\$ 0	\$ 57,902,962
10 Union Square					
New York Union Square Retail L.P.	\$ 105,000,000	(\$ 21,431,164)	\$ 0	\$ 0	\$ 83,568,836
103-107 Main Street					
Westport Main Street Retail L.L.C.	\$ 7,000,000	\$ 0	\$ 0	\$ 0	\$ 7,000,000
First Stamford Place <sup>(7)</sup>	\$ 266,000,000	(\$ 245,435,000)	\$ 0	\$ 0	
Fairfax Merrifield Associates L.L.C.					\$ 6,412,167
Merrifield Apartments Company L.L.C.					\$ 6,412,167
First Stamford Place L.L.C.					\$ 7,740,666
<b>Total</b>	<b>\$ 266,000,000</b>	<b>(\$ 245,435,000)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 20,565,000</b>
10 Bank Street					
1185 Swap Portfolio L.P.	\$ 50,000,000	(\$ 34,235,042)	\$ 0	\$ 0	\$ 15,764,958
1542 Third Avenue					
1185 Swap Portfolio L.P.	\$ 41,000,000	(\$ 19,540,393)	\$ 0	\$ 0	\$ 21,459,607
383 Main Ave					

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Fairfield Merrittview Limited Partnership	\$ 37,000,000	(\$ 31,173,778)	\$ 0	\$ 0	\$ 5,826,222
500 Mamaroneck Ave					
500 Mamaroneck Avenue L.P.	\$ 52,000,000	(\$ 37,190,401)	\$ 0	\$ 0	\$ 14,809,599
BBSF LLC	\$ 14,600,000	\$ 0	\$ 0	\$ 0	\$ 14,600,000
Supervisor and Management Companies					
Malkin Holdings, LLC	\$ 4,250,000	\$ 0	\$ 0	\$ 0	\$ 4,250,000
Malkin Properties	\$ 5,500,000	\$ 0	\$ 0	\$ 0	\$ 5,500,000
Malkin Construction Corp.	\$ 5,025,000	\$ 0	\$ 0	\$ 0	\$ 5,025,000
<b>Total</b>	<b>\$ 14,775,000</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 14,775,000</b>
<b>Total</b>	<b>\$ 5,235,375,000</b>	<b>(\$ 1,005,202,276)</b>	<b>(\$ 113,000,000)</b>	<b>\$ 32,914,650</b>	<b>\$ 4,150,087,374</b>

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- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having total allocable value of \$609,305,097. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The allocable values of such properties are the allocable values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities.
- (2) Represents the fee simple values, except as otherwise noted, which have been allocated to the subject LLCs and the private entities as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock.
- (3) Debt obligations, including mortgage debt, and in the case of the Two Tier Properties, shared mortgage debt obligations of the fee owner that are serviced by basic rent paid by the operating lessee.
- (4) Represents the present value of the base operating lease payments from the operating lessee to the fee owner.
- (5) Total Allocable Value that is shared equally by the property owner or ground lessee and the operating lessee associated with the Two Tier Properties, defined below, equals the appraised value of such property minus the sum of shared debt obligations and the present value of base rent payable under the operating lease, plus the cash reserves for improvements. Two Tier properties are those in which one entity is a property owner or ground lessee and the other entity is an operating lessee or operating sublessee.
- (6) Reflects the interest in the leasehold only.
- (7) First Stamford Place L.L.C. is a 37.64% co-tenant with Fairfax Merrifield Associates L.L.C. and Merrifield Apartments Company L.L.C., together owning a 62.36% interest. Merrifield Apartments Company L.L.C. is the operating lessee, owning a 50.00% interest in the co-tenancy, for an aggregate ownership interest of 31.18% in the property.

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The following table shows the additional adjustments to allocable value to derive the exchange value:

Entity <sup>(1)</sup>	Total Allocable Value <sup>(2)</sup>	Present Value of Supervisory Fees <sup>(3)</sup>	Unpaid Cash Overrides <sup>(4)</sup>	Unshared Debt Obligations <sup>(5)</sup>	Present Value of Base Rent <sup>(6)</sup>	Total Exchange Value <sup>(7)</sup>
<b>Empire State Building</b>						
Empire State Building Associates L.L.C.	\$ 1,166,250,000	(\$ 5,137,451)	\$ 0	(\$ 60,500,000)	\$ 83,000,000	\$ 1,183,612,549
Empire State Building Company L.L.C.	\$ 1,166,250,000	(\$ 4,113,518)	\$ 0	\$ 0	\$ 0	\$ 1,162,136,482
<b>Total</b>	<b>\$ 2,332,500,000</b>	<b>(\$ 9,250,969)</b>	<b>\$ 0</b>	<b>(\$ 60,500,000)</b>	<b>\$ 83,000,000</b>	<b>\$ 2,345,749,031</b>
<b>One Grand Central Place</b>						
60 East 42nd St. Associates L.L.C.	\$ 299,344,882	(\$ 1,275,348)	\$ 0	\$ 0	\$ 15,000,000	\$ 313,069,533
Lincoln Building Associates L.L.C.	\$ 299,344,882	(\$ 2,739,564)	(\$ 618,000)	\$ 0	\$ 0	\$ 295,987,317
<b>Total</b>	<b>\$ 598,689,763</b>	<b>(\$ 4,014,913)</b>	<b>(\$ 618,000)</b>	<b>\$ 0</b>	<b>\$ 15,000,000</b>	<b>\$ 609,056,850</b>
<b>250 West 57th St.</b>						
250 West 57th St. Associates L.L.C.	\$ 152,787,394	(\$ 722,787)	\$ 0	\$ 0	\$ 11,000,000	\$ 163,064,607
Fisk Building Associates L.L.C.	\$ 152,787,394	(\$ 729,597)	(\$ 909,000)	\$ 0	\$ 0	\$ 151,148,797
<b>Total</b>	<b>\$ 305,574,788</b>	<b>(\$ 1,452,383)</b>	<b>(\$ 909,000)</b>	<b>\$ 0</b>	<b>\$ 11,000,000</b>	<b>\$ 314,213,405</b>
<b>1333 Broadway</b>						
1333 Broadway Associates L.L.C.	\$ 156,714,650	(\$ 379,104)	\$ 0	\$ 0	\$ 0	\$ 156,335,546
<b>1350 Broadway</b>						
1350 Broadway Associates L.L.C.	\$ 136,572,665	(\$ 727,418)	\$ 0	\$ 0	\$ 0	\$ 135,845,247
<b>1359 Broadway</b>						
Marlboro Building Associates L.L.C.	\$ 158,998,767	(\$ 765,722)	\$ 0	\$ 0	\$ 0	\$ 158,233,045
<b>501 Seventh Avenue</b>						
Seventh & 37th Building Associates L.L.C.	\$ 63,422,961	(\$ 396,824)	\$ 0	(\$ 817,187)	\$ 4,000,000	\$ 66,208,949
501 Seventh Avenue Associates L.L.C.	\$ 63,422,961	(\$ 686,679)	\$ 0	\$ 0	\$ 0	\$ 62,736,281
<b>Total</b>	<b>\$ 126,845,921</b>	<b>(\$ 1,083,504)</b>	<b>\$ 0</b>	<b>(\$ 817,187)</b>	<b>\$ 4,000,000</b>	<b>\$ 128,945,230</b>
<b>69-97 Main Street</b>						
Soundview Plaza Associates II L.L.C.	\$ 21,715,611	(\$ 158,195)	\$ 0	\$ 0	\$ 0	\$ 21,557,416
<b>1010 Third Avenue and 79 West 55th Street</b>						
East West Manhattan Retail Portfolio L.P.	\$ 56,203,025	(\$ 191,143)	\$ 0	\$ 0	\$ 0	\$ 56,011,882
<b>Metro Center</b>						
One Station Place, Limited Partnership	\$ 57,902,962	\$ 0	\$ 0	\$ 0	\$ 0	\$ 57,902,962
<b>10 Union Square</b>						
New York Union Square Retail L.P.	\$ 83,568,836	(\$ 189,529)	\$ 0	\$ 0	\$ 0	\$ 83,379,307
<b>103-107 Main Street</b>						
Westport Main Street Retail L.L.C.	\$ 7,000,000	(\$ 74,447)	\$ 0	\$ 0	\$ 0	\$ 6,925,553
<b>First Stamford Place<sup>(8)</sup></b>						
Fairfax Merrifield Associates L.L.C.	\$ 6,412,167	(\$ 74,405)	\$ 0	\$ 0	\$ 0	\$ 6,337,762
Merrifield Apartments Company L.L.C.	\$ 6,412,167	(\$ 74,405)	\$ 0	\$ 0	\$ 0	\$ 6,337,762
First Stamford Place L.L.C.	\$ 7,740,666	(\$ 355,547)	\$ 0	\$ 0	\$ 0	\$ 7,385,119
<b>Total</b>	<b>\$ 20,565,000</b>	<b>(\$ 504,356)</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 20,060,644</b>
<b>10 Bank Street</b>						
1185 Swap Portfolio L.P.	\$ 15,764,958	(\$ 184,705)	\$ 0	\$ 0	\$ 0	\$ 15,580,253
<b>1542 Third Avenue</b>						
1185 Swap Portfolio L.P.	\$ 21,459,607	(\$ 184,705)	\$ 0	\$ 0	\$ 0	\$ 21,274,902
<b>383 Main Ave</b>						
Fairfield Merrittview Limited Partnership	\$ 5,826,222	(\$ 114,335)	\$ 0	\$ 0	\$ 0	\$ 5,711,887
<b>500 Mamaroneck Ave</b>						
500 Mamaroneck Avenue L.P.	\$ 14,809,599	(\$ 185,721)	\$ 0	\$ 0	\$ 0	\$ 14,623,878
BBSF LLC	\$ 14,600,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 14,600,000
<b>Supervisor and Management Companies</b>						
Malkin Holdings, LLC <sup>(9)</sup>	\$ 4,250,000	\$ 0	\$ 1,527,000	\$ 0	\$ 0	\$ 5,777,000
Malkin Properties	\$ 5,500,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 5,500,000

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Malkin Construction Corp.	\$ 5,025,000	\$ 0	\$ 0	\$ 0	\$ 0	\$ 5,025,000
<b>Total</b>	\$ 14,775,000	\$ 0	\$ 1,527,000	\$ 0	\$ 0	\$ 16,302,000
<b>Total</b>	\$ 4,150,087,374	(\$ 19,461,150)	\$ 0	(\$ 61,317,187)	\$ 113,000,000	\$ 4,182,309,037

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- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having exchange value of \$612,458,701. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The exchange values of such properties are the exchange values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities. If the option properties are included in the consolidation, the aggregate exchange value would increase by the total exchange value of the option properties, and the individual exchange values of the other properties would not be affected. The relative share of the aggregate exchange value of each of the subject LLCs would be calculated based on the aggregate exchange value including the private entities that own the option properties.
- (2) Total Allocable Value that is shared equally by the property owner or ground lessee and the operating lessee associated with the Two Tier Properties, defined below, equals the appraised value of such property minus the sum of shared debt obligations and the present value of base rent payable under the operating lease, plus the cash reserves for improvements. Two Tier properties are those in which one entity is a property owner or ground lessee and the other entity is an operating lessee or operating sublessee.
- (3) Reflects the after-tax net present value of the supervisory fees paid to the supervisor. The net operating income used to determine the appraised value of the properties was calculated without deducting supervisory fees as an expense. Instead, the after-tax net present value of the supervisory fee was included in determining the appraised value of the supervisor.
- (4) Reflects operating overrides due to the supervisor in respect of cash flow from operations which were unpaid as of June 30, 2012. The appraised value of the supervisor includes an amount equal to the value of the unpaid overrides.
- (5) Debt obligations attributable solely to the fee owner of the Two Tier Properties.
- (6) Represents the present value of the base operating lease payments from the operating lessee to the fee owner.
- (7) The exchange value of each subject LLC, each private entity and the management companies is based on each subject LLC's, each private entity's and the management companies' assets and liabilities included in the quarterly balance sheets of the subject LLCs, the private entities or the management companies, as of June 30, 2012. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC or private entity to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation.
- (8) First Stamford Place L.L.C. is a 37.64% co-tenant with Fairfax Merrifield Associates L.L.C. and Merrifield Apartments Company L.L.C., together owning a 62.36% interest. Merrifield Apartments Company L.L.C. is the operating lessee, owning a 50.00% interest in the co-tenancy, for an aggregate ownership interest of 31.18% in the property.
- (9) Total exchange value of the management companies excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.

**Allocation of Common Stock and Operating Partnership Units**

The method utilized to allocate common stock and operating partnership units is as follows:

**Level 1 Allocation:** The shares of common stock and operating partnership units will be allocated among the subject LLCs, the private entities and the management companies based upon the exchange value of each subject LLC, each private entity and the management companies relative to the aggregate estimated exchange value of all of the subject LLCs, the private entities and the management companies, as determined by the independent valuer and approved by the supervisor. The supervisor believes that the exchange value constitutes a reasonable basis for such allocation. The composition of the consideration issuable to each of the subject LLCs, and private entities will be based on the elections made by the participants.

**Level 2 Allocation:** Within each subject LLC, the operating partnership units, Class A common stock and Class B common stock allocable to the subject LLC will be allocated among the participants holding participation interests in the subject LLC (including the supervisor in respect of its override interests) in accordance with the provisions of the subject LLC's operating agreement and other agreements relating to distributions upon liquidation of the subject LLC. To obtain the participants' share of the common stock and operating partnership units of an applicable LLC, the common stock and operating partnership units allocated to each subject LLC (which will be determined in accordance with the Level 1 Allocation) will be allocated to each participant after allocation of the overrides in proportion to the percentage of participation interests it holds.

With respect to Empire State Building Associates L.L.C. and 250 West 57th St. Associates L.L.C., which have voluntary override programs, the voluntary capital transaction override then will be deducted only from the distributions allocable to those participants that have consented to the voluntary

capital transaction override, and the distributions allocable to participants that have not consented to





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the voluntary capital transaction override program will be determined without any deduction for these payments.

Since each subject LLC will receive capital transaction proceeds from its contribution of assets to the company and distribute such proceeds to all its interest holders including the participants and the supervisor, as holder of the override interests, the consideration allocable to the supervisor, as holder of the override interests, will be determined based on the amount to which it is entitled under such constituent documents in connection with a distribution by each subject LLC of capital transaction proceeds. Accordingly, the override payment to the supervisor will be calculated in accordance with the formula for the overrides included in the constituent documents for the subject LLCs (including the consents from participants to overrides). The amounts shown in this prospectus/consent solicitation assume that the value will be equal to the exchange value. The actual amount of such override payments will be determined after closing of the IPO based on the enterprise value instead of the exchange value. For example, the voluntary override for Empire State Building Associates L.L.C. equals 10% of the distribution of capital proceeds otherwise payable to participants that have agreed to the voluntary capital override program after they have received a return of their original investment. A participant with a \$10,000 original investment in Empire State Building Associates L.L.C. that has agreed to the voluntary override would have received capital proceeds of \$358,670 (based on the exchange value), before deduction of the voluntary capital override. The supervisor would receive as an override on such participant's participation interest \$34,870, representing 10% of the capital proceeds after \$10,000 of unreturned original investment. Accordingly, the amounts of consideration to each participant will take into account the override interests held by the supervisor for each of the subject LLCs. See Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values in the supplement for your subject LLC for a description of the allocation of consideration for your subject LLC.

The presentation of the number of operating partnership units and shares of common stock that a participant would receive is based on the aggregate exchange value and the hypothetical \$10 per share exchange value arbitrarily assigned by the supervisor for illustrative purposes only. The actual number of operating partnership units and shares of common stock allocated to each participant and the number of operating partnership units allocated with respect to the voluntary capital transaction overrides, will be determined based on the amount of each subject LLC's allocation (which will be determined in accordance with the Level 1 Allocation) of the common stock, on a fully-diluted basis. The number of shares of Class A common stock, Class B common stock, and operating partnership units issued in the consolidation will be determined based on the company's enterprise value, which will be determined based on the IPO price, without giving effect to shares of Class A common stock issued in 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

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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.

The following paragraphs describe the allocations.

**Allocation of Common Stock and Operating Partnership Units among the Subject LLCs, the Private**

**Entities and the Management Companies**

The number of shares of common stock and operating partnership units actually issued in the consolidation will be equal to the aggregate enterprise value divided by the IPO price. For illustrative purposes only, this prospectus/consent solicitation includes information regarding the allocation of common stock and operating partnership units based on a hypothetical value of \$10 per share and a hypothetical enterprise value equal to the aggregate exchange value arbitrarily assigned by the supervisor to illustrate the allocation of the common stock and operating partnership units and to determine the hypothetical number of outstanding common stock and operating partnership units.

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The table below shows such illustrative allocation of common stock and operating partnership units among each subject LLC, each private entity and the management companies assuming:

that all subject LLCs participate in the consolidation;

that all private entities participate in the consolidation;

that all participants in the private entities and the equity owners of the management companies receive operating partnership units or shares of common stock. The actual number of shares of common stock and operating partnership units allocated to each private entity upon consummation of the consolidation will be reduced by an amount equal to the number of shares of common stock or operating partnership units that would have been issuable to participants in the private entities that receive cash and

that the enterprise value of the company in connection with the IPO is equal to the aggregate exchange value.

Entity <sup>(1)</sup>	Exchange Value	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(2)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis
Empire State Building Associates L.L.C.	\$ 1,183,612,549	118,361,255	28.3%
60 East 42 <sup>nd</sup> St. Associates L.L.C.	\$ 313,069,533	31,306,953	7.5%
250 West 57th St. Associates L.L.C.	\$ 163,064,607	16,306,461	3.9%
Empire State Building Company L.L.C. <sup>(3)</sup>	\$ 1,162,136,482	116,213,648	27.8%
Lincoln Building Associates L.L.C. <sup>(4)</sup>	\$ 295,987,317	29,598,732	7.1%
Fisk Building Associates L.L.C. <sup>(5)</sup>	\$ 151,148,797	15,114,880	3.6%
1333 Broadway Associates L.L.C.	\$ 156,335,546	15,633,555	3.7%
1350 Broadway Associates L.L.C.	\$ 135,845,247	13,584,525	3.2%
Marlboro Building Associates L.L.C.	\$ 158,233,045	15,823,304	3.8%
Seventh & 37th Building Associates L.L.C.	\$ 66,208,949	6,620,895	1.6%
501 Seventh Avenue Associates L.L.C.	\$ 62,736,281	6,273,628	1.5%
Soundview Plaza Associates II L.L.C.	\$ 21,557,416	2,155,742	0.5%
East West Manhattan Retail Portfolio L.P.	\$ 56,011,882	5,601,188	1.3%
One Station Place, Limited Partnership	\$ 57,902,962	5,790,296	1.4%
New York Union Square Retail L.P.	\$ 83,379,307	8,337,931	2.0%
Westport Main Street Retail L.L.C.	\$ 6,925,553	692,555	0.2%
Fairfax Merrifield Associates L.L.C.	\$ 6,337,762	633,776	0.2%
Merrifield Apartments Company L.L.C.	\$ 6,337,762	633,776	0.2%
First Stamford Place L.L.C.	\$ 7,385,119	738,512	0.2%
1185 Swap Portfolio L.P.	\$ 36,855,156	3,685,516	0.9%
Fairfield Merrittview Limited Partnership	\$ 5,711,887	571,189	0.1%
500 Mamaroneck Avenue L.P.	\$ 14,623,878	1,462,388	0.3%
BBSF LLC	\$ 14,600,000	1,460,000	0.3%
Supervisor and Management Companies			
Malkin Holdings, LLC <sup>(6)</sup>	\$ 5,777,000	577,700	0.1%
Malkin Properties	\$ 5,500,000	550,000	0.1%

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Malkin Construction Corp.	\$ 5,025,000	502,500	0.1%
Total	\$ 16,302,000	1,630,200	0.4%
<b>Total</b>	<b>\$ 4,182,309,037</b>	<b>418,230,904</b>	<b>100.0%</b>

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- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an aggregate exchange value of \$612,458,701. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The exchange values of such properties are the exchange values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities. If the option properties are included in the consolidation, the aggregate exchange value would increase by the total exchange value of the option properties, and the individual exchange values of the other properties would not be affected. The relative share of the aggregate exchange value of each of the subject LLCs would be calculated based on the aggregate exchange value including the private entities that own the option properties.
- (2) The number of shares of common stock issued, on a fully-diluted basis, equals the number of shares of Class A common stock issued in the consolidation plus shares of Class A common stock issuable upon the exchange of operating partnership units or upon conversion of Class B common stock for shares of Class A common stock on a one-for-one basis. To the extent that participants in the private entities that are non-accredited investors or charitable organizations receive cash, the common stock which would have been issued to them, will not be issued. As a result, the number of outstanding shares of common stock will be reduced and the percentage of the common stock each other participant owns will increase. The actual number of shares of common stock, on a fully-diluted basis, and the value allocated to each participant in the subject LLCs and the private entities will be based on the enterprise value in connection with the IPO and the IPO price. 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.

- (3) Operating lessee of Empire State Building Associates L.L.C.
- (4) Operating lessee of 60 East 42nd St. Associates L.L.C.
- (5) Operating lessee of 250 West 57th St. Associates L.L.C.
- (6) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.

**Allocation of Common Stock and Operating Partnership Units among the Participants and the Supervisor and the Malkin Holdings Group**

The common stock and operating partnership units to be allocated among the subject LLCs, the private entities and the management companies will be allocated among the participants holding participation interests and the supervisor and the Malkin Holdings group in each subject LLC and private entity on account of override interests in accordance with the provisions of the subject LLC's operating agreement and other agreements relating to distributions upon liquidation of the subject LLC.

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A description of the allocations for each of the subject LLCs is shown in the supplement for each subject LLC.

Entity <sup>(1)</sup>	Exchange Value	Common Stock or Operating Partnership Unit Allocation <sup>(2)</sup>	Percentage of Total Exchange Value or Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(3)</sup>
<b>Empire State Building Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group (subject to voluntary override)	\$ 932,726,281	93,272,628	22.30%
Participants other than the supervisor and the Malkin Holdings group (not subject to voluntary override)	\$ 68,260,979	6,826,098	1.63%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 74,481,907	7,448,191	1.78%
Override Interests to the Malkin Holdings group	\$ 108,143,382	10,814,338	2.59%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 1,183,612,549</b>	<b>118,361,255</b>	<b>28.30%</b>
<b>60 East 42nd St. Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 259,259,874	25,925,987	6.20%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 22,600,706	2,260,071	0.54%
Override Interests to the Malkin Holdings group	\$ 31,208,953	3,120,895	0.75%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 313,069,533</b>	<b>31,306,953</b>	<b>7.49%</b>
<b>250 West 57th St. Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group (subject to voluntary override)	\$ 110,390,124	11,039,012	2.64%
Participants other than the supervisor and the Malkin Holdings group (not subject to voluntary override)	\$ 29,532,812	2,953,281	0.71%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 10,933,720	1,093,372	0.26%
Override Interests to the Malkin Holdings group	\$ 12,207,951	1,220,795	0.29%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 163,064,607</b>	<b>16,306,461</b>	<b>3.90%</b>
<b>Empire State Building Company L.L.C.<sup>(4)</sup></b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 1,031,303,682	103,130,368	24.66%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 24,724,899	2,472,490	0.59%
Override Interests to the Malkin Holdings group	\$ 52,889,643	5,288,964	1.26%
Other Override Interests <sup>(5)</sup>	\$ 53,218,257	5,321,826	1.27%
<b>Total</b>	<b>\$ 1,162,136,482</b>	<b>116,213,648</b>	<b>27.79%</b>
<b>Lincoln Building Associates L.L.C.<sup>(6)</sup></b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 246,409,442	24,640,944	5.89%



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Entity <sup>(1)</sup>	Exchange Value	Common Stock or Operating Partnership Unit Allocation <sup>(2)</sup>	Percentage of Total Exchange Value or Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(3)</sup>
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 19,979,144	1,997,914	0.48%
Override Interests to the Malkin Holdings group	\$ 29,598,732	2,959,873	0.71%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 295,987,317</b>	<b>29,598,732</b>	<b>7.08%</b>
<b>Fisk Building Associates L.L.C.<sup>(7)</sup></b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 87,116,414	8,711,641	2.08%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 18,354,490	1,835,449	0.44%
Override Interests to the Malkin Holdings group	\$ 31,851,768	3,185,177	0.76%
Other Override Interests <sup>(8)</sup>	\$ 13,826,125	1,382,612	0.33%
<b>Total</b>	<b>\$ 151,148,797</b>	<b>15,114,880</b>	<b>3.61%</b>
<b>1333 Broadway Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 124,715,469	12,471,547	2.98%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 31,620,077	3,162,008	0.76%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 156,335,546</b>	<b>15,633,555</b>	<b>3.74%</b>
<b>1350 Broadway Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 117,380,864	11,738,086	2.81%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 4,918,468	491,847	0.12%
Override Interests to the Malkin Holdings group	\$ 13,545,915	1,354,591	0.32%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 135,845,247</b>	<b>13,584,525</b>	<b>3.25%</b>
<b>Marlboro Building Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 139,091,265	13,909,126	3.33%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 8,736,799	873,680	0.21%
Override Interests to the Malkin Holdings group	\$ 10,404,981	1,040,498	0.25%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 158,233,045</b>	<b>15,823,304</b>	<b>3.78%</b>
<b>Seventh &amp; 37th Building Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 57,914,177	5,791,418	1.38%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 2,547,792	254,779	0.06%
Override Interests to the Malkin Holdings group	\$ 5,746,980	574,698	0.14%
Other Override Interests	\$ 0	0	0.0%



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Total	\$ 66,208,949	6,620,895	1.58%
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Entity <sup>(1)</sup>	Exchange Value	Common Stock or Operating Partnership Unit Allocation <sup>(2)</sup>	Percentage of Total Exchange Value or Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(3)</sup>
<b>501 Seventh Avenue Associates L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 44,905,454	4,490,545	1.07%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 11,557,199	1,155,720	0.28%
Override Interests to the Malkin Holdings group	\$ 6,273,628	627,363	0.15%
Other Override Interests	\$ 0	0	0%
<b>Total</b>	<b>\$ 62,736,281</b>	<b>6,273,628</b>	<b>1.50%</b>
<b>Soundview Plaza Associates II L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 12,122,693	1,212,269	0.29%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 9,434,723	943,472	0.23%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 21,557,416</b>	<b>2,155,742</b>	<b>0.52%</b>
<b>East West Manhattan Retail Portfolio L.P.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 27,974,367	2,797,437	0.67%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 28,037,515	2,803,751	0.67%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 56,011,882</b>	<b>5,601,188</b>	<b>1.34%</b>
<b>One Station Place, Limited Partnership</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 5,211,267	521,127	0.12%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 52,691,695	5,269,170	1.26%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 57,902,962</b>	<b>5,790,296</b>	<b>1.38%</b>
<b>New York Union Square Retail L.P.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 43,700,971	4,370,097	1.04%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 39,678,336	3,967,834	0.95%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 83,379,307</b>	<b>8,337,931</b>	<b>1.99%</b>
<b>Westport Main Street Retail L.L.C.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 6,680,360	668,036	0.16%
	\$ 245,193	24,519	0.01%

The supervisor and the Malkin Holdings group as holders of participation interests

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Entity <sup>(1)</sup>	Exchange Value	Common Stock or Operating Partnership Unit Allocation <sup>(2)</sup>	Percentage of Total Exchange Value or Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(3)</sup>
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 6,925,553</b>	<b>692,555</b>	<b>0.17%</b>
Fairfax Merrifield Associates L.L.C.			
Participants other than the supervisor and the Malkin Holdings group	\$ 4,945,712	494,571	0.12%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 758,274	75,827	0.02%
Override Interests to the Malkin Holdings group	\$ 633,776	63,378	0.02%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 6,337,762</b>	<b>633,776</b>	<b>0.15%</b>
Merrifield Apartments Company L.L.C.			
Participants other than the supervisor and the Malkin Holdings group	\$ 3,137,192	313,719	0.08%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 1,283,397	128,340	0.03%
Override Interests to the Malkin Holdings group	\$ 1,275,475	127,547	0.03%
Other Override Interests <sup>(8)</sup>	\$ 641,698	64,170	0.02%
<b>Total</b>	<b>\$ 6,337,762</b>	<b>633,776</b>	<b>0.15%</b>
First Stamford Place L.L.C.			
Participants other than the supervisor and the Malkin Holdings group	\$ 3,686,039	368,604	0.09%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 3,699,080	369,908	0.09%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 7,385,119</b>	<b>738,512</b>	<b>0.18%</b>
1185 Swap Portfolio L.P.			
Participants other than the supervisor and the Malkin Holdings group	\$ 9,933,220	993,322	0.24%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 26,921,935	2,692,194	0.64%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 36,855,156</b>	<b>3,685,516</b>	<b>0.88%</b>
Fairfield Merrittview Limited Partnership			
Participants other than the supervisor and the Malkin Holdings group	\$ 3,187,556	318,756	0.08%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 1,953,142	195,314	0.05%
Override Interests to the Malkin Holdings group	\$ 571,189	57,119	0.01%
Other Override Interests	\$ 0	0	0.0%

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Total	\$ 5,711,887	571,189	0.14%
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Entity <sup>(1)</sup>	Exchange Value	Common Stock or Operating Partnership Unit Allocation <sup>(2)</sup>	Percentage of Total Exchange Value or Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(3)</sup>
<b>500 Mamaroneck Avenue L.P.</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 14,255,210	1,425,521	0.34%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 368,668	36,867	0.01%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 14,623,878</b>	<b>1,462,388</b>	<b>0.35%</b>
<b>BBSF LLC</b>			
Participants other than the supervisor and the Malkin Holdings group	\$ 0	0	0.0%
The supervisor and the Malkin Holdings group as holders of participation interests	\$ 14,600,000	1,460,000	0.35%
Override Interests to the Malkin Holdings group	\$ 0	0	0.0%
Other Override Interests	\$ 0	0	0.0%
<b>Total</b>	<b>\$ 14,600,000</b>	<b>1,460,000</b>	<b>0.35%</b>
Supervisor and Management Companies <sup>(9)</sup>	\$ 16,302,000	1,630,200	0.39%
<b>Total</b>	<b>\$ 4,182,309,037</b>	<b>418,230,904</b>	<b>100.0%</b>

- (1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an aggregate exchange value of \$612,458,701. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The exchange values of such properties are the exchange values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities. If the option properties are included in the consolidation, the aggregate exchange value would increase by the total exchange value of the option properties, and the individual exchange values of the other properties would not be affected. The relative share of the aggregate exchange value of each of the subject LLCs would be calculated based on the aggregate exchange value including the private entities that own the option properties.
- (2) Assumes all holders of participation interests in the private entities and the management companies receive operating partnership units or shares of common stock. Each operating partnership unit provides the same rights to distributions as one share of Class A common stock in the company and, subject to limitations, is redeemable into one share of Class A common stock after a one-year period.
- (3) The number of shares of common stock outstanding, on a fully-diluted basis, equals the number of shares of common stock outstanding plus shares of Class A common stock issuable upon the exchange of operating partnership units or upon conversion of Class B common stock for shares of Class A common stock on a one-for-one basis. To the extent that participants in the private entities that are non-accredited investors or charitable organizations receive cash, the common stock, on a fully-diluted basis, which would have been issued to them, will not be issued. As a result, the number of shares of outstanding common stock, on a fully-diluted basis, will be reduced and the percentage of the common stock, on a fully-diluted basis, each other participant owns will increase.
- (4) Operating lessee of Empire State Building Associates L.L.C.
- (5) The additional overrides not owned by the Malkin Holdings group are owned primarily by members of the Wien group (who are not members of the Malkin Family). Such overrides were created under agreements with participants who acquired their interests from Lawrence A. Wien, and they were transferred to members of the Wien group as descendants of Lawrence A. Wien. In addition, a portion of the overrides held by persons other than the Malkin Holdings group are held by other persons not members of the Wien group who sold their participation interests, but retained an override interest.
- (6) Operating lessee of 60 East 42nd St. Associates L.L.C.
- (7) Operating lessee of 250 West 57th St. Associates L.L.C.
- (8) The additional overrides not owned by the Malkin Holdings group are owned by members of the Wien group (who are not members of the Malkin Family). The override interests were created under the agreements in which participants received their interests from Lawrence A. Wien and were transferred to members of the Wien group as descendants of Lawrence A. Wien.
- (9) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that Malkin Holdings group holds in the subject LLCs and the private entities.



**Table of Contents****Derivation of Costs of the Consolidation and IPO**

The costs of the consolidation and IPO will be borne by the company if the consolidation and the IPO are consummated. The following table sets forth as of September 30, 2012 the allocation of such costs to each subject LLC and each private entity based on the exchange value of each entity. No costs of the consolidation and the IPO were allocated to the management companies. The supervisor estimates that the aggregate costs will be \$75,000,000 and that each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. allocable share of these costs will be \$18,600,000, \$4,900,000 and \$2,600,000, respectively.

The costs related to the consolidation and the IPO as of September 30, 2012 are summarized in the following table:

Entity	Appraisals	Solicitation	Printing & Mailing	Legal	Accounting	Title, Transfer & Recording	Pre-formation Costs	Total Expenses
Empire State Building Associates L.L.C.	\$ 357,152	\$ 274,036	\$ 54,001	\$ 5,261,925	\$ 7,707,533	\$ 266	\$ 2,549,813	\$ 16,204,726
60 East 42nd St. Associates L.L.C.	\$ 94,468	\$ 72,484	\$ 14,283	\$ 1,391,797	\$ 2,038,669	\$ 70	\$ 674,434	\$ 4,286,205
250 West 57th St. Associates L.L.C.	\$ 49,204	\$ 37,754	\$ 7,440	\$ 724,928	\$ 1,061,856	\$ 37	\$ 351,284	\$ 2,232,503
Empire State Building Company L.L.C. <sup>(1)</sup>	\$ 350,671	\$ 269,064	\$ 53,021	\$ 5,166,450	\$ 7,567,684	\$ 261	\$ 2,503,548	\$ 15,910,699
Lincoln Building Associates L.L.C. <sup>(2)</sup>	\$ 89,313	\$ 68,529	\$ 13,504	\$ 1,315,855	\$ 1,927,431	\$ 66	\$ 637,635	\$ 4,052,333
Fisk Building Associates L.L.C. <sup>(3)</sup>	\$ 45,609	\$ 34,995	\$ 6,896	\$ 671,954	\$ 984,262	\$ 34	\$ 325,614	\$ 2,069,364
1333 Broadway Associates L.L.C.	\$ 47,174	\$ 36,196	\$ 7,133	\$ 695,013	\$ 1,018,037	\$ 35	\$ 336,788	\$ 2,140,376
1350 Broadway Associates L.L.C.	\$ 40,991	\$ 31,452	\$ 6,198	\$ 603,920	\$ 884,607	\$ 31	\$ 292,646	\$ 1,859,845
Marlboro Building Associates L.L.C.	\$ 47,746	\$ 36,635	\$ 7,219	\$ 703,448	\$ 1,030,393	\$ 36	\$ 340,876	\$ 2,166,353
Seventh & 37th Building Associates L.L.C.	\$ 19,978	\$ 15,329	\$ 3,021	\$ 294,342	\$ 431,144	\$ 15	\$ 142,632	\$ 906,461
501 Seventh Avenue Associates L.L.C.	\$ 18,930	\$ 14,525	\$ 2,862	\$ 278,903	\$ 408,531	\$ 14	\$ 135,150	\$ 858,915
Soundview Plaza Associates II L.L.C.	\$ 6,505	\$ 4,991	\$ 984	\$ 95,837	\$ 140,379	\$ 5	\$ 46,440	\$ 295,141
East West Manhattan Retail Portfolio L.P.	\$ 16,901	\$ 12,968	\$ 2,555	\$ 249,009	\$ 364,742	\$ 13	\$ 120,664	\$ 766,852
One Station Place, Limited Partnership	\$ 17,472	\$ 13,406	\$ 2,642	\$ 257,416	\$ 377,057	\$ 13	\$ 124,738	\$ 792,744
New York Union Square Retail L.P.	\$ 25,159	\$ 19,304	\$ 3,804	\$ 370,675	\$ 542,955	\$ 19	\$ 179,621	\$ 1,141,537
Westport Main Street Retail L.L.C.	\$ 2,090	\$ 1,603	\$ 316	\$ 30,789	\$ 45,098	\$ 2	\$ 14,919	\$ 94,817
Fairfax Merrifield Associates L.L.C.	\$ 1,912	\$ 1,467	\$ 289	\$ 28,175	\$ 41,271	\$ 1	\$ 13,653	\$ 86,768
Merrifield Apartments Company L.L.C.	\$ 1,912	\$ 1,467	\$ 289	\$ 28,175	\$ 41,271	\$ 1	\$ 13,653	\$ 86,768
First Stamford Place L.L.C.	\$ 2,228	\$ 1,710	\$ 337	\$ 32,832	\$ 48,091	\$ 2	\$ 15,909	\$ 101,109
1185 Swap Portfolio L.P.	\$ 11,121	\$ 8,533	\$ 1,681	\$ 163,845	\$ 239,996	\$ 8	\$ 79,396	\$ 504,580
Fairfield Merrittview Limited Partnership	\$ 1,724	\$ 1,322	\$ 261	\$ 25,393	\$ 37,195	\$ 1	\$ 12,305	\$ 78,201
500 Mamaroneck Avenue L.P.	\$ 4,413	\$ 3,386	\$ 667	\$ 65,013	\$ 95,229	\$ 3	\$ 31,504	\$ 200,215
BBSF LLC	\$ 4,406	\$ 3,380	\$ 666	\$ 64,906	\$ 95,073	\$ 3	\$ 31,452	\$ 199,886
112 West 34th Street Company L.L.C.	\$ 49,390	\$ 37,896	\$ 7,468	\$ 727,665	\$ 1,065,865	\$ 37	\$ 352,610	\$ 2,240,931
112 West 34th Street Associates L.L.C.	\$ 51,297	\$ 39,359	\$ 7,756	\$ 755,760	\$ 1,107,019	\$ 38	\$ 366,225	\$ 2,327,454
1400 Broadway Associates L.L.C.	\$ 84,121	\$ 64,544	\$ 12,719	\$ 1,239,351	\$ 1,815,369	\$ 63	\$ 600,562	\$ 3,816,729
<b>Total</b>	<b>\$ 1,441,887</b>	<b>\$ 1,106,335</b>	<b>\$ 218,012</b>	<b>\$ 21,243,376</b>	<b>\$ 31,116,757</b>	<b>\$ 1,074</b>	<b>\$ 10,294,071</b>	<b>\$ 65,421,512</b>



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- (1) Operating lessee of Empire State Building Associates L.L.C.
- (2) Operating lessee of 60 East 42nd St. Associates L.L.C.
- (3) Operating lessee of 250 West 57th St. Associates L.L.C.

**Estimated Exchange Value of Common Stock**

The following table sets forth for each subject LLC, each private entity and the management companies:

the exchange value of each subject LLC, each private entity and the management companies;

the percentage of total exchange value and percentage of total shares of common stock, on a fully-diluted basis, to be issued;

the number of shares of common stock, on a fully-diluted basis, to be allocated to each subject LLC, each private entity and the management companies based on the hypothetical exchange value of \$10 per share arbitrarily assigned by the supervisor for illustrative purposes, including the number of operating partnership units to be allocated on account of the override interests of the supervisor and the Malkin Holdings group;

the value of common stock or operating partnership units based on the hypothetical exchange value of \$10 per share arbitrarily assigned by the supervisor for illustrative purposes for each \$10,000 of original investment in each subject LLC and its operating lessee;

the book value (deficit) of the assets determined in accordance with U.S. generally accepted accounting principles, which is referred to herein as GAAP, per \$10,000 original investment in each subject LLC and its operating lessee and

the number of shares of common stock, on a fully-diluted basis, per \$10,000 original investment in each subject LLC and its operating lessee:

Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
Empire State Building Associates L.L.C.						
Participants (subject to voluntary override)	\$ 1,004,308,935	24.0%	100,430,894	\$ 323,803	\$ (2,853)	32,380
Participants (not subject to voluntary override)	\$ 71,160,232	1.7%	7,116,023	\$ 358,670	\$ (2,853)	35,867
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 108,143,382	2.6%	10,814,338	NA	NA	NA

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Other Override Interests	\$	0	0%	0	NA	NA	NA
Total	\$	1,183,612,549	28.3%	118,361,255			
60 East 42nd St. Associates L.L.C.							
Participants	\$	281,860,580	6.7%	28,186,058	\$ 402,658	\$ (13,607)	40,266
Override Interests to the Malkin							
Holdings group	\$	31,208,953	0.8%	3,120,895	NA	NA	NA
Other Override Interests	\$	0	0%	0	NA	NA	NA
Total	\$	313,069,533	7.5%	31,306,953			

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Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>250 West 57<sup>th</sup> St. Associates L.L.C.</b>						
Participants (subject to voluntary override)	\$ 115,510,893	2.8%	11,551,089	\$ 409,662	\$ (7,497)	40,966
Participants (not subject to voluntary override)	\$ 35,345,763	0.9%	3,534,576	\$ 452,957	\$ (7,497)	45,296
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 12,207,951	0.3%	1,220,795	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 163,064,607</b>	<b>3.9%</b>	<b>16,306,461</b>			
<b>Empire State Building Company L.L.C.<sup>(7)(8)</sup></b>						
Members and Participants	\$ 1,056,028,581	25.3%	105,602,858	\$ 105,602,858	\$ 2,601,832	10,560,286
Override Interests to the Malkin Holdings group	\$ 52,889,643	1.3%	5,288,964	NA	NA	NA
Other Override Interests	\$ 53,218,257	1.3%	5,321,826	NA	NA	NA
<b>Total</b>	<b>\$ 1,162,136,482</b>	<b>27.8%</b>	<b>116,213,648</b>			
<b>Lincoln Building Associates L.L.C.<sup>(9)</sup></b>						
Members	\$ 266,388,586	6.4%	26,638,859	\$ 2,663,886	\$ 563,798	266,389
Override Interests to the Malkin Holdings group	\$ 29,598,732	0.7%	2,959,873	NA	NA	NA
Other Override Interests	\$ 0	0%	0	NA	NA	NA
<b>Total</b>	<b>\$ 295,987,317</b>	<b>7.1%</b>	<b>29,598,732</b>			
<b>Fisk Building Associates L.L.C.<sup>(10)</sup></b>						
Members and Participants	\$ 105,470,905	2.5%	10,547,090	\$ 10,547,090	\$ 263,687	1,054,709
Override Interests to the Malkin Holdings group	\$ 31,851,768	0.8%	3,185,177	NA	NA	NA
Other Override Interests	\$ 13,826,125	0.3%	1,382,612	NA	NA	NA
<b>Total</b>	<b>\$ 151,148,797</b>	<b>3.6%</b>	<b>15,114,880</b>			
<b>1333 Broadway Associates L.L.C.</b>						
Members	\$ 156,335,546	3.7%	15,633,555			
<b>1350 Broadway Associates L.L.C.</b>						
Peter L. Malkin 50% Group	\$ 54,376,708	1.3%	5,437,671			
Override Interests to the Malkin Holdings group	\$ 13,545,915	0.3%	1,354,591			
Other Override Interests	\$ 0	0%	0			
David M. Baldwin 50% Group	\$ 67,922,623	1.6%	6,792,262			
<b>Total</b>	<b>\$ 135,845,247</b>	<b>3.3%</b>	<b>13,584,525</b>			

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Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>Marlboro Building Associates L.L.C.</b>						
Members	\$ 147,828,064	3.5%	14,782,806			
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 10,404,981	0.3%	1,040,498			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 158,233,045</b>	<b>3.8%</b>	<b>15,823,304</b>			
<b>Seventh &amp; 37<sup>th</sup> Building Associates L.L.C.</b>						
Participants	\$ 60,461,969	1.5%	6,046,197			
Override Interests to the Malkin Holdings group <sup>(6)</sup>	\$ 5,746,980	0.1%	574,698			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 66,208,949</b>	<b>1.6%</b>	<b>6,620,895</b>			
<b>501 Seventh Avenue Associates L.L.C.</b>						
Member	\$ 56,462,653	1.4%	5,646,265			
Override Interests to the Malkin Holdings group	\$ 6,273,628	0.2%	627,363			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 62,736,281</b>	<b>1.5%</b>	<b>6,273,628</b>			
<b>Soundview Plaza Associates II L.L.C.<sup>(11)</sup></b>						
Malkin Co-Investor Capital L.P.(General Partner) <sup>(12)</sup>	\$ 114,039	0.0%	11,404			
Malkin Co-Investor Capital L.P.(Class A LPs)	\$ 11,289,934	0.3%	1,128,983			
Malkin Co-Investor Capital L.P.(Class B LPs) <sup>(13)</sup>	\$ 0	0.0%	0			
Peter L. Malkin	\$ 8,935,118	0.2%	893,512			
<b>New Soundview Plaza Associates LLC (excluding interests held by the Malkin Holdings group)</b>						
	\$ 1,218,425	0.0%	121,842			
<b>Total</b>	<b>\$ 21,557,416</b>	<b>0.5%</b>	<b>2,155,742</b>			
<b>East West Manhattan Retail Portfolio L.P.</b>						
General Partner <sup>(12)</sup>	\$ 560,119	0.0%	56,012			
Class A LPs	\$ 27,725,882	0.7%	2,772,588			
Class B LP <sup>(13)</sup>	\$ 27,725,882	0.7%	2,772,588			
<b>Total</b>	<b>\$ 56,011,882</b>	<b>1.3%</b>	<b>5,601,188</b>			
<b>One Station Place, Limited Partnership<sup>(11)</sup></b>						
General Partner <sup>(12)</sup>	\$ 579,030	0.0%	57,903			
Class A LP	\$ 5,211,267	0.1%	521,127			

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Class B LPs	\$ 52,112,666	1.3%	5,211,267
Total	\$ 57,902,962	1.4%	5,790,296

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Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>New York Union Square Retail L.P.</b>						
General Partner <sup>(12)</sup>	\$ 833,793	0.0%	83,379			
Class A LPs	\$ 41,272,757	1.0%	4,127,276			
Class B LP <sup>(13)</sup>	\$ 41,272,757	1.0%	4,127,276			
<b>Total</b>	<b>\$ 83,379,307</b>	<b>2.0%</b>	<b>8,337,931</b>			
<b>Westport Main Street Retail L.L.C.<sup>(11)</sup></b>						
Manager <sup>(12)</sup>	\$ 69,256	0.0%	6,926			
Class A Members	\$ 6,856,297	0.2%	685,630			
Class B Member <sup>(13)</sup>	\$ 0	0.0%	0			
<b>Total</b>	<b>\$ 6,925,553</b>	<b>0.2%</b>	<b>692,555</b>			
<b>Fairfax Merrifield Associates L.L.C.</b>						
Participants	\$ 5,703,986	0.1%	570,399			
Override Interests to the Malkin Holdings group	\$ 633,776	0.02%	63,378			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 6,337,762</b>	<b>0.2%</b>	<b>633,776</b>			
<b>Merrifield Apartments Company L.L.C.</b>						
55% Members	\$ 3,137,192	0.1%	313,719			
45% Members	\$ 1,283,397	0.0%	128,340			
Override Interests to the Malkin Holdings group	\$ 1,275,475	0.03%	127,547			
Other Override Interests	\$ 641,698	0.02%	64,170			
<b>Total</b>	<b>\$ 6,337,762</b>	<b>0.2%</b>	<b>633,776</b>			
<b>First Stamford Place L.L.C.</b>						
Class A & A2 Members	\$ 3,655,634	0.1%	365,563			
Manager <sup>(14)</sup>	\$ 73,851	0.0%	7,385			
Class B Member <sup>(13)</sup>	\$ 3,655,634	0.1%	365,563			
<b>Total</b>	<b>\$ 7,385,119</b>	<b>0.2%</b>	<b>738,512</b>			
<b>1185 Swap Portfolio L.P.<sup>(11)</sup></b>						
<b>1185 Bank L.L.C.(General Partner)<sup>(12)</sup></b>						
	\$ 271,977	0.0%	27,198			
<b>1185 Gotham L.L.C.(General Partner)<sup>(11)</sup></b>						
	\$ 371,386	0.0%	37,139			
<b>Total (General Partner)</b>	<b>\$ 643,364</b>	<b>0.0%</b>	<b>64,336</b>			
1185 Bank L.L.C.(Class 1 LP)	\$ 13,928,283	0.3%	1,392,828			
1185 Gotham L.L.C.(Class 1 LP)	\$ 19,019,130	0.5%	1,901,913			
<b>Total (Class 1 LP)</b>	<b>\$ 32,947,413</b>	<b>0.8%</b>	<b>3,294,741</b>			
1185 Bank L.L.C.(Class 2 LP)	\$ 539,450	0.0%	53,945			
1185 Gotham L.L.C.(Class 2 LP)	\$ 736,621	0.0%	73,662			

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Total (Class 2 LP)	\$ 1,276,070	0.0%	127,607
Malkin Support Fund L.P.	\$ 1,988,308	0.1%	127,607
Total (1185 Swap Portfolio L.P.)	\$ 36,855,156	0.9%	3,685,516

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Entity <sup>(1)</sup>	Total Exchange Value <sup>(2)(3)</sup>	Percentage of Total Exchange Value and Percentage of Total Shares of Common Stock Issued, on a Fully-Diluted Basis <sup>(4)</sup>	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(4)(5)</sup>	Per \$10,000 Original Investment (except as otherwise noted)		
				Value of Shares of Common Stock or Operating Partnership Units <sup>(3)</sup>	GAAP Book Value (Deficit) as of September 30, 2012	Number of Shares of Common Stock, on a Fully-Diluted Basis <sup>(5)</sup>
<b>Fairfield Merrittview Limited Partnership<sup>(11)</sup></b>						
General Partner <sup>(12)</sup>	\$ 51,407	0.0%	5,141			
Class A LP	\$ 2,804,539	0.1%	280,454			
Class B LP <sup>(13)</sup>	\$ 2,284,752	0.1%	228,475			
<b>Override Interests to the Malkin Holdings group</b>						
Override Interests	\$ 571,189	0.01%	57,119			
Other Override Interests	\$ 0	0%	0			
<b>Total</b>	<b>\$ 5,711,887</b>	<b>0.1%</b>	<b>571,189</b>			
<b>500 Mamaroneck Avenue L.P.</b>						
Class A LPs	\$ 10,858,230	0.3%	1,085,823			
Class B LPs <sup>(13)</sup>	\$ 0	0.0%	0			
General Partner <sup>(12)</sup>	\$ 109,679	0.0%	10,968			
Co-Tenant	\$ 3,655,970	0.1%	365,597			
<b>Total</b>	<b>\$ 14,623,878</b>	<b>0.4%</b>	<b>1,462,388</b>			
<b>BBSF LLC</b>						
	\$ 14,600,000	0.4%	1,460,000			
<b>Supervisor and Management Companies</b>						
Malkin Holdings, LLC <sup>(15)</sup>	\$ 5,777,000	0.1%	577,700			
Malkin Properties <sup>(16)</sup>	\$ 5,500,000	0.1%	550,000			
Malkin Construction Corp.	\$ 5,025,000	0.1%	502,500			
<b>Total</b>	<b>\$ 16,302,000</b>	<b>0.4%</b>	<b>1,630,200</b>			
<b>Total</b>	<b>\$ 4,182,309,037</b>	<b>100.0%</b>	<b>418,230,904</b>			
<b>Overrides (including Class B interests) held by the Supervisor and the Malkin Holdings group</b>						
	\$ 304,352,372	7.3%	30,435,237			
<b>Overrides (including Class B interests) of other Persons</b>						
	\$ 128,327,761	3.1%	12,832,776			

(1) Excludes three private entities which are the ground lessees and an operating lessee of two properties that are supervised by the supervisor, having an aggregate exchange value of \$612,458,701. The operating partnership has entered into option agreements pursuant to which it has the option to acquire their property interests upon the final resolution of certain ongoing litigation with respect to these properties. The exchange values of such properties are the exchange values the properties would have had if the litigation is resolved, and were determined on a basis consistent with the exchange values of the subject LLCs and the private entities. If the option properties are included in the consolidation, the aggregate exchange value would increase by the total exchange value of the option properties, and the individual exchange values of the other properties would not be affected. The relative share of the aggregate exchange value of each of the subject LLCs would be calculated based on the aggregate exchange value including the private entities that own the option properties.

(2) The exchange value is determined as described in Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Exchange Values.



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- (3) The exchange value of each subject LLC, each private entity and the management companies is based on each subject LLC's, each private entity's and each management company's assets and liabilities included in the quarterly balance sheets of the subject LLC, private entity or the management companies, as of June 30, 2012. The exchange value will be revised to reflect changes in the balance sheet items included in the calculation of the exchange value in the final quarterly balance sheet prior to the closing of the consolidation (other than indebtedness incurred after June 30, 2012 which is used to fund capital expenditures taken into account in the Appraisal or held as reserves for such purposes and included in the assets contributed by the subject LLC or private entity to the company), but will not be revised based on changes in the balance sheets or other events after the final quarterly balance sheet date prior to the closing of the consolidation.
- (4) The number of shares of common stock issued, on a fully-diluted basis, equals the number of shares of Class A common stock outstanding plus shares of Class A common stock issuable upon the exchange of operating partnership units or upon conversion of

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Class B common stock for shares of Class A common stock on a one-for-one basis. To the extent that participants in the private entities that are non-accredited investors or charitable organizations receive cash, the Class A common stock, which would have been issued to them, will not be issued. As a result, the number of outstanding shares of Class A common stock will be reduced and the percentage of the Class A common stock each participant owns will increase.

- (5) The number of shares of common stock, on a fully-diluted basis, assumes that none of the participants in the private entities receive cash. The number of shares of common stock, on a fully-diluted basis, issuable to each subject LLC, as set forth in the table, was determined by dividing the exchange value for the subject LLC by \$10, which is the hypothetical value that the supervisor arbitrarily assigned for illustrative purposes. The number of shares of Class A common stock, Class B common stock, and operating partnership units issued in the consolidation will be determined based on the company's enterprise value, which will be determined based on the IPO price. Enterprise value is calculated without giving effect to shares of Class A common stock issued in 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.

- (6) Represents a voluntary capital override, which was voluntarily agreed to by certain participants.  
 (7) Operating lessee of Empire State Building Associates L.L.C.  
 (8) Information is provided per 1% interest instead of per \$10,000 original investment.  
 (9) Operating lessee of 60 East 42nd St. Associates L.L.C.  
 (10) Operating lessee of 250 West 57th St. Associates L.L.C.  
 (11) Based on financial statements prepared on a tax basis and not in accordance with GAAP.  
 (12) The general partner is an affiliate of the supervisor.  
 (13) The Class B interests are equivalent to override interests.  
 (14) The manager is an affiliate of the supervisor.  
 (15) Total exchange value of the supervisor excludes the value attributable to the supervisor's overrides, which are included in the value of the overrides that the Malkin Holdings group holds in the subject LLCs and the private entities.  
 (16) Refers collectively to Malkin Properties, L.L.C. Malkin Properties of New York, L.L.C. and Malkin Properties of Connecticut, L.L.C. (collectively "Malkin Properties").

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**Table of Contents****CONFLICTS OF INTEREST****Supervisor**

The supervisor acts as supervisor to the subject LLCs and the private entities. Members of the supervisor act as agents for groups of participants under the organizational documents of the subject LLCs and certain of the private entities and are general partners or managing members of certain of the private entities. From inception of the subject LLCs, the supervisor and its affiliates have served in these capacities with conflicts of interest and as such have conflicts in connection with the consolidation. The supervisor and its affiliates that act in such capacities have independent obligations to assess whether the terms of the consolidation or a third-party portfolio transaction are fair and equitable to the participants in each subject LLC without regard to whether the consolidation or a third-party portfolio transaction is fair and equitable to any of the participants in other subject LLCs and the private entities. While your supervisor has in good faith sought to discharge its obligations to your subject LLC, there is an inherent conflict of interest in serving, directly or indirectly, in a similar capacity with respect to all other subject LLCs and private entities. If each subject LLC had a separate supervisor and separate agents who did not serve in a similar capacity for any of the other subject LLC or private entity, the supervisor would have had an independent perspective, which might have led it to advocate positions during the negotiations and structuring of the consolidation differently from those taken by the supervisor and may have been more beneficial to the subject LLC. In addition, certain executives of the supervisor will be members of the senior management team and Anthony E. Malkin will be Chairman, Chief Executive Officer, President and a director of the company, and the principals, executives and employees of the supervisor could be officers, directors and/or employees of the acquiring entity following the consummation of a third-party portfolio transaction. The independent directors will act on behalf of the company in connection with any matter that arises subsequent to the closing of the consolidation with respect to the distribution and compensation arrangements of the Malkin Holdings group described in this prospectus/consent solicitation that involves a conflict of interest.

**Substantial Benefits to the Supervisor and its Affiliates**

The supervisor and the Malkin Holdings group currently receive substantial benefits and from inception of the subject LLCs have had conflicts of interest in connection with the subject LLCs, including in connection with the consolidation or a third-party portfolio transaction. The Malkin Holdings group also could receive certain benefits from a third-party portfolio transaction. These benefits could exceed the benefits that the supervisor and its affiliates would receive from continued ownership of their interests in the subject LLCs and continuing to act as supervisor to the subject LLCs, and, as a result, the supervisor may have a conflict of interest in recommending that participants vote **FOR** the consolidation and the third-party portfolio proposal. These conflicts and benefits include:

The supervisor and the Malkin Holdings group will receive shares of Class A common stock, Class B common stock and operating partnership units. If the consolidation is consummated, the Malkin Holdings group will receive 73,078,153 shares of Class A common stock, Class B common stock and operating partnership units in exchange for their interests in the subject LLCs and the private entities, including their override interests, and the management companies, having an aggregate value of \$730,781,533, which they will receive in accordance with the allocation of exchange value based on the Appraisal of the independent valuer. The amounts allocated to the Malkin Holdings group are based on the hypothetical \$10 per share exchange value that the supervisor arbitrarily assigned for illustrative purposes, and consist of their interests as participants which will be allocated to them on the same basis as other participants, their interests as holders of override interests that will be allocated to them in accordance with the subject LLCs and private entities organizational documents, and, with respect to their interests in the management companies, in accordance with the valuations of the management companies by the independent valuer. This is in addition to shares of Class A common stock issuable in respect of the voluntary pro rata reimbursement program consented to by participants in the subject LLCs in connection with the solicitation with respect to the consolidation and its share of distributions of any cash available for distribution from the subject LLCs prior to the consolidation.

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*Members and officers of the supervisor will become officers and senior management of the company after the consolidation and will receive salary and benefits which will be approved by the board of directors.* Following the consolidation, as is customary in connection with formation of a REIT, Anthony E. Malkin, David A. Karp, Thomas P. Durels and Thomas N. Keltner, Jr., executives of the supervisor will be members of the senior management team and Anthony E. Malkin, an executive and principal of the supervisor, will be Chairman, Chief Executive Officer, President and a director. They may receive equity incentives, including LTIP units and/or restricted stock grants under the company's equity incentive plan and any other plan approved by the stockholders of the company. The benefits that may be realized by them may exceed the benefits that they would expect to derive from the subject LLCs or the private entities if the consolidation does not occur.

*Some individuals will receive IPO grants under the equity incentive plan.* Upon completion of the IPO, the company expects to grant LTIP units and/or restricted shares of its Class A common stock to its independent directors, executive officers (other than Anthony E. Malkin) and certain other employees, including certain executives of the supervisor. Assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the company's Class A common stock), and assuming an IPO price of \$10 per share, David A. Karp, the company's Chief Financial Officer, Executive Vice President and Treasurer, is expected to be granted 114,500 LTIP units and/or restricted shares of Class A common stock, Thomas P. Durels, the company's Executive Vice President and Chief of Property Operations and Leasing, is expected to be granted 395,700 LTIP units and/or restricted shares of Class A common stock, and Thomas N. Keltner, Jr., the company's Executive Vice President, General Counsel and Secretary, is expected to be granted 252,800 LTIP units and/or restricted shares of Class A common stock. The LTIP units and/or restricted shares of Class A common stock will be subject to time-vesting and/or performance-vesting over a three to four year period.

*Some individuals will receive benefits under employment agreements with the company.* In publicly traded companies, it is customary practice for the company to enter into employment agreements with key employees. As such, the company intends to enter into an employment agreement with Anthony E. Malkin, providing for salary, bonus and other benefits, including severance upon a termination of employment under certain circumstances and issuance of equity awards as described under Management Employment Agreement.

*Some individuals will be relieved of certain guarantee obligations.* Peter L. Malkin and Anthony E. Malkin will be released from or otherwise indemnified for liabilities arising under certain guarantees and indemnities with respect to approximately \$1.11 billion of mortgage loans (including currently undrawn amounts) on the company's properties, which will be assumed by the company upon closing of the IPO and the consolidation in respect of obligations arising after the closing. The guarantees and indemnities with respect to mortgage loans of many of the existing entities, including the subject LLCs, were undertaken by Messrs. Malkin and Malkin to meet a conventional lender requirement which became standard only long after such entities were formed. In each case, Messrs. Malkin and Malkin provided such guarantee while serving in a representative capacity as an agent or member of a subject LLC or private entity which was then seeking a mortgage loan. The lender required such guarantee, and no party was available or willing to provide it except Messrs. Malkin and Malkin. They received no compensation for the guarantee and provided it as an accommodation to benefit such subject LLC or private entity in obtaining financing. The guarantees and indemnities with respect to all of the indebtedness are, in most instances, limited to losses incurred by the applicable lender arising from acts such as fraud, misappropriation of funds, intentional breach, bankruptcy and certain environmental matters. In connection with the company's assumption of these mortgage loans, it will seek to have the guarantors released from these guarantees and indemnities and to have the company's operating partnership assume any such guarantee and indemnity obligations as replacement guarantor and/or indemnitor. To the extent lenders do not consent to the release of these guarantors and/or indemnitors, and they remain guarantors and/or indemnitors on assumed indebtedness following the IPO and the consolidation, the company's operating partnership will enter into indemnification agreements with the guarantors and/or indemnitors pursuant to which the company's operating partnership will be obligated to indemnify such guarantors and/or indemnitors for any amounts paid by them under guarantees and/or indemnities with respect to the assumed indebtedness. The company believes that since

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the mortgage loans relating to the guarantees and indemnities will be assumed by the company upon closing of the consolidation, and it will have greater financial resources than the individual property owning entities which are subject to the mortgage loans, it is appropriate and consistent with market practice for Messrs. Malkin and Malkin to be indemnified by the company's operating partnership if the lenders do not consent to the release of these guarantors and/or indemnitors. Under the organizational documents of the subject LLCs and private entities and applicable law, Messrs. Malkin and Malkin are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence, including any such liabilities under these guarantees and indemnities. In addition, in connection with future mortgage loans that the company would enter into in connection with future property acquisitions or refinancing of the company's properties, the company intends to enter into any necessary guarantees directly, and neither Messrs. Malkin and Malkin nor any of the company's other directors, executive officers or stockholders would be expected to enter into such guarantees.

*Certain loans will be repaid.* In addition, 1185 Swap Portfolio L.P., which owns an interest in Ten Bank Street, White Plains, and One Gotham Street, New York, New York, two entities which will contribute properties to the company in the consolidation will repay a loan in the amount of approximately \$2.0 million relating to River Oaks Apartments, Rochester Hills, Michigan, a property not included in the consolidation to Anthony E. Malkin, Peter L. Malkin and certain other persons by applying a portion of the consideration received by it in the consolidation. The loan, which is an obligation of 1185 Swap Portfolio L.P., was made for the purpose of providing funds for the operation of River Oaks Apartments, a property owned by 1185 Swap Portfolio, L.P., which is not being contributed to the company.

*Some individuals will be indemnified by the company against claims, including claims for actions on behalf of the supervisor.* Members, managers and officers of the supervisor, who will be employed by the company, will be indemnified by the company for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against them for actions taken as officers and as a director of the company and for actions taken on behalf of the supervisor and other management companies, in their capacities as such, including actions relating to the consolidation.

*Some individuals will have the benefit of a tax protection agreement.* As part of the consolidation, the operating partnership intends to enter into a tax protection agreement with Peter L. Malkin and Anthony E. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property), against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

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The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction.

*The company will release certain individuals from liabilities for certain actions, including actions previously taken on behalf of the supervisor.* The company will release Anthony E. Malkin and Peter L. Malkin and certain other officers of the supervisor from all claims, liabilities, damages and obligations against them related to their ownership of the management companies, interests in any of the subject LLCs or the private entities or for serving as an agent for the participants and their employment with the management companies that exist immediately after the closing of the consolidation, other than breaches by them or entities related to them, as applicable, of the employment and non-competition agreement and the contribution agreements entered into by them and these entities in connection with the consolidation.

*If a participant consents to the voluntary pro rata reimbursement program, the supervisor will receive substantial benefits.* If a participant consents to the voluntary pro rata reimbursement program for expenses of the former property manager and leasing agent legal proceedings, the supervisor will be reimbursed for costs previously advanced. You are being asked to consent to the voluntary pro rata reimbursement program under which your share of distributions will be reduced by your pro rata share of the costs advanced by the supervisor and Peter L. Malkin for the former property manager and leasing agent legal proceedings. If you consent to the voluntary pro rata reimbursement program, the supervisor and Peter L. Malkin will be reimbursed for your pro rata share of costs previously incurred out of your share of the excess cash of your subject LLC that is being distributed to participants, and, to the extent that is insufficient, the consideration that you would receive in the consolidation or the consideration that you would receive in a third-party portfolio transaction, as applicable, will be reduced by the balance (valued, if the consolidation is consummated, at the IPO price) and such balance would be paid to the supervisor and Peter L. Malkin in shares of Class A common stock, if the consolidation is consummated, or out of distributions that you would receive from the proceeds of a third-party portfolio transaction, if consummated, or out of distributions from operations of the subject LLC. Your failure to consent to this proposal will not affect whether or not the subject LLC participates in the consolidation or a third-party portfolio transaction.

*There may be conflicts regarding the allocation of the chief executive officer's time.* After the consolidation, the company intends to enter into management and/or services agreements with the entities that own interests in or manage the excluded properties and with the managers of certain excluded businesses, which entities are owned in part by Anthony E. Malkin. Anthony E. Malkin is only required to dedicate a majority of his working time to the business of the company. There may be conflicts of interest in the allocation of his time between the company and his other interests.

*There may be conflicts regarding the option properties and other excluded properties and excluded businesses.* Affiliates of the supervisor also will retain interests in the option properties with respect to which the company has entered into option agreements, certain other properties to which the company will provide management services and certain excluded businesses. Affiliates of the supervisor are subject to conflicts of interest in connection with the terms of these arrangements. In addition, Anthony E. Malkin will have a conflict of interest in connection with the decision to exercise the option, because he may receive benefits from the exercise of the option not shared by holders of common stock of the company or operating partnership units.

*The supervisor and its affiliates may have a conflict of interest in deciding whether to approve a third-party portfolio proposal due to the benefits that the supervisor and the Malkin Holdings group could receive in that transaction.* The benefits that the supervisor or the Malkin Holdings group may receive in connection with a third-party portfolio transaction may be greater than the benefits that they would receive in the consolidation. On the other hand, the benefits to the supervisor and the Malkin Holdings group from the consolidation could exceed the benefits from a third-party portfolio transaction, particularly since senior executives of the supervisor will be senior executive officers and a director of the company, and the supervisor will receive other benefits from the consolidation described under *Conflicts of Interest Substantial Benefits to the Supervisor and its Affiliates*. Accordingly, the supervisor may have a conflict of interests in determining whether to approve a third-party offer.

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### **Lack of Independent Representation of Participants**

While the subject LLCs' exchange values have been determined based on the Appraisal by the independent valuer, which has also delivered a fairness opinion, no independent representative was retained to negotiate on behalf of the participants. There are 23 subject LLCs and private entities and groups with different interests in many of these entities. The supervisor does not believe that a single independent representative could have represented the interests of all participants and believes that to locate and retain an independent and equally competent and qualified representative for each separate interest in the consolidation is not possible. The supervisor represents the interests of all participants in the subject LLCs and private entities. The supervisor has served the same role in the past for sales of other properties with different groups of participants and believes it is not required to retain any independent representative on behalf of each group of participants or all of the participants as a whole. The supervisor believes the Appraisal prepared by the independent valuer serves the purposes of representing all parties fairly and that the consolidation is fair to all participants regardless of the absence of any such independent representative. If a representative or representatives had been retained for the participants, the terms of the consolidation might have been different and, possibly, more favorable to the participants.

### **Terms of the Consolidation with the Other Subject LLCs, the Private Entities and the Management Companies**

The supervisor and the Malkin Holdings group may hold a greater interest (including their share of distributions in respect of the override interests) in other subject LLCs or private entities than in your subject LLC, including the private entity which is the operating lessee of the property your subject LLC owns. Accordingly, they would be benefited to the extent that a greater portion of the exchange value is allocated to other subject LLCs or private entities than to your subject LLC.

The exchange values were determined based on the Appraisal by the independent valuer and the independent valuer has rendered a fairness opinion as to the fairness of the allocation of consideration (operating partnership units, Class A common stock, Class B common stock or cash consideration) (i) among each private entity, each subject LLC and the management companies and (ii) to the participants in each private entity and each subject LLC is fair to the participants in the subject LLC and the private entity from a financial point of view (without giving effect to any impact of the consolidation on any particular participant other than in its capacity as a participant in each of the subject LLCs and each of the private entities).

The supervisor believes that these terms are fair and reasonable and that the number of shares of common stock and operating partnership units allocable in respect of the private entities and the management companies was determined on the same basis and using the same methodology as the determination of the number of shares of Class A common stock issuable to the subject LLCs. However, due to the conflicts of interest the supervisor and its affiliates had in determining the terms of the transactions with the subject LLCs, the private entities and the management companies, the transaction was not the result of arm's-length negotiations.

### **Non-Arm's-Length Agreements**

All agreements and arrangements, including those relating to compensation and the contribution of the interests in the properties (and other assets) by the subject LLCs, the private entities and the management companies were determined by the supervisor and its affiliates. The agreements and arrangements were not the result of arm's-length negotiations.

### **Conflicts of Interest in Voting Participation Interests**

The Malkin Holdings group owns participation interests in all of the subject LLCs and have a conflict of interest in voting their participation interests. The company will acquire each subject LLC if the participants in that subject LLC who hold the required percentage of the outstanding participation interests vote in favor of the consolidation. The Wien group collectively owns participation interests in the subject LLCs and has advised that

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it will vote in favor of the consolidation and the third-party portfolio proposal. These participation interests represent the following percentage ownership for each subject LLC: 8.195% for Empire State Building Associates L.L.C., 8.447% for 60 East 42nd St. Associates L.L.C. and 8.912% for 250 West 57th St. Associates L.L.C. In addition to the participation interests, members of the Wien group hold override interests, which are non-voting. See [Background of and Reasons for the Consolidation](#) [Background of the Subject LLCs](#).

### **Features Discouraging Potential Takeovers**

The company's management could use provisions of the company's organizational documents to delay, discourage or thwart efforts of third parties to acquire control of, or a significant equity interest in, the company.

Provisions in the partnership agreement of the operating partnership may delay or make more difficult unsolicited acquisitions of the company or changes of control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of the company or change of control, although some stockholders might consider such proposals, if made, desirable. These provisions include, among others:

redemption rights of qualifying parties;

transfer restrictions on units;

the company's ability, as general partner, in some cases, to amend the partnership agreement and to cause the operating partnership to issue units with terms that could delay, defer or prevent a merger or other change of control of the company or the operating partnership without the consent of the limited partners; and

the right of the limited partners to consent to transfers of the general partnership interest and mergers or other transactions involving the company under specified circumstances.

In addition, certain provisions of the MGCL may have the effect of deterring a third party from making a proposal to acquire the company or of impeding a change in control under circumstances that otherwise could provide stockholders with the opportunity to realize a premium over the then-prevailing market price of the Class A common stock. Among other things, the company is subject to the [business combination](#), [control share acquisition](#) and [unsolicited takeover](#) provisions of the MGCL. These provisions may have the effect of inhibiting a third party from making an acquisition proposal for the company or of delaying, deferring or preventing a change in control of the company under the circumstances that otherwise could provide stockholders with the opportunity to realize a premium over the then-current market price. Pursuant to the statute, the company's board of directors has by resolution exempted business combinations between the company and any other person, provided that such business combination is first approved by the company's board of directors (including a majority of the directors who are not affiliates or associates of such person). The company's bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of the company's stock. There can be no assurance that these exemptions or provisions will not be amended or eliminated at any time in the future. The charter contains a provision whereby the company has elected to be subject to the provisions of Title 3, Subtitle 8 of the MGCL relating to the filling of vacancies on the company's board of directors. See [Certain Provisions of the Maryland General Corporation Law and the Company's Charter and Bylaws](#) [Business Combinations](#), [Control Share Acquisitions](#) and [Subtitle 8](#).

Furthermore, in order for the company to qualify as a REIT for each taxable year commencing with its taxable year ending December 31, 2013, no more than 50% in value of the company's outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of any calendar year, and at least 100 persons must beneficially own the company's stock during at least 335 days of a taxable year of 12 months, or during a proportionate portion of a shorter taxable year. Individuals for this purpose include natural persons, private foundations, some employee benefit plans and trusts and some charitable trusts. To assist the company in complying with these limitations, among other purposes, the company's charter generally prohibits any person from directly or indirectly owning more than 9.8% by value or number of shares, whichever is more



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restrictive, of the outstanding shares of the company's capital stock or more than 9.8% by value or number of shares, whichever is more restrictive, of the outstanding shares of the company's common stock. The ownership limitations could have the effect of discouraging a takeover or other transaction in which holders of common stock might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests.

The company's charter's constructive ownership rules are complex and may cause the outstanding shares owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the acquisition of less than these percentages of the outstanding shares of common stock by an individual or entity could cause that individual or entity to own constructively in excess of these percentages of the outstanding shares and thus violate the share ownership limits. The company's charter also provides that any attempt to own or transfer shares of the company's common stock or preferred stock (if and when issued) in excess of the stock ownership limits without the consent of the company's board of directors or in a manner that would cause the company to be "closely held" under Section 856(h) of the Code (without regard to whether the shares are held during the last half of a taxable year) will result in the shares being deemed to be transferred to a trustee for a charitable trust or, if the transfer to the charitable trust is not automatically effective to prevent a violation of the share ownership limits or the restrictions on ownership and transfer of the company's shares, any such transfer of the company's shares will be void.

The company's bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to the company's board of directors and the proposal of other business to be considered by stockholders may be made only (1) pursuant to the company's notice of the meeting, (2) by or at the direction of the board of directors or (3) by a stockholder who is a stockholder of record both at the time of giving the notice required by the bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on such other business and who has complied with the advance notice provisions set forth in the bylaws.

With respect to special meetings of stockholders, only the business specified in the company's notice of meeting may be brought before the meeting. Nominations of individuals for election to the board of directors may be made only (1) by or at the direction of the board of directors or (2) provided, that the meeting has been called in accordance with the bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving the notice required by the bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice provisions set forth in the bylaws.

The purpose of requiring stockholders to give the company advance notice of nominations and other business is to afford the board of directors a meaningful opportunity to consider the qualifications of the proposed nominees and the advisability of any other proposed business and, to the extent deemed necessary or desirable by the board of directors, to inform stockholders and make recommendations about such qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although the bylaws do not give the board of directors any power to disapprove stockholder nominations for the election of directors or proposals recommending certain action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if proper procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal without regard to whether consideration of such nominees or proposals might be harmful or beneficial to the company and its stockholders.

The charter and bylaws of the company and the partnership agreement of the operating partnership and Maryland law also contain other provisions that may delay, defer or prevent a transaction or a change of control that might involve a premium price for the common stock or that the stockholders otherwise believe to be in their best interest.

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**COMPARISON OF OWNERSHIP OF PARTICIPATION INTERESTS, OPERATING PARTNERSHIP UNITS AND SHARES OF COMMON STOCK**

The information below highlights a number of the significant differences between the subject LLCs, the operating partnership and the company relating to, among other things, form of organization, investment objectives, policies and restrictions, asset diversification, capitalization, management structure, compensation and fees and investor rights, and compares the principal legal rights associated with the ownership of participation interests in the subject LLCs, operating partnership units in the operating partnership and shares of common stock. These comparisons have been included to assist you in understanding how your investment will change if, as a result of the consolidation, your participation interest is exchanged for operating partnership units or common stock. This discussion is only a summary and does not constitute a complete discussion. The company strongly encourages you to review this prospectus/consent solicitation, as well as the accompanying supplement for your subject LLC for additional information. For a more detailed description of the terms of the common stock and the operating partnership units, see Certain Provisions of the Maryland General Corporation Law and the Company's Charter and Bylaws, Description of Capital Stock and Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership.

The interests in each subject LLC are held by members of such subject LLC, each of whom holds that interest for the benefit of participants in that agent's participating group.

**Table of Contents****Form of Organization and Purpose**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
The three subject LLCs are publicly-registered limited liability companies originally formed as partnerships or joint ventures to acquire the fee title or long-term ground lease interest in an office property located in New York, New York and to lease the property to an operating lessee, which operates the property.	The operating partnership is a Delaware limited partnership formed under the Delaware Revised Uniform Limited Partnership Act, as amended, which is referred to herein as the Delaware Act. The sole general partner of the operating partnership is the company. Following the completion of the IPO and the consolidation, substantially all of the company's business activities, including all activities pertaining to the acquisition and operation of properties, will be conducted through the operating partnership. The operating partnership will be operated in a manner that will enable the company to satisfy the requirements for qualification as a REIT.	The company is a Maryland corporation which intends to elect and to qualify to be taxed as a REIT under the Code. Its primary focus will be to own and manage its current portfolio and continue to operate, acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

The company and the operating partnership will have broader business opportunities than the subject LLCs, which each own an interest in a single office building, subject to an operating lease, and will have access to financing opportunities that are currently not accessible to the subject LLCs. Inherent in several of the additional financing opportunities are risks which do not exist in the case of your subject LLC, and the company encourages you to review Risk Factors for a detailed description of such risks.

**Length and Type of Investment**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
Each subject LLC was originally formed between 1953 and 1961 without a stated term. The investment objective of each subject LLC was to acquire and hold for the long-term the fee or leasehold interest in the property it now owns and for which it receives rental income. As a participant in your subject LLC, you are entitled to receive cash distributions out of your subject LLC's net operating income, if any. While historically the supervisor generally has not reinvested the proceeds from a sale, it is not restricted from doing so. Net proceeds of such a sale which are not	The operating partnership will have a perpetual term and intends to continue its operations for an indefinite time period. Events which may cause the dissolution of the operating partnership include: (i) a final and non-appealable judgment by a court of competent jurisdiction ruling that the general partner is bankrupt or insolvent without the appointment by the limited partners of a successor general partner; (ii) an election to dissolve the operating partnership made by the general partner in its sole and absolute discretion; (iii) entry of a decree of judicial	The company will have a perpetual term and intends to continue its operations for an indefinite time period. To the extent the company sells or refinances its assets, the net proceeds therefrom will generally be reinvested in additional properties or retained by the company for working capital and other corporate purposes, except to the extent distributions must be made to permit the company to continue to qualify as a REIT for U.S. federal income tax purposes. No assets have been identified for sale, financing, refinancing or purchase after the consolidation.

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Subject LLCs	Operating Partnership	The Company
<p>reinvested or reserved in the supervisor's discretion would be distributed to the participants in accordance with each subject LLC's operating agreement and participating agreements.</p>	<p>dissolution of the operating partnership pursuant to the provisions of the Delaware Act; (iv) the occurrence of any sale or other disposition of all or substantially all of the assets of the operating partnership or a related series of actions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the operating partnership; (v) the redemption (or acquisition by the general partner) of all operating partnership interests that the general partner has authorized other than those held by the company; or (vi) the incapacity or withdrawal of the general partner, unless all of the remaining partners in their sole and absolute discretion agree in writing to continue the business of the operating partnership and to the appointment of a substitute general partner.</p> <p>To the extent the operating partnership sells or refinances its assets, the net proceeds therefrom will generally be reinvested in additional properties or retained by the operating partnership and the company for working capital and other corporate purposes, except to the extent that distributions must be made to permit the company to qualify as a REIT for tax purposes.</p>	

The investment objective of each subject LLC was to acquire and hold for the long-term the fee or leasehold interest in the property it now owns and for which it receives rental income. The supervisor does not expect to reinvest net proceeds from a sale and net proceeds of such a sale which are not reinvested or reserved in the supervisor's discretion would be distributed to the participants in accordance with each subject LLC's operating agreement and participating agreements. In contrast, the operating partnership and the company generally will be operating companies and will reinvest the proceeds of asset dispositions, if any, in new properties or other appropriate investments consistent with their investment objectives.

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**Business and Property Diversification**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>The investment portfolio of each subject LLC currently consists of an interest in one office property subject to an operating lease and assets related to the property.</p>	<p>Assuming all of the properties of the subject LLCs and private entities are acquired by the company, the company will own, indirectly through the operating partnership, an interest in a portfolio of 12 office properties (including one long-term ground leasehold interest) encompassing in the aggregate approximately 7.7 million rentable square feet of office space and 428,431 rentable square feet of retail space and six retail properties encompassing 204,452 rentable square feet in the aggregate. Additionally, the company will have fully entitled land in Stamford, Connecticut that will support the development of an approximately 380,000 rentable square foot office building and garage.</p>	<p>Assuming all of the properties of the subject LLCs and private entities are acquired by the company, the company will own, indirectly through the operating partnership, an interest in a portfolio of 12 office properties (including one long-term ground leasehold interest) encompassing in the aggregate approximately 7.7 million rentable square feet of office space and 428,431 rentable square feet of retail space and six retail properties encompassing 204,452 rentable square feet in the aggregate. Additionally, the company will have fully entitled land in Stamford, Connecticut that will support the development of an approximately 380,000 rentable square foot office building and garage.</p>

The assets of each subject LLC currently consist of one office property. The consolidation of the properties owned by the subject LLCs and the private entities under the company and operating partnership ownership will result in a more diversified investment than your investment in your subject LLC. The company and the operating partnership will have a larger number of properties and broader types of properties, tenants and geographic locations. This diversification will reduce the dependence of your investment upon the performance of, and the exposure to the risks associated with, the one property your subject LLC owns.

**Borrowing Policies**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>The operating agreements of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. require the consent of 100% of the agents to enter into a mortgage financing. 250 West 57th St. Associates L.L.C.'s operating agreement requires the consent of at least 75% of the agents to enter into a mortgage financing. Each subject LLC's respective participating agreements require an agent to obtain the required consent of the participants, as set forth in Voting Rights below, to enter into a mortgage financing of the interest in the subject LLC. As a practical matter the amount which each subject LLC can borrow is limited by its size.</p>	<p>The operating partnership may incur debt or enter into similar credit, guarantee, financing or refinancing arrangements for any purpose with any person upon such terms as the company, as sole general partner, determines appropriate.</p>	<p>The company expects to employ leverage in its capital structure in amounts determined from time to time by its board of directors. Although the company's board of directors has not adopted a policy that limits the total amount of indebtedness that the company may incur, it will consider a number of factors in evaluating the company's level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or floating rate. The company's charter and bylaws do not limit the amount or percentage of indebtedness that it may incur nor do they restrict the form in which its indebtedness will</p>

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Subject LLCs	Operating Partnership	The Company
<p>In 2008, the supervisor solicited and received the consent of participants in Empire State Building Associates L.L.C. for mortgage financing, on the basis that the mortgage debt on the Empire State Building cannot exceed 50% of the appraised value of the property subject to the mortgage, and Peter L. Malkin and Anthony E. Malkin at their discretion can use the money towards certain investments for the account of Empire State Building Associates L.L.C., and no further action by the participants of Empire State Building Associates L.L.C. is required for them to act. At no time has Empire State Building Company L.L.C., the operating lessee, joined in any similar consent. For Empire State Building Company L.L.C. to take any such action will, like every other of its decisions, require the agreement of the Malkin Holdings group and the owner of the interest presently owned by the Helmsley estate.</p> <p>Each subject LLC has incurred mortgage indebtedness, with a debt to total assets ratio ranging from 8.66% to 12.74% as of September 30, 2012. The consent of participants is required for incurrence of debt. As a limited partner or stockholder, you will become an investor in an entity that may incur debt in the ordinary course of business without the consent of its limited partners or stockholders, respectively, and that may invest proceeds from borrowings. The ability of the company and the operating partnership to incur indebtedness in the ordinary course of business increases the risk of your investment in operating partnership units or common stock.</p>		<p>be taken (including, but not limited to, recourse or non-recourse debt and cross collateralized debt). The company's board of directors may from time to time modify its leverage policies in light of the then-current economic conditions, relative costs of debt and equity capital, market values of the company's properties, general market conditions for debt and equity securities, fluctuations in the market price of the company's common stock, growth and acquisition opportunities and other factors.</p>

**Other Investment Restrictions**

Subject LLCs	Operating Partnership	The Company
<p>The operating agreement for each subject LLC does not restrict the entity from investment of net proceeds of a sale of its property or the purchase of additional real property. However, the supervisor does not expect to reinvest net proceeds from a sale and net proceeds of such a sale which are not reinvested or reserved in the supervisor's discretion would be distributed to the participants in accordance with each subject LLC's</p>	<p>There are no restrictions upon the operating partnership's authority to enter into any actions. The policies of the company described under the Company also apply to the operating partnership.</p>	<p>The company may diversify its real estate investments in terms of property locations, size and market or submarket, and it does not have any limit on the amount or percentage of its assets that may be invested in any one property or any one geographic area. The company does not have a specific policy to acquire assets primarily for capital gain or primarily for income. The company may purchase or lease income-producing commercial and</p>

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Subject LLCs	Operating Partnership	The Company
<p>operating agreement and participating agreements. Such agreement in each case provides that the subject LLC will continue until it has disposed of all its assets.</p>		<p>other types of properties for long-term investment, expand and improve the properties it presently owns or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant. Although the company does not presently intend to invest in mortgages or deeds of trust, other than in a manner that is ancillary to an equity investment, it may elect to invest in mortgages and other types of real estate interests, including, without limitation, participating or convertible mortgages; provided, in each case, that such investment is consistent with its qualification as a REIT. The company does not currently have any policy limiting the types of entities in which it may make investments in securities or the proportion of assets to be so invested, whether through acquisition of an entity's common stock, limited liability or partnership interests, interests in another REIT or entry into a joint venture, however, the company intends to invest primarily in entities that own commercial real estate.</p>

Neither the operating agreement for the subject LLCs nor the participating agreements for the participating groups contemplate the reinvestment of cash available for distribution for the purchase of additional real property. However, there is no specific restriction on the authority of the agents to consent to the subject LLC reinvesting its sales proceeds. The organizational documents of the operating partnership and the company provide each with discretion in selecting the type of investments it may pursue and reinvesting sales proceeds. While the investment portfolio of each subject LLC currently consists of an interest in one office property subject to an operating lease and assets related to the property, the company and operating partnership will own the properties of the subject LLCs and the private entities that participate in the consolidation (subject to any operating lease) and assets related to such properties, and will likely acquire and own additional unidentified properties in the future.

**Table of Contents****Management Control**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>Under the operating agreement for each subject LLC, the supervisor is appointed to supervise the operation of the agreement. The operating agreements for the subject LLCs do not address the participation of members in the management of the subject LLC except that generally the property held by the subject LLC shall not be sold, mortgaged or transferred in any way, nor the lease modified, nor a new lease made, unless approved by agents owning 100% of Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. and at least 75% of the membership interests of 250 West 57th St. Associates L.L.C., respectively. The participating agreements provide that the agents may act in accordance with the operating agreement on all matters and that the actions of the agents will bind the participants in the group. However, for the agent to consent to certain actions such as the sale, transfer or mortgaging of the property, or the making or modification of a lease affecting the same, the agent must receive the required consent of participants in the participating group, as set forth in <i>Voting Rights</i> below. A subject LLC will also require the agreement of the operating lessee for certain of their actions. A subject LLC, as lessor, cannot determine to obtain additional financing to maximize cash flows and therefore distributions unless the operating lessee also agrees to the financing, because, in view of the operating lessee's rights under the operating lease, lenders generally could be expected to require in connection with any significant financing that the operating lessee subordinate its interest to the financing. A subject LLC, as lessor, has the right to sell its</p>	<p>The operating partnership agreement will provide limited partners certain limited voting rights, as set forth in <i>Voting Rights</i> below. Limited partners will also be entitled to any voting rights that may be required by law. Subject to these voting rights, the general partner of the operating partnership will have full, exclusive and complete responsibility and discretion in the management and control of the operating partnership, including the ability to cause the operating partnership to enter into certain major transactions, including a merger of the operating partnership or a sale of substantially all of the assets of the operating partnership.</p>	<p>After the consolidation, decisions regarding major transactions will be made for the company by the company's management, subject to oversight by the company's board of directors, but, except for certain extraordinary transactions, without any vote or approval of the company's stockholders. The company's board of directors and management will also have broad discretion, without being subject to stockholder vote or approval, to make decisions regarding the company's policies, including its policies with respect to investment, financing, growth, acquisitions, development, debt, capitalization and dividends.</p>



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Subject LLCs	Operating Partnership	The Company
<p>fee interest in the property without the operating lessee's consent. While the operating lessee does not have a contractual right to approve a sale of the property by the subject LLC, any property sale not agreed to by the operating lessee necessarily will be subject to the operating lease. The supervisor believes this limitation reduces the value of the subject LLCs unless sold with the operating lease position. Under the operating agreement of Empire State Building Company L.L.C., the Malkin Family and the Helmsley estate each effectively has an ability to veto actions by Empire State Building Company L.L.C., and Peter L. Malkin has succeeded to the right of first refusal originally held by Lawrence A. Wien on any sale by the Helmsley estate of its interests in Empire State Building Company L.L.C. The participating agreements for 250 West 57th St. Associates L.L.C. do not give the participants the right to remove the agent. The participating agreements for Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. provide that an agent for participants pursuant to a participating agreement may be removed by the written direction of participants owning at least 75% of such participating group.</p>		

Under the operating agreement and participating agreements for the subject LLCs, the participants are not involved in management, except on certain matters where consent of participants in the participating groups is required, as set forth in "Voting Rights" below. Under the operating partnership agreement of the operating partnership and the charter and bylaws of the company, respectively, the general partner (*i.e.*, the company) directs management of the operating partnership and the board of directors directs management of the company. Except for their vote in the elections of directors and their vote in major transactions, as set forth above, limited partners and stockholders have no control over the management of the operating partnership or the company, respectively.

**Fiduciary Duties**

Subject LLCs	Operating Partnership	The Company
<p>Each subject LLC was originally formed as a partnership or a joint venture under the laws of New York</p>	<p>Under the Delaware Act, the company, as general partner of the operating partnership, is</p>	<p>The company's directors and officers have duties under applicable Maryland law to act in</p>

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Subject LLCs	Operating Partnership	The Company
<p>and each was converted to a limited liability company under New York law. The agents hold their membership interests in the subject LLCs as agents for the participants in their respective participating group. The agents for each participating group are fiduciaries for the participants in their respective participating group and owe such participants a duty of loyalty and a duty of care, and are required to exercise good faith and fair dealing in conducting the affairs of the subject LLC in which they hold membership interests. The operating agreement of each subject LLC appoints the supervisor to provide supervisory and other services for the subject LLC. The supervisor is accountable to the subject LLC as a fiduciary and owes the subject LLCs a duty of loyalty and a duty of care. The supervisor is required to exercise good faith and fair dealing in providing supervisory and other services. The supervisor's fiduciary duty to the subject LLCs also runs to the participants, as holders of participation interests in the membership interests of the subject LLCs. The operating agreement of each subject LLC does not limit the liability of the supervisor in connection with providing supervisory and other services to the subject LLC.</p>	<p>accountable to the operating partnership as a fiduciary and, consequently, is required to exercise good faith and integrity in all of its dealings with respect to operating partnership affairs. However, under the operating partnership agreement, the company, as the general partner, is under no obligation to consider the separate interests of the limited partners in deciding whether to cause the operating partnership to take (or decline to take) any actions, and the company, as general partner, is liable for monetary damages for losses sustained, liabilities incurred, or benefits not derived by limited partners in connection with such decision, provided that the company, as general partner, has acted in good faith and pursuant to its authority under the operating partnership agreement. The company's duties, as the general partner, to the operating partnership and its limited partners, may come into conflict with the duties of the company's directors and officers to the</p>	<p>good faith, in a manner reasonably believed to be in the company's best interest and with the care of an ordinarily prudent person in a like position under similar circumstances. At the same time, in its capacity as the general partner of the operating partnership, the company has fiduciary duties to manage the operating partnership in a manner beneficial to the operating partnership and its partners. The company's duties, as the general partner, to the operating partnership and its limited partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or its stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict in the duties</p>
	<p>stockholders of the company. The limited partners agree that in the event of a conflict in the fiduciary duties owed by the general partner to its stockholders and in its capacity as general partner of the operating partnership, to such limited partners, the general partner will fulfill its fiduciary duties to such limited partners by acting in the best interests of its stockholders.</p>	<p>owed by the company's directors and officers to the company and its stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of its stockholders. The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and its stockholders, collectively.</p>

The agents of a participating group, the general partner of the operating partnership and the directors of the company, respectively, owe duties to their constituent parties. It is unclear, however, whether, or to what extent, there are actual differences in such duties.

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**Management's Liability and Indemnification**

Subject LLCs	Operating Partnership	The Company
<p>The participating agreements provide that the agent of a participating group shall not be personally liable for any act performed in good faith, nor for any action except for willful misconduct or gross negligence. The participating agreements for Empire State Building Associates L.L.C. provide that an agent may also be personally liable for liabilities under the Securities Act. Each participating agreement for 250 West 57th St. Associates L.L.C. and 60 East 42nd St. Associates L.L.C. provides that the participants in a participating group shall indemnify the agent, in proportion to their participation interests, against any liability to which the agent may be subject by reason of holding record title to the participation interests in his name. For Empire State Building Associates L.L.C., the agents are indemnified for any loss or liability arising out of their actions as agent, and the indemnity obligation by the participants in a participating group does not apply where the agent incurs a loss or liability as a result of bad faith or contravention of the participating agreement.</p>	<p>Neither the company, as the general partner, nor its directors and officers are liable to the operating partnership for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission, so long as such person acted in good faith. The operating partnership agreement will provide for indemnification of the company, the company's affiliates and each of the company officers, directors, and any persons the company may designate from time to time in its sole and absolute discretion to the fullest extent permitted by applicable law against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and</p>	<p>The Maryland General Corporation Law, or the MGCL, allows a Maryland corporation to include a provision in its charter limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (i) actual receipt of an improper benefit or profit in money, property or services or (ii) active and deliberate dishonesty established by a final judgment as being material to the cause of action. The company's charter contains a provision which eliminates the liability of its directors and officers to the maximum extent permitted by the MGCL. The MGCL requires the company (unless the company's charter provides otherwise, which it does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the</p>
<p>The agreements to indemnify the principals of the supervisor cover certain liabilities relating to the subject LLCs and the private entities. Under the organizational documents of the subject LLCs and private entities and applicable law, the principals of the supervisor are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence.</p>	<p>other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, that relate to the operations of the operating partnership, provided that the operating partnership will not indemnify such person for (i) willful misconduct or a knowing violation of the law; (ii) any action for which such person received an improper personal benefit in money, property or services in violation or breach of any provision of the operating partnership agreement; or (iii) in the case of any criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful, as set forth in the operating partnership agreement.</p>	<p>defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits the company to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that: (i) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty; (ii) the director or officer actually received an improper personal benefit in</p>

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Subject LLCs	Operating Partnership	The Company
		<p>money, property or services; or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. The company's charter and bylaws require the company to indemnify its directors and officers to the maximum extent permitted by the MGCL. The company will obtain a policy of insurance under which its directors and officers will be insured against certain losses arising from claims made against such directors and officers by reason of any acts or omissions covered under such policy in their respective capacities as directors or officers, including certain liabilities under the Securities Act. Additionally, the company intends to enter into indemnification agreements with each of its directors and executive officers upon the closing of the IPO.</p>

The agent of a participating group will generally be held liable only for their own willful misconduct or gross negligence or acts not performed in good faith, and may be indemnified in certain cases. The liability of the directors and officers of the operating partnership or the company, as applicable, is limited to the fullest extent permitted under the MGCL, and such directors and officers are indemnified by the operating partnership or the company, as applicable, to the fullest extent permitted by the MGCL.

**Takeover Provisions**

Subject LLCs	Operating Partnership	The Company
<p>The operating agreements for the subject LLCs do not provide for removal of a member. For each participating group of 250 West 57th St. Associates L.L.C., a change in the agent may be effected only by resignation, death, incompetence or other disability of the agent (who are agents for participants). The participating agreements for the other subject LLCs require the consent of 75% of the participants in a participating group to remove the agent for that participating group.</p>	<p>Change of control actions involving the operating partnership will generally occur only together with a change of control action involving the company.</p>	<p>Certain provisions of the MGCL and the company's charter and bylaws may have the effect of delaying, deferring or preventing a transaction or a change in control of the company that might involve a premium price for stockholders or otherwise be in their best interests. See Certain Provisions of the Maryland General Corporation Law and the Company's Charter and Bylaws.</p>

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Subject LLCs	Operating Partnership	The Company
<p>The agents, who are the members of your subject LLCs, recently created a new class of membership interests, which were divided into series. A separate series was deemed to be distributed to holders of each participating group in your subject LLC. The new series provide protections similar to those under a shareholder rights plan for a corporation. Each new series corresponds to a participating group for which a member acts as agent. The new series will not affect voting rights, except with respect to any person or group that acquires 6%, 3%, or 7.5% or more, respectively, of the outstanding participation interests in the applicable participating group (an acquiring person ) for each of 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 there is an acquiring person, the effect of the new series is that approval of the consolidation proposal and the third-party portfolio proposal by a participating group will require approval by the requisite consent of the participants in the participating group, as holders of the new series of membership interests, excluding the acquiring person.</p>		

The new series will not affect distributions unless there is an acquiring person. Each participant in the applicable participating group other than an acquiring person prior to the closing of the consolidation will have the right to receive distributions on the new series (equal to three times the distributions on the participations) and as a result if there is an acquiring person prior to the closing of the consolidation, the distributions to the acquiring person will be reduced and the distributions of other participants in the participating group in which there is an acquiring person will be correspondingly increased.

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Restrictions on removal of agents by the participants could deter attempts to obtain control of the subject LLCs. Certain provisions of the organizational documents of the company could be used to deter attempts to obtain control of the company in transactions not approved by the company's board of directors.

**Sale**

Subject LLCs	Operating Partnership	The Company
<p>The operating agreements of the subject LLCs require the consent of the members, as set forth under Management Control above, who are agents for the participants, to sell or transfer the property held by the subject LLCs. The participating agreements for each subject LLC require the consent of participants, as described in Voting Rights below for each agent to consent to a sale or transfer of property.</p>	<p>Under the operating partnership agreement, the company generally has the exclusive authority to determine whether, when and on what terms the assets of the operating partnership will be sold. The company, as general partner of the operating partnership, generally may sell, exchange, transfer or otherwise dispose of all or substantially all of the operating partnership's assets in a single transaction or a series of related transactions (including by way of merger, consolidation or other combination with any other persons), without the consent of the limited partners.</p>	<p>Under the MGCL and the company's charter, the sale of all or substantially all of the assets of the company must be declared advisable by the board of directors and approved by the affirmative vote of the stockholders entitled to cast a majority of all the votes entitled to be cast on the matter. No approval of the stockholders is required for the sale of less than substantially all of the company's assets. In addition, under the tax protection agreement, transferring of certain of the company's properties will be restricted without the consent of the parties to the tax protection agreement. See the section entitled, The Consolidation Description of the Tax Protection Agreement.</p>

Under the operating agreement and participating agreements, the sale or transfer of property may be affected with the required consent of participants, as set forth in Voting Rights below. The company, as the sole general partner of the operating partnership, may determine whether, when and on what terms the assets of the operating partnership will be sold. Under the charter of the company, the sale of assets which do not amount to all or substantially all of the assets of the company does not require any consent of the stockholders; however, a sale of all or substantially all of the company's assets requires stockholder consent.

**Dissolution**

Subject LLCs	Operating Partnership	The Company
<p>Each subject LLC shall dissolve when the all of the property owned by it shall have been disposed of pursuant to its operating agreement. Each participating group shall dissolve when all of the participation interests held by the participating group shall have been disposed of pursuant to its participating agreement.</p>	<p>An election to dissolve the operating partnership may be made by the general partner in its sole and absolute discretion, with or without the consent of a majority in interest of the other limited partners.</p>	<p>Under the MGCL and the company's charter, the dissolution of the company must be declared advisable by the board of directors and approved by the affirmative vote of the stockholders entitled to cast a majority of all votes entitled to be cast on the matter.</p>

Under each subject LLC's operating agreement and participating agreements the entity or participating group shall be dissolved when its property shall be disposed of. The operating partnership may be dissolved by the

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general partner without the consent of the limited partners. Under the charter of the company, the entity may be dissolved with the consent of stockholders entitled to cast a majority of all votes entitled to be cast on the matter.

**Amendments**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>The operating agreements of the subject LLCs do not address the vote required for amendment of the operating agreement. The operating agreements provide that the agents will have the same rights and liabilities in relation to the other members of the subject LLC after conversion of the subject LLCs to limited liability companies as they would have under New York partnership law. Under New York partnership law, unanimous consent of the agents would be required to amend the operating agreement of each subject LLC. The agents are not required to obtain the consents of the participants in their respective participating groups to consent to an amendment of the operating agreement. The participating agreements for Empire State Building Associates L.L.C. specify that amendment of the participating agreement requires consent of all of the participants in such participating group. The participating agreements for the subject LLCs, other than Empire State Building Associates L.L.C., do not address the vote required for amendment of the operating agreements. As a result, an amendment of the participating agreements requires the consent of all the participants in such participating group.</p>	<p>Amendments to the operating partnership agreement may only be proposed by the general partner. Generally, the operating partnership agreement will permit amendments with the general partner's approval and the approval of the limited partners holding a majority of all outstanding limited partner units (excluding limited partner units held by the company or its subsidiaries). Certain amendments will need to be approved by each partner adversely affected thereby. Additionally, certain amendments may be made by the general partner without the consent of the limited partners.</p>	<p>Generally, amendments to the charter must be declared advisable by the board of directors and approved by the affirmative vote of holders of shares entitled to cast a majority of all of the votes entitled to be cast on the matter.</p>
<p>Amendment of the operating agreement for the subject LLCs would require the consent of all of the agents and the amendment of the participating agreements would require the consent of all of the participants in such participating group. Certain amendments to the operating partnership agreement require the consent of the majority in interest of the limited partners. Amendment of the charter of the company requires the approval of both the board of directors and majority of the votes entitled to be cast at a meeting of stockholders.</p>		

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**Review of Investor Lists**

<b>Subject LLCs</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>Neither the operating agreement nor participating agreements for the subject LLCs address the right of participants to receive an investor list. Under New York limited liability company law, a member would have the right to inspect and make copies of investor lists at its own expense for any purpose reasonably related to the member's interest as a member. Under the New York partnership law, which may apply to participating agreements, a participant in a participating group would have the right to access and to make copies of the participating group's books, which would include the list of participants.</p>	<p>Under the Delaware Act, a limited partner will have the right to obtain upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner, a current list of the name and last known business, residence or mailing address of each partner.</p>	<p>The company's bylaws require that it must maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder. Under the MGCL, any stockholder may make a written request for a statement showing all stock and securities issued by the corporation during a specified period of not more than 12 months before the date of the request, and the corporation must prepare and have available a sworn statement containing (i) the number of shares or amounts of each class of stock or other securities issued during the specified period; (ii) the consideration received per share or unit, which may be aggregated as to all issuances for the same consideration per share or unit and (iii) the value of any consideration other than money as set in a resolution of the board of directors. The MGCL provides additional rights of inspection to a person or persons who, for at least six months, have held an aggregate of 5% of the outstanding stock of any class of the company, including the right to inspect the company's stock ledger or a list of its stockholders.</p>

The members and participants in the subject LLCs, limited partners of the operating partnership and the stockholders of the company may be entitled, subject to certain limitations, to inspect and, at their own expense (except as noted above), make copies of investor lists.

The following discussion describes the investment attributes and legal rights associated with your ownership of participation interests, operating partnership units and shares of Class A common stock.



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**Nature and Terms of Investment**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>Common Stock</b>
<p>The participation interest you hold constitutes an equity interest entitling you to your pro rata share of distributions made to the participants in your subject LLC. The distributions to participants are made after distributions to the supervisor of its share of cash distributions under its override on distributions and, to the extent that a participant has consented, its share of distributions of capital proceeds pursuant to the overrides. The distributions payable by your subject LLC to its participants are not fixed in amount and depend upon the operating results and net sales or refinancing proceeds available from the disposition or refinancing of your subject LLC's assets.</p>	<p>Operating partnership units constitute equity interests entitling each limited partner to its pro rata share of cash distributions made to the partners of the operating partnership. The operating partnership generally intends to retain and reinvest proceeds of the sale of property or excess refinancing proceeds in its business.</p>	<p>The shares of common stock constitute equity interests in the company with a par value of \$0.01 per share. As a stockholder, you will be entitled to your pro rata share of any distributions paid with respect to the common stock, including distributions payable to stockholders in the event of the company's liquidation, dissolution or winding up after payment of, or adequate provision for, all the company's known debts and liabilities. The distributions payable to you are not fixed in amount and are only paid if, as and when authorized by the board of directors of the company and declared by the company. In order for the company to qualify as a REIT, the company must distribute to its stockholders, on an annual basis, at least 90% of its REIT taxable income, determined without the deduction for dividends paid and excluding net capital gains. In addition, the company will be subject to U.S. federal income tax at regular corporate rates to the extent that the company distributes less than 100% of its net taxable income (including any net capital gains) and will be subject to a 4% nondeductible excise tax on the amount, if any, by which the company's distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws.</p>

Holders of shares of common stock have no preference, conversion, exchange, sinking fund or redemption rights (other than the right to convert one share of Class B common stock into one share of Class A common stock as described herein), no preemptive

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Participation Interest	Operating Partnership	Common Stock
		rights to subscribe for any securities of the company and generally no appraisal rights. Subject to the provisions of the company's charter regarding the restrictions on ownership and transfer of the company's stock and except as otherwise provided in the company's charter, shares of common stock will have equal dividend, liquidation and other rights.

The participation interests, operating partnership interests and the common stock constitute equity interests. As a participant in your subject LLC, you are entitled to your pro rata share of the cash distributions of your subject LLC. As a limited partner of the operating partnership and as a stockholder of the company, you will be entitled to your pro rata share of any dividends or distributions of the operating partnership or the company, as applicable, which are paid with respect to the operating partnership units or common stock. Distributions and dividends payable with respect to participation interests, operating partnership units or common stock depend on the performance of your subject LLC, the operating partnership and the company, respectively.

**Additional Equity/Potential Dilution**

Participation Interest	Operating Partnership	Common Stock
Neither the operating agreements nor the participating agreements of the subject LLCs address whether the subject LLCs or the agents for each applicable participating group is authorized to issue additional equity securities. It would be necessary to amend the applicable operating agreement or participating agreement to issue additional membership interests or participation interests, which would require the consent set forth in Amendments above.	The operating partnership is authorized to issue operating partnership units and other partnership interests (including partnership interests of different series or classes that may be senior to the operating partnership units) as determined by the company, in its sole discretion, including in connection with acquisitions of properties. The operating partnership may issue operating partnership units and other partnership interests to the company, as long as such interests are issued in connection with a comparable issuance of common stock or other equity interests of the company and proceeds in connection with the issuance of such common stock are contributed to the operating partnership.	The company's charter provides that it may issue up to 400,000,000 shares of Class A common stock and up to 50,000,000 shares of Class B common stock.  At the discretion of the board of directors, the company may issue additional equity securities, including shares of common stock, and may classify or reclassify unissued shares into one or more classes or series of common stock or preferred stock with certain terms or preferences set by the board of directors. The issuance of additional equity securities by the company will result in the dilution of your percentage ownership interest in the company. See Description of Capital Stock Power to Reclassify the Company's Unissued Shares of Stock and Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock.

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The issuance of additional equity securities by the subject LLCs was not contemplated by the operating agreements of the subject LLCs, although the agents may have the authority to authorize the subject LLCs to issue additional equity securities without the consent of the participants in their participating group. The operating partnership is authorized to issue additional partnership interests that may dilute your percentage ownership interests and/or may be senior to the operating partnership units. As a stockholder, your percentage ownership interest will be diluted if the company issues additional common stock (or securities convertible into common stock). Furthermore, the company may issue preferred stock with priorities or preferences with respect to dividends and liquidation proceeds.

**Liability of Investors**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>Common Stock</b>
Since the subject LLCs are limited liability companies, the agents are not personally liable for the debts and obligations of such limited liability company, subject to certain limitations under New York law. The participants are only participants in these membership interests, and, as such, are not personally liable for the debts and obligations of the limited liability company.	Under the operating partnership agreement and the Delaware Act, the liability of limited partners for the operating partnership's debts and obligations is generally limited to the amount of their investment in the operating partnership, together with their interest in undistributed income, if any.	Under the MGCL, you will not be personally liable for the debts or obligations of the company.

As a holder of a participation interest, your liability for the debts and obligations of your subject LLC is limited to the amount of your investment. In the operating partnership, a limited partner's liability is limited to the amount of his investment. As a stockholder, you generally would have no liability for the debts and obligations of the company.

**Table of Contents****Voting Rights**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>Common Stock</b>
<p>Generally, with some exceptions, you and the other participants in the subject LLCs have voting rights only on the sale, mortgage (including the modification or any existing mortgage) or transfer of the interest in the property, renewal or modification of the existing lease on the property held by your subject LLC or entry into a new lease affecting the same, as well as, with respect to participants in Empire State Building Associates L.L.C. only, conversion of the entity into a REIT, corporation, or any other form of ownership or disposal of any of the subject LLC's assets.</p> <p>The participation interests in each subject LLC are divided into separate participating groups. Each participating group has an agent who holds its interests in the subject LLC for the benefit of the participants in the participating group. Participants holding 100% of the outstanding participation interests in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. must consent for the agent of their participating group to consent to an action requiring the consent of the participants. Participants holding greater than 75% of the outstanding participation interests in at least eight out of ten of the participating groups of 250 West 57th St. Associates L.L.C. must consent for the agent of their participating group to consent to an action requiring the consent of the participants. If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve an action, the agent of any such</p>	<p>The operating partnership agreement will provide limited partners with certain limited voting rights. Subject to certain exceptions, the company may not, without the consent of a majority of the limited partners, (i) conduct any business other than as permitted under the partnership agreement or (ii) engage in a merger, consolidation or other combination or sale of substantially all of the its assets. Additionally, most amendments to the operating partnership agreement must be approved by the limited partners holding a majority of all outstanding limited partnership units and certain amendments must be approved by each partner adversely affected thereby. For a more detailed description of the actions requiring consent of the limited partners under the operating partnership agreement, see Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership. Limited partners will also be entitled to any voting rights that may be required by law. Subject to these voting rights, the general partner of the operating partnership will have full, exclusive and complete responsibility and discretion in the management and control of the operating partnership, including the ability to cause the operating partnership to enter into certain major transactions, such as a merger of the operating partnership or a sale of substantially all of the assets of the operating partnership.</p>	<p>The company is managed under the direction of a board of directors, as elected by the stockholders at the annual meeting of stockholders of the company. The MGCL and the company's charter generally require that major actions, including most amendments to the charter, be approved by the affirmative vote of stockholders entitled to cast a majority of all the votes entitled to be cast on the matter. Each outstanding share of Class A common stock entitles the holder thereof to one vote, and each outstanding share of Class B common stock entitles the holder thereof to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and, except as provided with respect to any other class or series of stock, the holders of shares of Class A common stock and Class B common stock will vote together as a single class and will possess the exclusive voting power. There is no cumulative voting in the election of the company's directors and the directors are elected by a plurality of all the votes cast in the election.</p> <p>Among other things, the company is subject to the business combination, control share acquisition and unsolicited takeover provisions of the MGCL. Pursuant to the statute, the company's board of directors has by resolution exempted business combinations between the company and any other person, provided that such business combination is first approved by the company's board of directors</p>



**Table of Contents****Liquidity**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>The Company</b>
<p>The participation interest that represents your ownership interest in your subject LLC is a relatively illiquid investment with a limited resale market. The trading volume of the participation interest in the resale market is limited and the supervisor believes that prices at which your subject LLC's participation interests trade are less than the fair market value. See the table under Background of and Reasons for the Consolidation Comparison of Alternatives. In addition, transfer restrictions in the participating agreements 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. could affect the development of a more active or substantial market for the participation interest. Neither you nor any other participant, individually, can require your subject LLC to dispose of its assets or redeem your or any other participants' interests in your subject LLC.</p>	<p>Limited partners may expect to obtain liquidity, not from the sale of assets, but through exchange of their operating partnership units and the sale of common stock. Each participant in the subject LLCs that receives operating partnership units may also achieve liquidity through sale of operating partnership units, which are expected to be listed on the NYSE, which they may sell, upon expiration of the lock-up period as described in this prospectus/consent solicitation, although the market for operating partnership units may be more limited than the market for the Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing. After the first anniversary of becoming a limited partner, each limited partner will have the right, subject to the terms and conditions set forth in the operating partnership agreement, to require the operating partnership to redeem all or a portion of the operating partnership units held by the limited partner in exchange for a cash amount equal to the number</p>	<p>Shares of common stock of the company will be freely transferable upon registration under the Securities Act subject to the restrictions on transfer and ownership set forth in the charter. See Description of Capital Stock Restrictions on Ownership and Transfer. The company intends to apply to have the Class A common stock listed on the NYSE, and the company expects a public market for the shares of common stock to develop. The breadth and strength of this market will depend upon, among other things, the amount of shares of the company's Class A common stock that are outstanding, the company's financial results and prospects, and the general interest in the company's dividend yield and growth potential compared to that of other debt and equity securities. See The Consolidation Consideration.</p> <p>One share of Class B common stock may be converted into one share of Class A common stock at any time, and one share of Class B common stock is subject to automatic conversion into one share of Class A common stock upon a direct or indirect transfer of such share of Class B common stock held by the holder of Class B common stock (or a permitted transferee thereof) to a person other than a permitted transferee. Shares of Class B common stock are also subject to automatic conversion upon certain direct or indirect transfers of operating partnership units held by the holder of such Class B common stock at a ratio of one share of Class B common stock for every</p>

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Participation Interest	Operating Partnership	The Company
	<p>of tendered operating partnership units multiplied by the price of a share of common stock, unless the terms of such operating partnership units or a separate agreement entered into between the operating partnership and the limited partner provide that the limited partner is not entitled to a right of redemption. On or before the close of business on the fifth business day after the operating partnership receives a notice of redemption, the company may, in its sole and absolute discretion, but subject to</p>	<p>49 operating partnership units transferred to a person other than a permitted transferee. A permitted transferee with respect to a person is defined in the company's charter as a family member, affiliate or controlled entity of such person.</p>
	<p>the restrictions on the ownership of common stock that will be imposed under the charter and the transfer restrictions and other limitations thereof, elect to acquire some or all of the tendered operating partnership units from the tendering limited partner in exchange for common stock, based on an exchange ratio of one share of common stock for each operating partnership unit (subject to anti dilution adjustments provided in the operating partnership agreement). It is the company's current intention to exercise this right in connection with any exchange of operating partnership units.</p>	

Your participation interest has a limited resale market. If you vote **FOR** the consolidation and your subject LLC participates in the consolidation, you will receive operating partnership units, unless you elect to receive shares of Class A common stock or, to a limited extent, Class B common stock. You may elect to receive one share of Class B common stock instead of one operating partnership unit for every 50 operating partnership units you would otherwise receive in the consolidation. Each share of Class B common stock has 50 votes on all matters on which stockholders are entitled to vote and the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. The operating partnership units you receive will be redeemable, at your option, for cash or, at the company's option, exchangeable for shares of Class A common stock beginning 12 months after the completion of the IPO. The Class A common stock you receive will be freely transferable, subject to the restrictions of the applicable U.S. federal and state securities laws and after expiration of the lock-up period as described in this prospectus/consent solicitation and subject to the restrictions on transfer and ownership set forth in the charter. The company intends to apply to have the Class A common stock listed on the NYSE. As a stockholder of the company, you will have the opportunity to achieve liquidity by trading the Class A common stock in the public market. Participants may also achieve liquidity through sale of Class A common stock issued in exchange for operating partnership units and Class B common stock, subject to

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such restrictions. If you receive operating partnership units in exchange for your participation interests, you may also achieve liquidity through the sale of such operating partnership units, which also are expected to be listed on the NYSE, which they may sell, subject to restrictions described above, although the market for operating partnership units may be more limited than the market for Class A common stock. In addition, each participant in the subject LLCs that receives operating partnership units may, immediately following the consolidation and the IPO, sell up to 4.0% of the operating partnership units he or she receives with respect to each subject LLC (assuming all of the participants in each subject LLC elect to receive operating partnership units, the enterprise value equals the aggregate exchange value and the IPO price equals \$10 per share), which treats all three subject LLCs equally after having determined for Empire State Building Associates L.L.C. the minimum amount required by the NYSE for it to meet the requirements as the primary listing.



**Table of Contents****Expected Distributions and Payments**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>Common Stock</b>
<p>Your subject LLC makes small regular monthly distributions and annual distributions out of overage rent, to the extent paid under the operating lease, in each case to the extent of available cash flow (equal to 50% of the operating lessee's net operating profit, which, in the case of Empire State Building Company L.L.C. is net operating profits above \$1,000,000, and which, in the case of 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C., is net operating profits in excess of \$1,053,800 per annum and \$752,000 per annum, respectively, of primary additional rent, which is paid by the operating lessee to the applicable subject LLC to the extent of net profits). Such amounts represent approximately 2.78%, 4.35% and 10.59%, respectively, of the original purchase price of each of the Empire State Building, One Grand Central Place and 250 West 57th Street. Amounts distributed to you are derived from your pro rata share of cash flow from operations or cash flow from sales or financings. See Selected Financial Information of the subject LLCs for a presentation of the cash distributions to you and the other limited partners of the subject LLCs over the five most recent calendar years.</p>	<p>The operating partnership agreement will provide that limited partners are entitled to receive quarterly distributions of available cash (i) first, with respect to any operating partnership units that are entitled to any preference in accordance with the rights of such interest (and within such class, pro rata in accordance with their respective percentage interests) and (ii) second, with respect to any operating partnership units that are not entitled to any preference in distribution, in accordance with the rights of such class of operating partnership units (and within such class, pro rata in accordance with their respective percentage interests). Limited partners in the operating partnership will receive their pro rata share of all distributions paid by the company to its stockholders.</p>	<p>The company intends to make quarterly dividend and distribution payments to the holders of its common stock. The amount of such dividends and distributions and the timing thereof will be established by the board of directors, taking into account the capital requirements of the company, funds from operations, yields available to stockholders, the market price for the common stock, the requirements for qualification as a REIT and the MGCL. In order for the company to qualify as a REIT, the company must distribute to its stockholders, on an annual basis, at least 90% of its REIT taxable income, determined without the deduction for dividends paid and excluding capital gains. Unlike the subject LLCs, the company is not required to distribute net proceeds from the sale or refinancing of properties.</p>
<p>Your subject LLC makes small regular monthly distributions and annual distributions out of overage rent as described above, in each case to the extent of available cash flow. The operating partnership and the company will pay dividends if, as and when authorized by the board of directors in its discretion out of funds legally available therefor and declared by the company. If you become a limited partner or stockholder, you will receive your pro rata share of the dividends and distributions made with respect to operating partnership units or shares of common stock, as applicable. The amount of such dividends and distributions will depend upon such factors as revenues, operating expenses, debt service payments, capital expenditures, and funds set aside for renovations or improvements of properties.</p>		

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**Taxation of Taxable Investors**

**Participation Interest**

Each subject LLC is intended to be treated as a partnership for U.S. federal income tax purposes. As a partnership, a subject LLC is generally not subject to U.S. federal income tax at the entity-level. Participants must report their allocable share of partnership income, gain, loss and deduction on their tax return, regardless of whether cash distributions are made by the relevant subject LLC.

A participant's allocable share of income or loss from the subject LLC generally constitutes passive activity income or loss, subject to the passive activity rules of Section 469 of the Code.

Generally, by March 30 of each year, you receive an annual Schedule K-1 with respect to information about your subject LLC for inclusion on your U.S. federal income tax returns. Generally, by April 15 of each year, a participant that also holds interests in one or more private entities receives an annual Schedule K-1 with respect to information about such private entities for inclusion on such participant's U.S. federal income tax returns.

You must file state income tax returns and incur state income tax in the state in which your subject LLC owns its interest in a property.

**Operating Partnership**

The operating partnership will be a limited partnership intended to be treated as a partnership for U.S. federal income tax purposes. As a partnership, the operating partnership is generally not subject to U.S. federal income tax at the entity-level. Limited partners must report their allocable share of partnership income, gain, loss and deduction on their tax return, regardless of whether cash distributions are made by the operating partnership.

A limited partner's allocable share of income or loss from the operating partnership generally constitutes passive activity income or loss, subject to the passive activity rules of Section 469 of the Code.

The company, as the general partner of the operating partnership, will use reasonable efforts to furnish, within 90 days of the close of each taxable year, an annual Schedule K-1 with respect to information about the operating partnership for inclusion on your U.S. federal income tax returns.

You must file state income tax returns and incur state income tax in each state in which the operating partnership owns properties.

**Common Stock**

As a general matter, the company will be able, as a REIT, to deduct dividends paid to stockholders, generally eliminating entity-level taxation to the extent that such income is distributed. In order to qualify as a REIT, the company must distribute, on an annual basis, at least 90% of its REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gain). As a general matter, the company will be subject to U.S. federal corporate income tax on its income and capital gain for a given taxable year that it does not distribute. The company may also be subject to certain other taxes (including U.S. federal excise taxes and state and local taxes).

Distributions by the company to the stockholders will generally be treated as taxable dividends to the extent of the company's accumulated earnings and profits. The company will mail stockholders an annual 1099-DIV in January.

Distributions received by a stockholder and gain or loss from a disposition of common stock by a stockholder generally does not constitute income from a passive activity for purposes of Section 469 of the Code, and therefore cannot be offset by passive losses.

As a general matter, stockholders will not be obligated to file state income tax returns in states in which the company has properties solely as a result of owning common stock of the company.

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Each subject LLC is intended to be treated as a partnership for U.S. federal income tax purposes. As a partnership, a subject LLC is generally not subject to U.S. federal income tax at the entity-level. Participants must report their allocable share of partnership income, gain, loss and deduction on their tax return, regardless of whether cash distributions are made by the relevant subject LLC. A participant's allocable share of income or loss from the subject LLC generally constitutes passive activity income or loss, subject to the passive activity rules of Section 469 of the Code. The operating partnership is also intended to be a pass-through entity whose income and loss generally is not taxed at the entity level, but instead is allocated to its limited partners. Limited partners will be taxed on income or loss allocated to them whether or not cash distributions are made to them. By contrast, as a general matter, the company will be able, as a REIT, to deduct dividends paid to stockholders for U.S. federal income tax purposes, generally eliminating entity level taxation to the extent that such income is distributed. In order to qualify as a REIT, as a REIT, the company must distribute, on an annual basis, at least 90% of its REIT taxable income (determined without regard to the deduction for dividends paid, and excluding net capital gain). As a general matter, the company will be subject to U.S. federal corporate income tax on its income and capital gain for a given taxable year that it does not distribute. Distributions by the company to the stockholders will generally be treated as taxable dividends to the extent of the company's accumulated earnings and profits. Distributions received by a stockholder and gain or loss from a disposition of common stock by a stockholder generally does not constitute income from a passive activity for purposes of Section 469 of the Code, and therefore cannot be offset by passive losses. Corporate stockholders will not be able to claim the dividends received deduction for dividends distributed by the company.

**Taxation of Tax-Exempt Investors**

<b>Participation Interest</b>	<b>Operating Partnership</b>	<b>Common Stock</b>
Allocations of income from a subject LLC and gain from the disposition of an interest in a subject LLC are characterized as unrelated business taxable income, or UBTI, to a tax-exempt investor, only to the extent that the tax-exempt investor incurs acquisition indebtedness with respect to its interest in the public partnership or to the extent the subject LLC incurs acquisition indebtedness.	Allocations of income from the operating partnership and gain from the disposition of an interest in a the operating partnership are characterized as unrelated business taxable income, or UBTI, to a tax-exempt investor, only to the extent that the tax-exempt investor incurs acquisition indebtedness with respect to its interest in the operating partnership or to the extent the operating partnership incurs acquisition indebtedness.	Dividends received from the company and gain from a disposition of common stock will generally not constitute UBTI except to the extent the tax-exempt investor finances the common stock with acquisition indebtedness, or, in the case of certain tax-exempt investors, unless the company is a pension-held REIT. See U.S. Federal Income Tax Considerations Taxation of Stockholders Taxation of Tax-Exempt U.S. Stockholders.

A tax-exempt entity is treated as owning and carrying on the business activity conducted by a partnership in which such entity owns an interest. Income received from a subject LLC or the operating partnership must not constitute UBTI for the tax-exempt investor to avoid U.S. federal income tax on such income. Income from the subject LLC or the operating partnership does not constitute UBTI except to the extent the subject LLC or the operating partnership incurs acquisition indebtedness or the tax-exempt investor incurs acquisition indebtedness with respect to its interest in the subject LLC or the operating partnership. In general, income attributable to the common stock is not UBTI.

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**Compensation and Fees**

Under each subject LLC's operating agreement or pursuant to the consent of the participants, the management companies and the Malkin Holdings group receive distributions, reimbursements, fees and sales proceeds. The following chart details the nature of the supervisor's compensation for each subject LLC and compares it to the operating partnership and the company.

	<b>250 West 57th St. Associates L.L.C.</b>	<b>Empire State Building Associates L.L.C.</b>	<b>60 East 42nd St. Associates L.L.C.</b>	<b>Operating Partnership</b>	<b>The Company</b>
<b>Interest in Cash Flow, and Partnership Management Fee</b>	Basic supervisory fee was equal to \$40,000 per annum prior to July 1, 2010 and was increased to equal to \$102,000 per year after July 1, 2010, plus an annual adjustment for inflation after July 1, 2010.	Basic supervisory fee was equal to \$100,000 per annum prior to July 1, 2010 and was increased to \$725,000 per year after July 1, 2010, plus an annual adjustment for inflation after July 1, 2010.	Basic supervisory fee was equal to \$24,000 per annum prior to July 1, 2010 and was increased to \$180,000 per year after July 1, 2010, plus an annual adjustment for inflation.	All payments described under The Company will be made by the operating partnership.	The company, through the operating partnership, will pay all management expenses. Such management expenses will reduce the funds available for distribution by the company. The officers and directors of the company will receive compensation for their services as described herein under Management. The company will not otherwise pay any management fees, other than property management fees paid to third party property manager.
	Supervisory fee for special services, such as legal and accounting services, payable at hourly rates.	Supervisory fee for special services, such as legal and accounting services, payable at hourly rates.	Supervisory fee for special services, such as legal and accounting services, payable at hourly rates.		
	Distributions of cash flow of 10% of all cash distributions (other than from mortgage, sale or condemnation proceeds) in excess of 15% on the remaining cash investment in any one year.	Distributions of (i) 6% of any distributions of overage rent received under the operating sublease; (ii) 6% of 50% of savings from mortgage elimination; and (iii) 6% of 50% of scheduled reductions in ground rent in 1992 and 2013 except to participants who approved the	Distributions of cash flow of 10% of all cash distributions in excess of 14% on the remaining cash investment in any one year.		As an internally-advised REIT, the company will not otherwise pay a portion of net cash flow or allocations to management,
	The Malkin Holdings group also receives distributions on account of		The Malkin Holdings group also receives distributions on account of interests owned by them on the		

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	<b>250 West 57th St. Associates L.L.C.</b>	<b>Empire State Building Associates L.L.C.</b>	<b>60 East 42nd St. Associates L.L.C.</b>	<b>Operating Partnership</b>	<b>The Company</b>
	interests owned by them on the same basis as other participants.	voluntary compensation plan for the management companies.	same basis as other participants.		except for distribution pro rata in accordance with ownership of the company's common stock and operating partnership units.
		The Malkin Holdings group also receives distributions on account of interests owned by them on the same basis as other participants.			
<b>Reimbursements</b>	Disbursements and regular accounting fees related to the supervisor's maintenance of the books and records of 250 West 57th St. Associates L.L.C. and supervision of the operation of the 250 West 57th St. Associates L.L.C. operating agreement are paid by 250 West 57th St. Associates L.L.C.	Disbursements and regular accounting fees related to the supervisor's maintenance of the books and records of Empire State Building Associates L.L.C. and supervision of the operation of the Empire State Building Associates L.L.C. operating agreement are paid by Empire State Building Associates L.L.C.	Disbursements and regular accounting fees related to the management companies maintenance of the books and records of 60 East 42nd St. Associates L.L.C. and supervision of the operation of the 60 East 42nd St. Associates L.L.C. operating agreement are paid by 60 East 42nd St. Associates L.L.C.	All payments described under The Company will be made by the operating partnership.	The company, through the operating partnership, will pay all management expenses. Such management expenses will reduce the funds available for distribution by the company.
	In addition to the basic supervisory fee and overrides, the supervisor receives payments for time charges for services not included in the	In addition to the basic supervisory fee and overrides, the supervisor receives payments for time charges for services not	In addition to the basic supervisory fee and overrides, the supervisor receives payments for time charges for services not included in the		

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	<b>250 West 57th St. Associates L.L.C.</b>	<b>Empire State Building Associates L.L.C.</b>	<b>60 East 42nd St. Associates L.L.C.</b>	<b>Operating Partnership</b>	<b>The Company</b>
	supervisory fee, that include administrative fees for tax information (k-1) preparation, fees for investing funds, internal disbursements (i.e. copies, fax), third party disbursements (postage and delivery, supplies, filing fees) and third party billings advanced by the supervisor.	included in the supervisory fee, that include administrative fees for tax information (k-1) preparation, fees for investing funds, internal disbursements (i.e. copies, fax), third party disbursements (postage and delivery, supplies, filing fees) and third party billings advanced by the supervisor.	supervisory fee, that include administrative fees for tax information (k-1) preparation, fees for investing funds, internal disbursements (i.e. copies, fax), third party disbursements (postage and delivery, supplies, filing fees) and third party billings advanced by the supervisor.		
<b>Property Management Fees</b>	None.	None.	None.	None.	None.
<b>Real Estate Disposition Fees</b>	None.	None.	None.	None.	None.
<b>Distribution of Net Sales Proceeds</b>	Under the voluntary capital transaction override program, approximately 78.32% of participants approved paying a portion of their distributions to the supervisor as follows: if cumulative net proceeds received by a participant from all capital transactions (including a partial or full sale, mortgage, pledge or	Under the voluntary capital transaction override program, approximately 94% of participants approved paying a portion of their distributions to the supervisor as follows: if cumulative net sale and refinancing proceeds received by a participant exceed the participants original cash investment, then	None.	Distributions will be made pro rata in accordance with ownership of the company s common stock and operating partnership units.	Distributions will be made pro rata in accordance with ownership of the company s common stock and operating partnership units.

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<b>250 West 57th St. Associates L.L.C.</b>	<b>Empire State Building Associates L.L.C.</b>	<b>60 East 42nd St. Associates L.L.C.</b>	<b>Operating Partnership</b>	<b>The Company</b>
assignment of the property or substantially all the interests in 250 West 57th St. Associates L.L.C.) exceed two times the original cash investment, then 10% of the excess shall be paid to the supervisor.	10% of the excess shall be paid to the supervisor.			

See also the section entitled "Distributions and Compensation Paid to the Supervisor and its Affiliates Compensation, Reimbursement and Distributions to the Supervisor and its Affiliates" in the supplement for your subject LLC.

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**VOTING PROCEDURES FOR THE CONSOLIDATION PROPOSAL AND THE THIRD-PARTY PORTFOLIO PROPOSAL**

**Distribution of Solicitation Materials**

This prospectus/consent solicitation, together with the accompanying supplement, transmittal letter and consent form constitute the solicitation materials being distributed to you and the other participants to obtain their votes **FOR** or **AGAINST** your subject LLC's participation in the consolidation and the third-party portfolio proposal.

Participants are being asked to vote on both the proposed consolidation and the third-party portfolio proposal. The participants holding the required percentage of the outstanding participation interests of your subject LLC must approve each proposal in order for such proposal to be approved by your subject LLC. If the consolidation is approved by your subject LLC and the consolidation is consummated, your subject LLC will consolidate with the company in the manner described in this prospectus/consent solicitation and in the supplement relating to your subject LLC.

The consent form seeks your consent to the consolidation and the third-party portfolio proposal. If you own participation interests in more than one subject LLC, for each subject LLC in which you own a participation interest you will receive a transmittal letter, supplement and consent form. Regardless of how many subject LLCs in which you own a participation interest, you will receive a single copy of the prospectus/consent solicitation. Participants in each subject LLC will vote separately on whether or not to approve the consolidation and the third-party portfolio proposal. Accordingly, if you hold interests in more than one subject LLC, you must complete one consent form for each subject LLC in which you are a participant.

If you vote **FOR** the consolidation and your subject LLC participates in the consolidation, you effectively will be voting against the alternatives to the consolidation, other than a third-party portfolio transaction, unless you vote **AGAINST** the third-party portfolio proposal. These alternatives include continuation of your subject LLC and a sale of your subject LLC's interest in the property and distribution of the net proceeds to participants. If the consolidation is not approved your subject LLC and a third-party portfolio transaction is not consummated, the supervisor expects the operations of your subject LLC to continue.

You should complete and return the consent form before the expiration of the solicitation period, which is the time period during which participants may vote **FOR** or **AGAINST** the consolidation and the third-party portfolio proposal. The solicitation period will commence upon delivery of the solicitation materials to you which is on or about \_\_\_\_\_.

Your consent form must be received by MacKenzie Partners, Inc. by 5:00 p.m. Eastern time on \_\_\_\_\_, 2013 unless the supervisor extends the solicitation period as set forth below. You may submit your consent form by mail, to 105 Madison Avenue, NY, NY 10016, or by facsimile, to (212) 929-0308. You can change your vote by mail or facsimile at any time before the later of the date that consents from participants holding the required percentage interest in your participating group are received and the 60<sup>th</sup> day after the date of this prospectus/consent solicitation. Either MacKenzie Partners, Inc. or the supervisor will send you a written acknowledgment by facsimile or, if requested by you, mail, that your vote has been changed promptly following receipt of a changed vote. If you are a participant in Empire State Building Associates L.L.C. or 60 East 42<sup>nd</sup> St. Associates L.L.C., and you do not consent to the consolidation or the third-party portfolio proposal, as applicable, you may also change your vote to consent to the consolidation or the third-party portfolio proposal, as applicable, within ten days' notice that the required supermajority consent from the participants in your participating group has been received, as described below. You may call MacKenzie Partners, Inc. during the solicitation period to check whether or not the required supermajority consent from the participants in your participating group has been received, or to confirm that your changed vote has been received.

The supervisor may extend on one or more occasions the solicitation period for one or more proposals for one or more subject LLCs or one or more participating groups in a subject LLC without extending for other \_\_\_\_\_.



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proposals, subject LLCs or participating groups whether or not it has received approval for the consolidation proposal or the third-party portfolio proposal on expiration of the consent solicitation period.

If you do not submit a consent form, you will be counted as having voted **AGAINST** both the consolidation and the third-party portfolio proposal. If you submit a properly signed consent form but do not indicate how you wish to vote on the consolidation, the third-party portfolio proposal, or both, you will be counted as having voted **FOR** such proposal(s).

The consent form also includes a section which permits participants to elect whether to receive operating partnership units or Class A common stock or, to a limited extent, as described above, Class B common stock. See Consideration.

### **Required Vote for the Consolidation Proposal and the Third-Party Portfolio**

#### **Proposal and Other Conditions**

The participation interests in each subject LLC are divided into separate participating groups. Participants are being asked to vote on both the proposed consolidation and the third-party portfolio proposal. For each of these proposals to be approved, participants holding 100% of the outstanding participation interests in Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C. must approve that proposal, and participants holding greater than 75% of the outstanding participation interests in eight out of the ten participating groups of 250 West 57<sup>th</sup> St. Associates L.L.C. must approve that proposal. Approval by the required vote of the participants in 250 West 57<sup>th</sup> St. Associates L.L.C. in favor of a proposal will be binding on you if you are a participant in 250 West 57<sup>th</sup> St. Associates L.L.C. even if you vote **AGAINST** such proposal. Each of these proposals is subject to a separate consent and approval of each proposal is not dependent on approval of any other proposal.

If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42<sup>nd</sup> St. Associates L.L.C. approve the consolidation or third-party portfolio proposal, as shown in the tabulation of consents by MacKenzie Partners, Inc., pursuant to a buyout right included in the participating agreements since inception of the subject LLCs, the agent of any such participating group will purchase on behalf of the subject LLC and for the buyout amount, the participation interest of any participant in such participating group that voted **AGAINST** the consolidation or the third-party portfolio proposal or **ABSTAINED**, as applicable, or that did not submit a consent form, unless such participant consents to the proposal within ten days after receiving written notice that the required supermajority consent has been received from the participants in such participant's participating group.

The buyout amount for your interest would be substantially lower than the exchange value. The buyout amount, which is equal to the original cost less capital repaid, but not less than \$100, is currently \$100 for the interest held by a participant in Empire State Building Associates L.L.C. and \$100 for the interest held by a participant in 60 East 42<sup>nd</sup> St. Associates L.L.C., as compared to the exchange value of \$323,800 (or \$358,670 if you are not subject to the voluntary capital override) per \$10,000 original investment for Empire State Building Associates L.L.C. and \$402,660 per \$10,000 original investment for 60 East 42<sup>nd</sup> St. Associates L.L.C., respectively. The cash required to buyout non-consenting participants will not be paid from the proceeds from the IPO.

These buyouts are contractual provisions expressly stated for 60 East 42<sup>nd</sup> St. Associates L.L.C. and Empire State Building Associates L.L.C. at the inception of these subject LLCs in their original participating agreements dated December 1, 1954 and July 11, 1961, respectively, under which the participation interests were issued. The buyout provisions were included as a practical way to permit the entity to act, while still following the then-current tax advice provided to the supervisor of the subject LLCs that participants needed to act unanimously to

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permit these subject LLCs to obtain partnership status and to avoid entity level tax as a corporation for U.S. federal income tax purposes. For this purpose, the buyout provisions allow the purchase, at original cost less capital returned (but not less than \$100), of the interest held by a non-consenting participant after ten-days' notice of receipt of approval by a required supermajority (90% for 60 East 42<sup>nd</sup> St. Associates L.L.C. and 80% for Empire State Building Associates L.L.C., in each case by participation group), if such non-consenting participant still does not change its vote to approval. Accordingly, the buyout provisions preserved the unanimity which was considered necessary for these tax reasons, but prevented a small minority, which might be acting for its own purposes and not in the interests of other participants, from preventing action by the large supermajority. The agents are authorized under the participating agreements to buy out participation interests of participants that do not consent to the action if the required supermajority consent is received, as described below. Since such buyout is necessary to provide for the required unanimous consent and is not conditioned on the transaction closing, the agent has the right to buy out participation interests from participants who do not vote **FOR** either proposal, if the required supermajority consent is received by the applicable participating group with respect to such proposal, within ten days after written notice, as described below, whether or not either or neither proposal is consummated.

Prior to an agent purchasing the participation interests of non-consenting participants, an agent will give such participants not less than ten days notice after the required supermajority consent is received by the applicable participating group in a subject LLC to permit them to consent to the consolidation or the third-party portfolio proposal, as applicable, in which case their participation interests will not be purchased. The agents will purchase the participation interests for the benefit of the subject LLC and not for their own account and will be reimbursed by the subject LLC for the cost of such buyout. If the agent purchases these participation interests, the requirement for consent of participants holding 100% of the participation interests of that participating group will be satisfied.

Unanimity on the consents is required pursuant to the organizational documents of Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C. with respect to both the consolidation and the third-party portfolio proposal for the consent of a participating group; therefore, a participant in either of such subject LLCs who does not vote in favor of either the consolidation or third-party portfolio transaction proposal (and does not change his or her vote after notice that the requisite supermajority consent has been obtained) will be subject to this buyout if the tabulation of consents by MacKenzie Partners, Inc. shows that the required consent in his or her participating group has been received, but in no event before the expiration of the 60-day solicitation period as the same may be extended, regardless of whether either or neither transaction is consummated or the required consent of other participating groups is received. A vote for the proposed transaction by the participants constitutes an authorization for the agents of each participating group to approve, in their capacity as members of the applicable subject LLC, the consolidation or the third-party portfolio transaction, as applicable. The agents, under the operating agreements of the subject LLCs, have discretion, subject to their fiduciary duties, to determine whether to approve the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. Additionally, the supervisor, acting on behalf of the subject LLCs and the agents, similarly has discretion, subject to its fiduciary duties, as to whether to abandon or to postpone the transaction, even after supermajority approval has been obtained for either or both transactions and dissenting participants have been bought out. The agents and supervisor could determine not to proceed with the consolidation and the IPO due to market conditions or other reasons.

The agents, who are the members of your subject LLCs, recently created a new class of membership interests, which were divided into series. A separate series was deemed to be distributed to holders of each participating group in your subject LLC. Each new series provides protections similar to those under a shareholder rights plan for a corporation. Each new series corresponds to a participating group for which a member acts as agent. The new series will not affect voting rights, except with respect to any person or group that acquires 6%, 3%, or 7.5% or more, respectively, of the outstanding participation interests in the applicable participating group (an "acquiring person") for each of Empire State Building Associates L.L.C., 60 East 42<sup>nd</sup> St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. If there is an acquiring person, the effect of the new series is that approval of the consolidation proposal and the third-party portfolio proposal by a participating

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group will require approval by the requisite consent of the participants in the participating group, as holders of the new series of membership interests, excluding the acquiring person.

The Wien group collectively owns participation interests in the subject LLCs and has advised that it will vote in favor of the consolidation and the third-party portfolio proposal. These participation interests represent the following percentage ownership for each subject LLC: 8.195% for Empire State Building Associates L.L.C., 8.447% for 60 East 42nd St. Associates L.L.C. and 8.912% for 250 West 57th St. Associates L.L.C. In addition to the participation interests, members of the Wien group hold override interests, which are non-voting. See Background of and Reasons for the Consolidation Background of the Subject LLCs.

*Outstanding Participation interests.* Holders of participation interests for all subject LLCs as of September 30, 2012 are entitled to vote. As of September 30, 2012, the following numbers of participation interests were held by the number of participants indicated below:

	Number of Participants	Number of Participation Interests Held <sup>(1)</sup>
<b>Empire State Building Associates L.L.C.</b>		
Participating Group 1.	1,156	1,100
Participating Group 2	1,146	1,100
Participating Group 3	1,152	1,100

(1) Based on an original investment per participation interest of \$10,000.

	Number of Participants	Number of Participation Interests Held <sup>(1)</sup>
<b>60 East 42nd St. Associates L.L.C.</b>		
Participating Group 1.	129	100
Participating Group 2	148	100
Participating Group 3	131	100
Participating Group 4.	132	100
Participating Group 5	144	100
Participating Group 6	137	100
Participating Group 7.	144	100

(1) Based on an original investment per participation interest of \$10,000.

	Number of Participants	Number of Participation Interests Held <sup>(1)</sup>
<b>250 West 57th St. Associates L.L.C.</b>		
Participating Group 1.	46	72
Participating Group 2	73	72
Participating Group 3	89	72
Participating Group 4.	63	72
Participating Group 5	84	72
Participating Group 6	73	72
Participating Group 7.	66	72
Participating Group 8.	58	72
Participating Group 9	87	72
Participating Group 10	69	72

(1) Based on an original investment per participation interest of \$5,000.

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You are entitled to one vote for each participation interest held. Accordingly, the number of participation interests entitled to vote with respect to the consolidation and the third-party portfolio proposal is equivalent to the number of participation interests held on the last day of the consent solicitation period.

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*Investor Lists.* Under Rule 14a-7 of the Securities Exchange Act of 1934, as amended, which is referred to herein as the Exchange Act, your subject LLC is required, upon your written request, to provide to you:

a statement of the approximate number of participants in your subject LLC and

the estimated cost of mailing a proxy statement, form of proxy or other similar communication to your subject LLC's participants. In addition, you have the right, at your option, either:

to have your subject LLC mail (at your expense) copies of any consent statement, consent form or other soliciting materials to be furnished by you to the other participants in your subject LLC or

to have the subject LLC deliver to you, within five business days of the receipt of the request, a reasonably current list of the names, addresses and participation interests held by the participants in your subject LLC.

The right to receive the list of participants is subject to your payment of the cost of mailing and duplication at a rate of \$0.20 fee per page.

*Tabulation of Votes.* An automated system administered by MacKenzie Partners, Inc. will tabulate the votes and consents. Abstentions will be tabulated with respect to the consolidation and other matters to be voted on. Abstentions will have the effect of a vote **AGAINST** the consolidation, as will the failure to return a consent form and broker nonvotes. Broker nonvotes are where a broker submits a consent but does not have authority to vote a participant's participation interest the consolidation proposal.

*Revocability of Consent.* You may withdraw or revoke your consent form, or change your vote, at any time before the later of the date that consents from participants holding the required percentage interest in your participating group are received by your subject LLC and the 60<sup>th</sup> day after the date of this prospectus/consent solicitation. In addition, a participant in Empire State Building Associates L.L.C. or 60 East 42<sup>nd</sup> St. Associates L.L.C. that does not consent to (or who abstains from or does not vote with respect to) the consolidation or the third-party portfolio proposal, as applicable, may also change his or her vote to consent to the consolidation or the third-party portfolio proposal, as applicable, within ten days after the notice that the required supermajority consent from the participants in such participant's participating group has been received with respect to such proposal is sent, as described below. A participant can change his or her vote by sending to MacKenzie Partners, Inc., the vote tabulator, (i) a written statement that he or she would like to change his or her vote, or (ii) a new consent form, in either case, by mail, to 105 Madison Avenue, NY, NY 10016, or by facsimile, to (212) 929-0308. Either MacKenzie Partners, Inc. or the supervisor will send to the participant a written acknowledgment by facsimile or, if requested by the participant, mail, that the participant's vote has been changed promptly following receipt of a changed vote. If a participant in Empire State Building Associates L.L.C. or 60 East 42<sup>nd</sup> St. Associates L.L.C. votes **AGAINST** the consolidation or the third-party portfolio proposal, **ABSTAINS** or does not submit a consent form and the supermajority consent of his or her participating group is received, the agent for his or her participating group will provide the written buyout notice, stating that such supermajority consent from the participants in such participant's participating group has been received to the participant following the expiration of the solicitation period, as the same may be extended. Participants may call MacKenzie Partners, Inc. during the solicitation period to check whether or not the required supermajority consent from the participants in such participant's participating group has been received, or to confirm that such participant's changed vote has been received.

The consents of each of the agents, who are the members of the subject LLCs, will become effective when they execute consents following receipt of the required consents of the participants. The consents of the participants in each participating group will become effective when the consents of the required number of participants are received, but not earlier than the 60<sup>th</sup> day after the beginning of the solicitation period, and, in the case of Empire State Building Associates L.L.C. and 60 East 42<sup>nd</sup> St. Associates L.L.C., the procedure for buyouts is completed.

*Solicitation of Consents.* The solicitation of consents for the consolidation and the third-party portfolio transaction is being made by the supervisor and will be done principally by mail. Each of the subject LLCs, the

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supervisor, as well as Peter L. Malkin, Anthony E. Malkin and Thomas N. Keltner, Jr., as agents, and other affiliates of the supervisor may be deemed to be participants in the solicitation of consents in connection with the consolidation. The company will bear the entire cost of soliciting consents and of preparing, assembling, printing and mailing this prospectus/consent solicitation and any additional information furnished to participants in the subject LLCs if the consolidation is consummated. Original solicitation of consents by mail will be supplemented by telephone, telegram or personal solicitation by officers, members, managers or other regular employees of the supervisor and by MacKenzie Partners, Inc. The company has engaged MacKenzie Partners, Inc. to furnish solicitation services on its behalf. No additional compensation will be paid to officers, members, managers or other regular employees for such services, but MacKenzie Partners, Inc. will be paid a customary fee for its services, plus reimbursement of out-of-pocket expenses. The fee is not based on whether participants vote in favor of the proposals. The anticipated costs of soliciting consents, which include the estimated fee to be paid to MacKenzie Partners, Inc., are included as part of consolidation expenses as described under Exchange Value and Allocation of Operating Partnership Units and Common Stock Derivation of Costs of the Consolidation and IPO and the portion of these expenses allocable to the solicitation are estimated by the supervisor to be \$18,600,000, \$4,900,000 and \$2,600,000 respectively, for each of Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C.

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**CONSENT PROCEDURES FOR VOLUNTARY PRO RATA REIMBURSEMENT PROPOSAL**

The consent form being distributed to you and the other participants also seeks to obtain your consent to the payment of a voluntary pro rata reimbursement to the supervisor and Peter L. Malkin for costs advanced, plus interest, for the former property manager and leasing agent legal proceedings.

If you return a signed consent form but fail to indicate whether you consent to or disapprove of the voluntary pro rata reimbursement program, you will be deemed not to have consented to the voluntary pro rata reimbursement program. If you fail to return a signed consent form by the end of the solicitation period, you will be deemed not to have consented to the voluntary pro rata reimbursement program.

The solicitation of consents for the voluntary pro rata reimbursement program will continue until the later of: (i) \_\_\_\_\_ or (ii) such later date as the supervisor from time to time may select. At its discretion, the supervisor may elect to extend the solicitation period for such proposal. Any consent form will be effective provided that such consent form has been properly completed and signed if received by MacKenzie Partners, Inc., which the company hired to tabulate your votes, prior to 5:00 p.m. Eastern time, on \_\_\_\_\_, 2013, unless the supervisor extends the solicitation period for such proposal, and, in such case, the last day of such extended solicitation period.

*Tabulation of Consents.* An automated system administered by MacKenzie Partners, Inc. will tabulate the votes and consents. Abstentions will have the effect of a **DOES NOT CONSENT** vote with respect to the voluntary pro rata reimbursement program, as will the failure to return a consent form and broker nonvotes. Broker nonvotes are where a broker submits a consent but does not have authority to vote a participant's participation interest in the proposal.

*Revocability of Consent.* You may withdraw or revoke your consent form at any time before the 60<sup>th</sup> day after the date of this prospectus/consent solicitation. A participant can withdraw or revoke his or her consent form by sending to MacKenzie Partners, Inc., the vote tabulator, (i) a written statement that he or she would like to withdraw or revoke his or her consent form, or (ii) a new consent form, in either case, by mail, to 105 Madison Avenue, NY, NY 10016, or by facsimile, to (212) 929-0308. Either MacKenzie Partners, Inc. or the supervisor will send to the participant a written acknowledgment by facsimile or, if requested by the participant, mail, that the participant's consent has been changed promptly following receipt of a changed consent. You may call MacKenzie Partners, Inc. during the solicitation period to confirm that your changed vote has been received.

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**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF EMPIRE STATE REALTY TRUST**

*This prospectus/consent solicitation contains forward-looking statements that involve risks and uncertainties. The company's actual results could differ materially from those anticipated in forward-looking statements for many reasons, including the risks described in Risk Factors and elsewhere in this prospectus/consent solicitation. The company's results of operations and financial condition, as reflected in the accompanying combined financial statements and related notes, are subject to the company's management's evaluation and interpretation of business conditions, changing capital market conditions and other factors that could affect the ongoing viability of the company's tenants. You should read the following discussion with Forward-Looking Statements and the combined financial statements and related notes included elsewhere in this prospectus/consent solicitation.*

*Upon completion of the IPO and the consolidation, the historical operations of the predecessor and the properties that have been operated through the predecessor, will be combined with the company, the operating partnership and/or their subsidiaries. The following discussion and analysis should be read in conjunction with Selected Financial and Other Data, the company's combined financial statements as of December 31, 2011 and 2010 and for the years ended December 31, 2011, 2010 and 2009 and the notes related thereto, the company's unaudited combined financial statements as of September 30, 2012 and for the nine months ended September 30, 2012 and 2011, and the company's unaudited condensed consolidated pro forma financial information appearing elsewhere in this prospectus/consent solicitation. Since the company's formation, the company has not had any corporate activity. Accordingly, the company believes a discussion of its results of operations would not be meaningful, and this Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust therefore only discusses the historical operations of the predecessor and the unaudited pro forma results of the company.*

*Unless the context otherwise requires or indicates, references in this section to the company, refer to (i) the company and its consolidated subsidiaries (including the operating partnership) after giving effect to the consolidation and the IPO and (ii) the predecessor before giving effect to the consolidation and the IPO.*

**Overview**

The company is a self-administered and self-managed REIT that owns, manages, operates, acquires and repositions office and retail properties in Manhattan and the greater New York metropolitan area. The company was formed to continue and expand the commercial real estate business of the supervisor and its affiliates. The company's primary focus will be to continue to own, manage and operate its current portfolio and to acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

For the periods presented, this Management's Discussion and Analysis of Financial Condition and Results of Operations discusses only the historical financial condition and results of operations of the predecessor which owns controlling interests in 16 properties and non-controlling interests in the following four office properties, which are accounted for under the equity method of accounting: the Empire State Building, 1350 Broadway, 1333 Broadway and 501 Seventh Avenue. The fee ownership interests of the Empire State Building and 501 Seventh Avenue are included in the predecessor's portfolio but the operating lease interests of these two properties are part of the predecessor's equity interest in non-controlled entities. These non-controlled interests will represent a significant part of the company's operations following the consolidation and the IPO (58.1% and 51.7% of the company's pro forma revenues for the nine months ended September 30, 2012, and the year ended December 31, 2011, respectively) when they become consolidated into the company's operations. Therefore, the company does not show historical consolidated financial information for the company's entire portfolio following the consolidation and the IPO. For the periods following the consummation of the consolidation and the IPO, the company's operations will consolidate the operations of the non-controlled entities (as defined below) which will result in a material change in the company's disclosure of the company's financial condition



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and results of operations. The company also presents in this prospectus/consent solicitation pro forma financial information for the company reflecting the company's entire portfolio on a consolidated basis, as of and for the nine months ended September 30, 2012, and for the year ended December 31, 2011.

The company operates an integrated business that currently consists of two operating segments: real estate and construction contracting.

As of September 30, 2012, the company's Manhattan and greater New York metropolitan area office properties were 77.0% leased (or 81.4% giving effect to leases signed but not yet commenced as of that date) and 88.6% leased (or 89.4% giving effect to leases signed but not yet commenced as of that date), respectively, and the company's office properties as a whole were 79.8% leased (or 83.3% giving effect to leases signed but not yet commenced as of that date). The company's ability to increase occupancy and rental revenue at its office properties depends on the successful completion of the company's repositioning program and market conditions. The other component of the company's real estate segment, retail leasing, comprises both standalone retail properties and retail space in the company's Manhattan office properties. The company's retail properties, including retail space in its Manhattan office properties, were 85.6% leased as of September 30, 2012.

Although construction contracting represented approximately 6.6% and 16.1%, respectively, of the company's revenues for the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively, its relative contribution to the company's net income was much less significant than its contribution to the company's revenues.

The Empire State Building is the company's flagship property and accounted for 47.3% and 41.6%, respectively, of the company's total pro forma revenues for the nine months ended September 30, 2012 and the year ended December 31, 2011. The Empire State Building provides the company with a diverse source of revenue through its office and retail leases, observatory operations and broadcasting licenses and related leased space. On a pro forma basis, during the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively, the company generated approximately \$181.6 million and \$213.4 million of revenue from the Empire State Building. During the nine months ended September 30, 2012 and the year ended December 31, 2011, the Empire State Building generated approximately \$68.5 million and \$80.6 million, respectively, of revenue from its observatory operations which represented approximately 17.8% and 15.7%, respectively, of the company's pro forma revenues. The company anticipates that the observatory operations will be a separate accounting segment following the consolidation and the IPO. The components of the Empire State Building revenue from its office lease, retail leases, tenant reimbursements and other income, observatory operations and broadcasting licenses and related leased space represented 27.3%, 4.1%, 13.3%, 40.1% and 9.3% during the nine months ended September 30, 2012, respectively, and 28.7%, 4.8%, 15.6%, 40.5% and 10.4% during the year ended December 31, 2011, respectively, of its historical revenues. During the first nine months of 2012, the Empire State Building also received a real estate tax refund in the amount of \$10.1 million, which was 5.9% of its revenues during the same period.

From 2002 through 2006, the supervisor gradually gained full control of the day-to-day management of the company's Manhattan office properties (with the Helmsley estate holding certain approval rights at some of these properties as a result of its interest in the entities owning the properties). Since then, the supervisor has been undertaking a comprehensive renovation and repositioning strategy of the Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such properties. Since the supervisor assumed full control of the day-to-day management of the company's Manhattan office properties beginning with One Grand Central Place in 2002, and through September 30, 2012, the private entities and the subject LLCs have invested a total of approximately \$342.0 million (excluding tenant improvement costs and leasing commissions) in its Manhattan office properties pursuant to this program. Of the \$342.0 million invested pursuant to this program, \$157.9 million was invested at the Empire State Building. The company currently intends to invest between \$100.0 million and \$130.0 million of additional capital through the end of 2013. The company expects to complete substantially this program by the end of 2013, except with

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respect to the Empire State Building, which is the last Manhattan office property that began its renovation program. In addition, the company currently estimates that between \$85.0 million and \$115.0 million of capital is needed beyond 2013 to complete substantially the renovation program at the Empire State Building, which the company expects to occur by the end of 2016 due to the size and scope of the company's remaining work and their desire to minimize tenant disruptions at the property. Of the total \$190.0 million to \$250.0 million of estimated additional capital the company expects to be incurred through 2016, the company currently estimates that between \$185.0 million and \$225.0 million is attributable to the Empire State Building. 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 intends to fund these capital improvements through a combination of operating cash flow and borrowings. These improvements, within the company's renovation and repositioning program, include restored, renovated and upgraded or new lobbies; elevator modernization; renovated public areas and bathrooms; refurbished or new windows; upgrade and standardization of retail storefront and signage; façade restorations; modernization of building-wide systems; and enhanced tenant amenities. These improvements are designed to improve the overall value and attractiveness of the company's properties and have contributed significantly to the company's tenant repositioning efforts, which seek to increase its occupancy; raise the company's rental rates; increase rentable square feet; increase the company's aggregate rental revenue; lengthen its average lease term; increase its average lease size; and improve its tenant credit quality. The company has also aggregated smaller spaces in order to offer larger blocks of office space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. This strategy has shown attractive results to date, as illustrated by the case studies which are described in *The Company Business and Properties Renovation and Repositioning Case Studies*, and the company believes has the potential to improve the company's operating margins and cash flows in the future. The company believes it will continue to enhance its tenant base and improve rents as the company's pre-renovation leases continue to expire and be re-leased.

Historically, the supervisor has operated the business to preserve capital through conservative debt levels. Upon completion of the consolidation and the IPO, the company will have no debt maturing in the remainder of 2012 and approximately \$56.9 million of debt maturing in 2013 and the company expects to have pro forma total debt outstanding of approximately \$1.11 billion, with a weighted average interest rate of 5.20% and a weighted average maturity of 3.4 years and 78.2% of which is fixed-rate indebtedness. Additionally, the company expects to have approximately \$304.1 million of available borrowing capacity under its loans on a pro forma basis (excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). The secured revolving and term credit facility will be used to repay and retire the existing \$500.0 million term loan currently secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012. The company's overall leverage will depend on the company's mix of investments and the cost of leverage. The company's charter does not restrict the amount of leverage that the company may use.

The company is a Maryland corporation that was formed on July 29, 2011. The company conducts all of its business activities through its operating partnership, of which the company is the sole general partner. The company intends to elect and to qualify as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013.

### ***The Predecessor***

The predecessor is not a legal entity but rather a combination of (i) controlling interests in (a) 16 office and retail properties, (b) one development parcel, and (c) certain management companies, which are owned by certain entities that the sponsors (Anthony E. Malkin and Peter L. Malkin) own interests in and control, which are collectively referred to as the controlled entities, and (ii) non-controlling interests in four office properties (which include two of the 16 properties set forth in (i) above), held through entities which are collectively referred to as the non-controlled entities, and are presented as uncombined entities in the company's combined financial statements. Specifically, the term *the predecessor* means (i) Malkin Holdings LLC, a New York limited liability company that acts as the supervisor of, and performs various asset management services and routine administration with respect to, certain of the existing entities (as described below), which the company refers to

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as the supervisor; (ii) the limited liability companies or limited partnerships that currently (a) own, directly or indirectly and either through a fee interest or a long-term leasehold in the underlying land, and/or (b) operate, directly or indirectly and through a fee interest, an operating lease, an operating sublease or an operating sub-sublease, the 18 office and retail properties (which include non-controlling interests in four office properties for which Malkin Holdings LLC acts as the supervisor but that are not consolidated into the predecessor for accounting purposes) and entitled land that will support the development of an approximately 380,000 rentable square foot office building and garage that the company will own after the consolidation, which the company refers to as the existing entities; (iii) Malkin Properties, L.L.C., a New York limited liability company that serves as the manager and leasing agent for certain of the existing entities in Manhattan, which the company refers to as Malkin Properties; (iv) Malkin Properties of New York, L.L.C., a New York limited liability company that serves as the manager and leasing agent for certain of the existing entities in Westchester County, New York, which the company refers to as Malkin Properties NY; (v) Malkin Properties of Connecticut, Inc., a Connecticut corporation that serves as the manager and leasing agent for certain of the existing entities in the State of Connecticut, which the company refers to as Malkin Properties CT; and (vi) Malkin Construction Corp., a Connecticut corporation that is a general contractor and provides services to certain of the existing entities and third parties (including certain tenants at the properties in the company's portfolio), which the company refers to as Malkin Construction. The term the predecessor's management companies refers to the supervisor, Malkin Properties, Malkin Properties NY, Malkin Properties CT and Malkin Construction, collectively. The predecessor accounts for its investment in the non-controlled entities under the equity method of accounting.

### ***Controlled Entities***

As of September 30, 2012, properties that the sponsors own interests in and control, and whose operations are 100% consolidated into the financial statements of the predecessor include:

#### ***Office:***

One Grand Central Place, New York, New York

250 West 57th Street, New York, New York

1359 Broadway, New York, New York

First Stamford Place, Stamford, Connecticut

Metro Center, Stamford, Connecticut

383 Main Avenue, Norwalk, Connecticut

500 Mamaroneck Avenue, Harrison, New York

10 Bank Street, White Plains, New York

Fee ownership position of 350 Fifth Avenue (Empire State Building), New York, New York

Fee ownership position of 501 Seventh Avenue, New York, New York

#### ***Retail:***

10 Union Square, New York, New York

1010 Third Avenue, New York, New York

77 West 55th Street, New York, New York

1542 Third Avenue, New York, New York

69-97 Main Street, Westport, Connecticut

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103-107 Main Street, Westport, Connecticut

### *Land Parcels:*

The company owns entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of the company's office properties that will support the development of an approximately 380,000 rentable square foot office building and garage.

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The acquisition of interests in the company's predecessor will be recorded at historical cost at the time of the consolidation.

### ***Non-Controlled Entities***

As of September 30, 2012, properties in which the sponsors own and control non-controlling interests and whose operations are reflected in the predecessor's combined financial statements as an equity interest include:

#### *Office:*

Master operating lease position of 350 Fifth Avenue, New York, New York Empire State Building Company L.L.C.

Master operating lease position of 1350 Broadway, New York, New York 1350 Broadway Associates L.L.C. (long term ground lease)

1333 Broadway, New York, New York 1333 Broadway Associates L.L.C.

Master operating lease position of 501 Seventh Avenue, New York, New York 501 Seventh Avenue Associates L.L.C.

All of the company's business activities will be conducted through its operating partnership. The company will be the sole general partner of the company's operating partnership. Pursuant to the consolidation, the company's operating partnership will (i) acquire interests in the office and retail properties owned by the controlled entities (including the predecessor management companies) and the non-controlled entities and (ii) assume related debt and other specified liabilities of such assets and businesses, in exchange for shares of the company's Class A common stock, Class B common stock, operating partnership units, and/or cash.

### ***Consolidation Transactions***

Prior to or concurrently with the completion of the IPO, the company will engage in the consolidation pursuant to which the company will acquire, through a series of contributions and merger transactions, (i) the 18 properties owned by the controlled and non-controlled entities, (ii) one development parcel in which the predecessor owns a controlling interest and (iii) the business and assets of the predecessor management businesses. In the aggregate, these interests will comprise the company's ownership of its property portfolio. The company will not acquire its predecessor's affiliates' interests in the option properties, the excluded properties or the excluded businesses.

To acquire the properties to be included in the company's portfolio from the current owners the company will issue to the participants and holders of override interests in the private entities shares of the company's Class A common stock, shares of the company's Class B common stock and operating partnership units, and the company will pay cash to participants in the private entities that are non-accredited and accredited investors that are charitable organizations but chose cash consideration. Cash amounts will be provided from the net proceeds of the IPO. These contributions and other transactions will be effected prior to or substantially concurrently with the completion of the IPO.

The company has determined that one of the predecessor entities, Malkin Holdings LLC, is the acquirer for accounting purposes, and therefore the contribution of the assets of, or acquisition by merger of, the controlled entities is considered a transaction between entities under common control since the sponsors control a majority interest in each of the controlled entities comprising the predecessor. As a result, the acquisition of interests in the controlled entities will be recorded at the company's historical cost. The contribution of the assets of, or acquisition by merger of, the non-controlled entities (including the predecessor's non-controlling interest in these entities) will be accounted for as an acquisition under the acquisition method of accounting and recognized as the estimated fair value of acquired assets and assumed liabilities on the date of such contribution or acquisition. The

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fair value of these assets and liabilities has been allocated in accordance with Accounting Standards Codification ( ASC ), Section 805-10, Business Combinations ( ASC 805 ) (formerly known as Statement of Financial Accounting Standards ( SFAS ) No. 141 ( SFAS No. 141 ), which was later replaced by SFAS 141 (R)). The company's methodology for allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. The company estimates the fair value of acquired tangible assets (consisting of land, buildings and improvements), identified intangible lease assets and liabilities (consisting of acquired above-market leases, acquired in-place lease value and acquired below-market leases) and assumed debt.

Based on these estimates, the company allocates the purchase price to the applicable assets and liabilities. The value allocated to in-place lease costs (tenant improvements, leasing commissions and in-place lease costs) is amortized over the related lease term and reflected as depreciation and amortization. The value of assumed above- and below-market leases is amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income. The fair value of the debt assumed is determined using current market interest rates for comparable debt financings.

## **Factors That May Influence Future Results of Operations**

### ***Rental Revenue***

The company derives revenues primarily from rents, rent escalations, expense reimbursements and other income received from tenants under existing leases at each of the company's properties. Escalations and expense reimbursements consist of payments made by tenants to the company under contractual lease obligations to reimburse a portion of the property operating expenses and real estate taxes incurred at each property.

The company believes that the average rental rates for in-place leases at its properties are generally below the current market rates, although individual leases at particular properties presently may be leased above, at or below the current market rates within its particular submarket.

The amount of net rental income and reimbursements that the company receives depends principally on the company's ability to lease currently available space, re-lease space to new tenants upon the scheduled or unscheduled termination of leases or renew expiring leases and to maintain or increase the company's rental rates. Factors that could affect the company's rental incomes include, but are not limited to: local, regional or national economic conditions; an oversupply of, or a reduction in demand for, office or retail space; changes in market rental rates; the company's ability to provide adequate services and maintenance at its properties; and fluctuations in interest rates could adversely affect the company's rental income in future periods. Future economic or regional downturns affecting the company's submarkets or downturns in the company's tenants' industries could impair the company's ability to lease vacant space and renew or re-lease space as well as the ability of the company's tenants to fulfill their lease commitments, and could adversely affect the company's ability to maintain or increase the occupancy at its properties.

### ***Tenant Credit Risk***

The economic condition of the company's tenants may also deteriorate, which could negatively impact their ability to fulfill their lease commitments and in turn adversely affect the company's ability to maintain or increase the occupancy level and/or rental rates of the company's properties. The recent economic downturn has resulted in many companies shifting to a more cautionary mode with respect to leasing. Many potential tenants are looking to consolidate, reduce overhead and preserve operating capital and many are also deferring strategic decisions, including entering into new, long-term leases at properties.

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### ***Leasing***

The company has seen an improvement since 2008 in leasing activity. For example, during 2011, on a pro forma basis, the company signed 1,534,064 rentable square feet of new leases and lease renewals, an increase of 28.1% over 2010 and 33.9% over 2009. An additional 768,125 rentable square feet of leases and lease renewals, on a pro forma basis, was signed in the nine months ended September 30, 2012.

Due to the relatively small number of leases that are signed in any particular quarter, one or more larger leases may have a disproportionately positive or negative impact on average base rent, tenant improvement and leasing commission costs for that period. As a result, the company believes it is more appropriate when analyzing trends in average base rent and tenant improvement and leasing commission costs to review activity over multiple quarters or years. Tenant improvement costs include expenditures for general improvements occurring concurrently with, but that are not directly related to, the cost of installing a new tenant. Leasing commission costs are similarly subject to significant fluctuations depending upon the length of leases being signed and the mix of tenants from quarter to quarter.

As of September 30, 2012, the company's Manhattan and greater New York metropolitan area office properties were 77.0% leased (or 81.4% giving effect to leases signed but not yet commenced as of that date) and 88.6% leased (or 89.4% giving effect to leases signed but not yet commenced as of that date), respectively, and the company's office properties as a whole were 79.8% leased (or 83.3% giving effect to leases signed but not yet commenced as of that date). As of September 30, 2012, there was approximately 1.4 million rentable square feet of space in the company's portfolio available to lease (excluding leases signed but not yet commenced) representing 16.5% of the net rentable square footage of the properties in the company's portfolio. In addition, leases representing 3.3% and 5.9% of net rentable square footage of the properties in the company's portfolio will expire in the remainder of 2012 (including month-to-month leases) and in 2013, respectively. These leases are expected to represent approximately 3.8% and 7.9%, respectively, of the company's annualized base rent for such periods. The company's revenues and results of operations can be impacted by expiring leases that are not renewed or re-leased or that are renewed or re-leased at base rental rates equal to above or below the current average base rental rates. Further, the company's revenues and results of operations can also be affected by the costs the company incurs to re-lease available space, including payment of leasing commissions, renovations and build-to-suit remodeling that may not be borne by the tenant.

The company believes that as it completes the renovation and repositioning of its properties the company will, over the long-term, experience increased occupancy levels and rents. Over the short term, as the company renovates and repositions its properties, which includes aggregating smaller spaces to offer large blocks of space, the company may experience lower occupancy levels as a result of having to relocate tenants to alternative space and the strategic expiration of existing leases. The company believes that despite the short-term lower occupancy levels it may experience, the company will continue to experience increased rental revenues as a result of the increased rents which the company expects to obtain in following the renovation and repositioning of its properties.

### ***Market Conditions***

The properties in the company's portfolio are located in Manhattan and the greater New York metropolitan area, which includes Fairfield County, Connecticut and Westchester County, New York. Positive or negative changes in conditions in these markets, such as business hirings or layoffs or downsizing, industry growth or slowdowns, relocations of businesses, increases or decreases in real estate and other taxes, costs of complying with governmental regulations or changed regulation, can impact the company's overall performance.

### ***Taxable REIT Subsidiaries***

Following the consolidation and the IPO, Empire State Realty Observatory TRS, LLC, a New York limited liability company, which is referred to herein as Observatory TRS, and Empire State Realty Holdings TRS, LLC,

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a Delaware limited liability company, which is referred to herein as Holding TRS, will be wholly owned subsidiaries of the operating partnership. The company intends to elect, together with Observatory TRS and Holding TRS, to treat Observatory TRS and Holding TRS as TRSs of the company for U.S. federal income tax purposes. A TRS generally may provide non-customary and other services to the company's tenants and engage in activities that the company may not engage in directly without adversely affecting the company's qualification as a REIT, although a TRS may not operate or manage a lodging facility or provide rights to any brand name under which any lodging facility is operated. See U.S. Federal Income Tax Considerations Taxation of the Company Requirements for Qualification Effect of Subsidiary Entities Taxable REIT Subsidiaries. The company may form additional TRSs in the future, and the operating partnership may contribute some or all of its interests in certain wholly owned subsidiaries or their assets to Observatory TRS and Holding TRS. Any income earned by a TRS of the company will not be included in the company's taxable income for purposes of the 75% or 95% gross income tests, except to the extent such income is distributed to the company as a dividend, in which case such dividend income will qualify under the 95%, but not the 75%, gross income test. See U.S. Federal Income Tax Considerations Requirements for Qualification Gross Income Tests. Because a TRS is subject to entity-level U.S. federal income tax and state and local income tax (where applicable) in the same manner as other taxable corporations, the income earned by a TRS of the company generally will be subject to an additional level of tax as compared to the income earned by the company's other subsidiaries.

The observatory operations at the Empire State Building have historically been part of the financial results of Empire State Building Company L.L.C., one of the non-controlled entities, and therefore, have not been consolidated into the predecessor's financial statements. Instead, they have been a component of the predecessor's equity investment in non-controlled entities. Following the consolidation and the IPO, these operations will be part of the company's consolidated results and the company anticipates it will constitute a separate accounting segment. The revenues from the company's observatory operations will represent a significant portion of the company's operations following the consolidation and the IPO representing 17.8% and 15.7% of the company's pro forma revenues for the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively. For the nine months ended September 30, 2012 and the year ended December 31, 2011, the lease payment from the observatory operations to the Empire State Building Company L.L.C. was \$36.6 million and \$49.8 million, respectively. These operations will be run by Observatory TRS. The company's operating partnership and Observatory TRS are party to a lease which is structured to pay the operating partnership a fixed minimum rent plus variable gross participations in certain operations of the company's observatory. Therefore, the amounts payable under this lease will be dependent upon the following: (i) the number of tourists (domestic and international) that come to New York City and visit the observatory, as well as any related tourism trends; (ii) the prices per admission that can be charged; (iii) seasonal trends affecting the number of visitors to the observatory; (iv) competition, in particular from the planned observation in the new property under construction at One World Trade Center; and (v) weather trends.

***Operating expenses***

The company's operating expenses generally consist of repairs and maintenance, security, utilities, property-related payroll, bad debt expense and prior to the IPO, third-party management fees. Factors that may affect the company's ability to control these operating costs include: increases in insurance premiums, tax rates, the cost of periodic repair, renovation costs and the cost of re-leasing space, the cost of compliance with governmental regulation, including zoning and tax laws, the potential for liability under applicable laws and interest rate levels. Also, as a public company, the company's annual general and administrative expenses will be meaningfully higher compared to historical expenses due to legal, insurance, accounting and other expenses related to corporate governance, SEC reporting, other compliance matters and the costs of operating as a public company. If the company's operating costs increase as a result of any of the foregoing factors, the company's future cash flow and results of operations may be adversely affected.

The expenses of owning and operating a property are not necessarily reduced when circumstances, such as market factors and competition, cause a reduction in income from the property. If revenues drop, the company



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may not be able to reduce the company's expenses accordingly. Costs associated with real estate investments, such as real estate taxes and maintenance generally, will not be materially reduced even if a property is not fully occupied or other circumstances cause the company's revenues to decrease. As a result, if revenues decrease in the future, static operating costs may adversely affect the company's future cash flow and results of operations. If similar economic conditions exist in the future, the company may experience future losses.

### ***Cost of funds and interest rates***

The company expects future changes in interest rates will impact the company's overall performance. Subject to maintaining its qualification as a REIT for U.S. federal income tax purposes, the company may mitigate the risk of interest rate volatility through the use of hedging instruments, such as interest rate swap agreements and interest rate cap agreements. While the company may seek to manage the company's exposure to future changes in rates, portions of the company's overall outstanding debt will likely remain at floating rates. Following the IPO and the consolidation, the company expects to have floating rate mortgage loans on 501 Seventh Avenue (third lien), 250 West 57th Street (third lien), 1350 Broadway (second lien) and the company's secured term loan on the Empire State Building, which collectively represent 21.8% of the company's pro forma indebtedness. The company's floating rate debt may increase to the extent the company uses available borrowing capacity under its loans to fund capital improvements. The company continually evaluates its debt maturities, and, based on the company's management's current assessment, believes it has viable financing and refinancing alternatives that will not materially adversely impact the company's expected financial results. Upon completion of the consolidation and the IPO, the company will have no debt maturities in the remainder of 2012 and maturities in the amount of \$56.9 million in 2013.

### ***Competition***

The leasing of real estate is highly competitive in Manhattan and the greater New York metropolitan market in which the company operates. The company competes with numerous acquirers, developers, owners and operators of commercial real estate, many of which own or may seek to acquire or develop properties similar to the company's in the same markets in which the company's properties are located. The principal means of competition are rent charged, location, services provided and the nature and condition of the facility to be leased. In addition, the company faces competition from other real estate companies including other REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, pension trusts, partnerships, individual investors and others that may have greater financial resources or access to capital than the company does or that are willing to acquire properties in transactions which are more highly leveraged or are less attractive from a financial viewpoint than the company is willing to pursue. In addition, competition from observatory and/or 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 observatory and/or broadcasting operations. Adverse impacts on domestic travel and changes in foreign currency exchange rates may also decrease demand in the future, which could have a material adverse effect on the company's results of operations, financial condition and ability to make distributions to its stockholders. Additionally, completion of the new Vornado Tower currently under construction at 15 Penn Plaza may provide a source of competition for office and retail tenants, due to its close proximity to the Empire State Building. If the company's competitors offer space at rental rates below current market rates, below the rental rates the company currently charges its tenants, in better locations within the company's markets or in higher quality facilities, the company may lose potential tenants and may be pressured to reduce its rental rates below those the company currently charges in order to retain tenants when its tenants' leases expire.

### ***Critical Accounting Policies***

#### ***Basis of Presentation and Principles of Combination***

The accompanying combined financial statements of the predecessor are prepared in accordance with U.S. generally accepted accounting principles, or GAAP, and with the rules and regulations of the SEC. The effect of

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all significant intercompany balances and transactions has been eliminated. The combined financial statements include all the accounts and operations of the predecessor. The real estate entities included in the accompanying combined financial statements have been combined on the basis that, for the periods presented, such entities were under common control, common management and common ownership of the sponsors. Equity interests in the combining entities that are not owned and controlled by the sponsors are shown as investments in uncombined entities. The company will also acquire these interests.

In June 2009, the Financial Accounting Standards Board, or FASB, amended the guidance for determining whether an entity is a variable interest entity, or VIE, and requires the performance of a qualitative rather than a quantitative analysis to determine the primary beneficiary of a VIE. Under this guidance, an entity would be required to consolidate a VIE if it has (i) the power to direct the activities that most significantly impact the entity's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could be significant to the VIE.

The company will assess the accounting treatment for each investment it may have in the future. This assessment will include a review of each entity's organizational agreement to determine which party has what rights and whether those rights are protective or participating. For all VIEs, the company will review such agreements in order to determine which party has the power to direct the activities that most significantly impact the entity's economic performance and benefit. In situations where the company or its partner could approve, among other things, the annual budget, the entity's tax return before filing, and leases that cover more than a nominal amount of space relative to the total rentable space at each property, the company would not consolidate the investment as the company considers these to be substantive participation rights that result in shared power of the activities that would most significantly impact the performance and benefit of such joint venture investment. Such agreements could also contain certain protective rights such as the requirement of partner approval to sell, finance or refinance the investment and the payment of capital expenditures and operating expenditures outside of the approved budget or operating plan.

A non-controlling interest in a consolidated subsidiary is defined as the portion of the equity (net assets) in a subsidiary not attributable, directly or indirectly, to a parent. Non-controlling interests are required to be presented as a separate component of equity in the combined balance sheets and in the combined statements of income by requiring earnings and other comprehensive income to be attributed to controlling and non-controlling interests. As the financial statements of the predecessor have been prepared on a combined basis, there is no non-controlling interest for the periods presented.

## **Accounting Estimates**

The preparation of the combined financial statements in accordance with GAAP requires the company's management to use estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Significant items subject to such estimates and assumptions include allocation of the purchase price of acquired real estate properties among tangible and intangible assets, determination of the useful life of real estate properties and other long-lived assets, valuation and impairment analysis of combined and uncombined commercial real estate properties and other long-lived assets, estimate of percentage of completion on construction contracts, and valuation of the allowance for doubtful accounts. These estimates are prepared using the company's management's best judgment, after considering past, current, and expected events and economic conditions. Actual results could differ from those estimates.

## **Real Estate**

Commercial real estate properties are recorded at cost, less accumulated depreciation and amortization. The recorded cost includes cost of acquisitions, development and construction and tenant allowances and improvements. Expenditures for ordinary repairs and maintenance are charged to operations as incurred.

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Significant replacements and betterments which improve or extend the life of the asset are capitalized. Tenant improvements which improve or extend the life of the asset are capitalized. If a tenant vacates its space prior to the contractual termination of its lease, the unamortized balance of any tenant improvements are written off if they are replaced or have no future value.

Properties are depreciated using the straight-line method over the estimated useful lives of the assets. The estimated useful lives are as follows:

Category	Term
Building (fee ownership)	39 years
Building improvements	Shorter of remaining life of the building or useful life
Building (leasehold interest)	Lesser of 39 years or remaining term of the lease
Furniture and fixtures	Four to seven years
Tenant improvements	Shorter of remaining term of the lease or useful life

For commercial real estate properties acquired after June 30, 2001, the company assesses the fair value of acquired tangible and intangible assets (including land, buildings, tenant improvements, above- and below-market leases, origination costs, acquired in-place leases, other identified intangible assets and assumed liabilities) in accordance with guidance included in ASC 805, and allocates the purchase price to the acquired assets and assumed liabilities, including land at appraised value and buildings as if vacant, based on estimated fair values. The company assesses and considers fair value based on estimated cash flow projections that utilize discount and/or capitalization rates that the company deems appropriate, as well as available market information. Estimates of future cash flows are based on a number of factors, including the historical operating results, known and anticipated trends, and market and economic conditions. The fair value of the tangible assets of an acquired property considers the value of the property as if it were vacant. The company also considers an allocation of purchase price of other acquired intangibles, including acquired in-place leases that may have a customer relationship intangible value, including (but not limited to) the nature and extent of the existing relationship with the tenants, the tenant's credit quality and expectations of lease renewals. Based on the company's acquisitions to date, the company's allocation to customer relationship intangible assets has been immaterial. Real estate properties acquired prior to July 1, 2001 were accounted for under the provisions of Accounting Principles Board (APB) 16 (APB 16), using the purchase method. Under the provisions of APB 16, the company did not allocate any of the purchase prices to acquired leases. APB 16 was superseded by SFAS 141 and later SFAS 141(R).

Acquired in-place lease costs (tenant improvements, leasing commissions and in-place lease costs) are amortized as amortization expense on a straight-line basis over the remaining life of the underlying leases. Acquired assumed above- and below-market leases are amortized on a straight-line basis as an adjustment to rental revenue over the remaining term of the underlying leases, including, for below-market leases, fixed option renewal periods, if any. To date, all such acquired lease intangibles were deemed to be immaterial and have been recorded as part of the cost of the acquired building. For below-market leases with fixed option renewal periods, the company has applied a minimum threshold of a 10% differential between the fixed rate for fixed rate renewals and estimated market rents when evaluating recording a below-market lease intangible.

Results of operations of properties acquired are included in the combined statements of income from the date of acquisition. Effective January 1, 2009, the date the company adopted ASC 805, the company was required to expense all acquisition related costs as incurred. Prior to this date, directly related acquisition costs were treated as part of consideration paid and were capitalized. No properties were acquired during the periods presented, nor did the company incur any acquisition related costs.

Should a tenant terminate its lease, any unamortized acquired in-place lease costs and acquired in-place lease assets and assumed above- and below-market leases associated with that tenant will be written off to amortization expense or rental revenue, as indicated above.

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For properties which the company constructs, the company capitalizes the cost to acquire and develop the property. The costs to be capitalized include pre-construction costs essential to the development of the property, development costs, construction costs, interest costs, real estate taxes, salaries and related costs of personnel directly involved and other costs incurred during the period of development.

Construction in progress is stated at cost, which includes the cost of construction, other direct costs and overhead costs attributable to the construction. Interest is capitalized if deemed material. No provision for depreciation is made on construction in progress until such time as the relevant assets are completed and put into use.

The company ceases capitalization on the portions of a construction property substantially completed and occupied or held available for occupancy, and capitalizes only those costs associated with the portions under construction.

As a part of and concurrently with the consolidation and the IPO, the company will distribute its interest in certain residential buildings and land located in Stamford, Connecticut, which is zoned for residential use and held for future development. These interests have a historical cost of \$15.3 million as of September 30, 2012 and such residential buildings and land will be distributed to certain of the owners of the predecessor and therefore will not be acquired by the company.

A property to be disposed of is reported at the lower of its carrying amount or its estimated fair value, less its cost to sell. Once an asset is held for sale, depreciation expense is no longer recorded and the historic results are reclassified as discontinued operations.

## **Investments in Non-Controlled Entities**

The company accounts for its investments under the equity method of accounting where the company does not have control but has the ability to exercise significant influence. Under this method, the company's investments are recorded at cost, and the investment accounts are adjusted for the company's share of the entities' income or loss and for distributions and contributions. Equity income (loss) from non-controlled entities is allocated based on the portion of the company's ownership interest that is controlled by the sponsor in each entity. The agreements may designate different percentage allocations among investors for profits and losses; however, the company's recognition of the entity's income or loss generally follows the entity's distribution priorities, which may change upon the achievement of certain investment return thresholds.

To the extent that the company contributed assets to an entity, the company's investment in the entity is recorded at cost basis in the assets that were contributed to the entity. Upon contributing assets to an entity, the company makes a judgment as to whether the economic substance of the transaction is a sale. If so, gain or loss is recognized on the portion of the asset to which the other partners in the entity obtain an interest.

To the extent that the carrying amount of these investments on the company's combined balance sheets is different than the basis reflected at the entity level, the basis difference would be amortized over the life of the related asset and included in the company's share of equity in net income of the entity.

On a periodic basis, the company assesses whether there are any indicators that the carrying value of the company's investments in entities may be impaired on an other than temporary basis. An investment is impaired only if the company's management's estimate of the fair value of the investment is less than the carrying value of the investment on an other than temporary basis. To the extent impairment has occurred, the loss shall be measured as the excess of the carrying value of the investment over the fair value of the investment. None of the company's investments in non-controlled entities are other than temporarily impaired.

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The company recognizes incentive income in the form of overage fees from certain uncombined entities (which include non-controlled and other properties not included in the predecessor's combined balance sheets) as income to the extent it has been earned and not subject to a clawback feature.

If the company's share of distributions and net losses exceeds its investments for certain of the equity method investments and if the company remains liable for future obligations of the entity or may otherwise be committed to provide future additional financial support, the investment balances would be presented in the accompanying combined balance sheets as liabilities. The effects of material intercompany transactions with these equity method investments are eliminated. None of the entity debt is recourse to the company.

The revenues and expenses of the company's non-controlled entities, including those generated by the company's observatory operations and the company's broadcasting operations, are not included in the historical operating results of the predecessor. These revenues and expenses are included in the non-controlled entities' financial statements and the company recognizes its share of net income, including those generated by the company's observatory operations and the company's broadcasting operations, through its share of equity in earnings. Upon completion of the consolidation and the IPO, the operations of the company's non-controlled entities, including the company's observatory operations and the company's broadcasting operations, will be combined with the company, the operating partnership and/or the company's subsidiaries. The revenue and expense recognition accounting policies in the financial statements of the company's non-controlled entities are substantially the same as those of the historical predecessor. For the company's observatory operations, revenues consist of admission fees to visit the company's observatory and are recognized as income when admission tickets are redeemed. The company also recognizes rental revenue attributable to a retail tenant which operates the concession space in the observatory. In addition, the company also participates in revenues generated by concession operators from photography, audio and other products and services which are recognized as income at the time of sale. For the company's broadcasting operations, revenues consist of broadcasting licenses and related leased space. The company recognizes broadcasting licenses on a straight-line basis over the terms of the license agreements. The company also receives rental revenue from certain broadcasting tenants which the company recognizes on a straight-line basis over the terms of the separate lease agreements. Expenses for the company's observatory and broadcasting operations are recognized as incurred.

## **Impairment of Long-Lived Assets**

Long-lived assets, such as commercial real estate properties and purchased intangible assets subject to amortization, are reviewed for impairment on a property by property basis whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. On a periodic basis, the company assesses whether there are any indicators that the value of the company's real estate properties may be impaired or that its carrying value may not be recoverable. If circumstances require that a long-lived asset be tested for possible impairment, the company first compares undiscounted cash flows expected to be generated by an asset to the carrying value of the asset. If the carrying value of the long-lived asset is not recoverable on an undiscounted cash flow basis, impairment is recognized to the extent that the carrying value exceeds its fair value. The company does not believe that the value of any of its properties and intangible assets were impaired during the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010 and 2009.

## **Income Taxes**

The company intends to elect and to qualify as a REIT for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2013. So long as the company qualifies as a REIT, the company generally will not be subject to U.S. federal income tax on the company's net income that it distributes currently to its stockholders. To maintain the company's qualification as a REIT, the company is required under the Code to distribute at least 90% of its REIT taxable income (without regard to the deduction for dividends paid and excluding net capital gains) to the company's stockholders and meet certain other requirements. If the company fails to qualify as a REIT in any taxable year, the company will be subject to U.S. federal income tax on its

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taxable income at regular corporate rates. Even if the company qualifies for taxation as a REIT, the company may also be subject to certain state, local and franchise taxes. Under certain circumstances, U.S. federal income and excise taxes may be due on the company's undistributed taxable income.

During the periods presented, the entities included in the combined financial statements are treated as partnerships or S corporations for U.S. federal and state income tax purposes and, accordingly, are not subject to entity-level tax. Rather, each entity's taxable income or loss is allocated to its owners. Therefore, no provision or liability for U.S. federal or state income taxes has been included in the accompanying combined financial statements.

Two of the limited liability companies in the combined group have non-real estate income that is subject to New York City unincorporated business tax (NYCUBT). In 2011, one of these entities generated a loss for NYCUBT purposes while the other entity generated income. In 2009 and 2010, both entities generated losses for NYCUBT purposes. It is estimated that it is more likely than not that those losses will not provide future benefit.

No provision or liability for U.S. federal, state, or local income taxes has been included in these combined financial statements, as current year taxable income as referred to above is fully offset by a NYCUBT net operating loss carry forward from previous years.

The company accounts for uncertain tax positions in accordance with ASC 740, Income Taxes. ASC No. 740-10-65 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC No. 740-10-65, the company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position should be measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement. ASC No. 740-10-65 also provides guidance on de-recognition, classification, interest and penalties on income taxes and accounting in interim periods and requires increased disclosures. As of September 30, 2012 and December 31, 2011 and 2010, the company does not have a liability for uncertain tax positions. Potential interest and penalties associated with such uncertain tax positions are recorded as a component of the income tax provision. As of September 30, 2012, the tax years ended December 31, 2008 through December 31, 2011 remain open for an audit by the IRS. The company has not received a notice of audit from the IRS for any of the open tax years.

## **Segment Reporting**

The company's management has determined that the predecessor operates in two reportable segments: a real estate segment and a construction contracting segment. The real estate segment includes all activities related to the ownership, management, operation, acquisition, repositioning and disposition of the company's real estate assets, including properties which are accounted for by the equity method. The construction segment includes all activities related to providing construction services to tenants and to other entities within and outside the company. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and different marketing strategies. The company accounts for intersegment sales and transfers as if the sales or transfers were to third parties, that is, at current market prices. Although the company's observatory operations are currently not presented as a segment in the predecessor's historical financial statements since the predecessor has a non-controlling interest in such observatory operations, the company anticipates that the operations of the company's observatory will encompass a reportable segment upon completion of the consolidation and the IPO. The company accounts for intersegment sales and transfers as if the sales or transfers were to third parties, that is, at current market prices.

## **Goodwill**

Certain of the properties the company will acquire in the consolidation are owned in two-tier structures with one entity owning a fee or master leasehold interest in the property and the other entity owning an operating or

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sub leasehold interest. This structure was implemented at inception to achieve flow through tax treatment. The operating lessee controls the operations of the property with the operating lease structured in a manner that shares net operating results, including capital expenditures and debt service, between these two entities. Two of the operating lessees, Empire State Building Company L.L.C. and 501 Seventh Avenue Associates L.L.C., are non-controlled entities and only the predecessor's non-controlling interest in the operations of these two entities are part of the predecessor's historical operations. In the remainder of these two-tier structures, the operations of both the owner and the operating lessee are part of the historical predecessor and are consolidated into the predecessor's historical financial statements.

The interests in the predecessor will be recorded at historical cost at the time of the consolidation. Using the aggregate exchange values, as of June 30, 2012, on a pro forma basis, the carrying value of the company's assets is substantially below their fair value. The acquisition of the controlling interests in the non-controlled entities, including the two operating lessees, will be accounted for as an acquisition under the acquisition method of accounting and the company will recognize the estimated fair value of the assets and liabilities acquired at the time of the consummation of the consolidation. When the company acquires the controlling interest in the assets of these two non-controlled operating lessees, the operating lease will be cancelled as the operations of the properties will be consolidated into the company's operations. The purchase price will be allocated to any identified tangible or intangible assets the company is acquiring from these two entities. Since the non-controlled operating lessees have no interest in the land or base building, the excess of the purchase price over any identified tangible and intangible assets for Empire State Building Company L.L.C. and 501 Seventh Avenue Associates L.L.C. will be recognized as goodwill on its balance sheet.

Using the aggregate exchange values for the acquisition of these two non-controlled operating leaseholds, the company expects to record approximately \$872.1 million of goodwill. Approximately \$256.0 million of the expected goodwill represents the fair value of the observatory operations of the Empire State Building after adjustment for an estimated market rent that the observatory would incur to the property owner, and approximately \$616.1 million of the expected goodwill represents the remainder of the excess of the purchase price over identified tangible and intangible assets, of which approximately \$593.5 million is attributable to Empire State Building Company L.L.C. and approximately \$22.5 million is attributable to 501 Seventh Avenue Associates, L.L.C. Goodwill is not amortized and, therefore, will not affect the company's future cash flows but may affect its income statement, if impaired. Based upon the aggregate exchange values as of June 30, 2012, the fair value of the assets of the company subsequently would have to decrease by over 68.2%, or \$2.85 billion for a determination that the goodwill may be impaired.

The company will review goodwill annually for impairment and whenever events or changes in circumstances indicate the carrying value of goodwill may be impaired. Goodwill impairment evaluation requires the company to perform a two-step impairment test. In the first step, the company will compare the fair value of each reporting unit to its carrying value. If the fair value of the reporting unit exceeds the carrying value of the net assets assigned to that unit, goodwill is not impaired. If the carrying value of the net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then the second step of the impairment test is performed in order to determine the implied fair value of the reporting unit's goodwill. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then the company will record an impairment write-off equal to the difference. After completion of the consolidation, the company may assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. This assessment can consider relevant events and circumstances such as macro economic conditions, industry and market considerations, overall report general financial performance and other relevant entity-specific events.

Determining the fair value of a reporting unit is judgmental in nature and involves the use of significant estimates and assumptions. These estimates and assumptions include revenue growth rates and operating margins used to calculate projected future cash flows, discount rates and future economic and market conditions. The company's estimates are based upon assumptions believed to be reasonable, but which are inherently uncertain

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and unpredictable. These valuations require the use of management's assumptions, which would not reflect unanticipated events and circumstances that may occur.

The aggregate exchange value was determined by the independent valuer for the purpose of allocating equity interests in the 18 office and retail assets, one development parcel and the management companies that are being contributed to the company pursuant to the consolidation. The independent valuer's appraisal was prepared for the purpose of determining these allocations and not for the purpose of establishing the absolute enterprise value of the company. The independent valuer's appraisal may be materially different from the market determination of the enterprise value of the company in the IPO.

## **Cash and Cash Equivalents**

Cash and cash equivalents consist of cash on hand, demand deposits with financial institutions and short-term liquid investments with original maturities of three months or less when purchased. The majority of the company's cash and cash equivalents are held at major commercial banks which may at times exceed the Federal Deposit Insurance Corporation limit. To date, the company has not experienced any losses on its invested cash.

## **Restricted Cash**

Restricted cash consists of amounts held by lenders and/or escrow agents to provide for future real estate tax expenditures and insurance expenditures, tenant vacancy related costs, debt service obligations and amounts held for tenants in accordance with lease agreements such as security deposits, as well as amounts held by the company's third-party property managers.

## **Revenue Recognition**

### ***Rental Revenue***

Rental revenue includes base rents that each tenant pays in accordance with the terms of its respective lease and is reported on a straight-line basis over the non-cancellable term of the lease which includes the effects of rent steps and rent abatements under the leases. The company commences rental revenue recognition when the tenant takes possession of the leased space or controls the physical use of the leased space and the leased space is substantially ready for its intended use. In addition, many of the company's leases contain fixed percentage increases over the base rent to cover escalations. The company accounts for all of its leases as operating leases. Deferred rent receivables, including free rental periods and leasing arrangements allowing for increased base rent payments are accounted for in a manner that provides an even amount of fixed lease revenues over the respective non-cancellable lease terms. Differences between rental income recognized and amounts due under the respective lease agreements are recognized as an increase or decrease to deferred rents receivable.

The timing of rental revenue recognition is impacted by the ownership of tenant improvements and allowances. When the company is the owner of the tenant improvements, revenue recognition commences after both the improvements are completed and the tenant takes possession or control of the space. In contrast, if the company determines that the tenant allowances it is funding are lease incentives, then the company commences revenue recognition when possession or control of the space is turned over to the tenant. Tenant improvement ownership is determined based on various factors including, but not limited to, whether the lease stipulates how and on what a tenant improvement allowance may be spent, whether the tenant or landlord retains legal title to the improvements at the end of the lease term, whether the tenant improvements are unique to the tenant or general-purpose in nature, and whether the tenant improvements are expected to have any residual value at the end of the lease.

In addition to base rent, the company's tenants also generally will pay their pro rata share of increases in real estate taxes and operating expenses for the building over a base year. In some leases, in lieu of paying additional rent based upon increases in building operating expenses, the tenant will pay additional rent based upon increases in the wage rate paid to porters over the porters' wage rate in effect during a base year or increases in the Consumer Price Index over the index value in effect during a base year.



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The company will recognize rental revenue of acquired in-place above- and below-market leases at their fair values over the terms of the respective leases, including, for below-market leases, fixed option renewal periods, if any.

Lease cancellation fees are recognized when the fees are determinable, tenant vacancy has occurred, collectability is reasonably assured, the company has no continuing obligation to provide services to such former tenants and the payment is not subject to any conditions that must be met or waived. Such fees are included in other income and fees in the company's combined statements of income.

Upon completion of the consolidation and the IPO, the operations of the company's non-controlled entities, including the company's observatory operations and the company's broadcasting operations, will be combined with the company, the company's operating partnership and/or the company's subsidiaries. For the company's observatory operations, revenues consist of admission fees to visit the company's observatory and the company will recognize them as income when admission tickets are redeemed. For the company's broadcasting operations, revenues consist of broadcasting licenses and related leased space. The company recognizes broadcasting licenses on a straight-line basis over the terms of the license agreements. The company also receives rental revenue from certain broadcasting tenants which the company recognizes on a straight-line basis over the terms of the separate lease agreements.

The company also earns concession revenues from photography, gifts and other products and services related to the company's observatory operations which are recognized at the time of sale.

### ***Gains on Sale of Real Estate***

The company records a gain on sale of real estate when title is conveyed to the buyer and the company has no substantial economic involvement with the property. If the sales criteria for the full accrual method are not met, the company defers some or all of the gain recognition and accounts for the continued operations of the property by applying the finance, leasing, profit sharing, deposit, installment or cost recovery methods, as appropriate, until the sales criteria are met.

Gains from sales of depreciated properties are included in discontinued operations and the net proceeds from the sale of these properties are classified in the investing activities section of the combined statements of cash flows. During the periods presented, the company does not sell any properties.

### ***Third-Party Management, Leasing and Other Fees***

The company earns revenue arising from contractual agreements with affiliated entities of the sponsors that are not presented as controlled entities. This revenue is recognized as the related services are performed under the respective agreements in place.

### ***Construction Revenue***

Revenues from construction contracts are recognized under the percentage of completion method. Under this method, progress towards completion is recognized according to the ratio of incurred costs to estimated total costs. This method is used because management considers the cost-to-cost method the most appropriate in the circumstances.

Contract costs include all direct material, direct labor and other direct costs and an allocation of certain overhead related to contract performance. General and administrative costs are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions and estimated profitability, including those arising from settlements, may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

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### **Allowance for Doubtful Accounts**

The company maintains an allowance against tenant and other receivables and deferred rents receivables for future potential tenant credit losses. The credit assessment is based on the estimated accrued rental revenue that is recoverable over the term of the respective lease. The company also maintains an allowance for doubtful accounts for estimated losses resulting from the inability of tenants to make required rent payments. The computation of this allowance is based on the tenants' payment history and current credit status, as well as certain industry or geographic specific credit considerations. If the company's estimate of collectability differs from the cash received, then the timing and amount of the company's reported revenue could be impacted. Bad debt expense is included in operating expenses on the company's combined statements of income and is an offset to allowance for doubtful accounts on the company's combined balance sheets.

### **Discontinued Operations**

The company reclassifies material operations related to properties sold during the period or held for sale at the end of the period to discontinued operations for all periods presented. There were no discontinued operations in the periods presented.

### **Deferred Lease Costs**

Deferred lease costs consist of fees and direct costs incurred to initiate and renew leases, are amortized on a straight-line basis over the related lease term and the expense is included in depreciation and amortization in the company's combined statements of income. Upon the early termination of a lease, unamortized deferred leasing costs are charged to expense.

### **Deferred Financing Costs**

Fees and costs incurred to obtain long-term financing have been deferred and are being amortized as a component of interest expense in the company's combined statements of income over the life of the respective mortgage on the straight-line method which approximates the effective interest method. Unamortized deferred financing costs are expensed when the associated debt is refinanced or repaid before maturity. Costs incurred in seeking debt, which do not close, are expensed in the period in which it is determined that the financing will not close.

### **Advertising and Marketing Costs**

Advertising and marketing costs are expensed as incurred.

### **Fair Value**

Fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, FASB guidance establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within levels one and two of the hierarchy) and the reporting entity's own assumptions about market participant assumptions (unobservable inputs classified within level three of the hierarchy).

The company uses the following methods and assumptions in estimating fair value disclosures for financial instruments.

Cash and cash equivalents, restricted cash, tenant and other receivables, accrued interest payable, due from affiliated companies, due to affiliate companies, deferred revenue, tenant security deposits and accounts payable approximate their fair values because of the short-term nature of these instruments.

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The fair value of the company's mortgage notes payable is based on a discounted cash flow model using currently available market rates assuming the loans are outstanding through maturity and considering the loan to value ratios. The unsecured loans and notes payable are carried at amounts which reasonably approximate their fair value at inception.

The methodologies used for valuing financial instruments have been categorized into three broad levels as follows:

Level 1 - Quoted prices in active markets for identical instruments.

Level 2 - Valuations based principally on other observable market parameters, including:

Quoted prices in active markets for similar instruments;

Quoted prices in less active or inactive markets for identical or similar instruments;

Other observable inputs (such as risk free interest rates, yield curves, volatilities, prepayment speeds, loss severities, credit risks and default rates); and

Market corroborated inputs (derived principally from or corroborated by observable market data).

Level 3 - Valuations based significantly on unobservable inputs.

Valuations based on third-party indications (broker quotes or counterparty quotes) which were, in turn, based significantly on unobservable inputs or were otherwise not supportable as Level 2 valuations.

Valuations based on internal models with significant unobservable inputs.

These levels form a hierarchy. The company follows this hierarchy for the company's financial instruments measured at fair value on a recurring and nonrecurring basis and other required fair value disclosures. The classifications are based on the lowest level of input that is significant to the fair value measurement.

For all periods presented, the company did not have any assets or liabilities subject to Level 1, 2, or 3 fair value measurements.

### **Offering Costs and Formation Transaction Expenses**

In connection with the consolidation and the IPO, the company has incurred or will incur incremental accounting fees, legal fees and other professional fees. Such costs will be deferred and recorded as a reduction of proceeds of the IPO, or expensed as incurred if the IPO is not consummated. Certain costs associated with the consolidation and the IPO not directly attributable to the solicitation of consents and the IPO, but rather related to structuring the formation transaction, are expensed as incurred.

### **Recently Adopted Accounting Pronouncements**

In December 2010, the FASB issued ASU 2010-29, Business Combinations (Topic 805): Disclosure of Supplementary Pro Forma Information for Business Combinations. This ASU clarifies for which periods supplemental disclosure of pro forma revenue and net income is required when a business combination occurs in the current period. The guidance clarifies that if a public entity presents comparative financial statements, the entity should disclose revenue and earnings of the combined entity as though the business combination(s) that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. In the company's case, the guidance is in effect for the 2011 annual reporting period. The adoption of this guidance did not have a material impact on the company's combined financial statements.

In May 2011 the FASB issued ASU No. 2011-04, Fair Value Measurements (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in US GAAP and International Financial Reporting Standards (IFRS) (ASU 2011-04). ASU 2011-04 represents the converged guidance of

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the FASB and the IASB (the Boards ) on fair value measurements. The collective efforts of the Boards and their staffs, reflected in ASU 2011-04, have resulted in common requirements for measuring fair value and for disclosing information about fair value measurements, including a consistent meaning of the term fair value. The Boards have concluded the common requirements will result in greater comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with GAAP and IFRS. The amendments in this ASU are required to be applied prospectively, and are effective for interim and annual periods beginning after December 15, 2011. The adoption of this guidance did not have a material impact on the company s combined financial statements.

In June 2011, the FASB issued Accounting Standards Update (ASU) No. 2011-05, Presentation of Comprehensive Income. The update provides an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. In addition, an entity is required to present on the face of the financial statements reclassification adjustments for items that are reclassified from other comprehensive income to net income in the statement(s) where the components of net income and the components of the comprehensive income are presented. The amendments in this update are to be applied retrospectively and are effective for fiscal years and interim periods beginning after December 15, 2011, except for the amendment to the presentation of reclassifications of items out of accumulated other comprehensive income which the FASB issued a deferral of the effective date on November 8, 2011. The adoption of this guidance did not have a material impact on the company s condensed combined financial statements.

In September 2011, the FASB issued a new Accounting Standards Update (ASU) to enhance the disclosure requirements about an employer s participation in a multiemployer pension plan. Employers that participate in a multiemployer pension plan will be required to provide a narrative description of the general nature of the plans and the employer s participation in the plans that would indicate how the risks of these plans are different from single-employer plans and a disclosure of the minimum contributions required by the agreement. For each multiemployer pension plan that is individually significant, employers are required to provide additional disclosures including disaggregation of information. In the company s case, the guidance is in effect for the 2011 annual reporting period. During the year ended December 31, 2011, the company adopted this guidance.

**Table of Contents****Results of Operations****Overview**

For the periods presented, the predecessor's portfolio was comprised of interests in ten office properties and six retail properties and non-controlled interests in the following four office properties, which are accounted for under the equity method of accounting: the Empire State Building, 1350 Broadway, 1333 Broadway and 501 Seventh Avenue. The fee ownership interests of the Empire State Building and 501 Seventh Avenue are included in the predecessor's portfolio but the operating lease interests of these two properties are part of the predecessor's equity interest in non-controlled entities. These non-controlled interests will represent a significant part of the company's operations following the consolidation and the IPO (58.1% and 51.7% of the company's pro forma revenues for the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively) when they become consolidated into the company's operations. Also, for the periods presented below, rental revenue includes rental revenue earned by the Empire State Building and 501 Seventh Avenue related to leasehold rent (which leasehold rent will be eliminated in consolidation), which upon acquisition by the company will be eliminated in consolidation. The following comparative discussion of results of operations discusses only the operations of the predecessor (which reflects its interest in the non-controlled entities as an equity investment). Therefore, for periods following the completion of the consolidation and the IPO, the company's results of operations will be materially different as they will consolidate the non-controlled entities and will disclose more detailed information concerning the Empire State Building, 1350 Broadway, 1333 Broadway and 501 Seventh Avenue.

**Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011 (in thousands)**

The following table summarizes the historical results of operations of the predecessor for nine months ended September 30, 2012 and 2011:

	<b>Nine Months Ended September 30,</b>			
	<b>2012</b>	<b>2011</b>	<b>Change</b>	<b>%</b>
<b>Revenues:</b>				
Rental revenue <sup>(1)</sup>	\$ 129,673	\$ 126,768	\$ 2,905	2.3%
Tenant expense reimbursement	22,570	22,869	(299)	(1.3%)
Third-party management and other fees	3,909	4,671	(762)	(16.3%)
Construction revenue	11,731	35,323	(23,592)	(66.8%)
Other income and fees	8,778	9,909	(1,131)	(11.4%)
<b>Total Revenues</b>	<b>176,661</b>	<b>199,540</b>	<b>(22,879)</b>	<b>(11.5%)</b>
<b>Operating Expenses:</b>				
Operating expenses	40,336	40,520	(184)	(0.5%)
Marketing, general and administrative expenses	14,415	13,431	984	7.3%
Construction expenses	12,575	34,121	(21,546)	(63.1%)
Real estate taxes	22,493	21,968	525	2.4%
Formation transaction expenses	1,640	1,849	(209)	(11.3%)
Depreciation and amortization	31,877	25,773	6,104	23.7%
<b>Total Operating Expenses</b>	<b>123,336</b>	<b>137,662</b>	<b>(14,326)</b>	<b>(10.4%)</b>
<b>Income from Operations Before Interest Expense and Equity in Net Income of Non-Controlled Entities</b>				
	<b>53,325</b>	<b>61,878</b>	<b>(8,553)</b>	<b>(13.8%)</b>
Interest expense	40,223	41,732	(1,509)	(3.6%)
<b>Income from Operations before Equity in Net Income of Non-controlled Entities</b>				
	<b>13,102</b>	<b>20,146</b>	<b>(7,044)</b>	<b>(35.0%)</b>
Equity in net income of non-controlled entities	13,498	12,239	1,259	10.3%
<b>Net Income</b>	<b>\$ 26,600</b>	<b>\$ 32,385</b>	<b>\$ (5,785)</b>	<b>(17.9%)</b>

(1) Includes \$12,208 and \$9,591 of leasehold rent for the nine months ended September 30, 2012 and September 30, 2011, respectively.

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**Table of Contents*****Rental Revenue***

Rental revenue increased by \$2,905, or 2.3%, to \$129,673 for the nine months ended September 30, 2012 from \$126,768 for the nine months ended September 30, 2011. The increase was primarily attributable to (i) an increase in overage rent income at 501 Seventh Avenue of \$1,367 which was primarily attributable to improvement and tenanting costs being funded by borrowings made by Seventh & 37<sup>th</sup> Associates L.L.C. (the lessor) as opposed to 501 Seventh Avenue Associates L.L.C. (the lessee) funding improvements costs during the period through operating cash flow which had been done in the first nine months of 2011 and (ii) an increase in basic rent income at the Empire State Building of \$1,250 attributable to increased basic rent paid from Empire State Building Company L.L.C. (lessee) to Empire State Building Associates L.L.C. (lessor) equal to increased debt service paid by the lessor on additional financing.

***Tenant Expense Reimbursement***

Tenant expense reimbursement decreased by \$299, or 1.3%, to \$22,570 for the nine months ended September 30, 2012 from \$22,869 for the nine months ended September 30, 2011. Generally, under the company's leases, the company is entitled to reimbursement from its tenants for increases in the consumer price index, real estate tax and operating expenses associated with the leased property over the amount incurred for these operating expenses in the first year of the leases. Therefore, no tenant reimbursements are typically earned during the first year of a lease term. The decrease in tenant expense reimbursements for the nine months ended September 30, 2012 as compared to the nine months ended September 30, 2011 was primarily attributable to a decline in electric income of \$599 primarily due to new tenants generally having their space metered resulting in lower profit margins on electric than previous tenants billed on a non-metered basis and a decrease in consumer price index, or CPI, related escalation income of \$203. The decreases were partially offset by an increase in operating expense reimbursements of \$254 primarily due to large new and renewal leases in 2011 where the tenant thereunder did not have to pay operating escalation in their base year, and an increase in real estate tax reimbursement of \$257.

***Third-Party Management and Other Fees***

Third-party management and other fees decreased by \$762, or 16.3%, to \$3,909 for the nine months ended September 30, 2012 from \$4,671 for the nine months ended September 30, 2011. This decrease is primarily attributable to a \$599 decline in supervisory fees paid in 2012 primarily reflecting 2010 supervisory fee income earned in 2011 and acquisition fee income of \$427 earned in 2011 (with no corresponding amounts earned in 2012), partially offset by \$245 of increased professional fees charged to the properties being accounted for under the equity method, the option properties and the excluded properties and excluded businesses. Acquisition fee income relates to services provided by the supervisor or affiliates related to new investments related to excluded properties and businesses.

***Construction Revenue***

Construction revenue decreased by \$23,592, or 66.8%, to \$11,731 for the nine months ended September 30, 2012 from \$35,323 for the nine months ended September 30, 2011. This decrease is attributable to lower construction activity in the nine months ended September 30, 2012 compared to the nine months ended September 30, 2011. In 2012, the company experienced a decrease in the project size of its construction projects. The aggregate billings for the five largest projects in the nine months ended September 30, 2012 was \$7,025, while the aggregate billings for the five largest projects in the nine months ended September 30, 2011 was \$29,540. The 2012 projects include revenue of \$3,035 from the construction of a middle school in Connecticut and \$12,931 in 2011 from the same project.

***Other Income and Fees***

Other income and fees decreased by \$1,131, or 11.4%, to \$8,778 for the nine months ended September 30, 2012 from \$9,909 for the nine months ended September 30, 2011. This decrease is mainly attributable to \$5,021

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of 2011 income as a voluntary reimbursement of legal expenses previously incurred by the company and received from the Helmsley estate, partially offset by net increases in other income, including an increase of \$2,950 in lease cancellation fees primarily from tenants at First Stamford Place and at One Grand Central Place and an increase of \$453 in connection with fee income related to additional offering costs for services provided by the supervisor and allocated to the properties being accounted for under the equity method and to the option properties.

### ***Operating Expenses***

Operating expenses decreased by \$184, or 0.5%, to \$40,336 for the nine months ended September 30, 2012 from \$40,520 for the nine months ended September 30, 2011. This decrease is primarily attributable to a reduction in repairs and maintenance of \$1,029 mainly offset by higher operating payroll of \$1,138.

### ***Marketing, General and Administrative Expenses***

Marketing, general and administrative expenses increased by \$984, or 7.3%, to \$14,415 for the nine months ended September 30, 2012 from \$13,431 for the nine months ended September 30, 2011. This increase mainly reflects an increase of \$2,003 in other professional fees for additional accounting and bookkeeping costs related to the proposed consolidation and IPO and is partially offset by a \$731 decrease in airplane expenses incurred by one of the predecessor management companies which are not reflected in 2012 (the shares in the airplanes were sold in 2011 by one of the predecessor management companies) and a \$192 increase in payroll.

### ***Construction Expenses***

Construction expenses decreased by \$21,546, or 63.1%, to \$12,575 for the nine months ended September 30, 2012 from \$34,121 for the nine months ended September 30, 2011. This decrease correlates with the decrease in the new construction projects as noted above in Construction Revenue.

### ***Real Estate Taxes***

Real estate taxes increased by \$525, or 2.4%, to \$22,493 for the nine months ended September 30, 2012 from \$21,968 for the nine months ended September 30, 2011. The increase was primarily attributable to an aggregate increase of \$508 at 250 West 57th Street, 1359 Broadway, One Grand Central Place and First Stamford Place and a decrease of \$105 at 500 Mamaroneck Avenue.

### ***Formation Transaction Expenses***

Formation transaction expenses decreased by \$209, or 11.3%, to \$1,640 for the nine months ended September 30, 2012 from \$1,849 for the nine months ended September 30, 2011. The decrease was due to a lower amount of external legal, accounting, and valuation professional services time and costs related to structuring the consolidation than on the solicitation of consents of investors and the IPO as the transaction progresses from the formation stage to the solicitation and offering stage. For formation transaction expenses, our prior period financial results have been adjusted to reflect an immaterial correction. During fiscal year 2012, we determined that certain costs related to the structuring of the consolidation that were previously included in deferred offering costs should have been expensed in the periods incurred. The correction resulted in immaterial changes to deferred costs and formation transaction expenses for the years ended December 31, 2011 and 2010. The formation transaction expenses will not have an impact on the company's results of operations or the dividends to be paid by the company after closing of the consolidation and the IPO.

### ***Depreciation and Amortization***

Depreciation and amortization increased by \$6,104, or 23.7%, to \$31,877 for the nine months ended September 30, 2012 from \$25,773 for the nine months ended September 30, 2011. The increase in depreciation



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and amortization expense was primarily the result of improvements made at the Empire State Building and One Grand Central Place resulting in additional depreciation and amortization of \$6,122 and a net decrease at the other properties of \$18.

***Interest Expense***

Interest expense (including amortization of mortgage costs) decreased by \$1,509, or 3.6%, to \$40,223 for the nine months ended September 30, 2012 from \$41,732 for the nine months ended September 30, 2011. The decrease was primarily attributable to decreased expenses of \$1,386 at the Empire State Building attributable to a 2011 prepayment fee of prior mortgages for \$2,343 (none in 2012) partially offset by increased amortization of finance costs of \$960.

***Equity in Income of Non-controlled Entities***

Equity in income of non-controlled entities increased by \$1,259, or 10.3%, to \$13,498 for the nine months ended September 30, 2012 from \$12,239 for the nine months ended September 30, 2011. The net increase in equity in net income of non-controlled entities resulted from the following: an increase of \$2,473 at the Empire State Building related to a net real estate tax refund of \$10,120 received by the lessee of the Empire State Building for the fiscal years 2002/2003 through 2011/2012 of which the company's share is \$2,404, higher income in 2012 earned by the lessee of the Empire State Building (excluding the real estate tax refund discussed above and acquisition fees discussed below), of which the company's share is \$1,433, and acquisition fee expense of \$5,743 for the nine months ended September 30, 2012 of which the company's share was \$1,364 (acquisition costs were not expensed for the similar period in 2011); partially offset by (i) lower income at 1333 Broadway of \$1,621 of which the company's share was \$811 and was partially attributable to higher vacancies including a large retail tenant that vacated in the nine months ended September 30, 2011 and higher operating expenses, including repairs and supplies, advertising and legal and professional fees; (ii) lower income at 1350 Broadway of \$265 of which the company's share was \$132; and (iii) lower income at 501 Seventh Avenue of \$1,316, attributable to higher overage rent expense related to lower expenditure on fixed assets, of which the company's share was \$270.

**Table of Contents****Year Ended December 31, 2011 Compared To Year Ended December 31, 2010 (in thousands)**

The following table summarizes the historical results of operations of the predecessor for the years ended December 31, 2011 and 2010:

	Year Ended December 31,		Change	%
	2011	2010		
<b>Revenues:</b>				
Rental revenue <sup>(1)</sup>	\$ 198,494	\$ 166,159	\$ 32,335	19.5%
Tenant expense reimbursement	31,063	32,721	(1,658)	(5.1%)
Third-party management and other fees	5,626	3,750	1,876	50.0%
Construction revenue	47,560	27,139	20,421	75.2%
Other income and fees	12,045	16,776	(4,731)	(28.2%)
<b>Total Revenues</b>	<b>294,788</b>	<b>246,545</b>	<b>48,243</b>	<b>19.6%</b>
<b>Operating Expenses:</b>				
Operating expenses	57,102	60,356	(3,254)	(5.4%)
Marketing, general and administrative expenses	15,688	13,924	1,764	12.7%
Construction expenses	46,230	27,581	18,649	67.6%
Real estate taxes	29,160	27,585	1,575	5.7%
Formation transaction expenses	2,845	807	2,038	252.5%
Depreciation and amortization	35,513	34,041	1,472	4.3%
<b>Total Operating Expenses</b>	<b>186,538</b>	<b>164,294</b>	<b>22,244</b>	<b>13.5%</b>
<b>Income from Operations Before Interest Expense and Equity in Net Income of Non-Controlled Entities</b>				
	108,250	82,251	25,999	31.6%
Interest expense	54,746	52,264	2,482	4.7%
<b>Income from Operations before Equity in Net Income of Non-controlled Entities</b>				
	53,504	29,987	23,517	78.4%
Equity in net income of non-controlled entities	3,893	15,324	(11,431)	(74.6%)
<b>Net Income</b>	<b>\$ 57,397</b>	<b>\$ 45,311</b>	<b>\$ 12,086</b>	<b>26.7%</b>

(1) Includes \$42,902 and \$17,106 of leasehold rent for the years ended December 31, 2011 and December 31, 2010, respectively.

**Rental Revenue**

Rental revenue increased by \$32,335, or 19.5%, to \$198,494 for the year ended December 31, 2011 from \$166,159 for the year ended December 31, 2010. This increase was primarily attributable to increased overage rent income at the Empire State Building of \$24,669 which was primarily attributable to improvement costs funded by new borrowings made by Empire State Building Associates L.L.C. (the lessor) as opposed to Empire State Building Company L.L.C. (the lessee) funding improvements costs in 2011 through operating cash flow as had been done in 2010. In addition, the increase was attributable to (i) increased overage rent income at 501 Seventh Avenue of \$704 which was primarily attributable to fewer improvements at the property; (ii) increased rental income at One Grand Central Place, 500 Mamaroneck and Metro Center which collectively accounted for \$3,989 and was mainly due to new, renewed and expanded office leases; (iii) increased rental income of \$3,492 at 250 West 57th Street including a significant retail lease that commenced in July 2010 that accounted for \$861 of the increase and a write-off in 2010 of deferred straight-line receivable for cancellation of the previous retail tenant's lease that accounted for \$1,559 of the increase. Vacancy contributed to a decrease in rental income of \$724 at 69-97 Main Street and the elimination of deferred rent receivable in connection with an early lease termination contributed to a decrease of \$425 of rental income at 10 Union Square.



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**Table of Contents*****Tenant Expense Reimbursement***

Tenant expense reimbursement decreased by \$1,658, or 5.1%, to \$31,063 for the year ended December 31, 2011 from \$32,721 for the year ended December 31, 2010. Generally, under the company leases, the company is entitled to reimbursement from its tenants for increases in specific operating expenses associated with the leased property over the amount incurred for these operating expenses in the first year of the leases. Therefore, no tenant reimbursements are typically earned during the first year of a lease term. The decrease in tenant expense reimbursements for the year ended December 31, 2011 as compared to the year ended December 31, 2010 was primarily attributable to: (i) a decline in electric income of \$1,735 primarily attributable to a decrease in electricity cost; (ii) operating expense reimbursements, which decreased by \$734 mainly due to no reimbursement for the base year of new and renewal leases commenced in 2011; and (iii) Consumer Price Index income, which decreased by \$412. This decrease was partially offset by: (i) real estate tax escalation income, which increased by \$775 mainly due to increased real estate tax expense; (ii) cleaning income, which increased by \$205; and (iii) security and repairs income, which increased by \$169.

***Third-Party Management and Other Fees***

Third-party management and other fees increased by \$1,876, or 50.0%, to \$5,626 for the year ended December 31, 2011 from \$3,750 for the year ended December 31, 2010. This increase is primarily attributable to increased supervisory and professional fees charged to the properties being accounted for under the equity method, the option properties and the excluded properties and excluded businesses. The company earned (i) supervisory fees from such entities of \$3,328 and \$1,925 for the years ended December 31, 2011 and 2010, respectively, and (ii) property management fees from such entities of \$1,667 and \$1,233 for the years ended December 31, 2011 and 2010, respectively.

***Construction Revenue***

Construction revenue increased by \$20,421, or 75.2%, to \$47,560 for the year ended December 31, 2011 from \$27,139 for the year ended December 31, 2010. This increase is attributable to greater construction activity in the year ended December 31, 2011 compared to the year ended December 31, 2010. In 2011, the company experienced a significant increase in the project size of its construction projects. The aggregate billings for the five largest projects in the year ended December 31, 2011 was \$39,946, while the aggregate billings for the five largest projects in the year ended December 31, 2010 was \$19,725. The 2011 projects include revenue of (i) \$16,196 from new construction of residential apartments and a residential parking garage at a development site adjacent to the company's entitled land in Stamford, Connecticut that will not be contributed to the company in the consolidation and (ii) \$22,463 from the construction of two middle schools in Connecticut. The company does not expect this increase in the project size and quantity of its construction projects to continue in the immediate future.

***Other Income and Fees***

Other income and fees decreased by \$4,731 or 28.2%, to \$12,045 for the year ended December 31, 2011 from \$16,776 for the year ended December 31, 2010. This decrease is attributable to lease cancellation income which was \$11,185 higher in the year ended December 31, 2010, related to four tenants at 1359 Broadway, First Stamford Place and 250 West 57th Street, all of which vacated their spaces in 2010. This decrease was partially offset by \$5,178 of income received as a voluntary reimbursement of legal expenses previously incurred by the company of which \$5,021 was from the Helmsley estate, and \$1,550 of professional fees earned from the option properties for the year ended December 31, 2011.

***Operating Expenses***

Operating expenses decreased by \$3,254, or 5.4%, to \$57,102 for the year ended December 31, 2011 from \$60,356 for the year ended December 31, 2010. This decrease is primarily attributable to a decrease in electricity

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expense of \$2,419 following a change in electric provider at certain of the company's Manhattan office properties resulting in better rates. The company's bad debt expense also declined by \$1,183 in 2011 due to improved collections. These decreases were partially offset by an increase to repairs and maintenance of \$1,170.

***Marketing, General and Administrative Expenses***

Marketing, general and administrative expenses increased by \$1,764, or 12.7%, to \$15,688 for the year ended December 31, 2011 from \$13,924 for the year ended December 31, 2010. This increase includes \$717 of executive bonuses paid in 2011 and an increase to other administrative payroll of \$384.

***Construction Expenses***

Construction expenses increased by \$18,649, or 67.6%, to \$46,230 for the year ended December 31, 2011 from \$27,581 for the year ended December 31, 2010. This increase correlates with the increase in the new construction projects that were commenced in the years ended December 31, 2010 and 2011.

***Real Estate Taxes***

Real estate taxes increased by \$1,575, or 5.7%, to \$29,160 for the year ended December 31, 2011 from \$27,585 for the year ended December 31, 2010. The increase was primarily attributable to increases of \$867 at First Stamford Place and \$275 at Metro Center, both attributable to prior year refunds received in the year ended December 31, 2010, and an increase of \$334 at One Grand Central Place.

***Depreciation and Amortization***

Depreciation and amortization increased by \$1,472, or 4.3%, to \$35,513 for the year ended December 31, 2011 from \$34,041 for the year ended December 31, 2010. The increase in depreciation and amortization expense was primarily the result of improvements made at the Empire State Building and One Grand Central Place resulting in additional depreciation and amortization of \$3,060, which was partially offset by the write-off of unamortized tenant improvements and leasing costs at 1359 Broadway in 2010 associated with the early termination of leases resulting in a decrease of depreciation and amortization of \$1,822 from that property.

***Formation Transaction Expenses***

Formation transaction expenses increased by \$2,038, or 252.5%, to \$2,845 for the year ended December 31, 2011 from \$807 for the year ended December 31, 2010. The increase was because of external legal, accounting, and valuation professional services related to the structuring of the consolidation. The process started late in 2010 and a majority of the costs were incurred in 2011. For formation transaction expenses, our prior period financial results have been adjusted to reflect an immaterial correction. During fiscal year 2012, we determined that certain costs related to the structuring of the consolidation that were previously included in deferred offering costs should have been expensed in the periods incurred. The correction resulted in immaterial changes to deferred costs and formation transaction expenses for the years ended December 31, 2011 and 2010. The formation transaction expenses will not have an impact on the company's results of operations or the dividends to be paid by the company after closing of the consolidation and the IPO.

***Interest Expense***

Interest expense (including amortization of mortgage costs) increased by \$2,482, or 4.7%, to \$54,746 for the year ended December 31, 2011 from \$52,264 for the year ended December 31, 2010. The increase was primarily attributable to (i) a prepayment fee of \$2,343 and increased amortization of prior mortgage costs of \$1,222 less lower interest expense of \$646 with respect to the company's new secured term loan at the Empire State Building which closed in July 2011; (ii) increased mortgage interest expense at 500 Mamaroneck Avenue and 501 Seventh

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Avenue due to increased borrowings (approximately \$292 and \$84, respectively); (iii) partially offset at 10 Union Square due to the 2010 prepayment of debt (\$159 of increase in expense for the year ended December 31, 2010); and a decrease of \$654 at various properties in connection with lower principal balances.

**Equity in Income of Non-controlled Entities**

Equity in income of non-controlled entities decreased by \$11,431, or 74.6%, to \$3,893 for the year ended December 31, 2011 from \$15,324 for the year ended December 31, 2010. The decrease in the company's share of equity in net income of non-controlled entities primarily reflected (i) an increase in acquisition costs of \$10,665 of which the company's share is \$3,042, (ii) an increase in overage rent paid by the lessee of the Empire State Building in the amount of \$24,669 and recognized by the company as rental revenue which was attributable to 2011 improvement costs paid from proceeds of the new secured term loan, of which the company's share was \$5,859; (iii) an increase in depreciation and amortization expense of \$4,031 due to increased investment, of which the company's share was \$1,148; and (iv) an increase of \$4,684 in rental revenues, of which the company's share is \$1,171.

**Year Ended December 31, 2010 Compared to Year Ended December 31, 2009 (in thousands)**

The following table summarizes the historical results of operations of the predecessor for the years ended December 31, 2010 and 2009:

	Year Ended December 31,		Change	%
	2010	2009		
<b>Revenues:</b>				
Rental revenue <sup>(1)</sup>	\$ 166,159	\$ 167,556	\$ (1,397)	(0.8%)
Tenant expense reimbursement	32,721	36,309	(3,588)	(9.9%)
Third-party management and other fees	3,750	4,296	(546)	(12.7%)
Construction revenue	27,139	15,997	11,142	69.7%
Other income and fees	16,776	8,157	8,619	105.7%
<b>Total Revenues</b>	<b>246,545</b>	<b>232,315</b>	<b>14,230</b>	<b>6.1%</b>
<b>Expenses:</b>				
Operating expenses	60,356	58,850	1,506	2.6%
Marketing, general and administrative expenses	13,924	16,145	(2,221)	(13.8%)
Construction expenses	27,581	17,281	10,300	59.6%
Real estate taxes	27,585	28,937	(1,352)	(4.7%)
Formation transaction expenses	807		807	100.0%
Depreciation and amortization	34,041	29,327	4,714	16.1%
<b>Total Operating Expenses</b>	<b>164,294</b>	<b>150,540</b>	<b>13,754</b>	<b>9.1%</b>
<b>Income from Operations Before Interest Expense and Equity in Net Income of Non-Controlled Entities</b>				
	82,251	81,775	476	0.6%
Interest expense	52,264	50,738	1,526	3.0%
<b>Income from Operations Before Equity in Net Income of Non-Controlled Entities</b>				
	29,987	31,037	(1,050)	(3.4%)
Equity in net income of non-controlled entities	15,324	10,800	4,524	41.9%
<b>Net Income</b>	<b>\$ 45,311</b>	<b>\$ 41,837</b>	<b>\$ 3,474</b>	<b>8.3%</b>

(1) Includes \$17,106 and \$19,716 of leasehold rent for the years ended December 31, 2010 and December 31, 2009, respectively.

**Rental Revenue**

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Rental revenue decreased by \$1,397, or 0.8%, to \$166,159 for the year ended December 31, 2010 from \$167,556 for the year ended December 31, 2009. This decrease was primarily attributable to a decrease in additional leasehold rent received from the operating lessee at the Empire State Building in the amount of \$3,459. Additional leasehold rent is calculated as a function of the property's operating income and is reduced by

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capital expenditures made by the lessee. Rent was further reduced by the expiration or early termination of tenant leases at various properties (including a retail lease at 250 West 57<sup>th</sup> Street), which resulted in lower revenues. The retail lease cancellation resulted in reduced rents of \$1,875. New leasing at One Grand Central Place added \$3,166 of rental revenue in 2010 compared to 2009. Additionally, rental revenue at First Stamford Place increased by \$783. The decline was mitigated by new leases and increases to rent from various assets.

### ***Tenant Expense Reimbursement***

Tenant expense reimbursement decreased by \$3,588, or 9.9%, to \$32,721 for the year ended December 31, 2010 from \$36,309 for the year ended December 31, 2009. The decrease was primarily the result of a decrease in real estate tax escalation reimbursement of \$1,966, caused by a decrease in real estate tax expense, as well as leasing of vacant space in 2010 and portions of 2009. Additionally, the decrease has also been caused by a reduction in operating escalations of \$1,309 as a result of the expiration and termination in 2010 of several leases with comparatively higher escalation billings. The decrease was offset by an increase in CPI escalations of \$328 resulting from higher CPI in 2010 and several new tenants with CPI based escalations.

### ***Third-Party Management and Other Fees***

Third-party management and other fees decreased by \$546, or 12.7%, to \$3,750 for the year ended December 31, 2010 from \$4,296 for the year ended December 31, 2009. This decrease is attributable to decreased supervisory fees charged to the properties being accounted for under the equity method, the option properties and the excluded properties and excluded businesses.

### ***Construction Revenue***

Construction revenue increased by \$11,142, or 69.7%, to \$27,139 for the year ended December 31, 2010 from \$15,997 for the year ended December 31, 2009. This increase is attributable to a general increase in construction activity in 2010. In 2010, the company experienced a significant increase in the project size of its construction projects. These projects primarily comprised various interior-office fit-up projects and the new construction of residential apartments at a development site adjacent to the company's entitled land in Stamford, Connecticut that will not be contributed to the company in the consolidation. In particular, there were three projects which commenced in 2010 which were not present in 2009 totaling approximately \$10,879 of construction revenue in 2010.

### ***Other Income and Fees***

Other income and fees increased by \$8,619, or 105.7%, to \$16,776 for the year ended December 31, 2010 from \$8,157 for the year ended December 31, 2009. This increase is primarily attributable to an increase in lease cancellation fees in 2010 of \$7,832. Three tenants terminated their leases in 2010 at 1359 Broadway, First Stamford Place, and 250 West 57<sup>th</sup> Street resulting in \$10,877 of other income in 2010. Comparatively, one tenant at One Grand Central Place accounted for \$2,900 of the cancellation income in 2009.

### ***Operating Expenses***

Operating expenses increased by \$1,506, or 2.6%, to \$60,356 for the year ended December 31, 2010 from \$58,850 for the year ended December 31, 2009. The company's property-related payroll expenses increased by \$1,155 due to increased staffing. Additionally, the company's bad debt expense increased by \$705 due to increased reserves. These increases were offset by lower repairs and maintenance which declined by \$1,073.

### ***Marketing, General and Administrative Expenses***

Marketing, general and administrative expenses decreased by \$2,221, or 13.8%, to \$13,924 for the year ended December 31, 2010 from \$16,145 for the year ended December 31, 2009. The decrease is primarily due to lower administrative payroll expense of \$1,699 in 2010 compared to 2009.



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### ***Construction Expenses***

Construction expenses increased by \$10,300, or 59.6%, to \$27,581 for the year ended December 31, 2010 from \$17,281 for the year ended December 31, 2009. In 2010, the company experienced a significant increase in the project size of its construction projects. These projects primarily comprised various interior-office fit-up projects and the new construction of residential apartments at a development site adjacent to the company's entitled land in Stamford, Connecticut that will not be contributed to the company in the consolidation. In particular, there were three projects which commenced in 2010 which were not present in 2009 totaling approximately \$9,822 of construction expense in 2010.

### ***Real Estate Taxes***

Real estate taxes decreased by \$1,352, or 4.7%, to \$27,585 for the year ended December 31, 2010 from \$28,937 for the year ended December 31, 2009. The decrease was attributable to reduced assessments and prior year refunds for First Stamford Place (\$1,324) and Metro Center (\$396), offset by increases at other properties.

### ***Formation Transaction Expenses***

Formation transaction expenses were \$807 for the year ended December 31, 2010 compared to \$0 for the year ended December 31, 2009. The increase was because of the formation transaction work that began late in 2010 related to the consolidation and IPO. Formation transaction expenses consist primarily of external legal, accounting, and valuation professional services time and costs that are spent structuring the consolidation and are not related to the solicitation of consents of investors and the IPO. For formation transaction expenses, the company's prior period financial results have been adjusted to reflect an immaterial correction. During fiscal year 2012, the company determined that certain costs related to the structuring of the consolidation that were previously included in deferred offering costs should have been expensed in the periods incurred. The correction resulted in immaterial changes to deferred costs and formation transaction expenses for the years ended December 31, 2011 and 2010. The formation transaction expenses will not have an impact on the company's results of operations or the dividends to be paid by the company after closing of the consolidation and the IPO.

### ***Depreciation and Amortization***

The company's depreciation and amortization expense increased by \$4,714, or 16.1%, to \$34,041 for the year ended December 31, 2010 from \$29,327 for the year ended December 31, 2009. This resulted from an approximately 14% increase in 2010, which was primarily associated with tenant improvements concentrated at One Grand Central Place, First Stamford Place, and 10 Bank Street.

### ***Interest Expense***

The company's interest expense increased by \$1,526, or 3.0%, to \$52,264 for the year ended December 31, 2010 from \$50,738 for the year ended December 31, 2009. The increase was attributable to increased borrowings to fund capital expenditures, tenant improvements and leasing commissions at the Empire State Building, One Grand Central Place and 10 Union Square.

### ***Equity in Income of Non-controlled Entities***

Equity in income of non-controlled entities increased by \$4,524, or 41.9%, to \$15,324 for the year ended December 31, 2010 from \$10,800 for the year ended December 31, 2009. This increase was due to (i) increased rental income at 1350 Broadway as a result of two large retail tenants whose leases commenced in April and May 2009 and several other new leases entered into in 2010 partially offset by expiring leases; (ii) improved operating results at 1333 Broadway where in 2009, the entity incurred a net loss whereas in 2010, it generated net income; and (iii) increased net income at the Empire State Building due to higher observatory revenues and

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licensing fees. These increases were partially offset by lower net income at 501 Seventh Avenue due to higher repairs and maintenance, increased depreciation expense on improvements placed in service during 2009 and 2010 and higher overage rent payable to the company.

### **Liquidity and Capital Resources**

Liquidity is a measure of the company's ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain the company's assets and operations, including lease-up costs, fund the company's renovation and repositioning programs, acquire properties, make distributions to the company's stockholders and other general business needs. Based on the historical experience of the supervisor and the company's business strategy, in the foreseeable future the company anticipates it will generate positive cash flows from operations. In order to qualify as a REIT, the company is required under the Code to distribute to the company's stockholders, on an annual basis, at least 90% of the company's REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. The company expects to make quarterly distributions to the company's stockholders.

While the company may be able to anticipate and plan for certain liquidity needs, there may be unexpected increases in uses of cash that are beyond the company's control and which would affect the company's financial condition and results of operations. For example, the company may be required to comply with new laws or regulations that cause the company to incur unanticipated capital expenditures for the company's properties, thereby increasing the company's liquidity needs. Even if there are no material changes to the company's anticipated liquidity requirements, the company's sources of liquidity may be fewer than, and the funds available from such sources may be less than, anticipated or needed. The company's primary sources of liquidity will generally consist of cash on hand and cash generated from the company's operating activities, mortgage financings and unused borrowing capacity under the company's expected new secured revolving and term credit facility. The company expects to meet the company's short-term liquidity requirements, including distributions, operating expenses, working capital, debt service, and capital expenditures from cash flows from operations, the net proceeds from the IPO and \$304.1 million of available borrowing capacity under the company's loans on a pro forma basis following the consolidation and the IPO (based on September 30, 2012 pro forma outstanding balances and excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). The \$304.1 million of available borrowing capacity is comprised of \$281.0 million with respect to the company's secured term loan on the Empire State Building, \$15.1 million with respect to the company's mortgage loan on 250 West 57th Street and \$8.0 million of available borrowing capacity with respect to the company's mortgage loan on 1350 Broadway. The availability of these borrowings is subject to the conditions set forth in the applicable loan agreements. The company expects to meet the company's long-term capital requirements, including acquisitions (including potentially the option properties), redevelopments and capital expenditures through the company's cash flows from operations, the net proceeds from the IPO, the company's secured revolving and term credit facility, mortgage financings, debt issuances, common and/or preferred equity issuances and asset sales.

The company does not intend to use any of the net proceeds from the IPO to fund distributions to the company's stockholders, but to the extent the company uses the net proceeds to fund distributions, these payments will be treated as a return of capital to the company's stockholders for U.S. federal income tax purposes. Pending the use of the net proceeds, the company intends to invest such portion of the net proceeds in interest-bearing accounts and short-term, interest-bearing securities that are consistent with the company's intention to qualify for taxation as a REIT.

The company expects to have approximately \$1.11 billion of total consolidated indebtedness outstanding, with a weighted average interest rate of 5.20% and a weighted average maturity of 3.4 years. Upon completion of the IPO and the consolidation, the company will have no debt maturing in the remainder of 2012 and approximately \$56.9 million of debt maturing in 2013. Additionally, the company expects to have \$304.1 million of available borrowing capacity under the company's loans on a pro forma basis upon consummation of the

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consolidation and the IPO (based on September 30, 2012 pro forma outstanding balances and excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). The company expects to obtain an \$800.0 million secured revolving and term credit facility upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates. The company has obtained a commitment for \$400.0 million of availability under the secured revolving and term credit facility, subject to satisfaction of certain customary conditions precedent, from the representatives of the underwriters or their respective affiliates who have also agreed to use commercially reasonable efforts to syndicate the remainder of the facility. The company expects to use this secured revolving and term credit facility to, among other things, fund capital expenditures and tenant improvements and leasing commissions, potential acquisitions, general corporate matters and working capital. Additionally, the secured revolving and term credit facility will be used to repay and retire the existing \$500.0 million term loan currently secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012. The company expects that the secured revolving and term credit facility will include an accordion feature that would allow the company to increase availability thereunder to \$1.25 billion, under specified circumstances. See Consolidated Indebtedness to be Outstanding After The IPO Description of Certain Debt Secured Revolving and Term Credit Facility. There is no assurance that the company will be able to enter into a definitive agreement relating to this facility on acceptable terms, or at all.

The company's overall leverage will depend on the company's mix of investments and the cost of leverage. The company's charter does not restrict the amount of leverage that the company may use. The company's properties require periodic investments of capital for individual lease related tenant improvements allowances, general capital improvements and costs associated with capital expenditures. Peter L. Malkin and Anthony E. Malkin will be released from or otherwise indemnified for liabilities arising under certain guarantees and indemnities with respect to approximately \$1.11 billion of mortgage loans (including currently undrawn amounts) on the company's properties, which will be assumed by the company upon consummation of the IPO and the consolidation in respect of obligations arising after the closing. The guarantees and indemnities with respect to all of the indebtedness are, in most instances, limited to losses incurred by the applicable lender arising from acts such as fraud, misappropriation of funds, intentional breach, bankruptcy and certain environmental matters. In connection with the company's assumption of these mortgage loans, it will seek to have the guarantors and/or indemnitors released from these guarantees and indemnities and to have the company's operating partnership assume any such guarantee and indemnity obligations as replacement guarantor and/or indemnitor. To the extent lenders do not consent to the release of these guarantors and/or indemnitors, and they remain guarantors and/or indemnitors on assumed indebtedness following the IPO and the consolidation, the company's operating partnership will enter into indemnification agreements with the guarantors and/or indemnitors pursuant to which the company's operating partnership will be obligated to indemnify such guarantors and/or indemnitors for any amounts paid by them under guarantees and/or indemnities with respect to the assumed indebtedness.

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The following table summarizes the company's tenant improvement costs, leasing commission costs and the company's capital expenditures for the 18 properties the company will own following the consolidation and the IPO as if they were consolidated for each of the periods presented:

**Office Properties<sup>(1)</sup>**

	Nine Months Ended September 30, 2012	2011	Year Ended December 31, 2010		2009
<b>Total New Leases, Expansions, and Renewals</b>					
Number of leases signed <sup>(2)</sup>	171	232	312		252
Total Square Feet	729,329	1,469,588	1,111,281		1,037,060
Leasing commission costs <sup>(3)</sup>	\$ 10,703,572	\$ 26,582,405	\$ 11,412,065		\$ 11,958,190
Tenant improvement costs <sup>(3)</sup>	\$ 32,839,596	\$ 58,391,713	\$ 35,493,556		\$ 39,155,388
Total leasing commissions and tenant improvement costs <sup>(3)</sup>	\$ 43,543,168	\$ 84,974,118	\$ 46,905,621		\$ 51,113,578
Leasing commission costs per square foot <sup>(3)</sup>	\$ 14.68	\$ 18.09	\$ 10.27		\$ 11.53
Tenant improvement costs per square foot <sup>(3)</sup>	\$ 45.03	\$ 39.73	\$ 31.94		\$ 37.76
Total leasing commissions and tenant improvement costs per square foot <sup>(3)</sup>	\$ 59.70	\$ 57.82	\$ 42.21		\$ 49.29

**Retail Properties<sup>(4)</sup>**

	Nine Months Ended September 30, 2012	2011	Year Ended December 31, 2010		2009
<b>Total New Leases, Expansions, and Renewals</b>					
Number of leases signed <sup>(2)</sup>	12	16	21		23
Total Square Feet	38,797	64,476	85,949		108,980
Leasing commission costs <sup>(3)</sup>	\$ 1,754,491	\$ 2,326,194	\$ 2,666,171		\$ 3,003,417
Tenant improvement costs <sup>(3)</sup>	\$ 0	\$ 212,088	\$ 760,650		\$ 255,456
Total leasing commissions and tenant improvement costs <sup>(3)</sup>	\$ 1,754,491	\$ 2,538,282	\$ 3,426,821		\$ 3,258,873
Leasing commission costs per square foot <sup>(3)</sup>	\$ 45.22	\$ 36.08	\$ 31.02		\$ 27.56
Tenant improvement costs per square foot <sup>(3)</sup>	\$ 0.00	\$ 3.29	\$ 8.85		\$ 2.34
Total leasing commissions and tenant improvement costs per square foot <sup>(3)</sup>	\$ 45.22	\$ 39.37	\$ 39.87		\$ 29.90
<b>Total Portfolio</b>					
Capital expenditures <sup>(5)</sup>	\$ 36,219,000	\$ 34,993,000	\$ 43,670,000		\$ 57,221,000

(1) Excludes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. Includes the Empire State Building broadcasting licenses and observatory operations.

(2) Presents a renewed and expansion lease as one lease signed.

(3) Presents all tenant improvement and leasing commission costs as if they were incurred in the period in which the lease was signed, which may be different than the period in which they were actually paid.

(4) Includes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. Excludes the Empire State Building broadcasting licenses and observatory operations.

(5) Includes all capital expenditures, excluding tenant improvement and leasing commission costs, which are primarily attributable to the renovation and repositioning program conducted at the company's Manhattan office properties.

As of September 30, 2012, on a pro forma basis, the company expects to incur additional costs relating to obligations under signed new leases of approximately \$17.7 million and \$95.3 million during the remainder of 2012 and the 12 months ending September 30, 2013, respectively. This consists of approximately \$13.4 million for tenant improvements and other improvements related to new leases and approximately \$4.3 million on leasing commissions expected to be incurred during the remainder of 2012, and approximately \$88.5 million for tenant improvements and other improvements related to new leases and approximately \$6.8 million on leasing



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commissions expected to be incurred in the 12 months ending September 30, 2013. The company intends to fund the tenant improvements and leasing commission costs through a combination of operating cash flow and borrowings under the secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates.

The company currently intends to invest between \$100.0 million and \$130.0 million of additional capital through the end of 2013 (excluding leasing commissions and tenant improvements) in continuation of the company's renovation and repositioning program for the company's Manhattan office properties. These additional capital expenditures are considered part of both the company's short-term and long-term liquidity requirements. The company expects to complete substantially this program by the end of 2013, except with respect to the Empire State Building, which is the last Manhattan office property that began its renovation and repositioning program. In addition, the company currently estimates that between \$85.0 million and \$115.0 million of capital is needed beyond 2013 to complete substantially the renovation and repositioning program at the Empire State Building, which the company expects to occur by the end of 2016 due to the size and scope of the company's remaining work and the company's desire to minimize tenant disruptions at the property. However, these estimates are based on current budgets and are subject to change. The company intends to fund the capital improvements that are needed beyond 2013 to complete the renovation and repositioning program at the Empire State Building through a combination of operating cash flow and borrowings under the secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates.

During the first nine months of 2012,

- (i) the company borrowed \$60.0 million on the existing secured term loan at the Empire State Building. The advance bears interest at 250 basis points over the 30-day LIBOR rate (as is the case with the prior advance) and is to be used to fund improvements at the Empire State Building as part of the company's renovation and repositioning program; and
- (ii) the company borrowed \$6.0 million under the existing loan on 1350 Broadway bearing interest at a rate of Prime plus 100 basis points with a minimum floor of 4.25% per annum in connection with improvements made at the property.

During 2011,

- (i) the company arranged a variable-rate mortgage loan on 501 Seventh Avenue in the amount of \$6.5 million, bearing interest at LIBOR plus 200 basis points in connection with improvements as part of the company's renovation and repositioning program;
- (ii) the company refinanced mortgage loans on the Empire State Building totaling \$92.0 million with a new secured term loan in the amount of up to \$300.0 million (of which \$159.0 million was drawn in 2011) bearing interest at 250 basis points over the 30-day LIBOR rate, in connection with improvements as part of the company's renovation and repositioning program and
- (iii) the company borrowed \$9.0 million under existing mortgage loans on 250 West 57th Street and 1350 Broadway bearing interest at a rate of Prime plus 100 basis points with a minimum floor of 6.50% per annum in connection with improvements as part of the company's renovation and repositioning program.

During 2010,

- (i) the company borrowed \$9.1 million under an existing mortgage loan on 1333 Broadway bearing interest at 6.32% per annum in connection with improvements as part of the company's renovation and repositioning program and
- (ii)

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the company refinanced a maturing \$18.4 million loan on 10 Union Square with a \$22.0 million mortgage bearing interest at a rate of 6.00% per annum. The net proceeds were used for tenant improvements, loan costs and to distribute \$3.1 million to existing investors.

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During 2009,

- (i) the company borrowed approximately \$31.5 million through a fixed-rate mortgage loan on the Empire State Building bearing interest at 6.50% per annum, in connection with improvements as part of the company's renovation and repositioning program;
- (ii) the company borrowed approximately \$16.0 million through a fixed-rate mortgage loan on One Grand Central Place bearing interest at 7.00% per annum, in connection with improvements as part of the company's renovation and repositioning program;
- (iii) the company arranged a variable-rate mortgage loan on 250 West 57th Street in the amount of \$21.0 million (of which \$0.9 million was drawn in 2009), bearing interest at a rate of Prime plus 100 basis points with a minimum floor of 6.50% per annum, in connection with improvements as part of the company's renovation and repositioning program;
- (iv) the company arranged a variable-rate mortgage loan on 1350 Broadway in the amount of \$18.7 million (of which \$0.7 million was drawn in 2010), bearing interest at a rate of Prime plus 100 basis points with a minimum floor of 6.50% per annum and
- (v) the company borrowed a total of \$23.7 million under existing mortgage loans on 1350 Broadway, 250 West 57th Street, and 1333 Broadway bearing interest at 5.87%, 6.13%, and 6.32% per annum, respectively, in connection with improvements as part of the company's renovation and repositioning program.

After September 30, 2012, the company borrowed an additional \$9.0 million under the existing mortgage loan on 250 West 57th Street. The advance bears interest at a rate of Prime plus 100 basis points with a minimum floor of 6.50% per annum in connection with improvements of the property as part of the company's renovation and repositioning program.

The company also modified the loan on the Empire State Building on October 11, 2012, to increase the aggregate commitments available to \$500.0 million from \$300.0 million with such increase predicated on certain conditions. See Description of Certain Debt Empire State Building Secured Term Loan, below.

These principal amounts and rates of interest represent the fair values at the date of financing.

## **Leverage Policies**

The company expects to employ leverage in the company's capital structure in amounts determined from time to time by the company's board of directors. Although the company's board of directors has not adopted a policy that limits the total amount of indebtedness that the company may incur, the company anticipates that its board of directors will consider a number of factors in evaluating the company's level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or floating rate. The company's charter and bylaws do not limit the amount or percentage of indebtedness that the company may incur nor do they restrict the form in which the company's indebtedness will be taken (including, but not limited to, recourse or non-recourse debt and cross collateralized debt). The company expects to have approximately \$1.11 billion of total consolidated indebtedness outstanding and \$304.1 million of available borrowing capacity under the company's loans on a pro forma basis upon consummation of the consolidation and the IPO (based on September 30, 2012 pro forma outstanding balances and excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). The secured revolving and term credit facility will be used to repay and retire the existing \$500.0 million term loan currently secured by the Empire State Building, which had a balance of \$219.0 million as of September 30, 2012. The company's overall leverage will depend on its mix of investments and the cost of leverage, however, the company initially intends to maintain a level of indebtedness consistent with its plan to seek an investment grade credit rating. The



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company's board of directors may from time to time modify the company's leverage policies in light of the then-current economic conditions, relative costs of debt and equity capital, market values of the company's properties, general market conditions for debt and equity securities, fluctuations in the market price of the company's common stock, growth and acquisition opportunities and other factors.

**Consolidated Indebtedness to be Outstanding After the IPO**

Upon completion of the consolidation and the IPO, the company expects to have pro forma total indebtedness outstanding of approximately \$1.11 billion (based on September 30, 2012 pro forma outstanding balances). This indebtedness is comprised of 23 mortgage loans secured by 17 of the company's properties including the secured term loan on the Empire State Building, 78.2% of which is anticipated to be at fixed rates. The weighted average interest rate on the total indebtedness is expected to be 5.20% per annum.

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The following table (in thousands) sets forth certain information with respect to the mortgage indebtedness as of September 30, 2012 that the company expects will be outstanding after the consolidation and the IPO.

Property Name	Stated Interest Rate	Principal Balance as of September 30, 2012	Debt Service Nine Months Ended September 30, 2012	Amortization Commencement Date/Period	Maturity Date <sup>(1)</sup>	Estimated Principal Balance at Maturity
69-97 Main Street, Westport, CT	5.64%	\$ 9,259	\$ 519	6/01/07; 30 years	05/01/13	\$ 9,141
501 Seventh Avenue (first lien mortgage loan)	5.75%	\$ 1,084	\$ 74	2/01/05; 25 years	08/01/13	\$ 1,051
(second lien mortgage loan) <sup>(2)</sup>	5.75%; 6.04%	\$ 40,023	\$ 2,736	25 years <sup>(3)</sup>	08/01/13	\$ 38,803
(third lien mortgage loan)	LIBOR + 2.0%	\$ 6,540	\$ 114 <sup>(4)</sup>	Interest only	08/01/13	\$ 6,540
The Empire State Building (secured term loan) <sup>(5)</sup>	LIBOR + 2.5%	\$ 219,000	\$ 4,168	Interest only	07/26/14	\$ 219,000
1359 Broadway (first lien mortgage loan)	5.75%	\$ 10,005	\$ 685	4/01/05; 25 years	08/01/14	\$ 9,336
(second lien mortgage loan) <sup>(6)</sup>	5.75%; 5.87%; 6.40%	\$ 36,778	\$ 2,484	25 years <sup>(7)</sup>	08/01/14	\$ 34,689
One Grand Central Place	5.34% - 7.00%	\$ 89,714	\$ 5,588	25 years <sup>(8)</sup>	11/05/14	\$ 84,186
500 Mamaroneck Avenue	5.41%	\$ 33,425	\$ 1,858	2/01/07; 30 years	01/01/15	\$ 31,764
250 West 57th Street (first lien mortgage loan)	5.33%	\$ 26,640	\$ 1,658	2/05/07; 25 years	01/05/15	\$ 24,681
(second lien mortgage loan)	6.13%	\$ 11,590	\$ 724	4/05/09; 25 years	01/05/15	\$ 10,937
(third lien mortgage loan)	Greater of 4.25% and Prime +1% <sup>(9)</sup>	\$ 5,935	\$ 193	Interest only	01/05/15	\$ 5,935
Metro Center (Note 1) <sup>(10)</sup>	5.80%	\$ 60,300	\$ 3,707	2/01/04; 30 years	01/01/16	\$ 55,144
(Note 2) <sup>(10)</sup>	6.02%	\$ 38,296	\$ 2,163	8/01/09; 30 years	01/01/16	\$ 36,225
10 Union Square	6.00%	\$ 21,360	\$ 1,198	6/01/10; 30 years	05/01/17	\$ 19,752
10 Bank Street	5.72%	\$ 34,100	\$ 1,872	7/01/09; 30 years	06/01/17	\$ 31,194
1542 Third Avenue	5.90%	\$ 19,457	\$ 1,132	7/01/07; 30 years	06/01/17	\$ 17,569
First Stamford Place	5.65%	\$ 249,545	\$ 11,243	08/15/12; 30 years	07/05/17	\$ 232,753
383 Main Avenue	5.59%	\$ 31,050	\$ 1,677	08/05/09; 30 years	07/05/17	\$ 28,333

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1010 Third Avenue and 77 West 55th Street	5.69%	\$ 28,684	\$ 1,565	08/05/09; 30 years	07/05/17	\$ 26,160
				Currently Interest		
1333 Broadway	6.32%	\$ 81,593 <sup>(11)</sup>	\$ 3,375	only <sup>(12)</sup>	01/05/18	\$ 66,511
				Currently Interest		
1350 Broadway (first lien mortgage loan)	5.87%	\$ 44,909 <sup>(13)</sup>	\$ 1,750	only <sup>(14)</sup>	04/05/18	\$ 36,929
(second lien mortgage loan)	Greater of 4.25% and Prime +1% <sup>(15)</sup>	\$ 11,005 <sup>(16)</sup>	\$ 211	Interest only	10/10/14 <sup>(17)</sup>	\$ 10,677
<b>Total/Weighted Average:</b>	5.20%	\$ 1,110,292	\$ 50,694			\$ 1,037,310

(1) Pre-payment is generally allowed for each loan with no pre-payment penalty or upon payment of a customary pre-payment penalty.

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- (2) Represents the two tranches of the second lien mortgage loan.
- (3) Amortization began on April 1, 2005 as to \$39,424 original principal and on April 1, 2006 as to \$8,276 original principal.
- (4) Loan made on June 29, 2011.
- (5) Loan is secured by the Empire State Building. Subject to the conditions set forth in the secured term loan agreement (as amended), the lenders initially agreed to provide the company with advances of up to \$300,000, of which \$219,000 has been advanced. The loan agreement was amended on October 11, 2012 to increase the aggregate commitments to \$500,000. A condition to the lenders' obligation to loan the additional amounts (in addition to any other conditions in the loan agreement) is that the loan-to-value ratio (as defined therein), based on an updated appraisal, does not then exceed 50%. For a description of the loan, see "Description of Certain Debt - Empire State Building Secured Term Loan" below.
- (6) Represents three tranches of the second lien mortgage loan.
- (7) Amortization began on April 1, 2005 as to \$6,969 original principal, on December 1, 2005 as to \$13,803 original principal and on September 1, 2007 as to \$21,228 original principal.
- (8) Amortization began on August 5, 2007 as to \$84,000 original principal and on December 5, 2009 as to \$16,000 original principal.
- (9) Prior to January 5, 2015, the company has the option to fix the interest rate on all or any portion of the principal then outstanding, up to three times and in minimum increments of \$5,000 to an annual rate equal to either (i) the greater of (a) 4.75% or (b) 300 basis points in excess of the weekly average yield on United States Treasury Securities adjusted to a maturity closest to January 5, 2015 as most recently made available by the Federal Reserve Board as of two days prior to the effective date of the fixing of the interest rate, and (ii) the greater of (a) 5.00% or (b) 300 basis points in excess of the weekly average yield on United States Treasury Securities adjusted to a maturity closest to January 5, 2015 as most recently made available by the Federal Reserve Board as of 30 days prior to the effective date of the fixing of the interest rate. If option (i) is selected, the company will be subject to the payment of pre-payment fees, and if option (ii) is selected, the company may prepay the loan without any pre-payment fees.
- (10) Notes 1 and 2 are pari passu.
- (11) Includes unamortized premium of \$10,393.
- (12) Amortization will begin on February 5, 2013, with a period of 30 years.
- (13) Includes unamortized premium of \$5,161.
- (14) Amortization will begin on May 5, 2013, with a period of 30 years.
- (15) Prior to October 10, 2014, the company has the option to fix the interest rate on all or any portion of the principal then outstanding, up to three times and in minimum increments of \$5,000 to an annual rate equal to the greater of (a) 4.75% or (b) 300 basis points in excess of the weekly average yield on United States Treasury Securities adjusted to a maturity closest to October 10, 2014 as most recently made available by the Federal Reserve Board as of two business days prior to the effective date of the fixing of the interest rate.
- (16) Includes unamortized premium of \$327.
- (17) The company has the right to extend the maturity date to April 5, 2018. If the company elects to extend the term of the loan, the interest rate will be reset at an annual rate equal to, at the company's option, either: (i) the greater of (a) 6.5% or (b) 300 basis points in excess of the weekly average yield on United States Treasury Securities adjusted to a maturity closest to April 5, 2018 as most recently made available by the Fed Reserve Board as of 30 days prior to the first day of the extended term of the loan or (ii) the greater of (a) 6.75% or (b) 325 basis points in excess of the weekly average yield on United States Treasury Securities adjusted to a maturity closest to April 5, 2018 as most recently made available by the Federal Reserve Board as of 30 days prior to the first day of the extended term of the loan. If option (i) is selected, the company will be subject to the payment of pre-payment fees, and if option (ii) is selected, the company may prepay the loan without any pre-payment fees.

***Description of Certain Debt***

The following is a summary of the material provisions of the secured term loan agreement with respect to the loan secured by the Empire State Building and the company's expected new secured revolving and term credit facility.

***Empire State Building Secured Term Loan***

On July 26, 2011, the company entered into a three-year term loan, or the company's secured term loan, with institutional lenders, including HSBC Bank USA, National Association as agent and HSBC Bank USA, National Association and DekaBank Deutsche Girozentrale as lead arrangers. The secured term loan is secured by the Empire State Building. The secured term loan was amended by the First Amendment to Loan Agreement, Ratification of Loan Documents and Omnibus Amendment dated as of November 2, 2011 to provide for additional commitments from Capital One, National Association so that, collectively, the loan was increased to \$300.0 million. No additional funds were drawn at the time of the modification.

The lenders provided the company with an initial advance of \$159.0 million and, subject to the conditions set forth in the secured term loan agreement (as amended), agreed to provide the company with additional advances of up to \$141.0 million, of which \$60.0 million was subsequently advanced. The loan agreement was

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amended on October 11, 2012 to increase the aggregate commitments to \$500.0 million. A condition to the lenders' obligation to loan the additional amounts (in addition to the other conditions in the loan agreement) is that the loan-to-value ratio (as defined therein), based on an updated appraisal, does not then exceed 50%.

The outstanding principal amount of the secured term loan bears interest at a rate equal to 2.5% per annum above 30-day LIBOR, unless such rate is not available, in which event the secured term loan would bear interest at 2.5% per annum in excess of (i) HSBC's prime rate or (ii) the BBA LIBOR Daily Floating Rate. The initial advance noted above accrued interest at the BBA LIBOR Daily Floating Rate plus the margin of 2.5% per annum until August 1, 2011. In connection with this loan, the company issued promissory notes, a mortgage encumbering the Empire State Building in favor of the lenders, and other customary security and other loan documents. The maturity date of this loan is July 26, 2014, which the company may extend to July 26, 2015 and thereafter to July 26, 2016, in each case, upon payment of an extension fee of 0.25% of the total availability under the secured term loan agreement at the time of such extension. Such extensions are subject to customary conditions, including the satisfaction of certain loan-to-value and debt yield ratios at the time the extension is requested and the absence of an event of default.

The initial advance of \$159.0 million was used to pay and discharge then existing secured mortgage loans relating to the Empire State Building and to fund operations and working capital requirements related to the Empire State Building (including for improvements). On each of April 6, 2012 and July 9, 2012, an additional \$30.0 million was drawn on this loan.

Payment obligations relating to the secured term loan may be accelerated upon the occurrence of an event of default under the secured term loan agreement. Events of default under the secured term loan agreement include, subject in some cases to specified cure periods: payment defaults; failure by the company to pay taxes; failure to keep certain insurance policies in effect; breaches of representations and covenants contained in the mortgage; defaults in the observance or performance of covenants; inaccuracy of representations and warranties in any material respect; bankruptcy and insolvency related defaults; and the entry of one or more final judgments for the payment of more than \$1 million that are not satisfied within 30 days.

The secured term loan agreement contains affirmative and negative covenants customary for financings of this type. Negative covenants in the secured term loan agreement limit the company's ability, subject to certain exceptions, to transfer all or substantially all of the company's property; incur indebtedness and liens; dissolve, liquidate or enter into mergers or similar transactions; change the company's line of business; cancel debt; enter into transactions with affiliates; rezone the company's property; sell the company's assets; make certain distributions to investors; and change the company's organizational documents. The company must also maintain a debt yield as specified in the secured term loan agreement. The company expects to fully repay its borrowings under this loan with the funds available under the secured revolving and term credit facility described below.

*Secured Revolving and Term Credit Facility*

In connection with the IPO and the consolidation, the company has received a commitment letter from Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch), who will act as joint lead arranger, Bank of America, N.A. (Bank of America), an affiliate of Merrill Lynch, who will act as administrative agent and Goldman Sachs Bank USA, an affiliate of Goldman Sachs & Co., who will act as syndication agent and joint lead arranger, with respect to the revolving credit and term loan facilities, which are collectively referred to herein as the secured revolving and term credit facility, in the maximum aggregate original principal amount of \$800.0 million. Pursuant to the commitment letter, the joint lead arrangers have agreed to use commercially reasonable efforts to arrange for a syndicate of financial institutions, including Bank of America and Goldman Sachs Bank USA, to provide commitments and act as lenders under the secured revolving and term credit facility. Bank of America and Goldman Sachs Bank USA, subject to satisfaction of certain customary conditions precedent, have each committed to lend up to \$200.0 million of the amount of the secured revolving term and credit facility. The company expects the secured revolving and term credit facility will be comprised of a term loan, which is referred to herein as the term loan, of up to \$300.0 million, and a revolving credit facility, which is

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referred to herein as the revolving credit facility, in the maximum original principal amount of the difference between \$800.0 million and the original balance under the term loan. The company expects the secured revolving and term credit facility will contain an accordion feature that would allow the company to increase the maximum aggregate principal amount to \$1.25 billion under specified circumstances. The company plans to use funds available under the (i) term loan to fully repay borrowings under its existing term loan secured by the Empire State Building and (ii) revolving credit facility for, among other things, capital expenditures, acquisitions, general corporate matters and working capital.

The company expects that it and certain of its subsidiaries will be guarantors of the secured revolving and term credit facility and will pledge specified equity interests in its subsidiaries as collateral for its obligations under the secured revolving and term credit facility. The company, the operating partnership and the company's subsidiaries who will be guarantors are collectively referred to herein as the loan parties.

**Availability.** The amount available to the company under the secured revolving and term credit facility will be based on adjusted net operating income from all of the borrowing base properties, and subject to parameters that reference a minimum debt service coverage ratio and an assumed amortization term and interest rate.

**Interest.** The secured revolving and term credit facility is expected to bear interest at the rate of either the Eurodollar rate or a base rate, in each case plus a margin that will vary depending on the company's leverage ratio or credit rating.

**Fees.** The company will also pay certain customary fees and expense reimbursements.

**Maturity.** The company expects the term loan will have a term of five years and the revolving credit facility will have an initial term of four years. The company expects to have the option to extend the initial term of the revolving credit facility for an additional one-year period, subject to certain conditions, including the payment of an extension fee equal to 0.20% of the then-outstanding commitments under the revolving credit facility.

**Financial Covenants.** The secured revolving and term credit facility will include the following financial covenants: (i) maximum leverage ratio of total indebtedness to total asset value of the loan parties and their consolidated subsidiaries will not exceed 60%, (ii) consolidated secured indebtedness (excluding the secured revolving and term credit facility) will not exceed 40% of total asset value, (iii) tangible net worth will not be less than the sum of 80% of tangible net worth at the closing of the secured revolving and term credit facility plus 75% of net equity proceeds received by the company after the closing date (other than proceeds received by the company in connection with any dividend reinvestment program), (iv) adjusted EBITDA (as defined in the commitment letter) to consolidated fixed charges will not be less than 1.50x, (v) consolidated variable rate debt will not exceed 25% of total asset value and (vi) consolidated secured recourse indebtedness (excluding the secured revolving and term credit facility) will not exceed 10% of total asset value. Subject to certain customary exceptions and excluding dividends and distributions payable solely in the company's common stock, the company will be restricted from paying dividends or other distributions in excess of the greater of (x) 95% of funds from operations (as defined in the commitment letter) and (y) the amount of dividends and other distributions the company is required to pay in order to maintain its qualification as a REIT and (other than during an event of default) to avoid the payment of federal or state income or excise tax; provided, that if certain events of default exist, the company may be precluded from paying any dividends or other distributions.

**Events of Default.** The company expects the secured revolving and term credit facility will contain customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of REIT qualification, and occurrence of a change of control (to be defined in the definitive documentation for the secured revolving and term credit facility).

**Table of Contents****Contractual Obligations**

The following table summarizes the amounts due in connection with the company's contractual obligations described below as of December 31, 2011 and for the years ended December 31, 2012 (assuming all debt obligations as of September 30, 2012 were outstanding as of January 1, 2012) through 2016 and thereafter on a pro forma basis (in thousands). For a description of the pro forma adjustments made to the predecessor's historical financial statements, see Unaudited Pro Forma Financial Information.

	Pro Forma Year Ended December 31						Total
	2012	2013	2014	2015	2016	Thereafter	
Mortgages and other debt <sup>(1)</sup>							
Interest expense	\$ 55,782	\$ 54,593	\$ 48,506	\$ 33,632	\$ 27,891	\$ 18,890	\$ 239,294
Amortization	\$ 12,164	\$ 15,266	\$ 14,635	\$ 10,051	\$ 7,921	\$ 5,641	\$ 65,678
Principal repayment		\$ 55,535	\$ 357,888	\$ 73,317	\$ 91,369	\$ 459,201	\$ 1,037,310
Ground leases							
Operating leases	\$ 108	\$ 108	\$ 108	\$ 108	\$ 108	\$ 2,763	\$ 3,303
Tenant improvement and leasing commission costs	\$ 63,024	\$ 72,844					\$ 135,868
Total	\$ 131,078	\$ 198,345	\$ 421,137	\$ 117,108	\$ 127,289	\$ 486,495	\$ 1,481,453

(1) Assumes no extension options are exercised.

**Off-Balance Sheet Arrangements**

As of September 30, 2012, the company does not have any off-balance sheet arrangements.

**Distribution Policy**

In order to qualify as a REIT, the company must distribute to the company's stockholders, on an annual basis, at least 90% of the company's REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. In addition, the company will be subject to U.S. federal income tax at regular corporate rates to the extent that the company distributes less than 100% of the company's net taxable income (including net capital gains) and will be subject to a 4% nondeductible excise tax on the amount, if any, by which the company's distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. The company intends to distribute the company's net income to the company's stockholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax liability on the company's income and the 4% nondeductible excise tax.

Before the company pays any distribution, whether for U.S. federal income tax purposes or otherwise, the company must first meet both the company's operating requirements and obligations to make payments of principal and interest, if any. However, under some circumstances, the company may be required to use cash reserves, incur debt or liquidate assets at rates or times that the company regards as unfavorable or make a taxable distribution of the company's shares in order to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax in that year. However, the company currently has no intention to use the net proceeds from the IPO to make distributions nor does the company currently intend to make distributions using shares of the company's common stock.

**Cash Flows****Comparison of Nine Months Ended September 30, 2012 to the Nine Months Ended September 30, 2011 (in thousands)**

*Net cash.* Cash on hand was \$93,235 and \$125,924, respectively, as of September 30, 2012 and 2011.

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*Operating activities.* Net cash provided by operating activities increased by \$26,220 to \$85,646 for the nine months ended September 30, 2012 compared to \$59,426 for the nine months ended September 30, 2011. This increase resulted from changes in working capital accounts primarily relating to a decrease in net due to/from affiliated companies of \$31,273 (including \$28,780 of overage rent paid by a lessee) which resulted in an increase in cash from operating activities in the nine months ended September 30, 2012 as compared with the nine months ended September 30, 2011.

*Investing activities.* Net cash used in investing activities increased by \$27,618 to \$69,836 for the nine months ended September 30, 2012 compared to \$42,218 for the nine months ended September 30, 2011. This increase resulted primarily from a \$25,889 increase in building improvements and tenant improvements costs, including \$15,061 attributable to investing activities of affiliates.

*Financing activities.* Net cash used in financing activities increased by \$29,576 to \$8,891 for the nine months ended September 30, 2012 compared to \$20,685 of net cash provided for the nine months ended September 30, 2011. This increase primarily reflected a decrease in net proceeds and repayments of mortgage loans and unsecured notes of \$16,665 and a \$14,987 increase in distributions to investors.

***Comparison of Year Ended December 31, 2011 to Year Ended December 31, 2010 (in thousands)***

*Net cash.* Cash on hand was \$86,316 and \$88,031, respectively, as of December 31, 2011 and 2010.

*Operating activities.* Net cash provided by operating activities decreased by \$25,892 to \$47,682 for the year ended December 31, 2011 compared to \$73,574 for the year ended December 31, 2010. This decrease primarily resulted from the following changes in working capital accounts, all of which resulted in decreases in cash from operating activities in the year ended December 31, 2011 as compared with the year ended December 31, 2010: increases in the change in tenant and other receivables of \$2,451, increases in offering costs due from affiliated companies of \$8,501, decreases in deferred revenues and other liabilities of \$1,779, and a decrease in cash inflows relating to accounts payable and accrued expenses and accrued interest payable of \$6,802. Additionally, payments of deferred leasing costs relating to tenant leases increased by \$6,403.

*Investing activities.* Net cash used in investing activities increased \$25,690 to \$60,527 for the year ended December 31, 2011 compared to \$34,837 for the year ended December 31, 2010. This increase resulted primarily from a \$25,217 increase in building improvements and tenant improvement costs.

*Financing activities.* Net cash provided by financing activities increased \$55,923 to \$11,130 for the year ended December 31, 2011 compared to \$44,793 of net cash used for the year ended December 31, 2010. This increase primarily resulted from a \$67,000 increase in net borrowings in connection with the Empire State Building, partially offset by financing charges of \$7,172 on the new loan and an increase in deferred costs of \$4,397 relating to the consolidation.

***Comparison of Year Ended December 31, 2010 to Year Ended December 31, 2009 (in thousands)***

*Net cash.* Cash on hand was \$88,031 and \$94,087, respectively, as of December 31, 2010 and 2009.

*Operating activities.* Net cash provided by operating activities increased \$15,065 to \$73,574 for the year ended December 31, 2010 compared to \$58,509 for the year ended December 31, 2009. This increase primarily resulted from an increase in net operating income generated by the company's properties and the timing in which the company settled accounts payable and accrued expenses.

*Investing activities.* Net cash used in investing activities decreased \$3,780 to \$34,837 for the year ended December 31, 2010 compared to \$38,617 for the year ended December 31, 2009. This decrease of net cash used in investing activities primarily resulted from a decrease in capital expenditures and costs associated with the development of Metro Tower of \$14,353 partially offset by an increase in tenant improvements of \$10,862.



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*Financing activities.* Net cash used in financing activities increased \$39,758 to \$44,793 for the year ended December 31, 2010 compared to \$5,035 for the year ended December 31, 2009. This increase primarily resulted from a decrease in net borrowings, including financing charges, of \$43,212 and a decrease in contributions of \$1,615 partially offset by a decrease in distributions of \$8,152.

### **Net Operating Income**

Following the closing of the IPO, the company's financial reports will include a discussion of property net operating income, or NOI. NOI is a non-GAAP financial measure of performance. NOI is used by investors and the company's management to evaluate and compare the performance of the company's properties and to determine trends in earnings and to compute the fair value of the company's properties as it is not affected by: (i) the cost of funds of the property owner, (ii) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP, (iii) acquisition expenses and formation transaction expenses; or (iv) general and administrative expenses and other gains and losses that are specific to the property owner. The cost of funds is eliminated from net operating income because it is specific to the particular financing capabilities and constraints of the owner. The cost of funds is also eliminated because it is dependent on historical interest rates and other costs of capital as well as past decisions made by the company regarding the appropriate mix of capital which may have changed or may change in the future. Depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets are eliminated because they may not accurately represent the actual change in value in the company's office or retail properties that result from use of the properties or changes in market conditions. While certain aspects of real property do decline in value over time in a manner that is reasonably captured by depreciation and amortization, the value of the properties as a whole have historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale which will usually change from period to period. These gains and losses can create distortions when comparing one period to another or when comparing the company's operating results to the operating results of other real estate companies that have not made similarly timed, purchases or sales. The company believes that eliminating these costs from net income is useful because the resulting measure captures the actual revenue, generated and actual expenses incurred in operating the company's properties as well as trends in occupancy rates, rental rates and operating costs.

However, the usefulness of NOI is limited because it excludes general and administrative costs, interest expense, interest income and other expense, depreciation and amortization expense and gains or losses from the sale of properties, and other gains and losses as stipulated by GAAP, the level of capital expenditures and leasing costs necessary to maintain the operating performance of the company's properties, all of which are significant economic costs. NOI may fail to capture significant trends in these components of net income which further limits its usefulness.

NOI is a measure of the operating performance of the company's properties but does not measure the company's performance as a whole. NOI is therefore not a substitute for net income as computed in accordance with GAAP. This measure should be analyzed in conjunction with net income computed in accordance with GAAP and discussions elsewhere in this Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the components of net income that are eliminated in the calculation of NOI. Other companies may use different methods for calculating NOI or similarly entitled measures and, accordingly, the company's NOI may not be comparable to similarly entitled measures reported by other companies that do not define the measure exactly as the company does.

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The following table presents a reconciliation of the company's historical and pro forma net income, the most directly comparable GAAP measure, to NOI for the periods presented (in thousands):

	Pro Forma			Historical		
	For the Nine Months Ended September 30, 2012 (unaudited)	For the Year Ended December 31, 2011 (unaudited)	For the Nine Months Ended September 30, 2012 (unaudited)	For the Year Ended December 31, 2011 2010 2009		
Net income <sup>(1)</sup>	\$ 60,163	\$ 58,653	\$ 26,600	\$ 57,397	\$ 45,311	\$ 41,837
Add:						
Marketing, general and administrative expenses	26,481	28,778	14,415	15,688	13,924	16,145
Total depreciation and amortization <sup>(2)</sup>	69,194	93,941	37,067	42,741	40,121	33,986
Interest expense, net <sup>(3)</sup>	43,566	56,608	43,111	58,467	55,851	53,768
Construction expenses	12,575	46,230	12,575	46,230	27,581	17,281
Formation transaction expenses <sup>(4)</sup>			1,640	2,845	807	
Less:						
Construction revenue	(11,731)	(47,560)	(11,731)	(47,560)	(27,139)	(15,997)
Third-party management and other fees	(2,148)	(3,672)	(3,909)	(5,626)	(3,750)	(4,296)
<b>Net operating income</b>	<b>\$ 198,100</b>	<b>\$ 232,978</b>	<b>\$ 119,768</b>	<b>\$ 170,182</b>	<b>\$ 152,706</b>	<b>\$ 142,724</b>

**Other Net Operating Income Data**

Straight line rental revenue	\$ 15,797	\$ 22,046	\$ 2,127	\$ 3,116	\$ 3,989	\$ 1,503
Net increase (decrease) in rental revenue from the amortization of in place lease assets, above and below-market lease assets and liabilities	\$ (6,725)	\$ (17,562)	\$	\$	\$	\$
Amortization of assumed below-market ground lease <sup>(5)</sup>	\$ 1,244	\$ 1,657	\$	\$	\$	\$
Ground rent earned from non-controlled entities <sup>(5)</sup>	\$	\$	\$ 12,208	\$ 42,902	\$ 17,106	\$ 19,717
Management fees from non-controlled entities	\$	\$	\$ 3,400	\$ 4,026	\$ 1,254	\$ 1,383

(1) Excludes gains/losses from sales.

(2) Includes adjustment for proportionate share of depreciation and amortization expense relating to non-controlled entities of \$5,190, \$7,228, \$6,080 and \$4,659 for the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010 and 2009, respectively.

(3) Includes adjustment for proportionate share of interest expense, net related to non-controlled entities of \$2,888, \$3,721, \$3,587 and \$3,030 for the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010, 2009, respectively.

(4) Includes external offering costs incurred that are not directly attributable to the solicitation of consents and the IPO.

(5) Upon completion of the consolidation and the IPO, the company will incur amortization of the assumed below-market ground lease attributable to 1350 Broadway, in addition to the contractual ground rent payment of \$108.

**Funds from Operations**

Presented below is a discussion of funds from operations, or FFO. The company computes FFO in accordance with the White Paper on FFO published by the National Association of Real Estate Investment Trusts, or NAREIT, which defines FFO as net income (loss) (determined in accordance with GAAP), excluding impairment writedowns of investments in depreciable real estate and investments in in-substance real estate

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investments, gains or losses from debt restructurings and sales of depreciable operating properties, plus real estate-related depreciation and amortization (excluding amortization of deferred financing costs), less distributions to non-controlling interests and gains/losses from discontinued operations and after adjustments for unconsolidated partnerships and joint ventures. FFO is a widely recognized non-GAAP financial measure for REITs that the company believes, when considered with financial statements determined in accordance with GAAP, is useful to investors in understanding financial performance and providing a relevant basis for comparison among REITs. In addition, FFO is useful to investors as it captures features particular to real estate performance by recognizing that real estate has generally appreciated over time or maintains residual value to a much greater extent than do other depreciable assets. Investors should review FFO, along with GAAP net income, when trying to understand an equity REIT's operating performance. The company presents FFO because the company considers it an important supplemental measure of the company's operating performance and believe that it is frequently used by securities analysts, investors and other interested parties in the evaluation of REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of the company's properties that results from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of the company's properties, all of which have real economic effect and could materially impact the company's results from operations, the utility of FFO as a measure of the company's performance is limited. There can be no assurance that FFO presented by the company is comparable to similarly titled measures of other REITs. FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions. Although FFO is a measure used for comparability in assessing the performance of REITs, as the NAREIT White Paper only provides guidelines for computing FFO, the computation of FFO may vary from one company to another.

The following table presents a reconciliation of the company's historical and pro forma net income, the most directly comparable GAAP measure, to FFO for the periods presented (in thousands):

	Pro Forma		For the Nine Months Ended September 30, 2012 (unaudited)	Historical		
	For the Nine Months Ended September 30, 2012 (unaudited)	For the Year Ended December 31, 2011 (unaudited)		For the Nine Months Ended September 30, 2012 (unaudited)	For the Year Ended December 31, 2011 2010 2009	
Net income <sup>(1)</sup>	\$ 60,163	\$ 58,653	\$ 26,600	\$ 57,397	\$ 45,311	\$ 41,837
Add:						
Real estate depreciation and amortization <sup>(2)</sup>	68,641	93,201	36,781	42,364	39,709	33,621
<b>Funds from operations</b>	<b>\$ 128,804</b>	<b>\$ 151,854</b>	<b>\$ 63,381</b>	<b>\$ 99,761</b>	<b>\$ 85,020</b>	<b>\$ 75,458</b>

(1) Excludes gains/losses from sales.

(2) Includes adjustment for proportionate share of real estate depreciation and amortization expense relating to non-controlled entities of \$5,050, \$7,049, \$5,915 and \$4,559 for the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010 and 2009, respectively.

**EBITDA**

Presented below is a discussion of EBITDA. The company computes EBITDA as net income plus interest expense, net of interest income, income taxes and depreciation and amortization. The company presents EBITDA because the company believes that EBITDA, along with cash flow from operating activities, investing activities and financing activities, provides investors with an additional indicator of the company's ability to incur and service debt. EBITDA should not be considered as an alternative to net income (determined in accordance with GAAP), as an indication of the company's financial performance, as an alternative to net cash flows from operating activities (determined in accordance with GAAP), or as a measure of the company's liquidity.

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The following table presents a reconciliation of the company's historical and pro forma net income, the most directly comparable GAAP measure, to EBITDA for the periods presented (in thousands):

	Pro Forma			Historical		
	For the	For the	For the	For the Year		
	Nine	For the Year	Nine	Ended December 31,		
	Months Ended	Ended	Months Ended	2011	2010	2009
	September 30,	December 31,	September 30,			
	2012	2011	2012			
	(unaudited)	(unaudited)	(unaudited)			
Net income <sup>(1)</sup>	\$ 60,163	\$ 58,653	\$ 26,600	\$ 57,397	\$ 45,311	\$ 41,837
Add:						
Income taxes <sup>(2)</sup>	5,591	3,969	59	42		
Interest expense, net <sup>(3)</sup>	43,566	56,608	43,111	58,467	55,851	53,768
Total depreciation and amortization <sup>(4)</sup>	69,194	93,941	37,067	42,741	40,121	33,986
<b>EBITDA</b>	<b>\$ 178,514</b>	<b>\$ 213,171</b>	<b>\$ 106,837</b>	<b>\$ 158,647</b>	<b>\$ 141,283</b>	<b>\$ 129,591</b>

(1) Excludes gains/losses from sales.

(2) Includes additional federal, state and local tax expense of \$4,348 and \$1,874 the company expects to incur for the nine months ended September 30, 2012 and the year ended December 31, 2011, respectively, related to the observatory operations through a TRS.

(3) Includes adjustment for proportionate share of interest expense related to non-controlled entities of \$2,888, \$3,721, \$3,587 and \$3,030 for the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010 and 2009, respectively.

(4) Includes adjustment for proportionate share of depreciation and amortization expense relating to non-controlled entities of \$5,190, \$7,228, \$6,080 and \$4,659 for the nine months ended September 30, 2012 and the years ended December 31, 2011, 2010 and 2009, respectively.

**Distribution to Equity Holders**

Distributions have been made to equity holders in 2009, 2010 and 2011 as follows:

**For the year ended:**

December 31, 2009	\$ 48,826,000
December 31, 2010	\$ 40,674,000
December 31, 2011	\$ 46,691,000

**For the nine months ended:**

September 30, 2012	\$ 49,738,000
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**Inflation**

Substantially all of the company's leases provide for separate real estate tax and operating expense escalations. In addition, many of the leases provide for fixed base rent increases. The company believes inflationary increases may be at least partially offset by the contractual rent increases and expense escalations described above. The company does not believe inflation has had a material impact on the company's historical financial position or results of operations.

**Seasonality**

The company does not consider the company's business to be subject to material seasonal fluctuations, except that 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.



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### **Quantitative and Qualitative Disclosures About Market Risk**

The company's future income, cash flows and fair values relevant to financial instruments are dependent upon prevalent market interest rates. Market risk refers to the risk of loss from adverse changes in market prices and interest rates. One of the principal market risks facing the company is interest rate risk on the company's floating rate indebtedness. Following the consolidation and the IPO, the company expects to have floating rate mortgage loans on 501 Seventh Avenue (third lien), 250 West 57<sup>th</sup> Street (third lien), 1350 Broadway (second lien) and the company's secured term loan on the Empire State Building, which collectively represent 21.8% of the company's pro forma indebtedness.

Subject to maintaining the company's qualification as a REIT for U.S. federal income tax purposes, the company may mitigate the risk of interest rate volatility through the use of hedging instruments, such as interest rate swap agreements and interest rate cap agreements. The company's primary objectives when undertaking hedging transactions and derivative positions will be to reduce the company's floating rate exposure and to fix a portion of the interest rate for anticipated financing and refinancing transactions. This in turn will reduce the risk that the variability of cash flows will impose on floating rate debt. However, the company can provide no assurances that the company's efforts to manage interest rate volatility will successfully mitigate the risks of such volatility on the company's portfolio. The company is not subject to foreign currency risk.

The company is exposed to interest rate changes primarily through (i) property-specific floating rate construction financing, and (ii) other property-specific floating rate mortgages. The company's objectives with respect to interest rate risk are to limit the impact of interest rate changes on operations and cash flows, and to lower the company's overall borrowing costs. To achieve these objectives, the company may borrow at fixed rates and may enter into derivative financial instruments such as interest rate swaps or caps in order to mitigate the company's interest rate risk on a related floating rate financial instrument. The company does not enter into derivative or interest rate transactions for speculative purposes.

As of September 30, 2012, the company had total outstanding pro forma floating rate mortgage debt obligations of \$242.5 million. Based on the company's variable balances, interest expense would have increased by approximately \$2.4 million for the year ended December 31, 2011, if short-term interest rates had been 1% higher. As of September 30, 2012, the weighted average interest rate on the \$867.8 million of pro forma fixed-rate indebtedness outstanding was 5.85% per annum, each with maturities at various dates through April 5, 2018.

As of September 30, 2012, the company's pro forma outstanding debt was approximately \$1.11 billion which was approximately \$15.9 million more than the historical book value as of such date. Interest risk amounts were determined by considering the impact of hypothetical interest rates on the company's financial instruments. These analyses do not consider the effect of any change in overall economic activity that could occur in that environment. Further, in the event of a change of that magnitude, the company may take actions to further mitigate the company's exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, these analyses assume no changes in the company's financial structure.

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**ECONOMIC AND MARKET OVERVIEW**

*Unless otherwise indicated, all information in this Economic and Market Overview section is comprised of the market studies prepared by Rosen Consulting Group, or RCG, a national commercial real estate advisory company in August 2012. Forecasts prepared by RCG are based on data (including third-party data), models and experience of various professionals, and are based on various assumptions, all of which are subject to change without notice. There is no assurance any of the forecasts will be achieved. The company believes the data utilized by RCG that is contained in this section is reliable, but the company has not independently verified this information. The manner in which the company defines its property markets and submarkets differs from how RCG has done so in its market study included herein. Further, RCG's definition of the New York metropolitan area differs from the company's definition of the greater New York metropolitan area in that it includes Putnam County and Rockland County in New York and Bergen County, Hudson County, and Passaic County in Northern New Jersey and excludes Fairfield County in Connecticut.*

**New York Metropolitan Division Economy and Demographics**

**New York City Overview**

The financial and entertainment capital of the United States, New York City is a destination for new residents, businesses, and tourists alike. New York City is an international hub for entertainment, finance, culture, cuisine, art, education, political affairs and media. Home to major conglomerates in the areas of finance, entertainment, and advertising, New York City is also one of the most-prized office markets in the world. The market's high barriers to entry and wide array of office demand driving industries provides stability through economic cycles and a foundation for the market's growth over the long-term. The city's lively, 24-7 environment makes New York City a go-to destination for both domestic and international tourists and attracts close to 50 million visitors annually, which helps to maintain the market's status as one of the most expensive retail markets in the country. Reaching a record-breaking 50.9 million visitors in 2011, New York City remains a top tourist destination among U.S. cities. One of the world's premier gateway cities, New York, with its large, diversified economy, will play a central role in the expanding global economy.

The varied mix of people, cultures and incomes make New York City a unique retail destination that is more diverse than any other in the country. The area's high tourism traffic contributes to this eclectic mix of consumers and is a major driver of retail sales for many shopping districts. Madison and Fifth Avenues and the Time Warner Center support upscale shopping, more avant-garde retailing is concentrated below 23rd Street, and a buoyant retail market contains everything from international foodstuffs to a huge diamond jewelry district. The area surrounding Herald Square is a retail hub and is home to Macy's flagship department store and the Manhattan Mall. The world-renowned retail market provides an endless selection of shopping options across the five boroughs from flagship department stores to unique boutiques, which are largely concentrated in neighborhoods like the Lower East Side, the West Village, Williamsburg and the Meatpacking District. In addition to the availability of one-of-a-kind items, shopping in New York is a memorable experience for many, leaving a long-lasting impression on those fortunate enough to experience it.

*Regional Overview*

The New York metropolitan division, which includes New York City, three suburban counties located north of New York City: Putnam County, Rockland County, and Westchester County, and three counties located in Northern New Jersey: Bergen County, Hudson County, and Passaic County, is the largest regional economy in the United States, with an employment base that totaled approximately 5.3 million as of June 2012. The New York metropolitan statistical area, which in addition to the aforementioned New York metropolitan division includes Long Island and parts of northern and central New Jersey, had a nominal gross product of \$1.3 trillion in 2010, the latest data available and the largest in the United States. Because of its global reach and available professional, educational and cultural resources, the New York metropolitan division is a highly desirable location for businesses and new residents. While New York City remains the global financial capital, the regional

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economic base is diverse and driven by other major industries such as business services, education, health care, technology, tourism, media and publishing.

In June 2012, year-over-year employment growth in the Manhattan borough (New York County) increased by 1.5% to approximately 930,800 jobs, according to the BLS Household Survey.

### ***Major Economic Drivers***

Despite the New York metropolitan division economy's increasing diversity, the financial activities sector remains a major growth driver in the economy, particularly because of the sector's concentration of high-income jobs and the business services needed to support operations. The finance industry constituted 25.2% of the New York metropolitan division's total earnings in 2011, the latest data available, despite accounting for only 10.3% of total employment. The sector also accounted for 33.8% of the New York 8211/76979-001 current/32049480v4 metropolitan statistical area's gross product in 2010, the latest data available, for a total of \$433.0 billion. Many other sectors of the economy depend on the financial industry for growth including business services, retail trade, residential and commercial real estate, arts and leisure, and many others. Understandably, the unwinding of the financial markets during the most recent recession had a disproportionately large effect on the New York region's financial services sector. However, the employment in the sector has rebounded, as financial activities sector employment levels rose to nearly 550,000 jobs as of June 2012, up from a year-end cyclical low of 530,000 jobs in 2009.

Anticipated to be one of the fastest-growing employment sectors during the forecast period, the professional and business services sector accounted for 15.9% of the total labor force and 14.6% of the New York metropolitan statistical area's gross metropolitan area product in 2010, the latest available data for this sector, for a total of \$187.4 billion. Capitalizing on the area's concentration of technical and creative talent, the New York regional professional and businesses sector encompasses a variety of professions from engineering and law to architecture, fashion design, and marketing. The anticipated rise in demand for specialized services such as law, consulting, accounting, and architecture should increase as the larger economy recovers from recent lows, which should fuel growth in the sector. In New York City, the growth of companies in the professional and business services sector is closely tied to the health of the heavily concentrated finance and media industries. New York City's large, diverse and educated workforce should facilitate the continued growth of companies in research and development, as well as in computer systems design. A promising trend for both the New York City economy and office market is the expansion of high-tech companies in the market, which have contributed to the growth of the New York City economy during the recent decade, but will play a prominent role in the recovery of the economy and future expansion. The New York regional tech industry is the East Coast's answer to California's Silicon Valley. The area's proximity to existing media and entertainment networks, as well as the availability of highly-skilled talent and venture capital firms, should continue to attract tech entrepreneurs to New York City. This trend should support accelerated growth and visibility among burgeoning tech companies and the expansion of existing companies such as Foursquare, BuzzFeed, and Tumblr.

The fashion industry remains an important source of job growth and office demand in New York City. According to the New York Economic Development Corporation, New York City's fashion industry—the largest in the country—employs approximately 172,000 people, accounting for approximately 4.5% of the city's workforce, and serves as the headquarters for more than 900 fashion companies. The New York metropolitan division's fashion industry primarily consists of jobs in fashion/apparel design and trade.

The educational and health services sector is also a major economic driver in the area, accounting for close to 20.0% of total employment or just over one million jobs as of June 2012. Expected to be one of the fastest-expanding employment sectors during the forecast period, educational services will benefit from the continued growth of younger age-cohorts combined with the heightened need for health services from aging baby-boomers. The sector recorded a gross product totaling \$109.8 billion in 2010, the latest available data, or 8.6% of the total metropolitan statistical area economy. According to the 2010 American Community Survey, approximately 898,200 or 11.7% of the New York metropolitan division's estimated 11.7 million residents were enrolled in



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higher education. With more than 110 colleges and universities located within New York City, education is a major service industry in the local economy. The city's four medical schools are all attached to tertiary-care hospitals, forming academic medical centers that provide advanced care to local residents and the thousands of out-of-area patients who visit the area specifically to receive treatment in these centers. The strength of the sector is further bolstered by several major medical research facilities in the area. New York State's total funding by the National Institutes of Health was the third-highest of all states for 2010, with many recipients located in New York City.

A source for media and entertainment for both national and international audiences, the New York metropolitan division's information services sector, which accounts for 3.9% of total employment, encompasses a wide range of industries such as traditional print publishing, motion picture and audio recording, broadcasting, telecommunications, and others. The New York region is the country's largest media market and is home to some of the country's largest and most influential newspapers and publishing houses. The area is also home to the country's major television and record industry conglomerates and the world's largest advertising agencies. These firms form a large base of tenants for New York City's office market. The information services sector gross product totaled \$96.5 billion in 2010, the latest available data, or 7.5% of the overall economy. Going forward, while New York City is expected to maintain its place as the global center for television, music and publishing, long-term dynamic factors like technological advancements, shifting consumer preferences, and rising popularity of other forms of media are likely to cause continued shifts within the media and entertainment industry.

Dependent upon consumer spending habits and the area's bustling tourism industry, the New York metropolitan division's trade and leisure and hospitality sectors combined, to account for 22.6% of total employment with close to 1.2 million jobs as of June 2012. Fueled by retail sales and visitor spending, New York City's tourism industry is an integral part of the continued success of the local economy. In 2011, 50.9 million domestic tourists (79%) and international tourists (21%) visited New York City, accounting for approximately \$32.5 billion in spending, which supports more than 310,000 jobs in the area. This surpasses the 2010 total of 48.8 million domestic visitors and \$31.5 billion in spending. Following the stronger-than-expected recovery in the local tourism industry through 2011, the anticipated continuation of this trend should allow the city to again surpass 50 million visitors annually in 2012.

***Demographic Characteristics***

The New York metropolitan division has the largest and one of the wealthiest populations of any U.S. metropolitan region, with approximately 11.7 million residents living within the 11-county metropolitan division defined by the Census, as of 2011. Historically, the New York metropolitan division's large and stable population base generally grows more slowly than the national average in percentage terms. Through the previous decade, the New York metropolitan division's population growth averaged 0.3% annually, in comparison to the national average annual growth rate of 0.9% during the decade. However, the New York metropolitan division's population grew by 290,600 people in the ten years through 2011, making it the ninth-fastest-growing region during the previous decade in terms of total new residents added. In 2011, the New York metropolitan division's mean per capita income, measured at \$58,500. During the most recent recession, the onset of the credit crunch and subsequent financial crisis led to a significant deceleration in the New York metropolitan division's per capita income growth, which slowed to 2.2% in 2008 and 0.6% in 2009. As a result of accommodative federal fiscal and monetary policies initiated in 2007, a decline in per capita income in 2008 and 2009 was prevented. As per capita income levels rebound as a result of improvements to the local job market, the resulting rise in disposable income levels should drive more robust retail sales activity in the coming years.

As of 2011, an estimated 4.3 million households were located in the New York metropolitan division. A variety of factors influence the rate of household creation, including job growth, housing supply and costs, and overall population growth, among others. Through the last decade, the total number of households in the New York metropolitan division grew at a slower pace than the national average, rising by 0.2% annually on average between 2001 and 2011 compared to household growth nationally, which increased at an annual average rate of 1.0% during the same period.

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*Forecast and Outlook*

Driven by positive net migration through the forecast period resulting from a continued influx of new residents from other states and other countries, the company expects the New York metropolitan division's population to rise at a relatively strong rate compared with the last decade. In the forecast period through 2016, population is forecasted to grow at an average annual rate of 0.5%. In absolute terms, the forecast calls for population to increase by 303,000 through 2016. As new residents move into vacant housing units and sustained job creation encourages households to unbundle, the rate of household creation is expected to closely mirror the rate of population growth through forecast period. Total households will likely grow, on average, 0.5% annually during the five years through 2016. The national household growth rate is expected to surpass that of the New York metropolitan division and average 1.1% growth annually through 2016.

The company's expectations for positive population growth and household formation are driven by its forecast for sustained job growth and moderate economic recovery during the forecast period. Following the moderate improvements to payroll levels in 2011, the company expects total payroll employment to expand at a healthy pace through the remainder of the forecast period as the recovery and restaffing within the private sector gains momentum. Much of the employment growth will be concentrated in Manhattan. In June 2012, year-over-year employment growth in the Manhattan borough (New York County) increased by 1.5% to approximately 930,800 jobs, according to the BLS Household Survey.

Job growth throughout the metropolitan division should accelerate through the next two years to reach a year-over-year rate of 1.9% by the end of 2012 from 1.2% in 2011, led by healthy gains in the professional and business services, financial activities, and educational and health services sectors. Supporting the expansion of the labor force during this time will be the strong rebound in leisure and hospitality employment fueled by the recovery in tourism and business travel by both domestic and international visitors. By comparison, the rate of employment growth at the national level is forecasted to rise to 1.5% in both 2012 and 2013. Job growth at the local level is expected to ease beginning in 2013 coinciding with a brief slowdown at the national level before accelerating again through 2015. Through the second half of the forecast period, national job growth is expected to slightly outpace the rate of job creation in the New York metropolitan division. The annual rate of job growth in New York is expected to reach 1.3% in 2015 followed by a 1.4% rise in 2016, while annual job growth nationally is forecasted to increase by 1.5% during both of those years.

Despite recent turmoil in the financial services industry and rising influence from financial centers in other countries, New York City will maintain its role as the primary financial capital of the world. The New York regional economy will be further strengthened as the metropolitan division's economic base adapts and diversifies in lockstep with the evolution of the business and regulatory environment. Looking forward, industries such as new media, health care, business services, and education will drive growth in the market,

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strengthening New York City's appeal to tourists and business travelers. These favorable economic and demographic trends during the forecast period will likely translate into a healthy, though moderate, rebound in retail sales during this time.

### **Stamford Metropolitan Statistical Area Economy and Demographics**

#### *Regional Overview*

The Stamford metropolitan statistical area encompasses all of Fairfield County, Connecticut, the most populous county in the State of Connecticut, which includes the cities of Stamford and Norwalk and the towns of Greenwich, New Canaan, Darien, Westport, Weston, and Wilton. With an employment base that totaled approximately 401,600 jobs as of June 2012, the area is home to a high concentration of hedge funds and investment management companies. In addition to the metropolitan statistical area's financial prowess, the regional economy is also driven by trade, professional and business services, and educational and health services sectors. The on-going diversification of the Fairfield County economy and influx of companies into the area should promote the area's long-term economic and demographic growth, as well as drive future demand for commercial space in the market.

#### *Major Economic Drivers*

Home to numerous corporate divisions and major players in the financial services industry, Fairfield County has one of the largest concentrations of financial services companies and corporations, which include UBS, RBS Securities, and GE Capital. Companies headquartered or with large operating divisions housed within the metro division include Nestle, Starwood, Thomson Reuters, Xerox, Elizabeth Arden, and Pitney Bowes.

A major driver of the Stamford metropolitan statistical area economy is the financial activities sector, which employed approximately 40,700 people as of June 2012 and accounted for roughly 10.1% of the total labor force and 33.0% of total earnings in the metropolitan statistical area as of 2011, the latest data available. In 2010, the finance industry accounted for approximately 40.2% of GDP growth in the Stamford metropolitan statistical area.

Employment in professional and business services composed 16.4% of the total labor force with close to 65,700 employed as of June 2012. Second only to the area's finance industry, the professional and business services sector accounts for approximately 14.7% of the Stamford metropolitan statistical area GDP in 2010.

With more than 69,800 people employed in educational and health services as of June 2012, 17.4% of total employment was in this sector, the largest employment sector by total number of people employed.

Trade is also a major driver of the economy, employing 61,600 people as of June 2012, accounting for 15.3% of total employment in the area. The City of Stamford is the major retail center of Fairfield County.

#### *Demographic Characteristics*

Fairfield County is often the preferred location to raise families due to the high quality of life offered by Southwestern Connecticut's suburban neighborhoods. The expansion of companies in the area in addition to the area's high-quality residential product, cultural amenities, and convenient public transportation has led to an increase in the number of workers commuting into Fairfield County from surrounding locations, many of which utilize the area's public transportation network. The area's extensive network is centered on the Stamford Transportation Center, which is in close proximity to the city's major retail and office hubs. More than 30% of all riders passing through the transit center commute for work into the Stamford metropolitan statistical area. The busiest New Haven Line station outside of New York City, the Stamford Transportation Center has facilitated the rise in the number of reverse commuters into Fairfield County from New York City, which doubled during the 10-year period from 1997 to 2007, with approximately 1,900 riders commuting into the Fairfield County area as of 2007. The Stamford station is ranked first among all stations along the New Haven Line in the number of peak

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AM boardings (4,200), in the number of AM peak disembarkments (5,300), and in the total number of weekday passenger boardings (13,700). A number of improvements to the Stamford Transportation center should maintain its place as a primary transit node in the region: \$10.5 million in Tiger 3 grants to upgrade platform connections for pedestrians, canopies, shelters, and intelligent information systems for real time updates. The number of commuter parking stations at the transit center garage will expand from 1,937 spaces to 2,200 spaces. In addition, cars along the New Haven Line are being upgraded, with 375 new M8 trains set to replace the existing fleet of worn-out train cars. Commonly referred to as the Gold Coast, the southwestern portion of Fairfield County is known for its concentration of exceptional wealth. The region is known for having some of the wealthiest towns and neighborhoods in the country, which include the towns of New Canaan, Greenwich, and Weston.

## **Forecast and Outlook**

In comparison to the previous decade, the company expects total population in the area to rise at a faster rate, driven by positive net migration through the near-term forecast period. The total population is forecasted to grow at an average annual rate of 0.5%. In absolute terms, the forecast calls for population to increase by more than 23,500 through 2016. The company's household formation forecast is expected to follow a similar trend and also increase by an annual average rate of 0.5%.

As the Fairfield County economy continues to recover from a period of stagnant job creation in 2011, the company expects total employment to accelerate through the near-term forecast period. Following the 0.2% decrease in total employment in 2011, the company expects more robust job creation, particularly among the economy's largest job employment sectors, to result in an annual employment growth rate of 0.8% in 2012. An integral part of the Fairfield County economy, the hedge fund industry remains in recovery mode. However, in recent quarters, hedge fund assets have increased at a robust pace driven by strong investment performance and renewed confidence among investors. As of the first quarter of 2012, total assets under management for the hedge fund industry was \$1.76 trillion from a cyclical-low of \$1.46 trillion in 2008, according to BarclayHedge. The continued recovery in this industry will stimulate growth in other employment sectors through future economic cycles. In addition, the continued diversification of the Fairfield County economy should also stimulate job growth in the coming years. This and the relative affordability of commercial space in the market in comparison to New York City and surrounding high-cost areas should result in the continued relocation of companies into the area. As the economy enters a more prosperous phase of the economic cycle, job growth is expected to rise to 1.1% by 2013 as companies in the financial activities, leisure and hospitality, as well as educational and health services employment sectors re-staff at a more brisk pace. By 2014, the company expects a more tempered 0.8% increase in total employment. Following this period of lackluster growth, the company expects the economy to regain momentum, resulting in a 1.0% employment growth rate in 2015 and 1.1% increase in 2016. The forecasted 19,300 net jobs added during the five-year period from 2012 to 2016 replenishes

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73% of the roughly 26,500 jobs lost during the two-year period following the onset of the national recession in December 2007.

**Office Markets****Manhattan**

Manhattan's office market is by far the largest in the United States measured by total square footage. With approximately 393 million square feet of office space, the island leads every other major city by a healthy margin. For comparison, the Washington, D.C. and Chicago office markets contain 291 million square feet and 217 million square feet, respectively. Rounding out the top five are Los Angeles with 194 million square feet of space and Boston with 183 million square feet. Manhattan is further split into three major markets: Midtown, Midtown South and Downtown. Midtown is defined to include the land north of 32<sup>nd</sup> Street east of 6<sup>th</sup> Avenue and north of 30<sup>th</sup> Street west of 6<sup>th</sup> Avenue. Midtown South is between Midtown and 14th Street. Downtown is defined to include all areas south of Canal Street and the Manhattan Bridge. The depth of New York's work-force, economic ties with countries around the globe, and clusters of sophisticated service industries make Manhattan a highly desirable place to do business, which together drive strong demand for office space irrespective of economic cycles. While the local office tenant base is broad, several industries cluster in Manhattan office space, including financial activities, legal, consulting and other professional services, media and publishing, advertising, communications, and fashion/apparel.

**Demand-Supply Analysis**

Operating conditions in the Manhattan office market have improved since 2009 and the demand recovery continued through mid-2012. Demand fundamentals continue to bounce back, with office employment in the New York metropolitan area growing 3.0% year-over-year through June 2012, representing 44,500 new office jobs. Despite the strong growth in job creation, leasing volume in the first half of 2012 slowed from the rapid pace set in 2011 with a total of 11.1 million square feet of space leased in the first half of 2012, a 36.9% decline over the first half of 2011. The overall vacancy rate, which includes all non-owner-occupied, Class A, B and C office buildings in Manhattan, decreased to 9.0% through the second quarter of 2012 from 9.4% at mid-year 2011. Office buildings are typically classified as Class A, B or C based upon a subjective rating of amenities, finishes and building systems. Class A properties are generally the most prestigious buildings within a market with high-quality finishes, numerous property-specific amenities and state-of-the-art building systems. These buildings are often newer construction or recently renovated. Class B properties offer functional office space with average finish, building amenities and building systems. Class C office buildings are generally the oldest stock with few building amenities. The vacancy rate was nearly equal to the long-term average of 8.9% from 2000 to the second quarter of 2012. No new multi-tenant buildings have come online in Manhattan since 2010. In Midtown, the office vacancy rate was unchanged from the second quarter of 2011 at 9.8%, compared with the long-term average vacancy rate of 8.8% from 2000 through the second quarter of 2012. The Downtown office vacancy rate decreased 0.8 percentage points to 8.9%, lower than the average vacancy rate of 9.7% from 2000 through the second quarter of 2012. Within the Midtown South submarket, the vacancy rate decreased 1.1 percentage points to 6.4%. The vacancy rate was 1.9 percentage points lower than the 2000 through second quarter of 2012 average vacancy rate of 8.3%. Manhattan's vacancy rate compares favorably with other U.S. gateway cities. Its overall office vacancy rate was lower than Boston, Chicago, Los Angeles, San Francisco and Washington, D.C. since at least 2005. As of the second quarter of 2012, the vacancy rates in these other gateway cities ranged between 11.0% in San Francisco and 18.6% in Los Angeles, compared with 9.0% in Manhattan. The Manhattan vacancy rate also compares favorably to other major CBDs. As of the second quarter of 2012, the vacancy rate in the CBDs of these gateway cities ranged from 9.6% in San Francisco to 20.2% in Los Angeles.

Leasing office space in Manhattan and, in particular, within the Midtown market is the most expensive in terms of overall average gross asking rents among major office markets within the United States, far exceeding those of other gateway cities. As of the second quarter of 2012, the overall total market average gross asking rents in the Boston, Chicago, Los Angeles, San Francisco and Washington, D.C. office markets, which include all building classes within the CBD, ranged between \$31.79 per square foot in Chicago and \$50.28 per square

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foot in Washington, D.C. Manhattan's overall average gross asking rent was recorded at \$58.80 per square foot, with Midtown averaging \$66.44 per square foot. On the whole, the overall average asking rental rate in Manhattan increased in 2011 and through the first half of 2012. The overall average asking rent, which includes all non-owner-occupied office space, grew by 5.4% during 2011 and an additional 2.7% to \$58.80 through the first half of 2012. Barriers to entry in Manhattan's office market are high. Following the delivery of 1.5 million square feet of new space to the Manhattan office market in 2010, no new buildings came online in 2011 and 2012.

## **Outlook**

RCG's outlook for Manhattan's office market as a whole is positive, marked by a decreasing vacancy rate through the end of the five-year forecast period. Though the pace of recovery in the near term is not expected to match the early bounce-back period in 2010 and 2011, improving fundamentals going forward are likely to be more broad-based, driven by growing demand for Class B/C space. Office buildings are typically classified as Class A, B or C based upon a subjective rating of amenities, finishes and building systems. Class A properties are generally the most prestigious buildings within a market with high-quality finishes, numerous property-specific amenities and state-of-the-art building systems. These buildings are often newer construction or recently renovated. Class B properties offer functional office space with average finish, building amenities and building systems. Class C office buildings are generally the oldest stock with few building amenities.

Overall, Manhattan's office vacancy rate, which covers all office space in Midtown, Midtown South and Downtown, is forecasted to decrease through the forecast period to ultimately reach around 7.3% by 2016 from 9.1% in 2011 – a 1.8 percentage-point drop. The drop in vacancy is expected to be spread relatively evenly through the three major office submarkets in Manhattan. Downtown is forecasted to lead the way with a 2.2 percentage-point drop in its vacancy rate, followed by Midtown South with a 1.9 percentage-point decrease.

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The Midtown vacancy rate is projected to decrease 1.6 percentage points. The overall Manhattan vacancy rate is forecasted to decrease to 7.3% by 2016 from 9.1% in 2011.

RCG's forecast calls for the overall average asking rent in the Manhattan office market to continue rising on a year-over-year basis through 2016. A falling vacancy rate should enable building owners to raise rents. Also the influx of unleased space on the market at new speculative office buildings through the forecast period will add an upward bias on the average rent calculation. RCG expects the average asking rent to increase by 6.1% and 3.4% in 2012 and 2013, respectively, followed by 8.6% growth in 2014. Annual rent growth is likely to peak in 2015 when the average rent is forecasted to increase by 13.1%, followed by slower growth of 8.3% in 2016. Manhattan office average asking rent growth is forecasted to exceed almost all other U.S. gateway cities through the forecast period, an effect of high demand and constraints on new supply. The average office asking rent in Manhattan is forecasted to grow at annual rates averaging 7.9% through 2016. Only the Boston CBD, where annual growth rates are projected to average 8.3%, is likely to post higher total rent growth through the medium term. Rent growth in other U.S. gateway city CBDs through 2016 are forecasted to range between 3.4% in Los Angeles and 7.8% in San Francisco.

RCG does not expect any new multi-tenant buildings to come online in 2012, a result of the economic and financial market turmoil in 2007-2009 that caused the suspension or cancellation of several major office construction projects that would have been delivered during this period. Through the medium term, RCG expects four major office towers to come online in 2013 and 2014. 1 World Trade Center is currently under construction and is scheduled to deliver 2.6 million square feet of new space to the Downtown market in 2013. Above-ground construction work on the 1.8 million square-foot 4 World Trade Center is under way and likely on pace for a 2014 delivery. Construction work on the 896,000 square-foot 250 West 55<sup>th</sup> Street resumed in 2011 in time for a 2014 delivery date. The first phase on the Hudson Yards project on the west side of Midtown—an office tower whose non-owner-occupied portion totals 1.1 million square foot office tower—is scheduled to be completed by 2015.

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*Midtown*

Midtown's office market spans the island of Manhattan from 30<sup>th</sup> Street north to Central Park. Approximately 241 million square feet of rentable space are contained within Midtown's multi-tenant office buildings, making it the largest CBD office market in the country by far. For a size comparison, Downtown Chicago and the Washington, D.C. CBD combine for a total of just 226 million square feet of office space.

Three-quarters 74.9% of Midtown's office stock is classified as Class A with total square footage of 181 million square feet. Approximately 44.6 million square feet of Midtown office space is counted as Class B stock, accounting for 18.5% of the total market. The remaining 6.6% of Midtown office space (15.9 million square feet) is categorized as Class C space.

Midtown is split into 11 submarkets: The Grand Central submarket is defined as the area bound by Fifth Avenue to the west, Second Avenue to the east, 39<sup>th</sup> Street to the south and 47<sup>th</sup> Street to the north, excluding Park Avenue north of 43<sup>rd</sup> Street. The Penn Station-Times Square South submarket it is defined as the area bound by Sixth Avenue to the east, the Hudson River to the west, 42<sup>nd</sup> Street to the north and 30<sup>th</sup> Street to the south. The West Side submarket is defined to include all office properties north of 42<sup>nd</sup> Street, west of 7<sup>th</sup> Avenue, with 59<sup>th</sup> Street and 57<sup>th</sup> streets forming a border to the north and the Hudson River forming the western



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boundary. Other submarkets include: 6<sup>th</sup> Ave/Rockefeller Center, Madison/Fifth, Park Avenue, East Side, Murray Hill, Lincoln Center and United Nations.

*Demand-Supply Analysis*

The Midtown office market is considered one of the world's premier central business districts based on its mix of tenants, deep and broad available labor force, excellent transportation access and overall prestige. Included among its major tenants are world-class media conglomerates and publishing houses, international corporate businesses and major financial institutions. In addition to these major tenants, sophisticated professional services firms, including accounting, advertising, legal and consulting, among others, also congregate in Midtown to locate near clients.

RCG believes the Midtown office market as a whole is in the midst of a mild slowdown following a rapid recovery. Uncertainty in the global economy and volatility in the capital markets during the second half of 2011 and early 2012 are leading some tenants to delay signing new leases or expanding office footprints. These negative impacts are concentrated among office tenants associated with the financial industry, where exposure to the Europe sovereign debt troubles and uncertainty over impending industry regulations are impacting profitability. Renewals dominate a large portion of the overall leasing volume. 6.5 million square feet of office space was leased in Midtown during the first half of 2012, down 41.9% and 24.1% from the first halves of 2011 and 2010, respectively, but still 50.8% greater than the first half of 2009.

Leasing trends varied among Class B and C space. While a market-wide flight-to-quality led the bounce back in demand for high-quality assets, building owners' financial health continues to prove an important deciding variable in driving leasing activity. A total of 1.4 million square feet of Class B space were leased in the

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first half of 2012, a decrease of 6.7% from the first half of 2011. Leasing volume of Class C space decreased 21.0% to 391,000 square feet.

The uncertain economic climate stanching the trend of decreasing sublease availabilities. The removal of sublease space reflects positively on market statistics since available sublease space raises the vacancy rate and exerting a twofold negative impact on the average rent by biasing average asking rent calculation downward and reducing landlords' pricing power on direct availabilities. The amount of space available for sublease in Midtown was flat through the first half of 2012 at 3.9 million square feet, even with the first quarter of 2011 but 51.9% less than the second quarter of 2009. By comparison, the total amount of vacant space available in Midtown has declined by 4.6% during the same period. Sublease availabilities are generally less prevalent in Class B and C buildings than Class A.

In the first half of 2012, the overall Midtown vacancy rate increased 0.2 percentage points to 9.8%, translating to 498,000 square feet of negative net absorption. Driving the vacancy rate increase was the addition of direct Class A availabilities. Year-to-date through the second quarter, the amount of direct vacant Class A space increased 4.7% to 15.6 million square feet. Among Class B and C properties, the amount of direct vacant space declined 5.7% to 4.1 million square feet. Despite the recent softness, market conditions remain far stronger than the aftermath of the recession. At 9.8% as of the second quarter of 2012, the overall vacancy rate covering all of Midtown office space was 2.8 percentage points less than the first quarter of 2010.

Based on high demand, RCG believes the cyclical decline in the overall average asking rent covering all of Midtown office space has passed. Midtown's overall average gross asking rent increased by 4.9% to \$66.44 per square foot in the year through the second quarter of 2012, including 1.6% growth year-to-date in 2012. Because 81.4% of Midtown's total vacant office stock is located in Class A buildings, Midtown's market-wide overall average gross asking rent, which is weighted on vacant stock, was heavily biased by the Class A concentration. Leading this trend have been the trophy buildings, particularly those clustered along the desirable Park and Madison Avenue corridors and near Central Park, where owners have been able to raise asking rents as space availabilities decline. RCG believes that falling vacancy rates have enabled landlords to raise asking rents for high-quality spaces. At the lower-end of the market, however, concessions still drive new leasing transactions, attributable to the imbalance between available supply and current demand among smaller office spaces and tenants specifically looking for smaller spaces.

Because of the difficulty and high costs associated with new building activity in Midtown, purely speculative construction projects have been rare in recent years. These constraints on supply also generally limit office development to dense high-rise office towers. During the past cycle, building activity has been concentrated to the immediate south of Times Square and around Bryant Park. In fact, three buildings delivered within two city blocks of each other account for 61% of the total amount of new multi-tenant office space delivered in Manhattan between 2004 and 2010. The 1.5 million square-foot New York Times building was completed in 2007 at 620 Eighth Avenue, followed by Bank of America's 2.1 million square-foot One Bryant Park tower in 2008. Despite the difficulties associated with purely speculative construction projects in Midtown, particularly at a time when construction financing was largely unavailable, SJP Properties delivered the 1.1 million square-foot 11 Times

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Square tower, located directly adjacent to the New York Times Building, in early 2010 completely vacant. The law firm Proskauer Rose subsequently signed on for approximately 400,000 square feet of space.

*Outlook*

Based on the likelihood of a demand recovery and a muted supply response through the medium term, RCG's outlook for Midtown's office market is positive. Underpinning this demand recovery are several factors. Current market softness is likely rooted in choppy global economic conditions and impending regulations that cloud tenants' ability to confidently plan for business operating conditions in the near term. Continued economic growth and clarity on regulatory issues, both expected in the near term, will encourage firms to return to the office leasing market going forward.

While rents are still relatively inexpensive, firms will likely continue to take advantage of favorable opportunities to sign long-term leases at rents well-below recent peak levels. As of mid-2012, Midtown's overall average asking rent, which is calculated from all available space in the submarket, was \$66.44 per square foot, 21.4% less than the previous peak from the third quarter of 2008.

While top-quality spaces in desirable locations have led the market's early stage recovery, RCG believes that sustained job growth will drive office demand for smaller spaces and in second-tier locations going forward. In particular, recent data suggest job growth among smaller office space users will likely drive much of the leasing and expansion activity in the Midtown market in the future. Illustrating the significance of smaller firms on overall office demand, small firms expand at a disproportionately rapid rate compared with large firms, a trend that bodes well for the demand of small-scale office spaces in Midtown. During the last employment

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expansion period in New York State, from 2004 through 2008, smaller firms outgrew large firms by a wide margin. Firms employing 1 to 49 workers expanded total payrolls by a total of 6.2% during the five-year period. By contrast, companies in New York State with 1,000 or more employees only grew 1.7% during the five-year period. In terms of absolute magnitude, firms employing 1 to 250 workers accounted for 82% of the total number of new jobs added during the 2004 to 2008 period throughout New York. While statistics specifically describing Midtown firms staffing levels are not available, the patterns are likely similar to the New York state-wide trends.

As firms grow beyond the capacity of their existing locations and become increasingly confident in the economic climate going forward, expansion into larger office spaces becomes more likely. As a result, office employment growth should more directly translate to strengthening office demand through the medium term. Various employment statistics covering Manhattan, New York City and the New York metropolitan division indicate that job growth recovery continued through mid-2012. The federal government's establishment survey, which counts total jobs, indicates that in the 11-county metropolitan division, which in addition to New York City includes Bergen, Hudson and Passaic Counties in New Jersey and Putnam, Rockland and Westchester Counties in New York, employers added a total of 95,100 jobs year-over-year through June 2012, a 1.8% year-over-year increase. A large majority of these new jobs were located in New York City: within the five boroughs, employers added 76,800 jobs in the 12 months through June 2012, expanding total employment by 2.0%. According to the government's survey of households, which counts number of residents employed (as opposed to the establishment survey's jobs tally), approximately 3,400 fewer Manhattan residents were employed as of May 2012 compared with the year prior, a 0.4% decline. RCG believes the establishment survey statistics provide a clearer view into current job market trends than the household survey because of the prevalence of workers commuting into New York City from neighboring areas, which are not counted in the Manhattan household survey. RCG's New York employment forecast, which covers the 11-county metropolitan division, calls for office employment to grow by 175,400 jobs during the five years through 2016 at annual rates averaging 2.3%.

With concessions likely to drive leasing activity in the lower-end of the market through the immediate- to near-term, well-capitalized owners that are able to fund tenant improvement packages and other concessions should lead the recovery within the second-tier segment. Through the near term, RCG expects the overall vacancy rate, which covers all of Midtown office space, to trend slightly downward, reaching 9.5% by the end of 2013 from 9.8% at mid-year 2012. In the years that follow RCG predicts Midtown's office vacancy rate will decrease to ultimately reach 8.0% by the end of 2016.

Midtown's overall average asking rent, which is calculated based on all available office space in Midtown, is likely to continue rising in spite of any near-term slowdown in leasing activity as a result of decreasing availability of space. Midtown's overall average asking rent is forecasted to grow at fourth quarter-over-fourth quarter rates of 4.4% and 3.2% during 2012 and 2013, respectively, to reach \$70.48 per square foot in 2013. Beyond 2013, RCG expects the overall average asking rent to rise at an accelerating pace through 2015 as the market tightens and new premium-priced space is delivered in 2014 and 2015, respectively, at 250 West 55<sup>th</sup> Street and at Hudson Yards. The average asking rent is forecasted to grow at a fourth quarter-over-fourth quarter rate of 9.4% and 12.6% in 2014 and 2015, respectively, to \$86.83 per square foot. By 2016, RCG's forecast calls for the average asking rent to grow at a fourth quarter-over-fourth quarter rate of 8.3% to \$94.03.

#### *Penn Station-Times Square South Submarket*

The Penn Station-Times Square South submarket, located on the west side of Midtown Manhattan, to the south and west of Times Square and Bryant Park, is the largest office submarket in Midtown Manhattan by total office inventory at more than 45.8 million square feet. The submarket includes a portion of Times Square, Penn Station, Madison Square Garden, the James Farley Post Office, Macy's flagship store, the Herald Square retail district, the Port Authority Bus Terminal, the Jacob K. Javits Convention Center, and many other landmarks. Whereas Midtown as a whole is comprised of mostly Class A office space, the opposite is true in the Penn Station-Times Square South submarket. Class A buildings represent just 30% of the total square footage, while

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Class B and C buildings make up 44% and 26%, respectively. The Penn Station-Times Square South submarket's unique set of features attracts a diverse tenant base. The area's low cost compared with Midtown's other submarkets attracts large firms in a variety of industries, including fashion and retail, media and publishing, corporate, and professional services firms.

One of the main attractions for office tenants is the excellent connectivity via mass transit to other parts of Manhattan, the outer boroughs, New Jersey, Connecticut, Long Island and Upstate New York. The submarket's eponymous transit node, Pennsylvania Station, is one of the busiest rail stations in the world, serving approximately 600,000 passengers per day. The Port Authority Bus Terminal, located on 8<sup>th</sup> Avenue between 41<sup>st</sup> and 42<sup>nd</sup> Streets, is the largest bus terminal in the United States and the busiest in the world by passenger count, serving more than 58 million passengers passed through the terminal in 2008, or an average of nearly 159,000 per day, according to the latest available data. The Times Square-42<sup>nd</sup> Street subway station, which services 11 lines (1, 2, 3, 7, A, C, E, N, Q, R and shuttle to Grand Central), connected more passengers in 2010 than any other in the city's network with annual ridership totaling approximately 58.4 million. Three subway nodes along 34<sup>th</sup> Street serve the Penn Station and Herald Square area, with combined annual ridership totaling 89.2 million in 2011. Still early in the planning and proposal stage, the Penn Station Access project would provide access to Penn Station from the northern suburbs and the Bronx via MetroNorth, enabling commuters to directly reach the Penn Station-Times Square South submarket from points north of Manhattan via fast commuter rail service.

Counter to the trend in the overall Midtown market, the Penn Station-Times Square South vacancy rate decreased slightly during the first half of 2012 to 9.5% from 9.8% in the fourth quarter of 2011. The Penn Station-Times Square South overall average asking rent, which is calculated from all available office space in the submarket, increased 3.3% year-to-date to \$52.31 per square foot as of the second quarter of 2012.

Two major office towers came online in the submarket during the last several years, both of which were located on opposite corners of the 8<sup>th</sup> Avenue and 41<sup>st</sup> Street intersection. The 1.5 million square-foot New York Times Building, located adjacent the Port Authority Bus Terminal at 620 8<sup>th</sup> Avenue, was completed in 2007. The New York Times has since subleased a portion of its original footprint in the building. The second tower, 11 Times Square, consists of 1.1 million square feet and was delivered without an anchor tenant in early 2010. Law firm Proskauer Rose subsequently leased approximately 36% of the space, followed by another law firm Zukerman Gore Brandeis & Crossman leasing just over 17,000 square feet in 2011.

RCG expects one office building to be completed in the Penn Station-Times Square South submarket during the five-year forecast period through 2016. The first building of the Related Companies' Hudson Yards development, which includes 950,000 square feet of multitenant office space and 750,000 square feet of space sold for occupancy to luxury company Coach, Inc., is expected to come online in 2015. Coach has a yet-to-be-exercised option to purchase an additional 100,000 square feet in the building, which would bring the

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multitenant space back to 850,000 square feet. Physical construction work on 15 Penn Plaza, on the other hand, is not likely for several years, with a completion date likely beyond 2016.

### *Grand Central Submarket*

The Grand Central submarket is the second-largest office submarket in Midtown Manhattan with 43.7 million square feet and is located on the east side of Midtown Manhattan, to the north of Murray Hill and to the south of the Park Avenue corridor. The large majority of office space in the Grand Central submarket is contained within high quality office towers. Approximately 83% of the office space within the Grand Central submarket is classified as Class A. Respectively, Class B and C office space comprise 17% and 0.6% of submarket. The Grand Central submarket has benefitted over the last two decades as financial firms and professional service firms that support them have migrated to Midtown from Downtown. Midtown's high-rise office buildings offered greater flexibility and prestige versus Downtown's older office stock, while Midtown's excellent transit connectivity is an important advantage for workers commuting from Upstate New York, Connecticut and New Jersey. The Grand Central Terminal specifically is the largest train station in the world by number of platforms. The East Side Access project, by rerouting some Long Island Railroad trains to Grand Central Terminal instead of Penn Station upon completion in 2014, will further increase the submarket's attractiveness to office tenants. In addition, advancement in computing and telecommunications technology over the past several decades have allowed securities traders to operate at a distance to the major exchanges on Wall Street.

Other features of the Grand Central submarket include proximity to the top-quality, trophy office buildings along the Fifth Avenue, Madison Avenue, Park Avenue corridors at significantly lower rents, a particularly attractive trait to cost-sensitive firms with clients on the east side of Midtown. Demand for space has bounced back strongly since the recession, marked by the jump in leasing activity since 2009. Leasing volume during the first half of 2012 totaled 1.1 million square feet, a 52.0% decline from the same period in 2011. Nevertheless, more office space was leased in Grand Central than any other Midtown submarket during the first half of 2012. Despite the decline in leasing activity, the overall submarket vacancy rate, which covers all office space, dropped 0.4 percentage points to 10.8% through the second quarter of 2012.

Grand Central's overall average asking rent, which is calculated from all available office space in the submarket, increased 0.6% during the first half of 2012 to \$55.72 per square foot.

Development opportunities in the Grand Central submarket are scarce, making new office construction a rarity. The last new building to come online in the submarket was the 296,000 square-foot CIT Building in 2006, at 505 Fifth Avenue and East 42<sup>nd</sup> Street, adjacent to Bryant Park. Though the building sits on a formerly vacant plot of land, most development requires assembling multiple parcels and demolition work, which extends the build-out timelines of new construction and increases the overall complexity of the development process. As a result of the lead time associated with major new construction projects in Manhattan, RCG does not expect any new office space to come online through at least 2016.

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### *West Side Submarket*

The West Side office submarket, located to the south and west of Central Park and including the area around Columbus Circle, consists of 25.4 million square feet of office space. The diverse submarket includes Manhattan's Theater District, a portion of Times Square and the Hell Kitchen's residential/commercial district. Like the Grand Central submarket, non-prime Class B and C office spaces make up a relatively small share of the West Side submarket's total. Approximately 12% and 9% of the submarket's total office space is categorized as Class B and C, respectively. Class A spaces account for 79% of the submarket's office stock. Office-using firms are drawn to the top-quality high-rise office buildings that line the 7<sup>th</sup> Avenue corridor, while transit connectivity allows firms to recruit from all areas of the vast greater New York metropolitan region. Firms from a variety of industries cluster in the West Side submarket, including publishing, media, finance, legal, consulting, retail and lodging. Furthermore, several high-profile corporations have headquarters or a major base of operations in and around Times Square, including Viacom, Conde Nast, Ernst & Young, Thomson Reuters, Barclays, Morgan Stanley, and many others. In 2011, Nomura signed a 900,000 square-foot lease for Worldwide Plaza, which was at the time the largest lease in Midtown since 2004. Viacom recently signed a lease at 1515 Broadway for 1.6 million square feet, expanding upon its current 1.4 million square-foot footprint.

Much like elsewhere in Midtown, demand for space in the submarket has rebounded since the recession, though leasing activity has slowed since 2011. A total of 727,000 square feet of space were leased in the submarket during the first half of 2012, a decline of 56.2% from the first half of 2011. The West Side submarket vacancy rate, which covers all submarket office space, increased 2.0 percentage points to 9.6% through the first half of 2012. Despite the jump, the current vacancy rate compares favorably to the 12.1% vacancy rate set at the end of 2010.

West Side's overall average gross asking rent, which is calculated from all available office space in the submarket, averaged \$61.69 per square foot as of the second quarter of 2012, a 3.1% increase year-to-date. By comparison, the overall average asking rent for Midtown as a whole, which includes both direct and sublease spaces, increased 1.6% to \$66.44 per square foot.

On the supply side, RCG expects a new office building located at 250 West 55<sup>th</sup> Street in the West Side submarket will come online during 2014. Boston Properties resumed construction on the office tower in 2011 following a lease commitment by law firm Morrison & Foerster for 184,000 square feet before it later added an additional 25,000 square feet to its footprint. It also has an option to add another 25,000 square feet to its lease that it has yet to exercise. Law firm Kaye Scholer recently signed a letter of intent to occupy 260,000 square feet. The two law firms commitments bring the preleasing total to 52% of the building's rentable square footage.

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Westchester County contains approximately 28.4 million square feet of office space and is split into six major submarkets: White Plains CBD and non-CBD, Northern, Central, Eastern and Southern. Office-using firms are attracted to the Westchester office market for its lower costs of occupancy but still close proximity to New York City, suburban towns within Westchester County and Upstate New York, as well as Southwestern Connecticut, Northeastern New Jersey and Long Island. The availability of on-site amenities, scalability of office space usage and transportation infrastructure attract corporate tenants and a variety of other industries including financial services, insurance, professional services, technology, biotech, consumer products, fashion/apparel, healthcare and pharmaceuticals. Westchester's lower rents, a more diverse tenant base compared with Manhattan and a near-complete lack of new building activity during the last expansion period shielded the office market from a sharp rise in vacancy and steep rent declines during the recession. With sustained economic growth expected going forward, renewed hiring in key sectors should boost office demand through the near- to medium term.

**Demand-Supply Analysis**

While heavy dependence on the financial sector proved to be a drag on office markets in Manhattan and many of its surrounding suburban submarkets during the recession, Westchester's diversity and high barriers to entry are a stabilizing force. RCG believes that the Westchester office market bottomed during 2010 and 2011 and is poised for recovery. Office employment expanded by 7.8% in the New York metropolitan division, within which Westchester is located, in 2010 through the first half of 2012, implying the creation of 109,900 new office-using jobs during the two-and-a-half-year span. Despite this job growth, however, fresh office demand has not yet grown significantly. Through the second quarter of 2012, the Westchester office vacancy rate increased 2.0 percentage points through the trailing four quarters to reach 18.4%. Driving increase, particularly in the previous two quarters, has been a large increase in the amount of sublease space available on the market. During the first half of 2012, sublease availabilities grew by 52.6% or 236,600 square-foot increase from year-end 2011. By contrast, direct availabilities grew by 3.1% or 134,700 square feet.

Evidence suggests large blocks of vacant space at properties formerly occupied by single tenants, often large corporate users, are contributing significantly to a high office vacancy rate in Westchester County. Reader's Digest recently vacated 200,000 at 480 Bedford Road in Pleasantville, which added to the existing block of 136,000 square feet of direct vacant space at the property. In addition, partially resulting from Starwood's relocation to neighboring Fairfield County, 350,000 square feet are now vacant at its two former buildings, along with another 100,000 square feet from Nokia leaving 102 Corporate Park Drive. Combined these blocks of space represent 18.2% of the total vacant space in the market, or 3.1% of the total office stock. Bank of New York Mellon recently vacated 60,300 square feet of sublease space in the market as well.

With the vacancy rate still at an elevated level, landlords lack pricing power on rent negotiations for second- and third-tier spaces. For top-tier buildings in desirable locations such as those near highways and transit nodes landlords have begun to regain some negotiating leverage. The average asking rent continued to decline through 2011 and through the first half of 2012. At \$28.76 per square foot as of the second quarter of 2012, the



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average asking rent was 4.8% less in the fourth quarter than at year-end 2010, including a 2.1% decline in the first half of 2012.

New office construction in Westchester County is rare, attributable to its high barriers to entry that originate from a lack of suitable land in desirable submarkets and high costs of construction. No new buildings have come online in Westchester County since 2005 when two properties totaling 91,000 square feet were completed. Prior to that, approximately 168,000 square feet of new space come online in 2002. In total, new construction expanded Westchester's total office inventory by just 0.9% between 1998 and the second quarter of 2012. By comparison, total office stock grew by 4.9% in Manhattan, where building is notoriously difficult, between 1998 and mid-year 2012. High barriers to entry, which have limited new building in the past, contributed to a relatively minor increase in the vacancy rate during the recession.

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### *Outlook*

While the recovery in office market fundamentals has been choppy since the end of the recession, RCG believes that several factors suggest an imminent recovery in the demand-supply balance for the market. Sustained job growth is expected across a range of industries, including healthcare, professional services, and technology particularly among small and medium-sized firms that prefer to operate in multi-tenant suburban office space. RCG expects office employment to grow at annual rates averaging 2.3% during the 2012-2016 period, translating to the creation of 175,400 office-using positions. Office employment growth will directly boost office demand in Westchester County and the region as a whole. The Tappan Zee Bridge replacement and proposed mass transit components may also attract new firms to Westchester County by enabling faster commute times to residents living west of the Hudson River. Demand will likely rise steadily in the future, while the supply response is likely to be muted.

RCG forecasts net absorption, a proxy for fluctuations in office space demand, to turn positive in the second half of 2012, driving a 1.0 percentage-point decrease in the Westchester overall office vacancy rate to 18.4%. Through the remainder of the forecast period, the vacancy rate is likely to continue moving downward as demand grows and high barriers to entry prevent a supply response. By 2016, RCG's forecast calls for the vacancy rate to reach 15.7%, a 2.7 percentage-point decrease from the current level.

RCG believes there is potential for rental rate expansion in Westchester County. A gradual tightening of the market going forward will likely transfer negotiating power on lease terms to the landlord from the prospective tenant, where it currently lies. As a result, rent growth is forecasted to turn positive as the vacancy rate drops down from cyclical highs through the near term. Following a projected 1.5% drop in 2012, the average asking rent is forecasted to grow by 1.0% to \$29.21 per square foot in 2013. Rent growth should gain momentum through the medium term as the vacancy rate drops to pre-recession levels. By 2016, coinciding with a drop in the vacancy rate and an expected high demand for high-quality office space in multi-tenant properties, RCG expects the average asking rent to increase by 11.0% from mid-year 2012 through year-end 2016 to reach \$32.11 per square foot. Fourth quarter-over-fourth quarter growth rates are forecasted to average 1.8% through the forecast period.

High-quality multi-tenant office buildings in desirable locations that cater to high-value tenants will likely outperform the market in terms of demand and rent growth going forward. Firms in the corporate sector, as well as financial services and professional services industries prefer to occupy these spaces based on proximity to transportation and executive and employee housing as well as the higher quality-of-life amenities, like parking, on-site dining, nearby commercial districts, views, and others. Although a shortage of these high-quality, trophy spaces is expected to emerge later in the forecast period, RCG does not expect any new construction to be completed by 2016.

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### ***White Plains CBD Submarket***

The White Plains CBD is situated in south central Westchester County, along the Cross-Westchester Expressway (Interstate 287) corridor between the Sprain Brook Parkway and the Hutchinson River Parkway. The submarket consists of approximately 6.3 million square feet of office space and is defined to include the area south of Barker Avenue, north of Quinby Avenue, east of the Bronx River Parkway and west of South Broadway/Post Road. Within the submarket is a thriving and densely developed central business district that has attracted office users of varying size. In 2008, an estimate from the city mayor's office placed the worker population at approximately 250,000, compared with a resident population of 60,000.

Workers commute into White Plains via a number of major roadway connections and the Metro-North Railroad, which connects to Grand Central Terminal. Its central location among Westchester County towns and villages makes White Plains an easy commute for upstate residents. Roadway access to the CBD is granted from both the Bronx River Parkway and the Cross Westchester Expressway (Interstate 287), while the White Plains Metro North Transportation Center provides a rail connection to Grand Central Terminal. With travel times as low as 31 minutes, the direct rail connection between Grand Central Terminal in Midtown Manhattan and the White Plains CBD gives local employers access to one of the deepest labor pools in the world. Furthermore, because of close proximity to transportation, office locations within walking distance of the White Plains MetroNorth station are more desirable than locations. Its accessibility and dense clustering of firms in the financial services and professional services industries are major positives for the market. Local amenities including retail, restaurants and luxury multifamily housing have also been instrumental in luring tenants to the submarket.

As of the second quarter of 2012, approximately 18.0% of the White Plains CBD office market was available for lease. This compares favorably with the overall Westchester office market, where the vacancy rate stood at 18.4% in the second quarter of 2012. While the overall vacancy rate translates to approximately 1.1 million square feet of vacant office space, large blocks of competitive space are in short supply. Asking rent on office space in the White Plains CBD averaged \$32.77 per square foot overall as of the second quarter of 2012, a 1.3% increase year-over-year. For comparison, the overall average asking rent on all Westchester County office space decreased by 2.1% on a year-to-date basis to \$28.76 per square foot through the second quarter of 2012.

### ***Eastern Submarket***

Westchester's Eastern office submarket consists of 6.5 million square feet of space and is located to the east of White Plains, between New Rochelle and the Connecticut state border. By definition, the submarket encompasses the towns of Harrison, Hartsdale, Larchmont, Mamaroneck, Port Chester, Purchase, Rye, Rye Brook and Scarsdale. A dense network of transportation infrastructure weaves through the various towns in the submarket, making accessibility a strong advantage for office properties competing for tenants. In addition to

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Interstate 95, the Cross-Westchester Expressway (Interstate 287) and the Hutchinson River Parkway, two lines along the Metro-North Railroad pass through the Eastern Submarket with several stops between New York City and Connecticut. While office development is less dense in these towns than in the White Plains CBD, the submarket is still an attractive location for office tenants. Based on the strength of its transportation infrastructure and the close proximity of amenities like banks, restaurants, hotels, executive conference centers and recreational resources, firms that choose to locate in the Eastern submarket are able to recruit high quality employees from nearby suburban towns, New York City and Connecticut.

The submarket's vacancy rate, which includes Class A, B and C office space, was recorded at 19.5% in the second quarter of 2012, up from 17.7% at year-end 2011. Sublease inventory expanded by 45.9% or 73,500 square feet, compared with 4.6% or 45,200 square-foot increase in direct availabilities. In addition to the influx of sublease space to the market, a collection of large office properties along the Cross-Westchester Expressway corridor in Harrison and Rye, which were built in the 1950s and 1960s for large, corporate users that have since vacated the premises, are driving up the current vacancy rate. Many of the properties are now functionally obsolete and are otherwise not suitable for the small and medium-sized tenants that prefer to occupy modernized multi-tenant office buildings. However, adaptive re-use of these outdated facilities, which has already begun in some cases, should correct the problem of unused and unmarketable office space in the area, which is attractive based on its access to transportation and rail lines. Fordham University opened a campus along the corridor in 2008 in a former office building. Memorial Sloan-Kettering Cancer Center has proposed and is awaiting regulatory approval to build a treatment center in the former Verizon complex, a 114,000 square-foot building. Life Time Fitness plans to demolish the former Gannett Suburban Newspapers office building and construct a new 109,000 square-foot facility. Histogenics, a biotech firm, bought the 118,000 square-foot building at 104

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Corporate Park Drive, formerly occupied by Malcolm Pirnie Inc. before it relocated to White Plains, with the intention of repurposing the property.

Average rental rates calculated from all available office space in the Eastern submarket exceed Westchester County as a whole. As of the second quarter of 2012, the overall average asking rent was recorded at \$29.75 per square foot, a 0.7% decline from year-end 2011.

## **Fairfield County**

Consisting of approximately 42 million square feet of office space, the Fairfield County office market is driven largely by the presence of major corporate tenants and key players in the financial services industries. Key submarkets in the area include: Stamford CBD, Stamford Non-CBD, South Central, Greenwich, Central, Eastern, and Greater Danbury. The Stamford CBD and Stamford Non-CBD office submarkets make up the Stamford office market, which consists of approximately 15.6 million square feet of space. The Stamford CBD office submarket is bordered by Broad St. to the north and extends south past I-95 and encompassing the Stamford Transit Center and office properties along State St., Station Place, and First Stamford Place. The South Central office submarket contains approximately 8.5 million square feet of office space, encompassing the areas of Norwalk, Darien/New Canaan, and Wilton/Weston. The Greenwich office submarket consists of 4.2 million square feet and located within the city of Greenwich. The Central Fairfield submarket includes 3.0 million square feet of office space across the cities of Westport, Southport, and Fairfield. The Eastern Fairfield submarket consists of 7.3 million square feet of office space located within in the cities of Bridgeport, Shelton, Stratford, and Trumbull. The Greater Danbury office submarket includes 3.3 million square feet of office space spread across the cities of Danbury, Bethel, Redding, Brookfield, Newtown, and Ridgefield. Having benefitted from the migration of corporate tenants from adjacent office markets during recent decades, the high concentration of financial services tenants in the market warrants the presence of professional and business services companies in the areas of law, accounting, and other technical services such as engineering, research, and consulting. Given the area's diversifying tenant base, established finance cluster, and rising prominence as a multimedia hub, the health of the Fairfield County economy is less dependent on growth in neighboring New York in comparison with previous economic cycles. Facilitating the growth of these industries in Stamford, the Stamford Campus of the University of Connecticut has begun to offer new degree programs in digital media, international business, and business finance, ensuring that the area's workforce will have the necessary skills to help develop these new economic clusters in the area. The on-going diversification of the Stamford metropolitan statistical area economy should bolster job growth, as well as office demand in the area, providing greater stability through future economic cycles as it continues to evolve into a more self-sustaining, dynamic economy.

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*Demand-Supply Analysis*

RCG believes that the Fairfield County office market is in the midst of a recovery fueled by favorable office employment growth trends and a recent influx of high profile tenants, which is resulting in increased office absorption. Having withstood the brunt of the financial crisis on the local economy and office market conditions, office employment payrolls continued to stabilize through 2011, as companies slowly began to re-staff in response to stabilization in financial market conditions and an improving national economic outlook. While signs of sustained job creation have emerged, total payroll levels declined by 0.2% in 2011. Though office employment levels declined by 1.3% year-over-year in 2011, office-using employment still increased by a net 340 jobs during the previous two-year span. More recently, total employment has begun to rebound led by gains in construction employment, educational and health services, and professional and business services employment. Total payroll levels increased by 0.4% year-over-year in June 2012, with year-to-date total employment levels expanding by more than 4,600 jobs. Although year-over-year office employment levels declined by 1.1% in June 2012, office employment gains accounted for nearly 1,000 of the net jobs created year-to-date. Given the modest pace of job growth in recent quarters and renewed economic and political uncertainty, Fairfield County office market conditions have stabilized but remain soft. Through mid-year 2012, the office vacancy rate rose to 21.2% from 20.5% in 2011. Year-to-date leasing activity through mid-year 2012, totaled close to 860,000 square feet, following the more than 2.4 million square feet leased in 2011. During this time, the overall average office lease rate increased by 5.0% to \$35.34 per square foot in the second quarter of 2012.

Available Class A sublease space in the market increased to approximately 940,000 square feet from 845,000 square feet in 2011, as the overall Class A vacancy rate stood at more than 20% in the second quarter. Although Class A office market conditions remain soft, demand for high-quality space placed upward pressure

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on Class A rates during this time, as the overall Class A lease rate increased by 8.1% year-to-date to \$38.54 per square foot in the second quarter of 2012. Given the company's expectations for more robust office employment growth through the forecast period, and with minimal supply-side pressure in the market, market conditions are expected to tighten more significantly as companies begin leasing office space in earnest to accommodate this growth.

An indication of the area's diversifying economy, a number of high profile companies have begun to relocate operations to Fairfield County. In late 2010, NBC Sports Group announced plans to build a number of studios in the Stamford, bringing 450 new jobs to the area and \$100 million in capital improvements and has begun to consolidate much of its northeast operations. The expansion of Chelsea Piers into Stamford and the development of a \$50 million, 417,000 square-foot sports facility will also be a major draw to residents and companies alike. Starwood Hotels has begun to relocate its operations in the Westchester submarket to Stamford, occupying 250,000 square feet at 333 Ludlow St. in the Harbor Point area. The completion of both of these blockbuster deals was facilitated by attractive tax incentives, loans, and sales tax exemptions afforded by both state and local development authorities.

As companies in the office employment sector begin to re-staff, RCG expects the rebound in the financial activities and professional services employment sectors to lead the market's recovery. Also, job growth in a number of other key industries is expected to drive the economy's resurgence: information services, re-insurance, shipping, media, as well as health and education. With the pace of employment growth expected to increase in 2012 and through the remainder of the forecast period, office absorption should continue to trend upwards during this time, placing downward pressure on the office vacancy rate through 2016.

During the 10-year period between 2000 and 2010, approximately 2.3 million square feet of new office space were added to the market an increase of 6.1% in total office stock. Practically all new office construction during this period took place in the suburban office market with much of the new office construction in recent years concentrated in the South Central, Stamford non-CBD, and Eastern submarkets. In 2011, 445,000 square feet were added to the market with the delivery of several office projects, the largest of which was the completion of Harbor Point I and II in the Stamford non-CBD submarket. Although the Harbor Point area is technically located within the non-CBD office submarket, the project area's proximity to downtown and the Stamford Transit Center allow it to compete for tenants against office properties within the CBD. With a lower-cost environment, high-quality buildings and proximity to New York City, Fairfield County is a highly desirable location for large corporate headquarters. The professional and business services sector provides ancillary support to these headquarters operations that come from a wide variety of industries. The anticipated rebound in the professional and business services employment sector should be the primary driver of improvements in the office demand fundamentals through the forecast period. With no office construction projects in the development pipeline, there will be limited supply-side pressure in the market, which should facilitate the office market's return to equilibrium. The limited supply of developable land in the Stamford area minimizes supply-side pressure on the market, restricting new construction to redevelopment in existing commercial areas.

## Outlook

RCG's outlook for the Fairfield County office market is positive. RCG believes continued hiring among office-using industries should drive new leasing activity and erode much of the sublease space weighing on the market. RCG expects Stamford to benefit from the influx of companies in growing industries such as multimedia and the recovery in financial services employment to drive the new office demand going forward. Rising investor confidence and business creation in the coming period should support job creation in office employment sectors and a tightening in office market conditions. RCG anticipates more broad-based leasing activity going forward, resulting in the absorption of commodity space and improving fundamentals in this segment of the office market.

As job growth in the market accelerates into the coming year, RCG expects the vacancy rate to decline to 20.8% in 2012 and 20.5% in 2013. By 2013, the overall office rental rate should increase at a rate of 1.7% to

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\$34.68 per square foot. Into the latter part of the forecast period, as office employment payroll growth accelerates, RCG expects this trend to push the vacancy rate to 19.9% in 2014 followed by a 19.1% vacancy rate in 2015 and a 19.4% vacancy rate in 2016. By 2016, the average office lease rate should reach \$38.39 per square foot, surpassing pre-recession rent levels. During the five-year period ending in 2016, forecasted office employment levels in the metropolitan statistical area are expected to increase by close to 4,300 jobs, replenishing more than 40% of all office employment jobs lost during the two-year period following the onset of the national recession in December 2007.

**Stamford CBD Submarket**

Encompassing the commercial areas surrounding the Stamford Transit Center and the area north of the I-95 to Broad St., the Stamford CBD office submarket consists of approximately 6.8 million square feet of space tenanted by a number of major corporations and investment companies including UBS, Royal Bank of Scotland, Thomson-Reuters, and Jefferies. Approximately 93% of all office space in the CBD market is Class A space. The market's proximity to Manhattan and location along the region's transportation network help to incent the location of companies to the area. The City of Stamford is less than one hour from midtown Manhattan by commuter rail or interstate highway and is located directly on the major rail lines and is intersected by highway I-95, which connects New York and Boston. For Metro-North express trains to New York City, the average express trip is approximately 45 minutes. The area is also within easy driving distance of the major New York area airports and approximately 20 minutes from the Westchester County Airport. Technological advancement will likely drive the decentralization of financial market activities going forward, strengthening the demand for office space in suburban office markets. And, though the Stamford office market will continue to benefit from its relatively lower costs and proximity to New York and Boston as office hiring accelerates, the growing concentration of housing and companies in other office-using industries that facilitate the area's development into a 24/7 live-work environment should support the market's recovery going forward. In particular, properties located in close proximity to major transit nodes are better positioned to benefit from the local economy's on-going recovery in comparison to properties in adjacent submarkets.



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As of the second quarter of 2012, the overall CBD vacancy rate rose to 26.9% from 26.6% in 2011 and from 23.1% in 2010. The vacancy rate remains elevated in comparison with market conditions five years prior, at which point the vacancy rate stood at 14.2%.

Tenant interest in parts of the submarket is also heightened by incentives provided through the Stamford enterprise zone, which encompasses the portion of the City of Stamford that is south of the I-95. Under the enterprise zone incentive program, qualified companies may receive benefits such as an 80%, five-year local property tax abatement on eligible real and personal property, as well as a 25% or 50% credit on the state corporate business tax, depending upon the program type and location of the certified project. The additional savings to tenants provided by these incentive programs should continue to draw new companies to this developing portion of the city.

### **South Central Submarket**

Located along the southern edge of Fairfield County, the South Central office submarket consists of approximately 8.5 million square feet of office space, encompassing the areas of Norwalk, Darien/ New Canaan, and Wilton/Weston. Close to two-thirds of the office submarket's inventory is located in the Norwalk submarket. The office market is home to many large corporations, which include Virgin Atlantic Airways, SoBe, Priceline.com, Siemens IT Solutions and Services, Xerox, Kayak.com, Pepperidge Farm, Emcor Group, and Arch Chemicals. With an average lease rate of less than \$30 per square foot and its proximity to major highways and transit nodes, the South Central submarket's relative affordability and location continues to attract companies to the area.

As of the second quarter of 2012, the submarket vacancy rate continues to stabilize, slipping just 30 basis points to 20.4% from 20.7% in 2011. Though occupancy levels remain stable, the vacancy rate remains well above the 17.1% vacancy rate in 2009 and 14.2% vacancy rate in 2008. In recent years, lingering economic uncertainty and the availability of more centralized, high-quality space at deep discounts from previous highs placed upward pressure on the vacancy rate for office space located in tertiary submarkets. The overall average

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lease rate declined by 2.4% year-to-date to \$28.07 per square foot in the second quarter, which follows the 1.4% year-over-year increase in 2011.

**Retail Markets**

*New York*

New York's retail market benefits from positive long-term fundamentals, including favorable demographics, a very high income population, significant barriers to entry and a strong local demand base, as well as a high volume of domestic and international visitors. In addition to the 11.7 million residents living within the New York-White Plains-Wayne, NY-NJ Metropolitan Division, approximately 8.3 million residents live in the surrounding region, including Newark, Central New Jersey, Long Island and Connecticut's Fairfield County. With this combined population approaching 20 million, the Greater New York City region is by far the most populous in the country and second only to Mexico City in North America.

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New York's long-term economic base is supported by the region's talented workforce, its dense base of customers and clients for businesses, and its highly integrated network of potential partners and investors that convene on the city from all parts of the world. High-paying, knowledge-based industry clusters such as finance, legal services, consulting, media and publishing and others fuel growth in other sectors of the economy. Furthermore, residents come from a highly diverse background: 34.8% of the New York metropolitan division's population was born outside the United States as of 2009, compared with 12.9% for the country as a whole. All types of retailers from discount, family-oriented outlets all the way to high-end, exclusive luxury are required to serve the heterogeneous population.

Domestic and international leisure travelers are drawn to New York City for its theaters, historical sites, museums, shopping and other cultural opportunities. As heightened focus on public safety and sanitation has helped to transform New York City, and Manhattan specifically, into a family-friendly tourist destination through the last two decades, tourism has come to account for a large share of the local economy. A record high of 50.2 million travelers visited New York City in 2011, according to NYC & Company, reaching Mayor Bloomberg's goal of 50 million visitors by 2012 one year early. Direct visitor spending in New York City reached \$32.5 billion in 2011, up from \$14.7 billion in 1998. According to the latest available data from 2010 when visitor volume totaled 48.8 million, or 4.1% less than the 2011 total, visitor spending supported 310,200 jobs, \$17.3 billion in total wages and generated \$8.1 billion in taxes for the area.

Other measures indicate rising volumes of tourism and business-related travel, which bodes well for retail demand in the region. Total passenger traffic at New York-area airports grew to 107.9 million in the 12 months through May 2012, an increase of 2.6% over the previous 12-month period. As of the summer of 2010, Saturday pedestrian traffic volume in Times Square increased 89% over the same period a year earlier.

On the supply side, New York's retail market has high barriers to entry, including limited available land to develop, long lead times on new construction, ambiguous zoning regulations, a difficult planning approval process, and high costs of construction. Major new construction projects are rare, particularly within Manhattan's main corridors, and are generally limited to the outer boroughs and the suburbs of Northern New Jersey and Upstate New York.

RCG's outlook for New York's retail market is positive. With job growth expected to remain positive, decreasing unemployment and stabilizing home values should encourage local residents to loosen spending habits, bolstering demand from local residents, the primary driver of retail demand in the New York area. Siena Research Institute's Current Consumer Confidence Index for New York City registered 79.3 as of the second quarter of 2012, a slight decrease from the first quarter of 2012 but 11.1% greater than one year earlier. The forward-looking Future Economic Expectations Index was recorded at 86.4 and 83.4 during the first and second quarters, respectively, the highest levels since at least 2008, suggesting increased economic optimism about the near future.

While barriers to entry in New York City's retail market are significant, select major projects are likely to continue construction through the foreseeable future. The number of projects in the planning and proposal stage has increased through the 2011 calendar year. One of the largest projects under development is the retail component of the World Trade Center complex, which totals 500,000 square feet of space. A public plaza that includes retail space is planned along 42<sup>nd</sup> Street between Sixth Avenue and Broadway. Several large projects planned in the Bronx include a 780,000 square-foot shopping mall at Bay Plaza in Co-op City, an 80,000 square-

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foot parcel on Broadway and 230<sup>th</sup> Street, and the 162,000 square-foot retail complex at the former Stella D Oro factory anchored by BJ's Wholesale Club.

*Manhattan*

The borough of Manhattan contains approximately 110 million square feet of retail space, according to the Real Estate Board of New York, and is split into six major submarkets: East Side, West Side, Midtown, Midtown South, Downtown and North Manhattan. The majority (78%) of the space is located within Midtown South, Midtown and Downtown. Spaces in prime corridors, which are spread out among the major submarkets, are among the most highly sought-after real estate in the world and also among the most expensive in terms of rental rates per square foot. Retail demand in the borough is driven by an affluent local population, commuters from outside the borough and a high concentration of business and leisure travelers.

On various measures of income, Manhattan exceeds surrounding geographies and the nation as a whole by wide margins according to the 2010 Census American Community Survey. Manhattan's median household income was recorded at \$63,832 in 2010, compared with \$48,742 for all of New York City, \$53,540 for the New York metropolitan division and \$50,046 at the national level. Manhattan's per capita income was recorded at \$56,556 as of 2010, much greater than \$29,326 for all of New York City, \$31,453 throughout the New York metropolitan division and \$26,059 for the United States as a whole.

Midtown, the area loosely defined to span between 31<sup>st</sup> and 59<sup>th</sup> streets, is among the premier commercial districts in the world and is home to a diverse base of office tenants, retail stores, entertainment venues, theaters, hotels, and residences, along with some light manufacturing, warehouse and storage. Midtown accounts for more than 61% of Manhattan's office space. Consumer expenditures in Midtown totaled an estimated \$3.4 billion in

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2012. Given the primacy of its commercial activities, Midtown accounts for a relatively small percentage of Manhattan’s residential population. In fact, approximately 161,940 residents live within the area, equating to roughly 12% of Manhattan’s total. Indicated by several income statistics, however, Midtown’s residential population is more affluent than Manhattan as a whole, which helps to support retail demand in the area. The median household income within Midtown Manhattan was estimated at \$83,021 in 2012.

Demand is recovering, driven by local job growth and a rise in tourism activity since the last recession. According to the latest available data, the average vacancy rate among major retail corridors increased slightly to 7.6% in the second quarter of 2012 from 7.2% one year earlier, largely stemming from an influx of new availabilities in the Lower Fifth Avenue submarket, which stretches from 42<sup>nd</sup> Street to 49<sup>th</sup> Street. In terms of rents, prime retail corridors command very high rents, though a very small sample size leads to volatile average measures. According to Cushman & Wakefield, asking rents in the Upper Fifth Avenue corridor averaged \$2,067 per square foot in the second quarter of 2012, a 0.8% year-over-year decrease. Rents on Times Square retail space averaged \$1,850 per square foot, 131.8% greater than one year earlier. In total, rents grew by an average of 35.5% year-over-year in Manhattan’s five most-expensive retail submarkets. The overall average asking rent in Manhattan was recorded at \$114 per square foot in the spring of 2012 and has fluctuated in the band between \$112 and \$118 per square foot since spring 2009, according to the Real Estate Board of New York.

As with the New York metropolitan division as a whole, RCG’s outlook for Manhattan’s retail market is positive. The main retail corridors have improved during the early stages of economic recovery as consumer spending stabilized and tourism activity rebounded. While rents are rising in the majority of the prime submarkets, rents are still relatively low in Manhattan’s second-tier submarkets, like the Flatiron District, Meatpacking District and Columbus Avenue, among others. Discounted lease rates present opportunities for small-scale and somewhat cost-sensitive retailers to enter the market where they have been previously priced out in the past. On the supply side, major new construction projects in Manhattan will likely be limited to the area north of Central Park, with the exception of the World Trade Center complex. One example is the conversion of a former manufacturing facility in Harlem into a Target- and Costco-anchored retail center. Smaller-scale deliveries, like conversion of old building stock into retail boutiques, will likely account for the dominant share of new supply in high-traffic, desirable submarkets.

Driving retail demand near Penn Station is a critical mass of pedestrian traffic in the neighborhood, comprised of office workers, tourists and inhabitants of the surrounding area. Office development, retail shops and Pennsylvania Station all drive pedestrian traffic in the area. According to the most recent estimates by the 34th Street Partnership, approximately 185,000 people work in offices in the area surrounding Penn Plaza and Herald Square, as of 2009. Approximately 27,000 people were counted leaving Penn Station in one hour on an average weekday in December 2009, also according to the 34th Street Partnership, while nearly 11,000 pedestrians per hour were counted at the corner of Seventh Avenue and 34th Street. Madison Square Garden is regularly ranked number one in North America for total ticket sales across the wide variety of events housed in the arena, including professional and collegiate basketball, professional hockey, live music events, one-time events like professional wrestling, and many others. Approximately 4 million tourists visit the Empire State Building observation decks each year, where tickets cost between \$16 and \$55 each. Approximately 27,900 residents occupy 16,600 households within one-half mile of the intersection Broadway and West 36th Street, around which 1333 Broadway, 1350 Broadway and 1359 Broadway are clustered. The median household income within the same area was estimated at \$79,162.

The East/West Manhattan Retail Portfolio consists of two properties located in Midtown Manhattan: 1010 Third Avenue and 77 West 55<sup>th</sup> Street. Located at the intersection of Third Avenue and East 60<sup>th</sup> Street, the retail space at 1010 Third Avenue is located across 60<sup>th</sup> Street from Bloomingdales and within the Decorative Arts District: four blocks west of the Fifth Avenue entrance to Central Park, adjacent to 59<sup>th</sup> Street-Lexington multi-line subway stop and one block from the Queensboro Bridge off ramp. Other retail outlets cluster in this high-pedestrian traffic neighborhood, along with luxury hotels, highly desirable residential buildings and major office tenants. The median household income within a half-mile radius of 1010 Third Avenue was an estimated \$99,866

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in 2012. Consumer expenditures reached an estimated \$1.4 billion within a half-mile radius of the property. Other major retail locations in the area include Savoy Plaza with 33,800 square feet and the Shops at Citicorp Center with 70,000 square feet.

Also in Midtown, 77 West 55<sup>th</sup> Street is located at the intersection of West 55<sup>th</sup> Street and Sixth Avenue. While Sixth Avenue is not known as a high-end retail corridor, pedestrian foot traffic is high, attributable to major office tenants and dense residential development in the area. The Hilton New York, the largest hotel in New York City, is located one block south on Sixth Avenue. High costs of living in the area surrounding the property have further concentrated an affluent population. The median household income within a half-mile radius of 77 West 55<sup>th</sup> Street in 2012 was estimated at \$98,000. Consumer expenditures were estimated at \$593 million in 2012. Only one other major retail center is located within a half-mile of the property, the 70,000 square-foot Shops at Citicorp Center.

The ground-level retail at 10 Union Square East is located on the eastern edge of Union Square where Park Avenue South meets 14<sup>th</sup> Street. With high-quality open spaces, a wide variety of pop-up markets, excellent transit accessibility, and active clusters of retail, education, healthcare, office tenants and other residential and commercial development, Union Square is one of the most heavily-trafficked pedestrian areas in Manhattan. Measured over a 14-hour period in July of 2011, weekday pedestrian traffic totaled 176,000 and 159,000 on the weekend. Overall, pedestrian traffic has increased 28% over the most recent five-year period, according to Union Square Partnership. Pedestrian traffic has reached as high as 200,000 during Greenmarket Saturdays. Furthermore, three major subway lines (L, N/Q/R, 4/5/6) converge on Union Square, connecting the neighborhood to New York's outer boroughs as well as Long Island, Connecticut, New Jersey and suburban Upstate New York. The 14<sup>th</sup> Street-Union Square subway station served 34.9 million riders during 2011, a 40.2% increase from 2000, making it the fourth-largest station in New York City. While area retailers benefit from customers that live at considerable distances to Union Square, affluent local residents also provide a stable demand base. The median household income within a half-mile radius was estimated at \$93,151 in 2012. Consumer expenditures within a half-mile radius of 10 Union Square East was estimated at \$1.6 billion in 2012. Though Union Square is a major retail submarket within Manhattan, large shopping centers are still in short supply in the surrounding area. Union Square South is the only shopping center within a half-mile radius of 10 Union Square East. Demand for space in Union Square South has been strong by national retail chains. Following the closure of Circuit City and Virgin Megastores, both of which occupied the property at a point in time, retail space at Union Square South was subsequently re-leased to Best Buy and Nordstrom Rack. Also at the property is Regal Cinemas. Other major retailers are in the neighborhood as well, including Whole Foods, Forever 21, Diesel, Barnes & Noble and many others. Within a one-mile radius of 10 Union Square East are two other major shopping centers: the 170,000 square-foot Manhattan Mall at Broadway and West 33<sup>rd</sup> Street and the 92,200 square-foot Kips Bay Shopping Center.

The Gotham retail property is located on the Upper East Side at the intersection of East 86<sup>th</sup> Street and Third Avenue, among a cluster of residential buildings, retail stores and entertainment spaces. One block from the 86<sup>th</sup> Street-Lexington subway stop, the area is easily accessible from other areas around New York City. Major landmarks in the surrounding area include the Metropolitan Museum of Art and the Guggenheim Museum. The neighborhood population is more affluent than Manhattan as a whole. The median household income within a half-mile radius was estimated at \$93,822 in 2012. Consumer expenditures within a half-mile radius of the

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Gotham was estimated at \$2.2 billion in 2012. According to Claritas, not a single major shopping center exists within a one-mile radius of the Gotham.

*Fairfield County*

Fairfield County's favorable demographics and high concentration of high-paying professionals and wealthy households drives high-end retail sales in the area. The region is studded with luxury retail establishments consisting of high-end boutiques and department stores. High-end retail stores cluster in affluent Fairfield County neighborhoods where residents live and work, particularly in Greenwich, New Canaan, and Westport retail submarkets which command the highest retail rents in the area. In the first quarter of 2012, the retail vacancy rate declined 40 basis points from mid-year 2011 to 4.1%, while the average asking retail lease rate in Fairfield County increased 0.6% to \$27.84 per square foot during this time, according to Cassidy Turley Research. Historic average annual rent growth in the market is 1.7%. In 2012, total consumer expenditures in Fairfield County retail establishments are expected to total \$12.9 billion, according to Claritas. Because of the area's concentration of middle-aged, high net worth professionals, Fairfield County is one of the most affluent counties in the country, representing a concentrated market for high-end and luxury retail goods, and services like restaurants, spas, and golf courses/clubs.

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Driven by the recent resurgence in job growth and increasingly positive economic outlook, retail sales in the area quickly rebounded from recent lows a trend RCG expects to continue through the forecast period. An indication of improving retail demand fundamentals, state sales and use tax revenues, a proxy for retail sales volume in Connecticut, increased by 4.6% in fiscal year 2010-2011 following a 3.4% decline the previous year.

Going forward, the continued stabilization of home values and acceleration in job growth should fuel retail sales activity, supported higher levels of retail space absorption in the coming years. As employment levels rebound from recent lows, the improvements to the local economy should also drive an increase in population and household growth through the forecast period, supplying the market with consumers to support local retail sales. Through the forecast period, RCG expects both total population and total household levels to increase at an annual average rate of 0.5% through 2016, resulting in the addition of more than 23,500 new residents and the formation of close to 9,000 new households during this time. The area's favorable demographic trends suggest that its retail market will be healthy through the forecast period.

Located in the Town of Westport, 69-97 Main St. is situated in one of the town's most affluent shopping districts located along the main thoroughfare. The high concentration of major national and regional retail tenants in the area include retailers such as Coach, Tiffany & Co., Restoration Hardware, and Williams Sonoma. Not surprisingly, the surrounding neighborhood population is more affluent in comparison to other submarkets in Fairfield County. The estimated 2012 retail sales volume within a one-mile radius of the retail property is expected to total approximately \$114 million, according to Claritas. The median household income within a one-mile radius was estimated at \$131,272 for 2012, with households making more than \$200,000 accounting for 14.3% of all households in the area in 2010.

Also located along Westport's main thoroughfare, 103-107 Main St. is located in the main shopping district. Given the property's central location within the area's most affluent shopping districts, the median household income is high relative to surrounding sub-market. The estimated 2012 retail sales volume within a one-mile radius of the retail property is expected to total approximately \$113 million, according to Claritas. Within a one-mile radius the median household income was \$131,388 and \$111,586 within a two-mile radius of the property in 2012.



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**THE COMPANY BUSINESS AND PROPERTIES**

**Overview**

The company is a self-administered and self-managed real estate investment trust, or REIT, that owns, manages, operates, acquires and repositions office and retail properties in Manhattan and the greater New York metropolitan area. The company was formed to continue and expand the commercial real estate business of the supervisor and its affiliates. The company's primary focus will be to continue to own, manage and operate its current portfolio and to acquire and reposition office and retail properties in Manhattan and the greater New York metropolitan area.

As of September 30, 2012, the company owned 12 office properties (including one long-term ground leasehold interest) encompassing approximately 7.7 million rentable square feet of office space, which were approximately 79.8% leased (or 83.3% giving effect to leases signed but not yet commenced as of that date). Seven of these properties are located in the midtown Manhattan market and encompass in the aggregate approximately 5.9 million rentable square feet of office space, including the Empire State Building. The company's Manhattan office properties also contain an aggregate of 433,545 rentable square feet of premier retail space on their ground floor and/or lower levels. The company's remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.8 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, the company has entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of the company's office properties, that will support the development of an approximately 380,000 rentable square-foot office building and garage, which is referred to herein as Metro Tower. As of September 30, 2012, the company's portfolio also included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 204,452 rentable square feet in the aggregate. As of September 30, 2012, the company's standalone retail properties were 100.0% leased in the aggregate. The company's portfolio represents all of the Manhattan and greater New York metropolitan area office and retail assets owned by the entities organized and supervised by the company.

In addition, the company has an option to acquire from three private entities supervised by the supervisor two additional Manhattan office properties encompassing approximately 1.5 million rentable square feet of office space and 154,149 rentable square feet of ground floor retail space. Each of the Malkin Holdings group and the Helmsley estate owns interests in such private entities. These option properties currently are subject to ongoing litigation and the company has an option to acquire fee, long-term leasehold, sub-leasehold and/or sub-subleasehold interests, as applicable, in these two properties after such litigation is resolved. These properties are referred to herein as the option properties. For more information, please see Description of Option Properties.

The company has a comprehensive knowledge of its markets that has been developed through its senior management team's substantial experience, and the company believes it is a recognized owner and operator of office properties. All of the company's properties are located in Manhattan and the greater New York metropolitan area, which, according to RCG, is one of the most prized office markets in the world and a world-renowned retail market due to a combination of supply constraints, high barriers to entry, near-term and long-term prospects for job creation, vacancy absorption and rental rate growth. From 2002 through 2006, the supervisor gradually gained full control of the day-to-day management of the company's Manhattan office properties (with the Helmsley estate holding certain approval rights at some of these properties as a result of its interest in the entities owning the properties). Helmsley-Spear, Inc. had provided property management services to the company's Manhattan office properties during the period from 2002 through 2006 prior to its removal as property manager. See History for more information regarding how the company gained full control of the day-to-day management of the company's Manhattan office properties. Since then, the company has been undertaking a comprehensive renovation and repositioning strategy of the company's Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such

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properties. Since the supervisor assumed full control of the day-to-day management of the company's Manhattan office properties, beginning with One Grand Central Place in 2002 and through September 30, 2012, the company has invested a total of approximately \$342.0 million (excluding tenant improvement costs and leasing commissions) in its Manhattan office properties pursuant to this program. The company currently intends to invest between \$100.0 million and \$130.0 million of additional capital through the end of 2013. The company expects to complete substantially the program by the end of 2013, except with respect to the Empire State Building, which is the last Manhattan office property that began its renovation program. In addition, the company currently estimates that between \$85.0 million and \$115.0 million of capital is needed beyond 2013 to complete substantially the renovation program at the Empire State Building, which the company expects to occur by the end of 2016, due to the size and scope of the company's remaining work and its desire to minimize tenant disruptions at the property. 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 intends to fund these capital improvements through a combination of operating cash flow and borrowings.

These improvements, within the company's renovation and repositioning program, include restored, renovated and upgraded or new lobbies, elevator modernization, renovated public areas and bathrooms, refurbished or new windows, upgrade and standardization of retail storefront and signage, façade restorations, modernization of building-wide systems, and enhanced tenant amenities. These improvements are designed to improve the overall value and attractiveness of the company's properties and have contributed significantly to the company's tenant repositioning efforts, which seek to increase the company's occupancy; raise its rental rates; increase its rentable square feet; increase the company's aggregate rental revenue; lengthen its average lease term; increase its average lease size; and improve its tenant credit quality. The company has also aggregated smaller spaces in order to offer larger blocks of office space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. This strategy has shown attractive results to date, as illustrated by the case studies which are described in Renovation and Repositioning Case Studies, and the company believes has the potential to improve its operating margins and cash flows in the future. The company believes it will continue to enhance its tenant base and improve rents as the company's pre-renovation leases continue to expire and be re-leased. Through September 30, 2012, the company has completed, or is in the process of completing in connection with signed leases, the renovations of approximately 4.0 million square feet of its Manhattan office properties pursuant to the renovation program. In addition, the company currently estimates that approximately 2.6 million square feet of additional renovations, including approximately 1.4 million square feet of additional renovations with respect to the Empire State Building, are required to complete substantially this program.

The company operates its business with a view to protect against economic, business and market downturns and preserve capital through conservative debt levels, underwriting and adequate capital provisions for maintenance and improvements. This helps the company to withstand economic downturns and grow in times of economic growth. The company motto is performance for today, perspective for tomorrow. The company believes its tenants are attracted to the company's financial stability and track record of consistent performance through multiple market cycles.

The Empire State Building is the company's flagship property. The 102-story building comprises 2,696,316 rentable square feet of office space and 169,215 rentable square feet of retail space. The building also includes the company's observatory and broadcasting operations. The building 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. The ongoing repositioning of the Empire State Building is representative of the company's strategic vision for its Manhattan office properties. After the supervisor gained full control of the day-to-day management of the Empire State Building in August 2006, the company developed and began implementing a restoration and renovation plan for the property and, as of September 30, 2012, Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. had invested a total of approximately \$157.9 million. The company currently estimates that between \$185.0 million and \$225.0 million of additional capital is needed to complete this renovation plan, which the company expects to complete substantially by the end of 2016, due to the size and

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scope of the company's remaining work and its desire to minimize tenant disruptions at the property. 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 intends to fund these capital improvements through a combination of operating cash flow and borrowings. These improvements include restored and upgraded the landmark art deco lobby, renovated public areas and bathrooms, refurbished 6,514 windows, renovated the observatories and broadcasting facilities and modernized building-wide systems. In addition, the company pioneered a process for a replicable, world-leading energy efficiency retrofit program. Future planned renovation expenditures include additional improvements to the building lobby, restroom renovations, elevator modernization, corridor upgrades, and enhanced ventilation and security systems. Plans are also in place for the development of a tenants-only fitness center and a conference center in the building. The few remaining details of the comprehensive renovation program for the observatory are expected to be completed substantially by 2013. As part of the supervisor's effort to increase the quality of its tenants, the supervisor 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. To date the company believes these efforts have accelerated the company's ability to lease space to new higher credit-quality tenants, including: LF USA; Skanska; Coty, Inc.; the Federal Deposit Insurance Corporation; Funaro & Co.; Kaltex North America, Inc., LinkedIn; Noven Pharmaceuticals; People's Daily Online USA; Taylor Global; The Freeh Group; Turkish Airlines; and World Monuments Fund. The company believes completing the repositioning program for the Empire State Building, as well as its other Manhattan office properties, represents a significant growth opportunity for the company. The company believes completing the repositioning program for the Empire State Building, as well as its other Manhattan office properties, represents a significant growth opportunity for the company.

The Empire State Building provides the company with a significant and diversified source of revenue through its office and retail leases, observatory operations and broadcasting licenses and related leased space. Empire State Building Associates L.L.C. owns the fee interest in, and the land underlying, the Empire State Building. 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 observatory was approximately 3.67 million, 4.03 million, 3.75 million, 4.03 million, 4.06 million, and 3.24 million, respectively. The number of admissions to the observatory for the 12 years from 2000 through 2011 increased at an aggregate growth rate of 16.4%. The average ticket revenue per admission for each of the 12 years from 2000 through 2011 increased 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. 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. In addition, the company has 75 broadcasting licenses with an average remaining term of 6.6 years as of September 30, 2012. On a pro forma basis, during the nine months ended September 30, 2012 and the year ended December 31, 2011, the company generated approximately \$181.6 million and \$213.4 million of revenue, respectively, from the Empire State Building, which included approximately \$68.5 million and \$80.6 million of revenue from its observatory operations and approximately \$15.9 million and \$20.6 million of revenue, respectively, from its broadcasting licenses and related leased space.

In addition to the Empire State Building, the company's portfolio attracts high quality tenants to its high quality, midtown Manhattan and greater New York metropolitan area office properties.

Major tenants of 1333 Broadway include LF USA, Inc., Aetna Life Insurance Company, OCE-USA Holdings, a variety of service firms and retail tenancy in its multi-level retail space. Major tenants of 1350 Broadway include E-Bay, Tarter Krinsky & Drogin LLP, Marketfish, EcoLab, Open Space Institute, a variety of service firms including Carrier Corporation and retail tenancy in its multi-level retail space including Bank Santander (Sovereign Bank), Duane Reade (a division of Walgreen Co.), HSBC, Starbucks, and FedEx/Kinko's. Major tenants of 1359 Broadway include LF USA Inc., IPREO Holdings LLC, Actimize, Inc., Equifax, Parkinson's Disease Foundation and a variety of leading not-for-profit and service firms. Major tenants of 501 Seventh Avenue include the corporate headquarters of both Carolina Herrera Ltd. and Warnaco, Local Initiatives

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Support Corporation, a variety of service firms and retail tenancy including Chipotle Mexican Grill and Pot Belly Sandwich Shop. One Grand Central Place is largely a small tenant building. Its major tenants include Fairfield Maxwell Group, Ales Group USA, Inc., Tourist Office of Spain, American Bureau of Shipping, Pine Brook Road Partners LLC, a variety of financial, services, corporate, and not-for-profit tenants and retail tenancy in its multi-level retail space including JP Morgan Chase Bank, Bank of America, N.A., and Charles Schwab & Co. 250 West 57<sup>th</sup> Street is largely a small tenant building. Its major tenant is Perseus Books Group and its other tenants include a variety of financial, services, corporate, and not-for-profit tenants including N.S. Bienstock, Inc., Chase Paymentech (a division of JPMorgan Chase Bank) and retail tenancy in its multi-level retail space including TJ Maxx, the Gap, and Duane Reade (a division of Walgreen Co.).

In the greater New York metropolitan area, the company's portfolio includes high quality suburban office properties in densely populated metropolitan communities in Fairfield County, Connecticut and Westchester County, New York. Major tenants of the greater New York metropolitan area flagship Metro Center (at the Transportation Center in Stamford, Connecticut) include Thomson Reuters, Jefferies Group, Columbus Circle Investors, OMI Group, Olympus Partners, BP Energy, Tweedy, Browne Company and a variety of other investment management and private equity firms. Major tenants of First Stamford Place (within a short walking distance of the Transportation Center in Stamford, Connecticut) include Ernst & Young, Legg Mason, Citibank, N.A., Elizabeth Arden, Inc., Thomson Reuters, Guardian Life Insurance Company, the corporate headquarters of Crane Co., Air Castle Advisor LLC, National Indemnity Company, Gleacher Securities Group Inc., Robert W. Baird, Inc., MKM Partners, Jones Lang LaSalle, Bank of Ireland, Forevermark US Inc., and a variety of investment management and service firms. Major tenants of 383 Main Avenue (at the intersection of the Merritt Parkway and Route 7 in Norwalk, Connecticut) include Reed Elsevier, Inc., Nestle Holdings, Inc., Cisco Systems, Inc., SunGard, CIT LLC, SAP America, Inc., SymphonyIRI Group, Multiple Myeloma Research Foundation, Fairfield County Community Trust and a variety of not-for-profit and service firms. Major tenants of 10 Bank Street (at the Transportation Center in White Plains, New York) include JP Morgan Chase Bank, Pearson Education, Inc., Fifth Street Capital, Inc., Rockwood Capital, LLC, Pine Brook Road Partners, LLC, Evolution Markets, LLC, US Renewables Group, Liberty Mutual, Nokia, Marubeni Specialty Chemicals Inc., Hitachi Cable America Inc., and a variety of leading investment management and service firms. Major tenants of 500 Mamaroneck Avenue (between the Hutchinson River Parkway and Interstate 95 in Harrison, New York) include Mariner Investment Group, O Connor Davies Munn & Dobbins, Pasternak Wine Imports, Universal Remote Control, Stark Business Solutions and a variety of financial and service firms.

The company's portfolio also includes high quality retail properties located in premier retail corridors in Manhattan and Westport, Connecticut. Tenants at 10 Union Square in Manhattan include Best Buy Mobile, Starbucks, A&P, Panera Bread, FedEx/Kinko's, Au Bon Pain, Chipotle Mexican Grill, and GameStop. Tenants at 1010 Third Avenue's multi-level retail space in Manhattan include Ethan Allen. Tenants at 55 West 57<sup>th</sup> Street include Tapps Supermarkets and Bank of America, N.A. Tenants at 69-97 Main Street in Westport, Connecticut include Ann Taylor, Lululemon, Allen Edmonds, Nike, and Theory. Tenants at 103-109 Main Street include Kate Spade.

The company is led by Anthony E. Malkin, the company's Chairman, Chief Executive Officer and President, who has a strong reputation in the industry for quality management, repositioning and marketing expertise. Mr. Malkin, together with the company's senior management team, has developed the company's strategy with a focus on tenant and broker relationships and the cultivation of the company's brand to attract higher credit-quality tenants to its improved buildings and negotiate attractive rental terms. Mr. Malkin has over 24 years of real estate experience specifically in expanding, renovating, repositioning and managing this portfolio. The company's senior management team has an average of approximately 29 years of experience covering all aspects of real estate, including asset and property management, leasing, marketing, acquisitions, construction, development, legal and finance. Messrs. Malkin, Durels and Keltner have worked together for the supervisor for approximately 23 years, with Messrs. Malkin and Durels being responsible for supervising the design and implementation of the company's renovation and repositioning program.

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### **History**

The Manhattan office properties that will be included in the company's initial portfolio were acquired between 1950 and 1979 through the business ventures of Lawrence A. Wien in partnership with Harry B. Helmsley, and later with his son-in-law and the company's Chairman Emeritus Peter L. Malkin. Three properties, the Empire State Building, One Grand Central Place and 250 West 57<sup>th</sup> Street, were acquired through public partnerships from 1953 to 1961, following earlier transactions on structures developed by Lawrence A. Wien, which are credited as the first flow-through tax treatment real estate syndications ever conducted, including other Manhattan office properties, 1333 Broadway, 1350 Broadway, 1359 Broadway and 501 Seventh Avenue, which were acquired through private partnerships from 1950 to 1979. With respect to the Manhattan office properties, Lawrence A. Wien and Peter L. Malkin were responsible for the syndication of the transactions, and Harry B. Helmsley was responsible for the identification of opportunities and the management and leasing of the properties once purchased. The principals of the supervisor during this period consisted of Lawrence A. Wien, until his death in 1988 and, beginning in 1958, Peter L. Malkin. Anthony E. Malkin joined Peter L. Malkin as a principal in 1989. All of the standalone retail assets and most of the Fairfield County and Westchester County office properties that will be included in the company's initial portfolio were acquired from 1989 to 2006 under the direction of Anthony E. Malkin.

The supervisor historically provided asset management services for most of the company's properties. The company's Manhattan office properties were managed, subject to the supervision of the supervisor, by Helmsley-Spear until 2002, in the case of One Grand Central Place, 250 West 57<sup>th</sup> Street and 501 Seventh Avenue; 2003, in the case of 1359 Broadway; and 2006, in the case of the Empire State Building, 1350 Broadway, 1333 Broadway and the option properties.

Over time, the supervisor observed and objected to deterioration in the property management and leasing services provided by Helmsley-Spear to the Manhattan office properties, resulting in deferred maintenance, reduced occupancy and/or rents and reduced tenant quality. The supervisor brought legal action to remove Helmsley-Spear as manager (after it was sold by entities controlled by Leona M. Helmsley) of these properties both for cause and based on contractual removal rights. The resolutions of the ensuing arbitrations and litigations resulted in a gradual transfer of day-to-day management away from Helmsley-Spear beginning in 2002 and were fully settled in 2006. Upon such transfer, Mr. Malkin and the company's senior management team conceived and designed the company's renovation and repositioning program for the company's Manhattan office properties, and a majority of the work on such program has taken place since 2008. The supervisor oversaw the engagement of third-party property management and leasing agents for these properties, and eventually the transformation of the Empire State Building to a self-managed structure, retaining a third party agent only for leasing.

Separately, the entities organized and supervised by the supervisor acquired certain office, city-center retail and multi-family residential properties outside of Manhattan, which other than the private entities' greater New York metropolitan area properties will not be part of the company's portfolio upon completion of the consolidation and the IPO. It developed and implemented a branding strategy for brokers and tenants for this portfolio. The branded portfolio provides tenants with a consistently high quality level of services, installations, maintenance and amenities and has built strong relationships with the broker community.

As the Helmsley-Spear management disputes progressed and were resolved, the supervisor conceived, planned and executed a comprehensive program to renovate and improve the Manhattan office properties in the company's portfolio with a combination of operating cash flow and debt financing. The improvements included restored and improved or new lobbies; elevator modernization; common hallway upgrades; bathroom renovations; roof and façade restorations; new windows; and building-wide systems upgrades. As each property renovation was put in place, the supervisor established its brand by deploying the same branding strategy with tenants and brokers as had succeeded with the office and retail properties in Fairfield County, Connecticut and Westchester County, New York.

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### **The Company's Competitive Strengths**

The company believes that it distinguishes itself from other owners and operators of office and retail properties as a result of the following competitive strengths:

**Irreplaceable Portfolio of Office Properties in Midtown Manhattan.** The company's Manhattan office properties are located in one of the most prized office markets in the world due to a combination of supply constraints, high barriers to entry, near-term and long-term prospects for job creation, vacancy absorption and rental rate growth. The company's management believes these properties could not be replaced today on a cost-competitive basis, if at all. As of September 30, 2012, the company owned seven Manhattan office properties (including one long-term ground leasehold interest) encompassing approximately 5.9 million rentable square feet of office space, including the Empire State Building, the company's flagship property. Unlike traditional office buildings, the Empire State Building provides the company with a significant source of income from its observatory and broadcasting operations. All of these properties include premier retail space on their ground floor and/or lower levels, which comprise 433,545 rentable square feet in the aggregate and some of which have recently undergone significant renovations. The company believes the high quality of its buildings, services and amenities, their desirable locations and commuter access to mass transportation should allow the company to increase rents and occupancy to generate positive cash flow and growth.

**Expertise in Repositioning and Renovating Manhattan Office Properties.** The company has substantial expertise in renovating and repositioning Manhattan office properties, having invested a total of approximately \$342.0 million (excluding tenant improvement costs and leasing commissions) in the Manhattan office properties since the supervisor assumed full control of the day-to-day management of these properties, beginning with One Grand Central Place in November 2002 through September 30, 2012. The company has gained substantial experience in upgrading, renovating and modernizing (or are in the process thereof) all building lobbies, corridors, bathrooms and elevator cabs and old, antiquated spaces to include new ceilings, lighting, pantries and base building systems (including electric distribution and air conditioning, as well as enhanced tenant amenities). The company has successfully aggregated and is continuing to aggregate smaller spaces to offer larger blocks of space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. As part of this program, the company converted some or all of the ground office floors of certain of its Manhattan office properties to higher rent retail space. The company believes that the post-renovation high quality of the company's buildings and the service the company provides also attract higher credit-quality tenants and allow the company to grow cash flow. In addition, the company believes that, based on the results of the company's energy retrofitting efforts at the Empire State Building, the company can derive cost savings through innovative energy efficiency retrofitting and sustainability initiatives, reducing direct and indirect energy costs paid both by tenants and by the company throughout the company's other Manhattan office properties.

**Leader in Energy Efficiency Retrofitting.** The company has pioneered certain practices in energy efficiency at the Empire State Building where the company has partnered with the Clinton Climate Initiative, Johnson Controls Inc., Jones Lang LaSalle and the Rocky Mountain Institute to create and implement a groundbreaking, replicable process for integrating energy efficiency retrofits in the existing built environment. The reduced energy consumption reduces costs for the company and its tenants, and the company believes it creates a competitive advantage for its properties. As a result of the energy efficiency retrofits, the company currently estimates that the Empire State Building will save at least 38% of its energy use, resulting in at least \$4.4 million of annual energy cost savings. Johnson Controls Inc. has guaranteed minimum energy cost savings of \$2.2 million, from 2010 through 2025, with respect to certain of the energy efficiency retrofits which Johnson Controls Inc. was responsible for installing. In 2011, the actual energy cost savings for the energy efficiency retrofits which Johnson Controls Inc. was responsible for installing was \$2.4 million. In addition, Skanska realized approximately 58% energy cost savings, on a per square foot basis, when comparing its

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previously leased space which it occupied in an unrelated third-party Class A office building during 2008 and its leased space at the Empire State Building during 2010. The company believes that higher quality tenants in general place a higher priority on sustainability, controlling costs and minimizing contributions to greenhouse gases. The company believes its expertise in this area gives it the opportunity to attract higher quality tenants at higher rental rates and to reduce the company's expenses. As a result of the company's efforts, the Empire State Building is now an Energy Star building and has been awarded LEED EBOM-Gold certification. The company is currently underway with the design and specification process to implement energy efficiency retrofitting projects in its Manhattan and greater New York metropolitan area office properties based on its work at the Empire State Building. Finally, the company maintains a series of management practices utilizing recycling of tenant and construction waste, recycled content carpets, low off-gassing paints and adhesives, green pest control and cleaning solutions, and recycled paper products throughout the company's office portfolio. The company believes that its portfolio's attractiveness is enhanced by these practices and that this should result in higher rental rates, longer lease terms and higher quality tenants.

**Attractive Retail Locations in Densely Populated Metropolitan Communities.** As of September 30, 2012, the company's portfolio also included six standalone retail properties and retail space at the ground floor and/or lower levels of the company's Manhattan office properties, encompassing 637,997 rentable square feet in the aggregate, which were approximately 85.6% leased in the aggregate. All of these properties are located in premier retail corridors with convenient access to mass transportation, a diverse tenant base and high pedestrian traffic and/or main destination locations. The company's retail portfolio includes 616,546 rentable square feet located in Manhattan and 21,433 rentable square feet located in Westport, Connecticut. The company's retail tenants cover a number of industries, including financial services, and include Allen Edmonds; Ann Taylor; AT&T; Bank of America; Bank Leumi; Bank Santander (Sovereign Bank); Best Buy Mobile; Charles Schwab; Chipotle; Duane Reade (a division of Walgreen Co.); Ethan Allen; FedEx/Kinko's; Food Emporium; Foot Locker; the GAP; GameStop; HSBC; JP Morgan Chase; Kate Spade; Loews Theatre; Lululemon; Men's Warehouse; Nike; Panera Bread; Payless Shoesource; Potbelly Sandwich Works; Sprint; Starbucks; Theory; TJ Maxx; and Walgreens. The company's Westport, Connecticut retail properties are located on Main Street, the main pedestrian thoroughfare in Westport, Connecticut, and have the advantage of being adjacent to one of the few available large-scale parking lots in town.

**Experienced and Committed Management Team with Proven Track Record.** The company's senior management team is highly regarded in the real estate community and has extensive relationships with a broad range of brokers, owners, tenants and lenders. The company has developed relationships it believes enable it to both secure high credit-quality tenants on attractive terms, as well as provide the company with potential acquisition opportunities. The company has substantial in-house expertise and resources in asset and property management, leasing, marketing, acquisitions, construction, development and financing and a platform that is highly scalable. Members of the company's senior management team have worked in the real estate industry for an average of approximately 29 years, and Messrs. Malkin, Durels and Keltner have worked together for the supervisor for approximately 23 years. The company takes an intensive, hands-on approach to the management of the company's portfolio and quality brand building. Upon completion of the consolidation and the IPO, the company's senior management team is expected to own 8.7% of the company's common stock on a fully diluted basis (including shares of common stock on a fully diluted basis as to which Anthony E. Malkin has the right to vote, but does not have a pecuniary interest), and therefore their interests are expected to be aligned with those of the company's stockholders, and they are incentivized to maximize returns for the company's stockholders.

**Strong Balance Sheet Well Positioned For Future Growth.** Upon completion of the consolidation and the IPO, the company expects to have pro forma total debt outstanding of approximately \$1.11 billion, with a weighted average interest rate of 5.20%, a weighted average maturity of 3.4 years

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and 78.2% of which is fixed-rate indebtedness. Additionally, the company expects to have approximately \$304.1 million of available borrowing capacity under the company's loans on a pro forma basis (excluding amounts under the \$800.0 million secured revolving and term credit facility which the company expects to obtain upon the closing of the IPO from lenders that will include certain of the underwriters of the IPO or their respective affiliates). Upon completion of the consolidation and the IPO and on a pro forma basis for the year ended December 31, 2011, the company expects to have a debt-to-earnings before interest, income tax, depreciation and amortization, or EBITDA, ratio of approximately 4.93x. For the year ended December 31, 2011, the company's pro forma EBITDA and pro forma net income were approximately \$213.2 million and \$58.7 million, respectively. The company has no debt maturing in the remainder of 2012 and approximately \$56.9 million maturing in 2013. The company's fiscal strength and disciplined ownership and operation of its business has enabled the company to weather multiple market downturns and challenging financing environments. The company operates its business to preserve capital through conservative debt levels and to provide adequate capital for maintenance and improvements.

### **Business and Growth Strategies**

The company's primary business objectives are to maximize cash flow and total returns to the company's stockholders and to increase the value of the company's properties through the pursuit of the following business and growth strategies:

**Lease-up Available Space at Manhattan Office Properties.** As of September 30, 2012, the company's Manhattan office properties were approximately 77.0% leased (or 81.4%, giving effect to leases signed but not yet commenced as of that date) and had approximately 1.4 million rentable square feet of available space (excluding leases signed but not yet commenced). This compares to an average of 90.2% leased in midtown Manhattan according to RCG as of June 30, 2012. The company believes the renovation and repositioning program for its Manhattan office properties is a catalyst for additional lease-up. The company has created large blocks of available space and intends to continue to create such blocks over the next several years as part of the company's comprehensive repositioning strategy to attract larger, higher credit-quality tenants at higher rents for longer lease terms with higher average retention rates and greater prospects for growth. Individual and multiple floors have been assembled and are being assembled for larger users. To date the company believes these efforts have accelerated its ability to lease space to new higher credit-quality tenants, many of which have expanded the office space they lease from the company over time. Examples of this include LF USA, Coty, Inc., the Federal Deposit Insurance Corporation and Actimize which collectively have leases signed with the company for over 1,397,250 rentable square feet that represent additional annualized base rent of \$56,424,227 as of September 30, 2012. LF USA, the company's largest tenant based on both total leased square feet and annualized base rent, signed a lease for 482,399 square feet of office space in the Empire State Building in January 2011 that represents an additional \$18,813,561 of annualized base rent and, in November 2011, signed another lease for an additional 106,545 square feet that represents an additional \$4,155,255 of an annualized base rent. In order to accommodate the initial lease, the company relocated two other tenants to other available space in the building in order to provide LF USA with space on two consecutive floors. As of September 30, 2012, LF USA leased an aggregate of 820,284 rentable square feet of office space at three of the company's office properties, representing approximately 9.8% of the total rentable square feet and approximately 10.8% of the annualized base rent in the company's portfolio. The company also employs a pre-built suite strategy in selected portions of some of its properties to appeal to many credit-worthy smaller tenants by fitting out some available space with new ceilings, lighting, pantries and base building systems (including electric distribution and air conditioning) for immediate occupancy. These pre-built suites deploy energy efficiency strategies developed in the company's work at the Empire State Building and are designed with efficient layouts sought by a wide array of users which the company believes will require only minor painting and carpeting for future re-leasing thus reducing the company's future costs.



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**Increase Existing Below-Market Rents.** The company believes it can capitalize on the successful repositioning of the company's Manhattan office portfolio and improving market fundamentals to increase rents. For example, the company expects to benefit from the re-leasing of 16.6%, or approximately 1.0 million rentable square feet (including month-to-month leases), of the company's Manhattan office leases expiring through December 31, 2014, which the company generally believes are currently at below market rates. These expiring leases represent a weighted average base rent of \$39.39 per square foot based on current measurements. As older leases expire, the company expects to continue to upgrade certain space to further increase rents and the company expects to increase the total rentable square footage of such space as a result of remeasurement and application of market loss factors to the company's space which the company expects will generate additional rental revenue. The company's concentration in Manhattan and the greater New York metropolitan area should also enable the company to benefit from increased rents associated with current and anticipated near-term improvements in the financial and economic environment in these areas. The company also expects to benefit from the lack of development of office and retail space in midtown Manhattan for the foreseeable future due to the recent economic downturn, scarcity of available development sites, and long lead time for new construction.

**Complete the Redevelopment and Repositioning of the Company's Current Portfolio.** The company intends to continue to increase occupancy, improve tenant quality and enhance cash flow and value by completing the renovation and repositioning of the company's Manhattan office properties. The company intends selectively to continue to allow leases for smaller spaces to expire or relocate smaller tenants in order to aggregate, demolish and re-demise existing office space into larger blocks of vacant space, which the company believes will attract higher credit-quality tenants at higher rental rates. The company applies rigorous underwriting analysis to determine if aggregation of vacant space for future leasing to larger tenants will improve the company's cash flows over the long term. In addition, the company is a leader in developing economically justified energy efficiency retrofitting and sustainability and has made it a portfolio-wide initiative. The company believes this makes its properties desirable to high credit-quality tenants at higher rental rates and longer lease terms.

**Pursue Attractive Acquisition and Development Opportunities.** The company will opportunistically pursue attractive opportunities to acquire office and retail properties, including the option properties, for which the purchase price is payable in a combination of shares of the company's common stock and operating partnership units, except with respect to the Helmsley estate, which will have the right to elect to receive all cash. See Option Properties. The company intends to focus its acquisition strategy primarily on Manhattan office properties and, to a lesser extent, office and multi-tenanted retail properties in densely populated communities in the greater New York metropolitan area and other markets it may identify in the future. The company believes it can utilize its industry relationships (including well-known real estate owners in Manhattan), brand recognition, and its expertise in redeveloping and repositioning office properties to identify acquisition opportunities where the company believes it can increase occupancy and rental rates. The company's strong balance sheet, access to capital, and ability to offer operating partnership units in tax deferred acquisition transactions should give the company significant flexibility in structuring and consummating acquisitions. Further, the company has a development site, Metro Tower at the Stamford Transportation Center, which is adjacent to the company's Metro Center property, which the company believes to be one of the premier office buildings in Connecticut. All required zoning approvals have been obtained to allow development of an approximately 380,000 rentable square foot office tower and garage. The company intends to develop this site when it deems the appropriate combination of market and other conditions are in place.

**Proactively Manage the Company's Portfolio.** The company believes its proactive, service-intensive approach to asset and property management helps increase occupancy and rental rates. The company utilizes its comprehensive building management services and its strong commitment to tenant and broker relationships and satisfaction to negotiate attractive leasing deals and to attract high credit-

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quality tenants. The company proactively manages its rent roll and maintains continuous communication with its tenants. The company fosters strong tenant relationships by being responsive to tenant needs. The company does this through the amenities it provides, the quality of the company's buildings and services, its employee screening and training, energy efficiency initiatives, and preventative maintenance and prompt repairs. The company's attention to detail is integral to serving its clients and building the company's brand. The company's properties have received numerous industry awards for their operational efficiency. The company believes long-term tenant relationships will improve the company's operating results over time by reducing leasing, marketing and tenant improvement costs and reducing tenant turnover. As a result, the company does extensive diligence on its tenants' (current and prospective) balance sheets, businesses and business models to determine if the company will establish long-term relationships in which the tenants will both renew with the company and expand over time.

**Renovation and Repositioning Case Studies**

From 2002 through 2006, the company gradually gained full control of the day-to-day management of its Manhattan office properties (with the Helmsley estate holding certain approval rights at some of these properties as a result of its interest in the entities owning the properties). Since then, the company has been undertaking a comprehensive renovation and repositioning strategy of its Manhattan office properties that has included the physical improvement through upgrades and modernization of, and tenant upgrades in, such properties. The company expects to complete substantially this program by the end of 2013, except with respect to the Empire State Building, which is the last Manhattan office property that began its renovation program, which it expects to complete substantially by the end of 2016, due to the size and scope of its remaining work and its desire to minimize tenant disruptions at the property. The improvements undertaken in connection with the renovation and repositioning program include restored, renovated and upgraded or new lobbies; elevator modernization; renovated public areas and bathrooms; refurbished or new windows; upgrade and standardization of retail storefront and signage; façade restorations; modernization of building-wide systems; and enhanced tenant amenities. These improvements are designed to improve the overall value and attractiveness of company properties and have contributed significantly to its tenant repositioning efforts, which seek to increase its occupancy; raise its rental rates; increase its rentable square feet; increase its aggregate rental revenue; lengthen its average lease term; increase its average lease size; and improve its tenant credit quality. This strategy has shown attractive results to date as illustrated by the case studies which are set forth below. There can be no assurance that the company's renovation and repositioning program will be completed in its entirety in accordance with the anticipated timing or at the anticipated cost or that the results the company expects to achieve will be accomplished. Accordingly, the information presented in the case studies should not be considered as indicative of the company's possible results and you should not rely on this information as an indication of its future performance.

The pre-renovation and repositioning statistics in the tables below represent the leases existing on the applicable floor of the applicable building at a date within a three-year period prior to the commencement of tenant repositioning efforts which were implemented on such floor and which generally represented the highest occupancy for such floor during such period. The tenant repositioning efforts include the exercise of the company's rights to relocate tenants, negotiated relocations of tenants, the strategic expiration of existing leases to aggregate large blocks of space, including whole floors, as well as the implementation of marketing efforts in such space including the signing of significant tenants prior to the onset of the renovation work. Post-renovation and repositioning statistics in the table below represent full floors where the company has completed its renovation and repositioning efforts and reflect leases signed for such space. In certain circumstances, certain tenants have signed leases where only a portion of their lease has commenced with the remainder of the lease to commence through 2012, except with respect to one tenant at the Empire State Building where such tenant's leases will commence through 2014. The information in the tables below presents statistics as if all such space under such leases have commenced.

**Table of Contents****Empire State Building Case Study**

After the company gained full control of the day-to-day management of the Empire State Building in August 2006, it developed and began implementing a restoration and renovation program at the property. As of September 30, 2012, the company had completed substantially the renovation and repositioning of 24 of the 76 office floors in the building where it has aggregated smaller spaces in order to seek larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. In order to maximize space utilization, the company aggregated smaller spaces to offer large blocks of space, including whole floors, by employing several strategies including the exercise of the company's rights to relocate tenants to alternative space, negotiated relocations of tenants and the strategic expiration of existing leases. As illustrated by the table below, for these 24 floors, the company has increased (i) annualized gross rent by an aggregate of approximately \$25.5 million, representing a 111.7% increase, (ii) weighted average annualized gross rent per leased square foot by \$5.41 in the aggregate, representing a 14.9% increase and (iii) total rentable square footage by 282,790 square feet in the aggregate, representing a 31.9% increase.

	Number of Leases	Total Rentable Square Feet <sup>(1)</sup>	Percent Leased <sup>(2)</sup>	Average Rentable Square Feet per Leased Space	Weighted Average Lease Term (years)	Annualized Gross Rent <sup>(3)</sup>	Weighted Average Annualized Gross Rent per Leased Square Foot <sup>(4)</sup>
<b>Floors 3 - 10</b>							
Pre	77	415,966	76.6%	4,139	9.4	\$ 11,723,671	\$ 36.79
Post	1	555,204	100.0%	555,204	16.3	\$ 21,653,904	\$ 39.00
<b>Change</b>	<b>(76)</b>	<b>139,238</b>	<b>23.4%</b>	<b>551,065</b>	<b>6.9</b>	<b>84.7%</b>	<b>6.0%</b>
<b>Floor 11</b>							
Pre	7	33,465	89.1%	4,259	5.4	\$ 1,309,999	\$ 43.94
Post	2	50,006	100.0%	25,003	13.4	\$ 2,121,027	\$ 42.42
<b>Change</b>	<b>(5)</b>	<b>16,541</b>	<b>10.9%</b>	<b>20,744</b>	<b>8.0</b>	<b>61.9%</b>	<b>(3.5%)</b>
<b>Floors 12 - 13</b>							
Pre	21	82,256	29.7%	1,164	5.3	\$ 724,379	\$ 29.64
Post	1	105,613	100.0%	105,613	10.1	\$ 4,684,680	\$ 44.36
<b>Change</b>	<b>(20)</b>	<b>23,357</b>	<b>70.3%</b>	<b>104,449</b>	<b>4.8</b>	<b>546.7%</b>	<b>49.6%</b>
<b>Floors 14 - 19</b>							
Pre	64	236,621	74.4%	2,749	8.2	\$ 6,269,674	\$ 35.63
Post	1	312,590	100.0%	312,590	16.8	\$ 13,949,480	\$ 44.63
<b>Change</b>	<b>(63)</b>	<b>75,969</b>	<b>25.6%</b>	<b>309,841</b>	<b>8.6</b>	<b>122.5%</b>	<b>25.2%</b>
<b>Floors 32 - 33</b>							
Pre	2	21,906	14.6%	1,596	4.9	\$ 134,099	\$ 42.01
Post	1	25,057	100.0%	25,057	15.0	\$ 1,219,550	\$ 48.67
<b>Change</b>	<b>(1)</b>	<b>3,151</b>	<b>85.4%</b>	<b>23,461</b>	<b>10.1</b>	<b>809.4%</b>	<b>15.9%</b>
<b>Floor 37</b>							
Pre	1	22,800	100.0%	22,800	5.5	\$ 810,359	\$ 35.54
Post	1	25,346	100.0%	25,346	11.0	\$ 785,726	\$ 31.00
<b>Change</b>		<b>2,546</b>	<b>0.0%</b>	<b>2,546</b>	<b>5.5</b>	<b>(3.0%)</b>	<b>(12.8%)</b>
<b>Floor 38</b>							
Pre	1	18,255	100.0%	18,255	15.4	\$ 562,233	\$ 30.80
Post	1	25,294	100.0%	25,294	10.5	\$ 1,107,855	\$ 43.80
<b>Change</b>		<b>7,039</b>	<b>0.0%</b>	<b>7,039</b>	<b>(4.9)</b>	<b>97.0%</b>	<b>42.2%</b>
<b>Floor 41</b>							

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Pre	1	17,293	3.2%	545	2.6	\$ 18,193	\$ 33.38
Post	1	21,405	100.0%	21,405	12.5	\$ 1,040,416	\$ 48.61
<b>Change</b>		<b>4,112</b>	<b>96.8%</b>	<b>20,860</b>	<b>9.9</b>	<b>5,618.7%</b>	<b>45.6%</b>

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	Number of Leases	Total Rentable Square Feet <sup>(1)</sup>	Percent Leased <sup>(2)</sup>	Average Rentable Square Feet per Leased Space	Weighted Average Lease Term (years)	Annualized Gross Rent <sup>(3)</sup>	Weighted Average Annualized Gross Rent per Leased Square Foot <sup>(4)</sup>
<b>Floor 53</b>							
Pre	6	17,634	90.2%	2,652	6.4	\$ 538,459	\$ 33.84
Post	4	26,032	57.7%	3,753	8.7	\$ 627,743	\$ 41.81
<b>Change</b>	<b>(2)</b>	<b>8,398</b>	<b>(32.5%)</b>	<b>1,101</b>	<b>2.3</b>	<b>16.6%</b>	<b>23.6%</b>
<b>Floor 75</b>							
Pre	8	20,150	93.9%	2,364	4.2	\$ 742,841	\$ 39.27
Post	5	22,589	100.0%	4,518	6.3	\$ 1,153,922	\$ 51.08
<b>Change</b>	<b>(3)</b>	<b>2,439</b>	<b>6.1%</b>	<b>2,154</b>	<b>2.1</b>	<b>55.3%</b>	<b>30.1%</b>
<b>Total</b>							
<b>Pre</b>	<b>188</b>	<b>886,346</b>	<b>70.9%</b>	<b>3,343</b>	<b>8.4</b>	<b>\$ 22,833,907</b>	<b>\$ 36.33</b>
<b>Post</b>	<b>18</b>	<b>1,169,136</b>	<b>99.1%</b>	<b>64,340</b>	<b>15.1</b>	<b>\$ 48,344,303<sup>(5)</sup></b>	<b>\$ 41.74</b>
<b>Change</b>	<b>(170)</b>	<b>282,790</b>	<b>28.2%</b>	<b>60,997</b>	<b>6.7</b>	<b>111.7%</b>	<b>14.9%</b>

- (1) The change in total rentable square footage results from a combination of remeasurement of, and changes in loss factor applied to, the renovated spaces. Post-renovation and repositioning property measurements are based on the Real Estate Board of New York measurement standards. Includes leases that have been signed but have not yet commenced.
- (2) Percent leased is calculated as (a) rentable square feet less available square feet divided by (b) rentable square feet.
- (3) Pre-renovation and repositioning annualized gross rent represents the last annualized fully escalated gross rent prior to the start of the renovation and repositioning of the floor and post-renovation and repositioning annualized gross rent represents annualized contractual first monthly base rent (after free rent periods) for leases that have been signed and assumes the lease has commenced.
- (4) Represents annualized gross rent divided by leased square feet.
- (5) 47.5% of post-renovation and repositioning annualized gross rent relates to one tenant at the Empire State Building where a portion of such tenant's leases have commenced, with the remainder of the leases to commence through 2014.

**Table of Contents****1333 Broadway Case Study**

Since the company gained full control of the day-to-day management of 1333 Broadway in August 2006, it developed and began implementing a restoration and renovation program at the property. As of September 30, 2012, the company had completed substantially the renovation and repositioning of eight of the ten non-retail floors in the building where it has aggregated smaller spaces in order to offer larger blocks of office space in a similar manner to the program undertaken with respect to the Empire State Building. As illustrated by the table below, for these eight floors, the company has increased (i) annualized gross rent by an aggregate of approximately \$6.4 million, representing a 184.1% increase, (ii) weighted average annualized gross rent per leased square foot by \$11.07 in the aggregate, representing a 36.0% increase and (iii) total rentable square footage by 18,715 square feet in the aggregate, representing an 8.6% increase.

	Number of Leases	Total Rentable Square Feet <sup>(1)</sup>	Percent Leased <sup>(2)</sup>	Average Rentable Square Feet per Leased Space	Weighted Average Lease Term (years)	Annualized Gross Rent <sup>(3)</sup>	Weighted Average Annualized Gross Rent per Leased Square Foot <sup>(4)</sup>
<b>Floor 3</b>							
Pre	6	26,696	86.0%	3,826	8.6	\$ 646,730	\$ 28.17
Post	3	28,866	100.0%	9,622	5.9	\$ 1,293,374	\$ 44.81
<b>Change</b>	<b>(3)</b>	<b>2,170</b>	<b>14.0%</b>	<b>5,796</b>	<b>(2.7)</b>	<b>100.0%</b>	<b>59.0%</b>
<b>Floor 4</b>							
Pre	2	24,639	37.5%	4,614	1.3	\$ 254,888	\$ 27.62
Post	1	29,075	100.0%	29,075	10.5	\$ 1,657,275	\$ 57.00
<b>Change</b>	<b>(1)</b>	<b>4,436</b>	<b>62.5%</b>	<b>24,461</b>	<b>9.2</b>	<b>550.2%</b>	<b>106.4%</b>
<b>Floor 6</b>							
Pre	3	26,316	10.3%	905	3.5	\$ 83,553	\$ 30.77
Post	1	29,566	100.0%	29,566	15.0	\$ 1,360,036	\$ 46.00
<b>Change</b>	<b>(2)</b>	<b>3,250</b>	<b>89.7%</b>	<b>28,661</b>	<b>11.5</b>	<b>1,527.8%</b>	<b>49.5%</b>
<b>Floors 8, 9, 10, 11, &amp; 12</b>							
Pre	48	138,971	55.9%	1,620	4.0	\$ 2,483,572	\$ 31.95
Post	1	147,830	100.0%	147,830	15.4	\$ 5,543,625	\$ 37.50
<b>Change</b>	<b>(47)</b>	<b>8,859</b>	<b>44.1%</b>	<b>146,210</b>	<b>11.4</b>	<b>123.2%</b>	<b>17.4%</b>
<b>Total</b>							
Pre	59	216,622	52.0%	1,909	4.6	\$ 3,468,743	\$ 30.80
Post	6	235,337	100.0%	39,223	13.3	\$ 9,854,310	\$ 41.87
<b>Change</b>	<b>(53)</b>	<b>18,715</b>	<b>48.0%</b>	<b>37,314</b>	<b>8.7</b>	<b>184.1%</b>	<b>36.0%</b>

- (1) The change in total rentable square footage results from a combination of remeasurement of, and changes in loss factor applied to, the renovated spaces. Post-renovation and repositioning property measurements are based on the Real Estate Board of New York measurement standards. Includes leases that have been signed but have not yet commenced.
- (2) Percent leased is calculated as (a) rentable square feet less available square feet divided by (b) rentable square feet.
- (3) Pre-renovation and repositioning annualized gross rent represents the last annualized fully escalated gross rent prior to the start of the renovation and repositioning of the floor and post-renovation and repositioning annualized gross rent represents annualized contractual first monthly base rent (after free rent periods) for leases that have been signed and assumes the lease has commenced.
- (4) Represents annualized gross rent divided by leased square feet.

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As of September 30, 2012, the company's portfolio consisted of 12 office properties and six standalone retail properties totaling approximately 8.4 million rentable square feet and was approximately 80.2% leased (or 83.5%, giving effect to leases signed but not yet commenced as of that date). In addition, the company owned entitled land that will support the development of an approximately 380,000-rentable-square-foot office building and garage (Metro Tower) at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of the company's office properties, as of September 30, 2012. The table below presents an overview of the company's portfolio and the company's option properties as of September 30, 2012:

Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized Base Rent Per Leased Square Foot <sup>(5)</sup>	Net Effective Rent Per Square Foot <sup>(6)</sup>	Number of Leases <sup>(7)</sup>
<b>Manhattan Office Properties</b>								
The Empire State Building	Penn Station-Times Sq. South	1931/In process					\$ 43.80	
Office <sup>(8)</sup>			2,696,316	67.4%	\$ 70,119,745	\$ 38.60		247
Retail <sup>(9)</sup>			169,215	85.9%	\$ 15,234,691	\$ 104.82		25
One Grand Central Place	Grand Central	1930/In process					\$ 47.67	
Office			1,181,327	79.1%	\$ 41,949,725	\$ 44.89		297
Retail			68,005	92.9%	\$ 6,313,878	\$ 99.97		19
250 West 57 <sup>th</sup> Street	Columbus Circle-West Side	1921/In process					\$ 45.02	
Office			476,574	86.0%	\$ 16,794,389	\$ 40.99		165
Retail			52,247	100.0%	\$ 4,566,250	\$ 87.40		7
501 Seventh Avenue	Penn Station-Times Sq. South	1923/In process					\$ 35.79	
Office			441,203	87.3%	\$ 13,487,847	\$ 35.03		31
Retail			35,502	100.0%	\$ 1,784,676	\$ 50.27		10
1359 Broadway	Penn Station-Times Sq. South	1924/In process					\$ 39.41	
Office			441,022	93.0%	\$ 15,407,047	\$ 37.58		31
Retail			27,618	40.3%	\$ 1,510,342	\$ 135.59		5
1350 Broadway <sup>(10)</sup>	Penn Station-Times Sq. South	1929/In process					\$ 55.80	
Office			368,323	81.7%	\$ 12,154,203	\$ 40.41		73
Retail			30,895	100.0%	\$ 5,730,477	\$ 185.48		6
1333 Broadway	Penn Station-Times Sq. South	1915/In process					\$ 43.96	
Office			302,277	96.6%	\$ 11,996,983	\$ 41.09		10
Retail			50,063	6.4%	\$ 745,713	\$ 233.11		3
<b>Sub-Total / Weighted Average Manhattan Office Properties</b>			<b>6,340,587</b>	<b>77.1%</b>	<b>\$ 217,795,966</b>	<b>\$ 44.54</b>	<b>\$ 44.46</b>	<b>929</b>

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<b>Office</b>	<b>5,907,042</b>	<b>77.0%</b>	<b>\$ 181,909,939</b>	<b>\$</b>	<b>39.99</b>	<b>854</b>
<b>Retail</b>	<b>433,545</b>	<b>78.8%</b>	<b>\$ 35,886,027</b>	<b>\$</b>	<b>105.09</b>	<b>75</b>

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Property Name	Submarket	Year Built / Renovated <sup>(1)</sup>	Rentable Square Feet <sup>(2)</sup>	Percent Leased <sup>(3)</sup>	Annualized Base Rent <sup>(4)</sup>	Annualized Base Net Effective		Number of Leases <sup>(7)</sup>
						Rent Per Leased Square Foot <sup>(5)</sup>	Rent Per Square Foot <sup>(6)</sup>	
<b>Greater New York Metropolitan Area Office Properties</b>								
First Stamford Place <sup>(11)</sup>	Stamford, Connecticut <sup>(12)</sup>	1986/2003	785,945	88.6%	\$ 26,824,272	\$ 38.53	\$ 39.54	38
Metro Center	Stamford, Connecticut <sup>(12)</sup>	1987/1999	275,758	98.6%	\$ 12,855,443	\$ 47.28	\$ 47.28	26
383 Main Avenue	Norwalk, Connecticut <sup>(13)</sup>	1985/1996	259,856	81.3%	\$ 5,787,139	\$ 27.39	\$ 27.94	18
500 Mamaroneck Avenue	Harrison, New York <sup>(14)</sup>	1986/2004	289,711	88.5%	\$ 6,950,955	\$ 27.12	\$ 26.74	29
10 Bank Street	White Plains, New York <sup>(15)</sup>	1989/2001	228,994	85.4%	\$ 6,485,766	\$ 33.15	\$ 33.71	28
<b>Sub-Total / Weighted Average Greater New York Metropolitan Area Office Properties</b>			<b>1,840,264</b>	<b>88.6%</b>	<b>\$ 58,903,574</b>	<b>\$ 36.11</b>	<b>\$ 36.62</b>	<b>139</b>
<b>Total / Weighted Average Office Properties</b>			<b>7,747,306</b>	<b>79.8%</b>	<b>\$ 240,813,514</b>	<b>\$ 38.97</b>	<b>\$</b>	<b>993</b>
<b>Standalone Retail Properties</b>								
10 Union Square	Union Square	1988/1997	58,005	100.0%	\$ 4,731,292	\$ 81.57	\$ 81.95	13
1542 Third Avenue	Upper East Side	1993 <sup>(16)</sup>	56,250	100.0%	\$ 2,775,618	\$ 49.34	\$ 47.71	3
1010 Third Avenue	Upper East Side	1963/2007 <sup>(17)</sup>	44,662	100.0%	\$ 3,048,085	\$ 68.25	\$ 65.88	2
77 West 55 <sup>th</sup> Street	Midtown	1962 <sup>(16)</sup>	24,102	100.0%	\$ 2,244,516	\$ 93.13	\$ 79.62	3
69-97 Main Street	Westport, Connecticut	1922/2005	17,103	100.0% <sup>(18)</sup>	\$ 1,513,984	\$ 88.52	\$ 90.79	5
103-107 Main Street	Westport, Connecticut	1900 <sup>(16)</sup>	4,330	100.0%	\$ 423,696	\$ 97.85	\$ 94.69	3
<b>Sub-Total / Weighted Average Standalone Retail Properties</b>			<b>204,452</b>	<b>100.0%</b>	<b>\$ 14,737,192</b>	<b>\$ 72.08</b>	<b>\$ 69.75</b>	<b>29</b>
<b>Total / Weighted Average Retail Properties(19)</b>			<b>637,997</b>	<b>85.6%</b>	<b>\$ 50,623,218</b>	<b>\$ 92.73</b>	<b>\$</b>	<b>104</b>
<b>Portfolio Total</b>			<b>8,385,303</b>	<b>80.2%</b>	<b>\$ 291,436,731</b>	<b>\$ 43.33</b>	<b>\$ 43.33</b>	<b>1,097</b>
<b>Option Properties</b>								
112-122 West 34 <sup>th</sup> Street <sup>(20)</sup>	Penn Station-Times Sq. South	1954/In process					\$ 36.09	
Office			608,050	83.9%				47
Retail			133,437	100.0%				3
1400 Broadway	Penn Station-Times Sq. South	1930/In process					\$ 37.01	
Office			866,103	79.1%				79
Retail			20,712	39.4%				13
<b>Option Properties Total</b>			<b>1,628,302</b>					<b>142</b>

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- (1) For more information regarding the status of ongoing renovations at certain of the company's properties, see The Company Business and Properties Description of the Company's Properties.
- (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) 119,437 square feet of space across the company's portfolio attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.

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- (3) Based on leases signed and commenced as of September 30, 2012 and calculated as (i) rentable square feet less available square feet divided by (ii) rentable square feet.
- (4) Annualized base rent for office properties 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 the office properties for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$10,441,248. Total annualized base rent, net of abatements and free rent, for the company's office properties is \$230,372,265. Annualized base rent for retail properties (including the retail space in the company's Manhattan office properties) is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2013, by (ii) 12. Total abatements, tenant reimbursements and free rent with respect to the retail properties (including the retail space in the company's Manhattan office properties) for leases in effect as of September 30, 2012 for the 12 months ending September 30, 2013 are \$243,517. Total annualized base rent, net of abatements, tenant reimbursements and free rent, for the company's retail properties is \$50,379,701. Annualized base rent data for the company's office and retail properties is as of September 30, 2012 and does not reflect scheduled lease expirations for the 12 months ending September 30, 2013.
- (5) Represents Annualized Base Rent under leases commenced as of September 30, 2012 divided by leased square feet.
- (6) Net effective rent per leased square foot represents (i) the contractual base rent for office and retail leases in place as of September 30, 2012, 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 September 30, 2012.
- (7) Represents the number of leases at each property or on a portfolio basis. If a tenant has more than one lease, whether or not at the same property, but with different expirations, the number of leases is calculated equal to the number of leases with different expirations.
- (8) Includes 85,812 rentable square feet of space leased by the company's broadcasting tenants.
- (9) Includes 6,180 rentable square feet of space leased by Host Services of New York, a licensee of the company's observatory.
- (10) Denotes a ground leasehold interest in the property with a remaining term, including unilateral extension rights available to the company, of approximately 38 years (expiring July 31, 2050).
- (11) First Stamford Place consists of three buildings.
- (12) This submarket is part of the Stamford, Connecticut central business district (CBD) submarket as defined by RCG. See Economic and Market Overview.
- (13) This submarket is part of the South Central Stamford, Connecticut submarket as defined by RCG. See Economic and Market Overview.
- (14) This submarket is part of the Eastern Westchester County submarket as defined by RCG. See Economic and Market Overview.
- (15) This submarket is part of the White Plains, New York CBD submarket as defined by RCG. See Economic and Market Overview.
- (16) No major renovation activity was undertaken at this property.
- (17) This property underwent major renovations in 2007 to coincide with the signing of a significant retail lease.
- (18) 100% leased, including leases signed but not yet commenced.
- (19) Includes 433,545 rentable square feet of retail space in the company's Manhattan office properties.
- (20) 112-122 West 34<sup>th</sup> Street consists of two parcels having separate owners and ownership structures. The real property interests that the company will acquire with respect to the parcel located at 112-120 West 34<sup>th</sup> Street consist of (i) a ground leasehold interest currently held by 112 West 34<sup>th</sup> Street Associates L.L.C., a private entity supervised by the supervisor with whom the company has entered into an option agreement and (ii) an operating leasehold interest currently held by 112 West 34<sup>th</sup> Street Company L.L.C., another private entity supervised by the supervisor with whom the company has entered into an option agreement. The real property interests that the company acquires with respect to the parcel located at 122 West 34<sup>th</sup> Street consist of (i) a fee interest and a subleasehold interest currently held by 112 West 34<sup>th</sup> Street Associates L.L.C. and (ii) an operating leasehold interest currently held by 112 West 34<sup>th</sup> Street Company L.L.C.

**Table of Contents****Tenant Diversification**

As of September 30, 2012, the company's office and retail portfolios were leased to a diverse base of approximately 1,097 tenants. The following table sets forth information regarding the ten largest tenants in the company's portfolio based on annualized base rent as of September 30, 2012, after giving effect to the consolidation.

Tenant	Number of Leases	Number of Properties	Lease Expiration <sup>(1)</sup>	Weighted Average Remaining Lease Term <sup>(2)</sup>	Total Leased Square Feet <sup>(3)</sup>	Percent of Portfolio Rentable Square Feet <sup>(4)</sup>	Annualized Base Rent <sup>(5)</sup>	Percent of Portfolio Annualized Base Rent <sup>(6)</sup>
LF USA <sup>(7)</sup>	6	3	Oct. 2021-Oct. 2028	14 years, 6 months	820,284	9.8%	\$ 31,432,984	10.8%
Coty, Inc. <sup>(8)</sup>	1	1	Jan. 2030	17 years, 4 months	194,281	2.3%	\$ 8,853,502	3.0%
Legg Mason	2	1	Dec. 2012-Sept. 2024	9 years	190,655	2.3%	\$ 7,815,435	2.7%
Warnaco	3	1	Sept. 2016-Feb. 2020	4 years, 3 months	201,272	2.3%	\$ 6,627,799	2.3%
Thomson Reuters	4	2	Apr. 2018-Apr. 2020	6 years, 10 months	147,208	1.8%	\$ 6,329,684	2.1%
Federal Deposit Insurance Corporation	1	1	Jan. 2020	7 years, 3 months	121,879	1.5%	\$ 5,489,847	1.9%
Host Services of New York	1	1	May 2020	7 years, 7 months	6,180	0.1%	\$ 5,091,190	1.7%
Duane Reade (a division of Walgreen Co.)	2	2	Feb. 2021-May 2025	10 years, 9 months	23,134	0.2%	\$ 3,650,000	1.3%
Odyssey Reinsurance	1	1	Sept. 2022	10 years	101,619	1.2%	\$ 3,368,670	1.2%
Bank of America	3	3	Feb. 2013-Apr. 2017	3 years, 3 months	29,671	0.4%	\$ 3,042,377	1.0%
<b>Total</b>	<b>24</b>				<b>1,836,183</b>	<b>21.9%</b>	<b>\$ 81,701,487</b>	<b>28.0%</b>

- (1) Expiration dates are per lease and do not assume exercise of renewal or extension options. Except for the Federal Deposit Insurance Corporation lease (February 1, 2015), none of these leases contain early termination options. For tenants with more than two leases, the lease expiration is shown as a range.
- (2) Represents the weighted average lease term, based on annualized base rent.
- (3) Based on leases signed and commenced as of September 30, 2012.
- (4) Represents the percentage of rentable square feet of the company's office and retail portfolios in the aggregate.
- (5) Represents annualized monthly cash base rent under leases commenced as of September 30, 2012. Annualized base rent for office properties 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. Annualized base rent for retail properties is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12.
- (6) Represents the percentage of annualized base rent of the company's office and retail portfolios in the aggregate.
- (7) LF USA is the US subsidiary of Li & Fung Ltd, a Hong Kong headquartered global consumer product design, development, sourcing and distribution company. Li & Fung Ltd has a market capitalization of approximately \$13.0 billion as of September 30, 2012, is listed on the Hong Kong Stock Exchange and is a constituent member of the Hang Seng Index, MSCI Index, S&P/StanChart/Greater China Index, FTSEGood Index, Dow Jones Sustainability Asia Pacific Index and Hang Seng Corporate Sustainability Index Series. 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.
- (8) 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.



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The following table sets forth information relating to the distribution of leases in the company's portfolio, based on net rentable square feet under lease as of September 30, 2012.

**Manhattan Office Properties<sup>(1)</sup>**

Square Feet Under Lease	Number of Leases <sup>(2)</sup>	Leases as Percent of Total	Rentable Square Feet <sup>(3)</sup>	Percent of Portfolio Rentable Square Feet	Annualized Base Rent <sup>(4)</sup>	Percent of Portfolio Annualized Base Rent <sup>(5)</sup>
Available			1,098,360	13.1%	\$	
2,500 or less	465	41.5%	561,577	6.7%	\$ 22,882,637	7.9%
2,501 - 10,000	321	28.7%	1,438,842	17.1%	\$ 58,830,297	20.2%
10,001 - 20,000	39	3.5%	511,010	6.1%	\$ 20,638,605	7.1%
20,001 - 40,000	24	2.1%	652,527	7.8%	\$ 25,743,883	8.8%
40,001 - 100,000	4	0.4%	241,916	2.9%	\$ 8,336,343	2.8%
Greater than 100,000	5	0.4%	1,142,510	13.6%	\$ 45,478,174	15.6%
Signed leases not commenced	15	1.3%	260,300	3.1%	\$	
<b>Manhattan Office Properties Total</b>	<b>873</b>	<b>77.9%</b>	<b>5,907,042</b>	<b>70.4%</b>	<b>\$ 181,909,938</b>	<b>62.4%</b>

**Greater New York Metropolitan Area Office Properties**

Square Feet Under Lease	Number of Leases <sup>(2)</sup>	Leases as Percent of Total	Rentable Square Feet <sup>(3)</sup>	Percent of Portfolio Rentable Square Feet	Annualized Base Rent <sup>(4)</sup>	Percent of Portfolio Annualized Base Rent <sup>(5)</sup>
Available			195,946	2.3%	\$	
2,500 or less	24	2.1%	28,721	0.3%	\$ 1,214,711	0.4%
2,501 - 10,000	73	6.5%	369,329	4.4%	\$ 12,439,590	4.3%
10,001 - 20,000	20	1.8%	270,267	3.2%	\$ 8,934,153	3.1%
20,001 - 40,000	14	1.3%	375,120	4.4%	\$ 14,905,895	5.1%
40,001 - 100,000	6	0.5%	348,049	4.2%	\$ 12,234,331	4.2%
Greater than 100,000	2	0.2%	239,862	2.9%	\$ 9,174,894	3.1%
Signed leases not commenced	4	0.4%	12,970	0.2%	\$	
<b>Greater New York Metropolitan Area Office Properties Total</b>	<b>143</b>	<b>12.8%</b>	<b>1,840,264</b>	<b>21.9%</b>	<b>\$ 58,903,574</b>	<b>20.2%</b>

**Retail Properties<sup>(6)</sup>**

Square Feet Under Lease	Number of Leases <sup>(2)</sup>	Leases as Percent of Total	Rentable Square Feet <sup>(3)</sup>	Percent of Portfolio Rentable Square Feet	Annualized Base Rent <sup>(4)</sup>	Percent of Portfolio Annualized Base Rent <sup>(5)</sup>
Available			92,068	1.1%	\$	
2,500 or less	53	4.7%	47,656	0.6%	\$ 6,728,212	2.3%

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2,501	10,000	37	3.3%	170,236	2.0%	\$ 25,078,887	8.6%
10,001	20,000	8	0.7%	137,658	1.6%	\$ 10,516,110	3.6%
20,001	40,000	5	0.5%	142,002	1.7%	\$ 7,519,634	2.6%
40,001	100,000	1	0.1%	48,377	0.6%	\$ 780,375	0.3%
Greater than 100,000						\$	
Signed leases not commenced						\$	
			%			\$	
<b>Retail Properties Total</b>		<b>104</b>	<b>9.3%</b>	<b>637,997</b>	<b>7.6%</b>	<b>\$ 50,623,218</b>	<b>17.4%</b>

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- (1) Excludes (i) retail space in the company's Manhattan office properties and (ii) the Empire State Building broadcasting licenses and observatory operations.
- (2) If a lease has two different expiration dates, it is considered to be two leases (for purpose of lease count and square footage).
- (3) 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) 119,437 square feet of space across the company portfolio attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.
- (4) Represents annualized cash base rent under leases commenced as of September 30, 2012. Annualized base rent for office properties 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. Annualized base rent for retail properties is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12.
- (5) Represents the percentage of annualized base rent of the company's office and retail portfolios in the aggregate.
- (6) Includes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. The company's Manhattan office properties include 75 retail leases representing \$35,886,026 in annualized base rent. Excludes the Empire State Building broadcasting licenses and observatory operations.

**Lease Expirations**

The company expects to benefit from the re-leasing of 16.6%, or approximately 1.0 million rentable square feet (including month-to-month leases), of its Manhattan office leases expiring through December 31, 2014, which the company generally believes are currently at below market rates. During 2011 and 2012, the company has generally been obtaining higher base rents on new and renewed leases at its Manhattan office properties. These increased rents are partly due to an increase in the total rentable square footage of such space as a result of remeasurement and application of market loss factors to the company's space.



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The following table sets forth a summary schedule of the lease expirations for leases in place as of September 30, 2012 plus available space for each of the ten full calendar years beginning with the year ending December 31, 2013 at the properties in the company's portfolio. The information set forth in the table assumes that tenants exercise no renewal options and all early termination rights.

**Manhattan Office Properties<sup>(1)</sup>**

Year of Lease Expiration	Number of Leases Expiring <sup>(2)</sup>	Square Footage of Leases Expiring <sup>(3)</sup>	Percent of Portfolio Square Footage of Leases Expiring	Annualized Base Rent <sup>(4)</sup>	Percent of Portfolio Annualized Base Rent <sup>(5)</sup>	Annualized Base Rent Per Leased Square Foot
Available		1,098,360	13.1%	\$		\$
Signed leases not commenced	15	260,300	3.1%	\$		\$
Month-to-month leases	3	2,344	0.0%	\$ 83,708	0.0%	\$ 35.71
2012 (October 1, 2012 to December 31, 2012) <sup>(6)</sup>	58	170,466	2.0%	\$ 6,416,892	2.2%	\$ 37.64
2013	189	406,593	4.8%	\$ 16,823,311	5.8%	\$ 41.38
2014	154	398,690	4.8%	\$ 15,205,125	5.2%	\$ 38.14
2015	173	567,164	6.8%	\$ 21,517,658	7.4%	\$ 37.97
2016	56	381,002	4.5%	\$ 13,565,921	4.6%	\$ 35.61
2017	58	217,149	2.6%	\$ 9,559,957	3.3%	\$ 44.02
2018	50	264,123	3.2%	\$ 11,728,117	4.0%	\$ 44.40
2019	19	178,339	2.1%	\$ 6,723,521	2.3%	\$ 37.70
2020	36	397,963	4.7%	\$ 15,693,992	5.4%	\$ 39.44
2021	24	310,052	3.7%	\$ 12,314,219	4.2%	\$ 39.72
2022	19	149,056	1.8%	\$ 6,906,438	2.4%	\$ 46.33
Thereafter	19	1,105,441	13.2%	\$ 45,371,081	15.6%	\$ 41.04
<b>Total/Weighted Average</b>	<b>873</b>	<b>5,907,042</b>	<b>70.4%</b>	<b>\$ 181,909,939</b>	<b>62.4%</b>	<b>\$ 39.99</b>

**Greater New York Metropolitan Area Office Properties**

Year of Lease Expiration	Number of Leases Expiring <sup>(2)</sup>	Square Footage of Leases Expiring <sup>(3)</sup>	Percent of Portfolio Square Footage of Leases Expiring	Annualized Base Rent <sup>(4)</sup>	Percent of Portfolio Annualized Base Rent <sup>(5)</sup>	Annualized Base Rent Per Leased Square Foot
Available		195,946	2.3%	\$		\$
Signed leases not commenced	4	12,970	0.1%	\$		\$
Month-to-month leases				\$		\$
2012 (October 1, 2012 to December 31, 2012) <sup>(7)</sup>	5	104,620	1.1%	\$ 4,089,237	1.4%	\$ 39.09
2013	16	57,847	0.7%	\$ 2,030,135	0.7%	\$ 35.09
2014	16	48,066	0.6%	\$ 1,830,528	0.6%	\$ 38.08
2015	21	115,066	1.4%	\$ 3,983,400	1.4%	\$ 34.62
2016	14	83,823	1.0%	\$ 2,802,771	1.0%	\$ 33.44
2017	19	149,268	1.8%	\$ 5,585,074	1.9%	\$ 37.42
2018	13	176,336	2.1%	\$ 6,613,703	2.3%	\$ 37.51
2019	9	240,449	2.9%	\$ 7,608,979	2.6%	\$ 31.64
2020	9	147,953	1.8%	\$ 5,320,013	1.8%	\$ 35.96
2021	6	99,365	1.2%	\$ 3,803,007	1.3%	\$ 38.27

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2022	5	151,436	1.8%	\$ 5,286,973	1.8%	\$ 34.91
Thereafter	6	257,119	3.1%	\$ 9,949,754	3.4%	\$ 38.70
<b>Total/Weighted Average</b>	<b>143</b>	<b>1,840,264</b>	<b>21.9%</b>	<b>\$ 58,903,574</b>	<b>20.2%</b>	<b>\$ 36.11</b>

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<b>Year of Lease Expiration</b>	<b>Number of Leases Expiring<sup>(2)</sup></b>	<b>Square Footage of Leases Expiring<sup>(3)</sup></b>	<b>Percent of Portfolio Square Footage of Leases Expiring</b>	<b>Annualized Base Rent<sup>(4)</sup></b>	<b>Percent of Portfolio Annualized Base Rent<sup>(5)</sup></b>	<b>Annualized Base Rent Per Leased Square Foot</b>
Available		92,068	1.1%	\$		\$
Signed leases not commenced	0			\$		\$
Month-to-month leases	2			\$ 4,800	0.0%	\$
2012 (October 1, 2012 to December 31, 2012) <sup>(9)</sup>	4	4,369	0.1%	\$ 679,857	0.2%	\$ 155.61
2013	11	33,932	0.4%	\$ 4,218,578	1.5%	\$ 124.32
2014	4	7,116	0.1%	\$ 505,883	0.2%	\$ 71.09
2015	11	29,075	0.3%	\$ 2,672,804	0.9%	\$ 91.93
2016	9	80,141	1.0%	\$ 2,686,855	0.9%	\$ 33.53
2017	7	50,602	0.6%	\$ 4,195,222	1.4%	\$ 82.91
2018	7	62,514	0.7%	\$ 2,704,254	0.9%	\$ 43.26
2019	8	28,239	0.3%	\$ 2,782,854	1.0%	\$ 98.55
2020	13	65,667	0.8%	\$ 10,157,949	3.5%	\$ 154.69
2021	6	29,221	0.4%	\$ 4,250,878	1.5%	\$ 145.47
2022	5	53,314	0.6%	\$ 4,538,531	1.6%	\$ 85.13
Thereafter	15	101,739	1.2%	\$ 11,204,754	3.8%	\$ 110.13
<b>Total/Weighted Average</b>	<b>104</b>	<b>637,997</b>	<b>7.6%</b>	<b>\$ 50,603,219</b>	<b>17.4%</b>	<b>\$ 92.69</b>

(1) Excludes (i) retail space in the company's Manhattan office properties and (ii) the Empire State Building broadcasting licenses and observatory operations.

(2) If a lease has two different expiration dates, it is considered to be two leases (for the purposes of lease count and square footage).

(3) Office property measurements are based on Real Estate Board of New York measurement standards; retail property measurements are based on useable square feet. Excludes (i) 119,437 rentable square feet across the company portfolio attributable to building management use and tenant amenities and (ii) 68,226 square feet of space attributable to the company's observatory.

(4) Represents annualized cash base rent under leases commenced as of September 30, 2012. Annualized base rent for office properties 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. Annualized base rent for retail properties is calculated by multiplying (i) base rental payments (defined as cash base rents (before abatements, tenant reimbursements and free rent)) for the month ended September 30, 2012 for leases commenced as of September 30, 2012, by (ii) 12.

(5) Represents the percentage of annualized base rent of the company's office and retail portfolios in the aggregate.

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

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

(8) Includes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. The company's Manhattan office properties include 75 retail leases representing \$35,886,026 in annualized base rent. Excludes the Empire State Building broadcasting licenses and observatory operations.

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

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The following table sets forth certain information regarding tenant improvement costs and leasing commissions for tenants at the office and retail properties in the company's portfolio for the years ended December 31, 2009, 2010 and 2011 and for the nine months ended September 30, 2012.

**Office Properties<sup>(1)</sup>**

Office Properties <sup>(1)</sup>	Nine Months Ended September 30, 2012	Year Ended December 31,			Total/ Weighted Average January 1, 2009 to September 30, 2012
		2011	2010	2009	
<b>New Leases</b>					
Number of leases signed	61	68	98	87	314
Total Square Feet	269,898	682,864	361,081	577,373	1,891,216
Leasing commission costs <sup>(2)</sup>	\$ 4,318,933	\$ 13,708,547	\$ 4,466,974	\$ 7,963,454	\$ 30,457,908
Tenant improvement costs <sup>(2)</sup>	\$ 17,233,546	\$ 35,673,476	\$ 17,071,670	\$ 30,114,200	\$ 100,092,892
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 21,552,479	\$ 49,382,023	\$ 21,538,644	\$ 38,077,654	\$ 130,550,800
Leasing commission costs per square foot <sup>(2)</sup>	\$ 16.00	\$ 20.08	\$ 12.37	\$ 13.79	\$ 16.10
Tenant improvement costs per square foot <sup>(2)</sup>	\$ 63.85	\$ 52.24	\$ 47.28	\$ 52.16	\$ 52.93
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 79.85	\$ 72.32	\$ 59.65	\$ 65.95	\$ 69.03
<b>Expansions</b>					
Number of leases signed	24	35	28	21	108
Total Square Feet	200,118	377,034	134,292	102,018	813,462
Leasing commission costs <sup>(2)</sup>	\$ 4,802,441	\$ 9,917,670	\$ 1,790,761	\$ 1,796,869	\$ 18,307,742
Tenant improvement costs <sup>(2)</sup>	\$ 10,639,792	\$ 19,407,838	\$ 6,137,902	\$ 4,213,126	\$ 40,398,658
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 15,442,233	\$ 29,325,508	\$ 7,928,664	\$ 6,009,995	\$ 58,706,400
Leasing commission costs per square foot <sup>(2)</sup>	\$ 24.00	\$ 26.30	\$ 13.33	\$ 17.61	\$ 22.51
Tenant improvement costs per square foot <sup>(2)</sup>	\$ 53.12	\$ 51.48	\$ 45.71	\$ 41.30	\$ 47.66
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 77.17	\$ 77.78	\$ 59.04	\$ 58.91	\$ 72.17
<b>Renewals</b>					
Number of leases signed	87	134	191	146	558
Total Square Feet	259,313	409,690	615,908	357,669	1,642,580
Leasing commission costs <sup>(2)</sup>	\$ 1,582,198	\$ 2,956,188	\$ 5,154,330	\$ 2,197,867	\$ 11,890,583
Tenant improvement costs <sup>(2)</sup>	\$ 4,966,258	\$ 3,310,400	\$ 12,283,984	\$ 4,828,061	\$ 25,388,703
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 6,548,456	\$ 6,266,588	\$ 17,438,314	\$ 7,025,928	\$ 37,279,286
Leasing commission costs per square foot <sup>(2)</sup>	\$ 6.10	\$ 7.22	\$ 8.37	\$ 6.14	\$ 7.24
Tenant improvement costs per square foot <sup>(2)</sup>	\$ 19.15	\$ 8.08	\$ 19.94	\$ 13.50	\$ 15.46
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 25.25	\$ 15.30	\$ 28.31	\$ 19.64	\$ 22.70

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<b>Total New Leases, Expansions and Renewals</b>					
Number of leases signed <sup>(4)</sup>	171	232	312	252	967
Total Square Feet	729,329	1,469,588	1,111,281	1,037,060	4,347,258
Leasing commission costs <sup>(2)</sup>	\$ 10,703,572	\$ 26,582,405	\$ 11,412,065	\$ 11,958,190	\$ 60,656,232
Tenant improvement costs <sup>(2)</sup>	\$ 32,839,596	\$ 58,391,713	\$ 35,493,556	\$ 39,155,388	\$ 165,880,253
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 43,543,168	\$ 84,974,118	\$ 46,905,621	\$ 51,113,578	\$ 226,536,485
Leasing commission costs per square foot <sup>(2)</sup>	\$ 14.68	\$ 18.09	\$ 10.27	\$ 11.53	\$ 13.95
Tenant improvement costs per square foot <sup>(2)</sup>	\$ 45.03	\$ 39.73	\$ 31.94	\$ 37.76	\$ 38.16
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 59.70	\$ 57.82	\$ 42.21	\$ 49.29	\$ 52.11

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	Nine Months Ended September 30, 2012	2011	Year Ended December 31,		Total/ Weighted Average January 1, 2009 to September 30, 2012
Office Properties <sup>(1)</sup>			2010	2009	
<b>Retail Properties<sup>(3)</sup></b>					
<b>New Leases</b>					
Number of leases signed	2	7	5	12	26
Total Square Feet	2,468	22,319	33,085	34,486	92,358
Leasing commission costs <sup>(2)</sup>	\$ 186,674	\$ 1,272,824	\$ 1,028,094	\$ 2,697,960	\$ 5,185,553
Tenant improvement costs <sup>(2)</sup>	\$	\$ 212,088	\$ 760,650	\$ 255,456	\$ 1,228,194
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 186,674	\$ 1,484,912	\$ 1,788,744	\$ 2,953,416	\$ 6,413,747
Leasing commission costs per square foot <sup>(2)</sup>	\$ 75.64	\$ 57.03	\$ 31.07	\$ 78.23	\$ 56.15
Tenant improvement costs per square foot <sup>(2)</sup>	\$	\$ 9.50	\$ 22.99	\$ 7.41	\$ 13.30
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 75.64	\$ 66.53	\$ 54.07	\$ 85.64	\$ 69.44
<b>Expansions</b>					
Number of leases signed	1	1	2		4
Total Square Feet	21,683	463	8,913		31,059
Leasing commission costs <sup>(2)</sup>	\$ 1,501,135	\$ 44,578	\$ 425,713	\$	\$ 1,971,426
Tenant improvement costs <sup>(2)</sup>	\$	\$	\$	\$	\$
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 1,501,135	\$ 44,578	\$ 425,713	\$	\$ 1,971,426
Leasing commission costs per square foot <sup>(2)</sup>	\$ 69.23	\$ 96.28	\$ 47.76	\$	\$ 63.47
Tenant improvement costs per square foot <sup>(2)</sup>	\$	\$	\$	\$	\$
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 69.23	\$ 96.28	\$ 47.76	\$	\$ 63.47
<b>Renewals</b>					
Number of leases signed	9	8	15	11	43
Total Square Feet	14,646	41,694	43,951	74,494	174,785
Leasing commission costs <sup>(2)</sup>	\$ 66,682	\$ 1,008,792	\$ 1,212,364	\$ 305,457	\$ 2,593,296
Tenant improvement costs <sup>(2)</sup>	\$	\$	\$	\$	\$
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 66,682	\$ 1,008,792	\$ 1,212,364	\$ 305,457	\$ 2,593,296
Leasing commission costs per square foot <sup>(2)</sup>	\$ 4.55	\$ 24.20	\$ 27.58	\$ 4.10	\$ 14.84
Tenant improvement costs per square foot <sup>(2)</sup>	\$	\$	\$	\$	\$
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$ 4.55	\$ 24.20	\$ 27.58	\$ 4.10	\$ 14.84
<b>Total New Leases, Expansions and Renewals</b>					
Number of leases signed <sup>(4)</sup>	12	16	21	23	72
Total Square Feet	38,797	64,476	85,949	108,980	298,202
Leasing commission costs <sup>(2)</sup>	\$ 1,754,491	\$ 2,326,194	\$ 2,666,171	\$ 3,003,417	\$ 9,750,274
Tenant improvement costs <sup>(2)</sup>	\$	\$ 212,088	\$ 760,650	\$ 255,456	\$ 1,228,194
Total leasing commissions and tenant improvement costs <sup>(2)</sup>	\$ 1,754,491	\$ 2,538,283	\$ 3,426,821	\$ 3,258,873	\$ 10,978,468
Leasing commission costs per square foot <sup>(2)</sup>	\$ 45.22	\$ 36.08	\$ 31.02	\$ 27.56	\$ 32.70

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Tenant improvement costs per square foot <sup>(2)</sup>	\$	\$	3.29	\$	8.85	\$	2.34	\$	4.12	
Total leasing commissions and tenant improvement costs per square foot <sup>(2)</sup>	\$	45.22	\$	39.37	\$	39.87	\$	29.90	\$	36.82

- (1) Excludes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. Includes the Empire State Building broadcasting licenses and observatory operations.
- (2) Presents all tenant improvement and leasing commission costs as if they were incurred in the period in which the lease was signed, which may be different than the period in which they were actually paid.
- (3) Includes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties. Excludes the Empire State Building broadcasting licenses and observatory operations.
- (4) Presents a renewed and expansion lease as one lease signed.

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The following table sets forth certain information regarding historical capital expenditures at the properties in the company's office and retail portfolios for the years ended December 31, 2009, 2010 and 2011 and for the nine months ended September 30, 2012. Historically the company has not tracked expenditures as either recurring or non-recurring and the company believes a substantial amount of these capital expenditures during the periods presented would be considered to be non-recurring due to the extensive amount of capital spent on renovation, repositioning and deferred maintenance at the company's Manhattan office properties at the time the company began its renovation and repositioning program.

	Nine Months Ended		Year Ended December 31,		Weighted Avg. 2009 to Sep. 30, 2012
	September 30, 2012	2011	2010	2009	
Manhattan Office <sup>(1)</sup>	\$ 34,453,741	\$ 32,976,777	\$ 41,292,635	\$ 54,509,278	\$ 41,230,494
Greater NY Metro Office	1,765,240	1,876,627	2,149,395	2,622,885	2,126,024
Standalone Retail		139,453	228,439	89,034	121,825
<b>Portfolio Total<sup>(2)</sup></b>	<b>\$ 36,218,981</b>	<b>\$ 34,992,857</b>	<b>\$ 43,670,469</b>	<b>\$ 57,221,197</b>	<b>\$ 43,478,343</b>

(1) Includes an aggregate of 433,545 rentable square feet of retail space in the company's Manhattan office properties.

(2) Includes all capital expenditures, excluding tenant improvement and leasing commission costs, primarily due to the renovation and repositioning program conducted at the company's Manhattan office properties.

**Description of the Company's Properties**

Each of the Empire State Building and One Grand Central Place accounts for more than 10% of the company's total assets based on book value, or more than 10% of the company's gross revenues, as of September 30, 2012 and for the year ended December 31, 2011. The company's other properties described below each account for less than 10% of the company's total assets based on book value and less than 10% of the company's gross revenues as of September 30, 2012 and for the year ended December 31, 2011. See Management's Discussion and Analysis of Financial Condition and Results of Operations of Empire State Realty Trust Consolidated Indebtedness to be Outstanding After the IPO for a description of the company's indebtedness to be outstanding after completion of the IPO.

***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



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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 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

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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 103rd 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 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.

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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:

	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,

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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:

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 Base Rent	Annualized Base Rent Per Square Foot
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. LinkedIn <sup>(6)</sup>	Retail store Internet networking business	Sept. 2027 <sup>(5)</sup> May 2018	6/1/2016		23,842 31,742	0.8% 1.1%	\$ 1,800,000 \$ 1,237,938	2.1% 1.5%	\$ 75.50 \$ 39.00
Skanska USA Building Manhattan	Engineering Tax professionals	Mar. 2024		1 x 5 years	25,057	0.9%	\$ 1,219,550	1.4%	\$ 48.67
Professional Group Bank of America	Bank	Aug. 2026			25,611	0.9%	\$ 1,180,264	1.4%	\$ 46.08
Taylor Global	Public relations	Apr. 2015		1 x 5 years	14,234	0.5%	\$ 1,152,577	1.3%	\$ 80.97
		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.

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*Empire State Building Lease Expirations*

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.

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

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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.

***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,

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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 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	1/15/2015 <sup>(3)</sup>	1 x 5 years	17,825	1.4%	\$ 937,376	1.9%	\$ 52.59
Special Funds Conservation	Defends special disability fund & workers comp cases	Apr. 2021		1 x 5 years	17,614	1.4%	\$ 704,560	1.5%	\$ 40.00
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>
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- (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.

*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.

**Table of Contents***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:

<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.

**250 West 57<sup>th</sup> 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.

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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:

	Completed	In Process	To Be Completed
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

**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.

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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
<i>1359 Broadway, New York, New York</i>			

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

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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

**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 re-leasing upgraded spaces to existing and prospective tenants, the company's desire to minimize existing tenant disruptions, and the need to obtain

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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		
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	
<i>1350 Broadway, New York, New York</i>			

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 re-leasing upgraded spaces to existing and prospective tenants, the company s desire to minimize existing tenant disruptions, and the need to obtain

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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	

***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.

***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



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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.

***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.

***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

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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.

### ***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.

### ***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 55<sup>th</sup> 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.

***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.

***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.

***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.

***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

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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.

***Metro Tower, Stamford, Connecticut***

One of the private entities acquired fee title to the land on which Metro Tower will be located in 2001. The project will be built on an in-fill, 1.9 acre site bounded by Station Place and Henry Street. The site is currently improved with a temporary surface parking area, rental car agency parking areas and a related car wash facility, which are to be relocated. The site is directly adjacent to Metro Center and the Stamford Transportation Center. All required zoning approvals have been obtained to allow development of an approximately 380,000 rentable square foot office tower and garage.

Metro Tower will be a 17-story, multi-tenanted commercial office building that is expected to comprise approximately 380,000 rentable square feet on 13 floors of office space. Tenants will have access to a fully enclosed parking garage at the base of the building. Its immediate adjacency to mass transportation at the Stamford Transportation Center provides access to Metro North; Acela Express and other Amtrak train services, Connecticut transit buses with local and inter-county service to Westchester County, New York; and taxis. In-building services and amenities will likely include on-site building management; concierge; 24/7 security; multi-media conference center; fitness center; dining facility; sundry shop; and access to landscaped rooftop gardens and its garage.

Metro Tower is part of a transit-oriented, mixed use development project, Metro Green, which when fully built will include three residential buildings and a separate residential garage. Only the development office building and its garage, known as Metro Tower, will be acquired by the company in the consolidation. The site and related plans and permit pertaining to residential developments will not be acquired by the company.

As of September 30, 2012, the company had incurred costs of approximately \$7.4 million relating to the Metro Tower development.

**Depreciation**

The following table sets forth for each property that comprised ten percent or more of the company's total consolidated assets as of September 30, 2012, or that had gross revenues that amounted to ten percent or more of the company's consolidated gross revenues for the 12 months ended December 31, 2011, and component thereof, upon which depreciation is taken, the (i) tax basis (determined for U.S. federal income tax purposes) upon completion of the consolidation and the IPO, (ii) depreciation rate, (iii) method and (iv) life claimed with respect to such property or component thereof for purposes of depreciation.

<b>Property</b>	<b>Federal Tax Basis December 31, 2011</b>	<b>Rate</b>	<b>Method<sup>(1)</sup></b>	<b>Life Claimed<sup>(2)</sup></b>
The Empire State Building	\$ 202,004,012	Various	DDB/Straight-line	15-39 years
One Grand Central Place	\$ 79,451,911	Various	DDB/Straight-line	15-39 years

(1) Unless otherwise noted, depreciation method and life claimed for each property and component thereof is determined by reference to IRS-mandated method for depreciating assets placed into service after 1986, known as the Modified Accelerated Cost Recovery System.

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(2) Buildings, building improvements and tenant improvements are depreciated over 39 years using the straight line method. Tenant improvements incurred in 2010 and 2011 are depreciated over 15 years using the straight line method after allowing for any applicable bonus depreciation.

**Property Revenue and Operating Expenses**

Certain of the company's properties provide the company with diversified sources of income. In addition, base rent does not include tenant reimbursements for real estate taxes, insurance, common area maintenance, utilities or operating expense escalations. In addition certain of the company's properties are entitled to business improvement district tax reimbursements that are not included in base rent. In order to provide a better understanding of how these reimbursements impact the comparability of the leases in place at the properties in the company's portfolio, the table below includes information as of September 30, 2012 regarding base rent, reimbursement income, other property income and property operating expenses associated with each of the properties in the company's portfolio. Property operating expenses include property management fees paid to third parties as well as property management and supervisory fees paid to the supervisor.

Property	Base Rent <sup>(1)</sup>	Expense Reimbursements <sup>(2)</sup>	Other Income <sup>(3)</sup>	Total Income	Operating Expenses <sup>(4)</sup>	Net Operating Income
			<i>(in thousands)</i>			
The Empire State Building	\$ 76,313	\$ 25,615	\$ 99,298 <sup>(5)</sup>	\$201,226	\$ 111,808	\$ 89,418
One Grand Central Place	48,101	10,308	1,749 <sup>(6)</sup>	60,158	33,259	26,899
First Stamford Place	25,861	5,220	2,483 <sup>(7)</sup>	33,564	15,166	18,398
250 West 57 <sup>th</sup> Street	21,020	4,602	223	25,845	14,427	11,418
1359 Broadway	16,877	3,030	365	20,272	7,898	12,374
1350 Broadway	16,999	2,078	988	20,065	9,632	10,433
1333 Broadway	12,249	1,005	823	14,257	6,321	7,936
501 Seventh Avenue	15,546	2,560	467	18,573	8,694	9,879
Metro Center	12,895	3,957	1,192 <sup>(8)</sup>	18,044	6,826	11,218
500 Mamaroneck Avenue	6,912	1,606	124 <sup>(9)</sup>	8,642	4,645	3,997
10 Bank Street	6,364	1,262	520 <sup>(10)</sup>	8,146	4,810	3,336
383 Main Avenue	5,973	1,854	31 <sup>(11)</sup>	7,858	4,267	3,591
10 Union Square	4,415	811	3	5,229	1,800	3,429
1010 Third Avenue and 77 West 55 <sup>th</sup> Street <sup>(12)</sup>	4,955	512		5,467	1,878	3,589
1542 Third Avenue	2,809	458		5,467	1,878	3,589
69-97 Main Street	1,331	98		1,429	364	1,065
103-107 Main Street	426	56		482	106	376
<b>Total</b>	<b>\$ 279,226</b>	<b>\$ 65,032</b>	<b>\$ 108,266</b>	<b>\$ 452,524</b>	<b>\$ 232,909</b>	<b>\$ 219,615</b>

(1) Represents base rent for the 12 months ended September 30, 2012 (before free rent and abatements) and excludes impact of straight line rent and FAS 141 adjustments. Total abatements for the company's portfolio were approximately \$17,469 for the 12 months ended September 30, 2012.

(2) Represents tenant expense reimbursements relating to the 12 months ended September 30, 2012.

(3) Represents additional property-related income for the 12 months ended September 30, 2012, which includes (i) observatory income, (ii) other property income (such as lease termination fees and parking revenue).

(4) Represents property operating expenses for the 12 months ended September 30, 2012. Property operating expenses includes all rental expenses, but exclude ground rent, leasehold rent, overage rents, interest expense, capital expense, debt service and non-cash items such as depreciation and amortization.

(5) Includes approximately \$65,534 from observatory operations, \$17,629 in antennae license fee revenue and \$10,120 from a real estate tax refund.

(6) Includes approximately \$1,027 in lease termination fees.

(7) Includes approximately \$29 in parking revenue and \$2,115 in lease termination fees.

(8) Includes approximately \$758 in parking revenue and \$246 in lease termination fees.

(9) Includes approximately \$30 in lease termination fees.

(10) Includes approximately \$513 in parking revenue.

(11) Includes approximately \$4 in parking revenue.

(12) 1010 Third Avenue and 77 West 55<sup>th</sup> Street are treated as one property for accounting purposes and presented on an aggregate basis.

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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., Regus Plc, Kahn Lucas Lancaster, Inc., Carr Business Systems (a division of Xerox), a variety of services firms and retail

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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:

Property	Location	Type of Property	Rentable Square Feet <sup>(1)</sup>	Percentage Ownership Subject to Option Agreement
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>			1,628,302	

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

**Excluded Properties and Businesses**

The company s portfolio represents all of the Manhattan and greater New York metropolitan area office and retail assets owned by the entities organized and supervised by the company. The Malkin Family including Anthony E. Malkin, the company s Chairman, Chief Executive Officer and President, owns non-controlling interests in, and Anthony E. Malkin and Peter L. Malkin control the general partners or managers of the entities that own interests in six multi-family properties, five net leased retail properties, one former post office property which is subject to rezoning before it will be converted into a single tenant retail property, and a development parcel that is zoned for residential use. The Malkin Family also owns non-controlling interests in one Manhattan office property, two Manhattan retail properties and several retail properties outside of Manhattan, none of which will be contributed to the company as part of the consolidation. The company refers to the non-controlling interests described above collectively as the excluded properties. In addition, the Malkin Family owns interests in six mezzanine and senior equity funds, two industrial funds, five residential property managers and a registered broker dealer, none of which will be contributed to the company in the consolidation, and which are collectively referred to as the excluded businesses. The Malkin Family owns certain non-real estate family investments that will not be contributed to the company in the consolidation. The company does not believe that the excluded properties or the excluded businesses are consistent with the company s portfolio geographic or property type composition, management or strategic direction. Pursuant to management and/or services agreements with the owners of interests in those excluded properties and services agreements with the five residential property managers and the managers of certain other excluded businesses which historically were managed by affiliates of the supervisor, the company will be designated as the manager of the excluded properties and will provide services to the owners of certain of the excluded properties and the five residential property managers and provide services and access to office space to the existing managers of the other excluded businesses (other than with respect to the registered broker dealer). As the manager or service provider, the company will be paid a management or other fee with respect to those excluded properties and excluded businesses (other than with respect to the registered broker dealer) where the supervisor had previously received a management fee on the same terms as the fee paid to the supervisor, and reimbursed for the company s costs in providing the management and other services to those excluded properties and businesses where the supervisor had not previously received a management fee. The company s management of the excluded properties and provision of services to the owners of certain of the excluded properties, the five residential property managers and the existing managers of the other excluded businesses will represent a minimal portion of its overall business. There is no established time period in which the company will manage such properties or provide services to such entities and Peter L. Malkin and Anthony E. Malkin expect to sell certain of these properties or unwind certain of these businesses over time.

**Leasing**

The company is focused on maintaining a brand that tenants associate with a consistently high level of quality of services, installations, maintenance and amenities with long term financial stability. Through the

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company's commitment to brokers, the company has developed long-term relationships that focus on negotiating attractive deals with high credit-quality tenants. The company proactively manages and cultivates the company's industry relationships and makes the most senior members of its management team available to the company's constituencies. The company believes that its consistent, open dialogue with its tenants and brokers enables the company to maximize its redevelopment and repositioning opportunities. The company's focus on performance and perspective allows the company to concentrate on the ongoing management of its portfolio, while seeking opportunities for growth in the future.

### **Property Management**

The company protects its investments by regularly monitoring the company's properties, performing routine preventive maintenance, and implementing capital improvement programs in connection with property redevelopment and life cycle replacement of equipment and systems. The company proactively manages its properties and rent rolls to (i) aggregate smaller demised spaces to create large blocks of vacant space, to attract high credit-quality tenants at higher rental rates with lower landlord contributions towards tenant installation costs, and (ii) create efficient, modern, pre-built offices that can be rented through several lease cycles and attract better credit-quality tenants. The company also aggressively manages common area expenses to make the company's properties as competitive as possible for new and existing tenants. In addition, the company has made energy efficiency retrofitting and sustainability a portfolio-wide initiative driven by economic return. The company passes on the cost savings achieved by such improvements to its tenants through lower utility costs and reduced operating expense escalations. The company believes these improvements make the company's properties more desirable to a broader tenant base than the properties of its competitors.

### **Construction Management**

The company's construction management business is recognized as a leading general contracting and construction management business in the greater New York metropolitan area with in-depth experience in projects of varying type, complexity, budget and schedule. The company follows a disciplined approach to every aspect of project management, from pre-construction planning, estimating and procurement, to project management and field supervision. The company works with its client and their team of architects, engineers, and owner's representatives to develop the right solutions for every project that it manages. The company has built or renovated millions of square feet of commercial, medical, institutional, multi-family and retail space throughout thousands of completed projects. The company is experienced in both ground-up construction and executing building renovation programs. The company is also skilled in procuring sustainable building products and implementation of environmentally sensitive construction technologies. The company's years of experience, combined with a helpful approach, provide solutions that keep the company's clients' projects on schedule and on budget.

### **Regulation**

#### ***General***

The properties in the company's portfolio are subject to various laws, ordinances and regulations, including regulations relating to common areas. The company believes each of the existing properties has the necessary permits and approvals to operate its business.

#### ***Americans with Disabilities Act***

The company's properties must comply with Title III of the Americans with Disabilities Act, or ADA, to the extent that such properties are public accommodations as defined by the ADA. The ADA may require removal of structural barriers to access by persons with disabilities in certain public areas of the company's properties where such removal is readily achievable. The company believes the existing properties are in substantial compliance with the ADA and that the company will not be required to make substantial capital expenditures to



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address the requirements of the ADA. However, noncompliance with the ADA could result in imposition of fines or an award of damages to private litigants. The obligation to make readily achievable accommodations is an ongoing one, and the company will continue to assess its properties and to make alterations as appropriate in this respect.

### ***Environmental Matters***

Under various federal, state and/or local laws, ordinances and regulations, as a current or former owner or operator of real property, the company may be liable for costs and damages resulting from the presence or release of hazardous substances, waste, or petroleum products at, on, in, under or from such property, including costs for investigation or remediation, natural resource damages, or third party liability for personal injury or property damage. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the presence or release of such materials, and the liability may be joint and several. Some of the company's properties have been or may be impacted by contamination arising from current or prior uses of the property or adjacent properties for commercial, industrial or other purposes. Such contamination may arise from spills of petroleum or hazardous substances or releases from tanks used to store such materials. The company also may be liable for the costs of remediating contamination at off-site disposal or treatment facilities when the company arranges for disposal or treatment of hazardous substances at such facilities, without regard to whether the company complies with environmental laws in doing so. The presence of contamination or the failure to remediate contamination on the company's properties may adversely affect its ability to attract and/or retain tenants, and its ability to develop or sell or borrow against those properties. In addition to potential liability for cleanup costs, private plaintiffs may bring claims for personal injury, property damage or for similar reasons. Environmental laws also may create liens on contaminated sites in favor of the government for damages and costs it incurs to address such contamination. Moreover, if contamination is discovered on the company's properties, environmental laws may impose restrictions on the manner in which that property may be used or how businesses may be operated on that property.

Some of the company's properties are adjacent to or near other properties used for industrial or commercial purposes or that have contained or currently contain underground storage tanks used to store petroleum products or other hazardous or toxic substances. Releases from these properties could impact the company's properties. In addition, some of the company's properties have previously been used by former owners or tenants for commercial or industrial activities, e.g., gas stations and dry cleaners, and a portion of the Metro Tower site is currently used for automobile parking and fuelling, that may release petroleum products or other hazardous or toxic substances at such properties or to surrounding properties. While certain properties contain or contained uses that could have or have impacted the company's properties, the company is not aware of any liabilities related to environmental contamination that it believes will have a material adverse effect on the company operations.

Soil contamination has been identified at 69-97 Main Street in Westport, Connecticut. The affected soils are more than four feet below the ground surface. An Environmental Land Use Restriction has been imposed on this site to ensure the soil is not exposed, excavated or disturbed such that it could create a risk of migration of pollutants or a potential hazard to human health or the environment. While the contamination is currently contained, the potential resale value of this property and the company's ability to finance or refinance this property in the future may be adversely affected as a result of such contamination. In addition, pursuant to the Environmental Land Use Restriction, plans for the redevelopment of the property would be subject to the review of the Town of Westport, Connecticut among other conditions.

The property situated at 500 Mamaroneck Avenue in Harrison, New York was the subject of a voluntary remedial action work cleanup plan performed by the former owner following its conveyance of title to the present owners under an agreement with the New York State Department of Environmental Conservation, or NYDEC. As a condition to the issuance of a no further action letter, NYDEC required that certain restrictive and affirmative covenants be recorded against the subject property. In substantial part, these include prohibition against construction that would disturb the soil cap isolating certain contaminated subsurface soil, limiting the

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use of such property to commercial uses, implementing engineering controls to assure that improvements be kept in good condition, not using ground water at the site for potable purposes without treatment, implementing safety procedures for workers to follow excavating at the site to protect their health and safety and filing an annual certification that the controls implemented in accordance with the voluntary remedial action work cleanup plan remain in place. Furthermore, a substantial portion of the site that had been substantially unimproved prior to acquisition may not be further developed.

In addition, the company's properties are subject to various federal, state and local environmental and health and safety laws and regulations. Noncompliance with these environmental and health and safety laws and regulations could subject the company or its tenants to liability. These liabilities could affect a tenant's ability to make rental payments to the company. Moreover, changes in laws could increase the potential costs of compliance with such laws and regulations or increase liability for noncompliance. This may result in significant unanticipated expenditures or may otherwise materially and adversely affect the company's operations, or those of the company's tenants, which could in turn have a material adverse effect on the company. The company sometimes requires its tenants to comply with environmental and health and safety laws and regulations and to indemnify the company for any related liabilities in the company's leases with them. But in the event of the bankruptcy or inability of any of the company's tenants to satisfy such obligations, the company may be required to satisfy such obligations. The company is not presently aware of any instances of material non-compliance with environmental or health and safety laws or regulations at the company's properties, and believes that it and/or its tenants have all material permits and approvals necessary under current laws and regulations to operate the company's properties.

As the owner or operator of real property, the company may also incur liability based on various building conditions. For example, buildings and other structures on properties that the company currently owns or operates or those the company acquires or operates in the future contain, may contain, or may have contained, asbestos-containing material, or ACM. Environmental and health and safety laws require that ACM be properly managed and maintained and may impose fines or penalties on owners, operators or employers for non-compliance with those requirements. These requirements include special precautions, such as removal, abatement or air monitoring, if ACM would be disturbed during maintenance, renovation or demolition of a building, potentially resulting in substantial costs. In addition, the company may be subject to liability for personal injury or property damage sustained as a result of releases of ACM into the environment. The company is not presently aware of any material liabilities related to building conditions, including any instances of material non-compliance with asbestos requirements or any material liabilities related to asbestos.

In addition, the company's properties may contain or develop harmful mold or suffer from other indoor air quality issues, which could lead to liability for adverse health effects or property damage or costs for remediation. When excessive moisture accumulates in buildings or on building materials, mold growth may occur, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Some molds may produce airborne toxins or irritants. Indoor air quality issues can also stem from inadequate ventilation, chemical contamination from indoor or outdoor sources, and other biological contaminants such as pollen, viruses and bacteria. Indoor exposure to airborne toxins or irritants above certain levels can be alleged to cause a variety of adverse health effects and symptoms, including allergic or other reactions. As a result, the presence of significant mold or other airborne contaminants at any of the company's properties could require the company to undertake a costly remediation program to contain or remove the mold or other airborne contaminants from the affected property or increase indoor ventilation. In addition, the presence of significant mold or other airborne contaminants could expose the company to liability from the company's tenants, employees of the company's tenants or others if property damage or personal injury occurs. The company is not presently aware of any material adverse indoor air quality issues at its properties.

## **Insurance**

The company carries comprehensive liability, fire, extended coverage, earthquake, terrorism and rental loss insurance covering all of its Manhattan properties and its greater New York metropolitan area properties under a

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blanket policy. The company carries additional all-risk property and business insurance, which includes terrorism insurance, on the Empire State Building through ESB Captive Insurance Company L.L.C., or ESB Captive Insurance, the company's wholly owned captive insurance company. ESB Captive Insurance covers terrorism insurance for \$700 million in losses in excess of \$800 million per occurrence suffered by the Empire State Building, providing the company with aggregate terrorism coverage of \$1.5 billion. ESB Captive Insurance fully reinsures the 15% coinsurance under the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) and the difference between the TRIPRA captive deductible and policy deductible of \$25,000 for non-Nuclear, Biological, Chemical and Radiological exposures. As a result, the company remains only liable for the 15% coinsurance under TRIPRA for Nuclear, Biological, Chemical and Radiological (NBCR) exposures, as well as a deductible equal to 20% of the prior year's premium, which premium was approximately \$429,000 in 2011. As long as the company owns ESB Captive Insurance, the company is responsible for ESB Captive Insurance's liquidity and capital resources, and ESB Captive Insurance's accounts are part of the company's consolidated financial statements. If the company experiences a loss and its captive insurance company is required to pay under its insurance policy, the company would ultimately record the loss to the extent of its required payment.

The policies described above cover certified terrorism losses as defined under the Terrorism Risk Insurance Act of 2002 (TRIA) and subsequent extensions. On December 26, 2007, the President of the United States signed into law TRIPRA, which extends TRIA through December 31, 2014. TRIA provides for a system of shared public and private compensation for insured losses resulting from acts of terrorism. As a result, the certified terrorism coverage provided by ESB Captive Insurance is eligible for 85% coinsurance provided by the United States Treasury in excess of a statutorily calculated deductible. ESB Captive Insurance reinsures 100% of their 15% coinsurance for non-NBCR exposures. The 15% coinsurance on NBCR exposures is retained by ESB Captive Insurance.

Reinsurance contracts do not relieve ESB Captive Insurance from its primary obligations to its policyholders. Additionally, failure of the various reinsurers to honor their obligations could result in significant losses to ESB Captive Insurance. The reinsurance has been ceded to reinsurers approved by the State of Vermont. ESB Captive Insurance continually evaluates the reinsurers' financial condition by considering published financial stability ratings of the reinsurers and other factors. There can be no assurance that reinsurance will continue to be available to ESB Captive Insurance to the same extent and at the same cost. ESB Captive Insurance may choose in the future to reevaluate the use of reinsurance to increase or decrease the amounts of risk it cedes.

In addition to insurance held through the company's captive insurance company described above, the company carries terrorism insurance on all of the company's properties in an amount and with deductibles which it believes are commercially reasonable. See **Risk Factors** **Real Estate/Business Risks** Potential losses such as those from adverse weather conditions, natural disasters, terrorist events and title claims, may not be fully covered by the company's insurance policies, and such losses could materially and adversely affect the company.

## **Competition**

The leasing of real estate is highly competitive in Manhattan and the greater New York metropolitan market in which the company operates. The company competes with numerous acquirers, developers, owners and operators of commercial real estate, many of which own or may seek to acquire or develop properties similar to the company's in the same markets in which the company's properties are located. The principal means of competition are rent charged, location, services provided and the nature and condition of the facility to be leased. In addition, the company faces competition from other real estate companies including other REITs, private real estate funds, domestic and foreign financial institutions, life insurance companies, pension trusts, partnerships, individual investors and others that may have greater financial resources or access to capital than the company does or that are willing to acquire properties in transactions which are more highly leveraged or are less attractive from a financial viewpoint than the company is willing to pursue. In addition, competition from observatory

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and/or 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 observatory operations and/or broadcasting revenues. Adverse impacts on domestic travel and changes in foreign currency exchange rates may also decrease demand in the future, which could have a material adverse effect on the company's results of operations, financial condition and ability to make distributions to the company's stockholders. Additionally, completion of the new Vornado Tower currently under construction at 15 Penn Plaza may provide a significant source of competition for office and retail tenants, due to its close proximity to the Empire State Building. If the company's competitors offer space at rental rates below current market rates, below the rental rates the company currently charges the company's tenants, in better locations within the company's markets or in higher quality facilities, the company may lose potential tenants and may be pressured to reduce its rental rates below those it currently charges in order to retain tenants when the company's tenants' leases expire.

## **Employees**

As of September 30, 2012, the company had approximately 605 employees, 102 of whom were managers and professionals. There are currently collective bargaining agreements which cover the workforce that services all of the company's office properties.

## **Offices**

The company's principal executive offices are located at One Grand Central Place, 60 East 4<sup>th</sup> Street, New York, New York 10165. In addition, the company has six additional regional leasing and property management offices in Manhattan and the greater New York metropolitan area. The company's current facilities are adequate for its present and future operations, although the company may add regional offices or relocate its headquarters, depending upon the company's future operations.

## **Legal Proceedings**

From time to time, the company is party to various lawsuits, claims for negligence and other legal proceedings that arise in the ordinary course of the company's business. Except as described below, the company is not currently a party, as plaintiff or defendant, to any legal proceedings which, individually or in the aggregate, would be expected to have a material effect on the company's business, financial condition or results of operations if determined adversely to the company.

In March 2012, five putative class actions, or the Class Actions, were filed in New York State Supreme Court, New York County by participants in Empire State Building Associates L.L.C. and several other entities supervised by the supervisor (on March 1, 2012, March 7, 2012, March 12, 2012, March 14, 2012 and March 19, 2012). The plaintiffs assert claims against Malkin Holdings LLC, Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., Malkin Construction Corp., Anthony E. Malkin, Peter L. Malkin, the Helmsley estate, the operating partnership and the company for breach of fiduciary duty, unjust enrichment, and/or aiding and abetting breach of fiduciary duty. They allege, among other things, that the terms of the transaction and the process by which it was structured (including the valuation that was employed) are unfair to the participants, the consolidation provides excessive benefits to the Malkin Holdings group and the then-draft prospectus/consent solicitation filed with the SEC failed to make adequate disclosure to permit a fully informed decision about the proposed transaction. The complaints seek money damages and injunctive relief preventing the proposed transaction. The actions were consolidated and co-lead plaintiffs' counsel were appointed by the New York State Supreme Court by order dated June 26, 2012. Furthermore, an underlying premise of the Class Actions, as noted in discussions among plaintiffs' counsel and defendants' counsel, was that the consolidation had been structured in such a manner that would cause the subject LLC participants immediately to incur substantial tax liabilities.

The parties entered into a Stipulation of Settlement dated September 28, 2012, resolving the Class Actions. The Stipulation of Settlement recites that the consolidation was approved by overwhelming consent of the

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participants in the private entities. The Stipulation of Settlement states that counsel for the plaintiff class satisfied themselves that they have received adequate access to relevant information, including the independent valuer's valuation process and methodology, that the disclosures in the Registration Statement on Form S-4, as amended, are appropriate, that the transaction presents potential benefits, including the opportunity for liquidity and capital appreciation, that merit the participants' serious consideration and that each of named class representatives intends to support the transaction as modified. The Stipulation of Settlement further states that counsel for the plaintiff class are satisfied that the claims regarding tax implications, enhanced disclosures, appraisals and exchange values of the properties that would be consolidated into the company, and the interests of the participants in the subject LLCs and the private entities, have been addressed adequately, and they have concluded that the settlement pursuant to the Stipulation of Settlement and opportunity to consider the proposed transaction on the basis of revised consent solicitations are fair, reasonable, adequate and in the best interests of the plaintiff class.

The defendants in the Stipulation of Settlement denied that they committed any violation of law or breached any of their duties and did not admit that they had any liability to the plaintiffs.

The terms of the settlement include, among other things (i) a payment of \$55 million, with a minimum of 80% in cash and maximum of 20% in freely-tradable shares of common stock and/or freely-tradable operating partnership units (all of which will be paid by the Malkin Holdings group (provided that no member of the Malkin Holdings group that would become a direct or indirect subsidiary of the company in the consolidation will have any liability for such payment) and the Helmsley estate and certain participants in the private entities who agree to contribute) to be distributed, after reimbursement of plaintiffs' counsel's court-approved expenses and payment of plaintiffs' counsel's court-approved attorneys' fees and, in the case of shares of common stock and/or operating partnership units, after the termination of specified lock-up periods, to participants in the subject LLCs and the private entities pursuant to a plan of allocation to be prepared by counsel for plaintiffs; (ii) defendants' agreement that (a) the IPO will be on the basis of a firm commitment underwriting; (b) if, during the solicitation period, any of the three subject LLC's percentage of total exchange value is lower than what is stated in the final prospectus/consent solicitation by 10% or more, such decrease will be promptly disclosed by defendants to investors in the subject LLCs; and (c) unless total gross proceeds of \$600,000,000 are raised in the IPO, defendants will not proceed with the transaction without further approval of the subject LLCs; and (iii) defendants' agreement to make additional disclosures in this prospectus/consent solicitation regarding certain matters (which are included herein). Defendants have also acknowledged the work of plaintiffs and their counsel was a material factor in defendants' implementation of the change in the consolidation that, as originally proposed, would have required the exchange of participation interests for Class A common stock, which are taxable on receipt, and that now permits participants instead to elect to receive operating partnership units and Class B common stock, which permit tax deferral. Participants in the subject LLCs and private entities will not be required to bear any portion of the settlement payment. The payment in settlement of the Class Actions will be made by the Helmsley estate and the Malkin Holdings group (provided that no member of the Malkin Holdings group that would become a direct or indirect subsidiary of the company in the consolidation will have any liability for such payment) and certain participants in the private entities who agree to contribute. The company and the operating partnership will not bear any of the settlement payment.

The settlement further provides for the certification of a class of participants in the three subject LLCs and all of the private entities, other than defendants and other related persons and entities, and a release of any claims of the members of the class against defendants and related persons and entities, as well as underwriters and other advisors. The release in the settlement excludes certain claims, including but not limited to, claims arising from or related to any supplement to the Registration Statement on Form S-4 that is declared effective to which the plaintiffs' counsel objects in writing, which objection will not be unreasonably made or delayed, so long as plaintiffs' counsel has had adequate opportunity to review such supplement. Members of the putative class have the right to opt out of the monetary portion of the settlement, but not the portion providing for equitable relief. The settlement is subject to court approval. It is not effective until such court approval is final, including the resolution of any appeal. Defendants continue to deny any wrongdoing or liability in connection with the allegations in the Class Actions.

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**POLICIES WITH RESPECT TO CERTAIN ACTIVITIES**

*The following is a discussion of certain of the company's investment, financing and other policies. These policies have been determined by the company's board of directors and, in general, may be amended and revised from time to time at the discretion of the company's board of directors without notice to or a vote of the stockholders.*

**Investment Policies**

***Investment in Real Estate or Interests in Real Estate***

The company will conduct all of its investment activities through the operating partnership and its affiliates. The company's investment objectives are to increase cash flow available for distribution to its stockholders and holders of operating partnership units, increase the value of the company's properties and maximize long-term stockholder value through stable dividends and share appreciation. The company has not established a specific policy regarding the relative priority of these investment objectives. For a discussion of the properties and the company's acquisition and other strategic objectives, see "The Company Business and Properties."

The company expects to pursue its investment objectives primarily through the ownership and operation, directly or indirectly, by the operating partnership of the properties that the company will own following the consolidation. The company intends to focus primarily on Manhattan and greater New York metropolitan area office properties and, in addition, office and multi-tenanted retail properties in Manhattan and the greater New York metropolitan area. Future investment or redevelopment activities will not be limited to any geographic area, product type or to a specified percentage of the company's assets. While the company may diversify in terms of property locations, size and market or submarket, the company does not have any limit on the amount or percentage of its assets that may be invested in any one property or any one geographic area. The company intends to engage in such future investment or development activities in a manner that is consistent with the maintenance of the company's qualification as a REIT for U.S. federal income tax purposes commencing with its taxable year ending December 31, 2013. The company does not have a specific policy to acquire assets primarily for capital gain or primarily for income. In addition, the company may purchase or lease income-producing commercial and other types of properties for long-term investment, expand and improve the properties it presently owns or other acquired properties, or sell such properties, in whole or in part, when circumstances warrant.

The company may also participate with third parties in property ownership, through joint ventures or other types of co-ownership, if it determines that doing so would be the most effective means of raising capital. The company will not, however, enter into a joint venture or other partnership arrangement to make an investment that would not otherwise meet its investment policies. The company also may acquire real estate or interests in real estate in exchange for the issuance of common stock, operating partnership units, preferred stock or options to purchase stock.

Equity investments in acquired properties may be subject to existing mortgage financing and other indebtedness or to new indebtedness which may be incurred in connection with acquiring or refinancing these investments. Principal and interest on the company's debt will have a priority over any dividends with respect to the company's common stock. Investments are also subject to the company's policy not to be treated as an investment company under the Investment Company Act of 1940, as amended, or the 1940 Act.

***Investments in Real Estate Mortgages***

The company's current portfolio consists entirely of, and the company's business objectives emphasize, equity investments in commercial real estate. Although the company does not presently intend to invest in mortgages or deeds of trust, other than in a manner that is ancillary to an equity investment, the company may elect, in its discretion, to invest in mortgages and other types of real estate interests, including, without limitation,

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participating or convertible mortgages; provided, in each case, that such investment is consistent with the company's qualification as a REIT. Investments in real estate mortgages run the risk that one or more borrowers may default under certain mortgages and that the collateral securing certain mortgages may not be sufficient to enable the company to recoup its full investment.

### ***Investments in Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers***

Subject to the company's qualification as a REIT, the company may invest in securities of other REITs, other entities engaged in real estate activities or securities of other issuers, including for the purpose of exercising control over such entities. The company does not currently have any policy limiting the types of entities in which it may invest or the proportion of assets to be so invested, whether through acquisition of an entity's common stock, limited liability or partnership interests, interests in another REIT or entry into a joint venture. The company intends to invest primarily in entities that own commercial real estate. The company has no current plans to invest in entities that are not engaged in real estate activities. The company's investment objectives are to maximize the cash flow of the company's investments, acquire investments with growth potential and provide cash distributions and long-term capital appreciation to the company's stockholders through increases in the value of the company. The company has not established a specific policy regarding the relative priority of these investment objectives.

### ***Investment in Other Securities***

Other than as described above, the company does not intend to invest in any additional securities such as bonds, preferred stock or common stock.

## **Dispositions**

The company from time to time dispose of properties if, based upon the company's management's periodic review of the company's portfolio, the company's board of directors determines such action would be in the company's best interest. In addition, the company may elect to enter into joint ventures or other types of co-ownership with respect to properties that it already owns, either in connection with acquiring interests in other properties (as discussed above in "Investment in Real Estate or Interests in Real Estate") or from investors to raise equity capital. Certain members of the company's senior management team who hold operating partnership units may have their decision as to the desirability of a proposed disposition influenced by the tax consequences to them resulting from the disposition of a certain property. In addition, the company may be obligated to indemnify certain investors, including members of the company's senior management team, against adverse tax consequences to them in the event that the company sells or disposes of certain properties in taxable transactions. See "Risk Factors" "Risks Related to the Tax Consequences of the Consolidation" Tax consequences to holders of operating partnership units upon a sale or refinancing of the company's properties may cause the interests of certain members of the company's senior management team to differ from your own.

## **Financing Policies**

The company expects to employ leverage in the company's capital structure in amounts determined from time to time by the company's board of directors. Although the company's board of directors has not adopted a policy that limits the total amount of indebtedness that the company may incur, it will consider a number of factors in evaluating the company's level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or variable rate. The company's charter and bylaws do not limit the amount or percentage of indebtedness that the company may incur nor do they restrict the form in which the company's indebtedness will be taken (including recourse or non-recourse debt, cross collateralized debt, etc.). The company's board of directors may from time to time modify the company's debt policy in light of the then-current economic conditions, relative costs of debt and equity capital, market values of the company's properties,

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general market conditions for debt and equity securities, fluctuations in the market price of the company's Class A common stock, growth and acquisition opportunities and other factors.

To the extent the company's board of directors determines to obtain additional capital, the company may, without stockholder approval, issue debt or equity securities, including additional operating partnership units, retain earnings (subject to the distribution requirements applicable to REITs under the Code) or pursue a combination of these methods. As long as the operating partnership is in existence, the proceeds of all equity capital raised by the company will be contributed to the operating partnership in exchange for additional interests in the operating partnership, which will dilute the ownership interests of the limited partners in the operating partnership.

### **Conflict of Interest Policies**

Conflicts of interest could arise in the future as a result of the relationships between the company and the company's affiliates, on the one hand, and the operating partnership or any partner thereof, on the other. The operating partnership intends to enter into a tax protection agreement with Anthony E. Malkin and Peter L. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group, and one additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible or (iii) the operating partnership failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and such investor received in the consolidation. The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction. See The Consolidation Description of the Tax Protection Agreement.

In addition, Anthony E. Malkin, together with the Malkin Family, has outside business interests which include ownership interests in the excluded properties and excluded businesses which the company is not acquiring. The company's directors and officers have duties to the company under applicable Maryland law in connection with their management of the company. At the same time, the company has fiduciary duties, as a general partner, to the operating partnership and to the limited partners under Delaware law in connection with the management of the operating partnership. The company's duties as a general partner to the operating partnership and its partners may come into conflict with the duties of the company's directors and officers to the



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company. Unless otherwise provided for in the relevant partnership agreement, Delaware law generally requires a general partner of a Delaware limited partnership to adhere to fiduciary duty standards under which it owes its limited partners the highest duties of loyalty and care and which generally prohibits such general partner from taking any action or engaging in any transaction as to which it has a conflict of interest. The limited partners of the operating partnership have agreed that in the event of such a conflict, the company will fulfill the company's fiduciary duties to such limited partners by acting in the best interests of the company's stockholders.

Additionally, the operating partnership agreement expressly limits the company's liability by providing that neither the general partner of the operating partnership, nor any of its directors or officers, will be liable or accountable in damages to the operating partnership, the limited partners or assignees for errors in judgment, mistakes of fact or law or for any act or omission if the company, or such director or officer, acted in good faith. In addition, the operating partnership is required to indemnify the company, the company's affiliates and each of the company's respective officers, directors and employees and any person the company may designate from time to time in the company's sole and absolute discretion, including present and former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the supervisor, to the fullest extent permitted by applicable law against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the operating partnership, provided that the operating partnership will not indemnify such person for (i) willful misconduct or a knowing violation of the law, (ii) any transaction for which such person received an improper personal benefit in violation or breach of any provision of the operating partnership agreement, or (iii) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful.

The provisions of Delaware law that allow the common law fiduciary duties of a general partner to be modified by an operating partnership agreement have not been resolved in a court of law, and the company has not obtained an opinion of counsel covering the provisions set forth in the operating partnership agreement that purport to waive or restrict the company's fiduciary duties that would be in effect under common law were it not for the operating partnership agreement.

The company's charter and bylaws do not restrict any of its directors, officers, stockholders or affiliates from having a pecuniary interest in an investment or transaction that the company has an interest in or from conducting, for their own account, business activities of the type the company conducts. The company has, however, adopted certain policies designed to eliminate or minimize certain potential conflicts of interest. Specifically, the company will adopt a code of business conduct and ethics that prohibits conflicts of interest between the company's officers, employees and directors on the one hand, and the company on the other hand, except in compliance with the policy. The company's code of business conduct and ethics will state that a conflict of interest exists when a person's private interest interferes with the company's interest. For example, a conflict of interest will arise when any of the company's employees, officers or directors or any immediate family member of such employee, officer or director receives improper personal benefits as a result of his or her position with the company. The company's code of business conduct and ethics will also limit the company's employees, officers and directors from engaging in any activity that is competitive with the business activities and operations of the company, except as disclosed in this prospectus/consent solicitation. In addition, the company's code of business conduct and ethics will also restrict the ability of its employees, officers and directors to participate in a joint venture, partnership or other business arrangement with the company, except in compliance with the policy. Waivers of the company's code of business conduct and ethics will be required to be disclosed in accordance with NYSE and Securities and Exchange Commission requirements. In addition, the company will adopt corporate governance guidelines to assist the company's board of directors in the exercise of its responsibilities and to serve the company's interests and those of its stockholders. In addition, certain provisions of Maryland law are also designed to minimize conflicts. However, the company cannot assure you these policies or provisions of law will always succeed in eliminating the influence of such conflicts. If they are not successful, decisions could be made that might fail to reflect fully the interests of all stockholders.

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Except with respect to the option properties, excluded properties, excluded businesses and certain non-real estate family investments owned and managed by Anthony E. Malkin and Peter L. Malkin, together with the Malkin Family, none of the company's senior management team will be permitted to compete with the company during their employment with the company.

### **Policies with Respect to Other Activities**

The company has authority to offer common stock, operating partnership units, preferred stock, options to purchase stock or other securities in exchange for property, repurchase or otherwise acquire the company's common stock or other securities in the open market or otherwise, and the company may engage in such activities in the future. As described in Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership, the company expects, but is not obligated, to issue common stock to holders of operating partnership units upon exercise of their redemption rights. Except in connection with the consolidation or pursuant to the equity incentive plan, the company has not issued common stock, units or any other securities in exchange for property or any other purpose, although, as discussed above in Investment in Real Estate or Interests in Real Estate, the company may elect to do so. After the consummation of the consolidation, the company's board of directors has no present intention of causing the company to repurchase any common stock, although the company may do so in the future. The company may issue preferred stock from time to time, in one or more series, as authorized by the company's board of directors without the need for stockholder approval. See Description of Capital Stock. The company has not engaged in trading, underwriting or agency distribution or sale of securities of other issuers other than the operating partnership and do not intend to do so. At all times, the company intends to make investments in a manner consistent with the qualification as a REIT unless the board of directors determines that it is no longer in the company's best interest to qualify as a REIT. The company has not made any loans to third parties, although the company may make loans to third parties, including, without limitation, to joint ventures in which the company participates. The company intends to make investments in such a way that it will not be treated as an investment company under the 1940 Act.

### **Reporting Policies**

The company intends to make available to the company's stockholders the company's annual reports, including the company's audited financial statements. After the IPO, the company will become subject to the information reporting requirements of the Exchange Act. Pursuant to those requirements, the company will be required to file annual and periodic reports, proxy statements and other information, including audited financial statements, with the SEC.

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### **CERTAIN PROVISIONS OF THE MARYLAND GENERAL CORPORATION LAW AND THE COMPANY'S CHARTER AND BYLAWS**

*The following is a summary of certain provisions of Maryland law applicable to the company and of the company's charter and bylaws. For a complete description, the company refers you to the MGCL and the company's charter and bylaws. This summary does not purport to be complete and is qualified in its entirety by reference to Maryland law and the company's charter and bylaws. Copies of the company's charter and bylaws are filed as exhibits to the registration statement of which is prospectus is a part. See [Where You Can Find More Information](#).*

#### **The Company's Board of Directors**

The company's charter and bylaws provide that the number of directors the company has may be established by the company's board of directors but that the number may not be less than the minimum number required by the MGCL nor more than 15. The company's charter and bylaws currently provide that, except as may be provided by the board of directors in setting the terms of any class or series of preferred stock, any vacancy may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any individual elected to fill such vacancy will serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is duly elected and qualifies.

Each of the company's directors is elected by the company's stockholders to serve until the next annual meeting and until his or her successor is duly elected and qualifies. Holders of shares of common stock will have no right to cumulative voting in the election of directors. Consequently, at each annual meeting of stockholders, the holders of a majority of the shares of common stock entitled to vote will be able to elect all of the company's directors at any annual meeting. Directors are elected by a plurality of all votes cast in the election of directors.

#### **Removal of Directors**

The company's charter provides that subject to the rights of holders of one or more classes or series of preferred stock to elect or remove one or more directors, any director or the entire board of directors may be removed only for cause and only by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors. Cause means, with respect to any particular director, a conviction of a felony or a final judgment of a court of competent jurisdiction holding that such director caused demonstrable, material harm to the company through bad faith or active and deliberate dishonesty. This provision, when coupled with the exclusive power of the company's board of directors to fill vacancies on the company's board of directors, precludes stockholders from (1) removing incumbent directors except upon a substantial affirmative vote and for cause and (2) filling the vacancies created by such removal with their own nominees.

#### **Policy on Majority Voting**

The company's board of directors will adopt a policy regarding the election of directors in uncontested elections. Pursuant to such policy, in an uncontested election of directors, any nominee who receives a greater number of votes affirmatively withheld from his or her election than votes for his or her election will, within two weeks following certification of the stockholder vote by the company, submit a written resignation offer to the company's board of directors for consideration by the company's Nominating and Corporate Governance Committee. The company's Nominating and Corporate Governance Committee will consider the resignation offer and, within 60 days following certification by the company of the stockholder vote with respect to such election, make a recommendation to the company's board of directors concerning the acceptance or rejection of the resignation offer. The company's board of directors will take formal action on the recommendation no later than 90 days following certification of the stockholder vote by the company. The company will publicly disclose, in a Form 8-K filed with the SEC, the decision of the company's board of directors. The company board of

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directors will also provide an explanation of the process by which the decision was made and, if applicable, its reason or reasons for rejecting the tendered resignation.

### **Business Combinations**

Under the MGCL, certain business combinations (including a merger, consolidation, share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and an interested stockholder (defined generally as any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock or an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding stock of the corporation) or an affiliate of such an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Thereafter, any such business combination must be recommended by the board of directors of such corporation and approved by the affirmative vote of at least (1) 80% of the votes entitled to be cast by holders of outstanding voting stock of the corporation and (2) two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder, unless, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares. A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. The board of directors may provide that its approval is subject to compliance with any terms and conditions determined by it.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a board of directors prior to the time that the interested stockholder becomes an interested stockholder. Pursuant to the statute, the company's board of directors has by resolution exempted business combinations between the company and any other person, provided that such business combination is first approved by the company's board of directors (including a majority of the company's directors who are not affiliates or associates of such person) and, consequently, the five-year prohibition and the supermajority vote requirements will not apply to business combinations between the company and any person as described above. As a result, any person described above may be able to enter into business combinations with the company that may not be in the best interest of the company's stockholders without compliance by the company with the supermajority vote requirements and other provisions of the statute.

The company cannot assure you its board of directors will not opt to be subject to such business combination provisions in the future. However, an alteration or repeal of the resolution described above will not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal. If the company's board of directors opted back into the business combination statute or failed to first approve a business combination, the business combination statute may discourage others from trying to acquire control of the company and increase the difficulty of consummating any offer.

### **Control Share Acquisitions**

The MGCL provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by the affirmative vote of two-thirds of the votes entitled to be cast on the matter, excluding shares of stock in a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors: (i) a person who makes or proposes to make a control share acquisition, (ii) an officer of the corporation or (iii) an employee of the corporation who is also a director of the corporation. Control shares are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the

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acquirer, or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power: (A) one-tenth or more but less than one-third; (B) one-third or more but less than a majority; or (C) a majority or more of all voting power. Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an acquiring person statement as described in the MGCL), may compel the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem any or all of the control shares (except those for which voting rights have previously been approved) for fair value determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of such shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to (1) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or (2) acquisitions approved or exempted by the charter or bylaws of the corporation.

The company's bylaws contain a provision exempting from the control share acquisition statute any acquisitions by any person of shares of the company's stock. There is no assurance that such provision will not be amended or eliminated at any time in the future.

## **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

a classified board;

a two-thirds vote requirement for removing a director;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of class of directors in which the vacancy occurred; and

a majority requirement for the calling of a special meeting of stockholders.

The company's charter provides that, at such time as the company is able to make a Subtitle 8 election, vacancies on the company's board may be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred. Through provisions in the company's charter and bylaws



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unrelated to Subtitle 8, the company already (1) requires the affirmative vote of stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast on the matter for the removal of any director from the board, which removal also requires cause, (2) vests in the board the exclusive power to fix the number of directorships and (3) requires, unless called by the chairman of the company's board of directors, the company's chief executive officer, the company's president or the company's board of directors, the written request of stockholders entitled to cast not less than a majority of all votes entitled to be cast on any matter at such a meeting to call a special meeting.

### **Meetings of Stockholders**

Pursuant to the company's bylaws, a meeting of the company's stockholders for the election of directors and the transaction of any business will be held annually at a date, time and place set by the company's board of directors beginning in 2013. The chairman of the company's board of directors, the company's chief executive officer, the company's president or the company's board of directors may call a special meeting of the company's stockholders. Subject to the provisions of the company's bylaws, a special meeting of the company's stockholders will also be called by the company's secretary upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast on any matter that may be properly considered at a meeting of stockholders and containing the information required in the company's bylaws.

### **Amendments to the Company's Charter and Bylaws**

Except for amendments to the provisions of the company's charter relating to the removal of directors, the restrictions on ownership and transfer of the company's shares of stock and the vote required to amend these provisions (each of which must be advised by the company's board of directors and approved by the affirmative vote of the stockholders entitled to cast not less than two-thirds of all the votes entitled to be cast on the matter), the company's charter generally may be amended only with the approval of the company's board of directors and the affirmative vote of the stockholders entitled to cast not less than a majority of all of the votes entitled to be cast on the matter. However, the board of directors, without stockholder approval, has the power under the company's charter to amend the charter from time to time to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class or series that the company is authorized to issue, to authorize the company to issue authorized but unissued shares of its common stock or preferred stock and to classify and reclassify any unissued shares of common stock or preferred stock into one or more classes or series of stock and set the terms of such newly classified or reclassified shares. See Description of Capital Stock Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock and Power to Reclassify the Company's Unissued Shares of Stock.

The company's board of directors has the exclusive power to adopt, alter or repeal any provision of the company's bylaws and to make new bylaws.

### **Dissolution of the Company**

The dissolution of the company must be declared advisable by a majority of the company's entire board of directors and approved by the affirmative vote of the stockholders entitled to cast not less than a majority of all of the votes entitled to be cast on the matter.

### **Advance Notice of Director Nominations and New Business**

The company's bylaws provide that, with respect to an annual meeting of stockholders, nominations of individuals for election to the company's board of directors and the proposal of other business to be considered by stockholders may be made only (1) pursuant to the company's notice of the meeting, (2) by or at the direction of the company's board of directors or (3) by a stockholder who is a stockholder of record both at the time of giving the notice required by the company's bylaws and at the time of the meeting, who is entitled to vote at the

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meeting in the election of each individual so nominated or on such other business and who has complied with the advance notice provisions set forth in the company's bylaws.

With respect to special meetings of stockholders, only the business specified in the company's notice of meeting may be brought before the meeting. Nominations of individuals for election to the company's board of directors may be made only (1) by or at the direction of the company's board of directors or (2) provided, that the meeting has been called in accordance with the company's bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record both at the time of giving the notice required by the company's bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice provisions set forth in the company's bylaws.

The purpose of requiring stockholders to give the company advance notice of nominations and other business is to afford the company's board of directors a meaningful opportunity to consider the qualifications of the proposed nominees and the advisability of any other proposed business and, to the extent deemed necessary or desirable by the company's board of directors, to inform stockholders and make recommendations about such qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although the company's bylaws do not give the company's board of directors any power to disapprove stockholder nominations for the election of directors or proposals recommending certain action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if proper procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal without regard to whether consideration of such nominees or proposals might be harmful or beneficial to the company and the company's stockholders.

### **Anti-Takeover Effect of Certain Provisions of Maryland Law and of the Company's Charter and Bylaws**

The company's charter and bylaws and Maryland law contain provisions that may delay, defer or prevent a change in control or other transaction that might involve a premium price for the company's shares of common stock or otherwise be in the best interests of the company's stockholders, including restrictions on ownership and transfer of the company's stock and advance notice requirements for director nominations and stockholder proposals. Likewise, if the provision in the bylaws opting out of the control share acquisition provisions of the MGCL were rescinded or if the company were to opt into the business combination provisions of the MGCL or the classified board or other provisions of Subtitle 8, these provisions of the MGCL could have similar anti-takeover effects.

### **Interested Director and Officer Transactions**

Pursuant to the MGCL, a contract or other transaction between the company and a director or between the company and any other corporation or other entity in which any of the company's directors is a director or has a material financial interest is not void or voidable solely on the grounds of such common directorship or interest, the presence of such director at the meeting at which the contract or transaction is authorized, approved or ratified or the counting of the director's vote in favor thereof, if:

the fact of the common directorship or interest is disclosed or known to the company's board of directors or a committee of the company's board, and the company's board or committee authorizes, approves or ratifies the contract or transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum;

the fact of the common directorship or interest is disclosed or known to the company's stockholders entitled to vote thereon, and the contract or transaction is authorized, approved or ratified by a majority of the votes cast by the stockholders entitled to vote other than the votes of shares owned of record or beneficially by the interested director or corporation or other entity; or

the contract or transaction is fair and reasonable to the company.



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Upon the closing of the IPO, the company intends to adopt a policy that requires all contracts and transactions between the company or any of the company's subsidiaries, on the one hand, and any of the company's directors or named executive officers or any entity in which such director or named executive officer is a director or has a material financial interest, on the other hand, to be approved by the affirmative vote of a majority of the disinterested directors, even if less than a quorum. Where appropriate in the judgment of the disinterested directors, the company's board of directors may obtain a fairness opinion or engage independent counsel to represent the interests of non-affiliated security holders, although the company's board of directors will have no obligation to do so.

### **Indemnification and Limitation of Directors and Officers Liability**

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty established by a final judgment as being material to the cause of action. The company's charter contains such a provision and eliminates the liability of the company's directors and officers to the maximum extent permitted by Maryland law.

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which the company's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The MGCL permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty;

the director or officer actually received an improper personal benefit in money, property or services; or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. Under the MGCL, a Maryland corporation may not indemnify a director or officer in a suit by or in the right of the corporation or in any proceeding charging improper personal benefit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by the corporation or in its right, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of:

a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and

a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

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The company's charter and bylaws obligate the company, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

any present or former director or officer who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity; or

any individual who, while a director or officer of the company and at the company's request, serves or has served another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner, member, manager or trustee of such corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity.

The company's charter and bylaws also permit the company, with the approval of the company's board of directors, to indemnify and advance expenses to members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the predecessor in their capacities as such.

Upon completion of the IPO, the company intends to enter into indemnification agreements with each of the company's directors, executive officers, chairman emeritus and certain other parties, providing for the indemnification by the company for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against (i) the company's directors, executive officers and chairman emeritus and (ii) the company's executive officers, chairman emeritus and certain other parties who are former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the predecessor in their capacities as such. Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling the company for liability arising under the Securities Act, the company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## **REIT Qualification**

The company's charter provides that the company's board of directors may revoke or otherwise terminate the company's REIT election, without approval of the company's stockholders, if it determines that it is no longer in the company's best interests to continue to qualify as a REIT.

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**DESCRIPTION OF OPERATING PARTNERSHIP UNITS AND THE PARTNERSHIP AGREEMENT OF THE OPERATING PARTNERSHIP**

*The following is a summary of the material terms of the operating partnership units and the material provisions of the operating partnership agreement, a copy of which is filed as an exhibit to the registration statement of which this prospectus/consent solicitation is a part. The following description does not purport to be complete and is subject to and qualified in its entirety by reference to applicable provisions of the Delaware Revised Uniform Limited Partnership Act, as amended, and the operating partnership agreement. See Where You Can Find More Information. For the purposes of this section, references to the general partner refer to Empire State Realty Trust, Inc.*

**General**

The operating partnership is a Delaware limited partnership that was formed on November 28, 2011. The company is the sole general partner of the operating partnership. Pursuant to the operating partnership agreement, the company has, subject to certain protective rights of limited partners described below, full, exclusive and complete responsibility and discretion in the management and control of the operating partnership, including the ability to cause the partnership to enter into certain major transactions including a merger of the operating partnership or a sale of substantially all of the assets of the operating partnership. The limited partners have no power to remove the general partner without the general partner's consent.

The company may not conduct any business without the consent of a majority of the limited partners other than in connection with the ownership, acquisition and disposition of partnership interests, the management of the business of the operating partnership, the company's operation as a reporting company with a class of securities registered under the Exchange Act, the offering, sale syndication, private placement or public offering of stock, bonds, securities or other interests, financing or refinancing of any type related to the operating partnership or its assets or activities and such activities as are incidental to those activities discussed above. In general, the company must contribute any assets or funds that the company acquires to the operating partnership in exchange for additional partnership interests. The company may, however, in the company's sole and absolute discretion, from time to time hold or acquire assets in the company's own name or otherwise other than through the operating partnership so long as the company takes commercially reasonable measures that the economic benefits and burdens of such property are otherwise vested in the operating partnership. The company and its affiliates may also engage in any transactions with the operating partnership on such terms as the company may determine in its sole and absolute discretion.

The company is under no obligation to give priority to the separate interests of the limited partners or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. If there is a conflict between the interests of the company's stockholders on the one hand and the limited partners on the other, the company will endeavor in good faith to resolve the conflict in a manner not adverse to either the company's stockholders or the limited partners. The company is not liable under the operating partnership agreement to the operating partnership or to any partner for monetary damages for losses sustained, liabilities incurred, or benefits not derived by limited partners in connection with such decisions, provided that the company has acted in good faith.

Upon completion of the consolidation and the IPO, substantially all of the company's business activities, including all activities pertaining to the acquisition and operation of properties, must be conducted through the operating partnership, and the operating partnership must be operated in a manner that will enable the company to satisfy the requirements for qualification as a REIT.

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### **Operating Partnership Units**

Interests in the operating partnership are denominated in units of limited partnership interest. Following the IPO and the consolidation, the operating partnership will have two classes of limited partnership interest – operating partnership units and LTIP units. The operating partnership units will have four series – Series PR operating partnership units, Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units. The Series ES operating partnership units will be issued to participants in Empire State Building Associates L.L.C., the Series 60 operating partnership units will be issued to participants in 60 East 42<sup>nd</sup> St. Associates L.L.C. and the Series 250 operating partnership units will be issued to participants in 250 West 57<sup>th</sup> St. Associates L.L.C., in each case except for the Wien group. The operating partnership intends to apply to have the Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units listed on the New York Stock Exchange under the symbols ESBA, OGCP, and FISK, respectively. The Series PR operating partnership units will be issued to the participants in the private entities and the Wien group and will not be listed on a national securities exchange. The company will only hold Series PR operating partnership units. Other than with respect to the transfer restrictions applicable to the Series PR operating partnership units as described below under Transferability of Operating Partnership Units; Extraordinary Transactions and that the Series PR operating partnership units will not be listed on a national securities exchange, each of the series of operating partnership units has identical rights as to distributions, liquidation and other rights as a limited partner in the operating partnership. The four series vote together as a single class on all matters on which the holders of operating partnership units have the right to approve, as described below. The separate series were created because there are unique U.S. federal income tax consequences to a participant that receives listed operating partnership units of a particular series (as compared to ownership of operating partnership units of another series) depending on the subject LLC in which they had an interest and the tax aspects of the property contributed by such entity. By issuing the operating partnership units in separate series, each of the operating partnership units in a series that will be trading on the New York Stock Exchange is expected to be uniform with other operating partnership units of that series with regard to distributions, liquidation and other rights as a limited partner in the operating partnership. The company may, without the consent of the limited partners, delist some or all of the operating partnership units from the national securities exchange on which such operating partnership units are admitted to trading.

### **Management Liability and Indemnification**

Neither the company nor the company's directors and officers are liable to the operating partnership, the limited partners or assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission, so long as such person acted in good faith. The operating partnership agreement provides for indemnification of the company, its affiliates and each of the company's respective officers, directors, employees and any persons the company may designate from time to time in its sole and absolute discretion, including present and former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the supervisor, to the fullest extent permitted by applicable law against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorneys' fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the operating partnership, provided that the operating partnership will not indemnify such person, for (i) willful misconduct or a knowing violation of the law, (ii) any transaction for which such person received an improper personal benefit in violation or breach of any provision of the operating partnership agreement, or (iii) in the case of a criminal proceeding, the person had reasonable cause to believe the act or omission was unlawful, as set forth in the operating partnership agreement (subject to the exceptions described below under Fiduciary Responsibilities ).

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### **Fiduciary Responsibilities**

The company's directors and officers have duties under applicable Maryland law to manage the company in a manner consistent with the company's best interests. At the same time, the general partner of the operating partnership has fiduciary duties to manage the operating partnership in a manner beneficial to the operating partnership and its partners. The company's duties, as the general partner, to the operating partnership and its limited partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict in the duties owed by the company's directors and officers to the company and its stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders.

The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively.

### **LTIP Units**

Upon completion of the IPO, the company may cause the operating partnership to issue LTIP units to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees. These LTIP units will be subject to certain vesting requirements. In general, LTIP units are a class of partnership units in the operating partnership and will receive the same quarterly per unit profit distributions as the other outstanding units in the operating partnership. The rights, privileges, and obligations related to each series of LTIP units will be established at the time the LTIP units are issued. As profits interests, LTIP units initially will not have full parity, on a per unit basis, with the operating partnership's common units with respect to liquidating distributions. Upon the occurrence of specified events, LTIP units can over time achieve full parity with operating partnership units and therefore accrete to an economic value for the holder equivalent to operating partnership units. If such parity is achieved, vested LTIP units may be converted on a one-for-one basis into Series PR operating partnership units, which in turn are exchangeable by the holder for cash or, at the company's election shares of the company's Class A common stock on a one-for-one basis, company's election. However, there are circumstances under which LTIP units will not achieve parity with operating partnership units, and until such parity is reached, the value that a participant could realize for a given number of LTIP units will be less than the value of an equal number of shares of the company's Class A common stock and may be zero.

### **Distributions**

The operating partnership agreement provides that the company may cause the operating partnership to make quarterly (or more frequent) distributions of all, or such portion as the company may in the company's sole and absolute discretion determine, of available cash (which is defined to be cash available for distribution as determined by the general partner) (i) first, with respect to any operating partnership units and LTIP units that are entitled to any preference in accordance with the rights of such operating partnership unit or LTIP unit (and, within such class, *pro rata* according to their respective percentage interests) and (ii) second, with respect to any operating partnership units and LTIP units that are not entitled to any preference in distribution, in accordance with the rights of such class of operating partnership unit or LTIP units (and, within such class, *pro rata* in accordance with their respective percentage interests).

### **Allocations of Net Income and Net Loss**

Net income and net loss of the operating partnership are determined and allocated with respect to each fiscal year of the operating partnership as of the end of the year. Except as otherwise provided in the operating

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partnership agreement, an allocation of a share of net income or net loss is treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing net income or net loss. Except as otherwise provided in the operating partnership agreement, net income and net loss are allocated to the holders of operating partnership units or LTIP units holding the same class or series of operating partnership units or LTIP units in accordance with their respective percentage interests in the class or series at the end of each fiscal year. In particular, upon the occurrence of certain specified events, the operating partnership will revalue its assets and any net increase in valuation will be allocated first to the holders of LTIP units to equalize the capital accounts of such holders with the capital accounts of operating partnership unit or LTIP units holders. See Management Equity Incentive Plan. The operating partnership agreement contains provisions for special allocations intended to comply with certain regulatory requirements, including the requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. Except as otherwise required by the operating partnership agreement or the Code and the Treasury Regulations, each operating partnership item of income, gain, loss and deduction is allocated among the limited partners of the operating partnership for U.S. federal income tax purposes in the same manner as its correlative item of book income, gain, loss or deduction is allocated pursuant to the operating partnership agreement. In addition, under Section 704(c) of the Code, items of income, gain, loss and deduction with respect to appreciated or depreciated property which is contributed to a partnership, such as the operating partnership, in a tax-free transaction must be specially allocated among the partners in such a manner so as to take into account such variation between tax basis and fair market value. The operating partnership will allocate tax items to the holders of operating partnership units or LTIP units taking into consideration the requirements of Section 704(c). See U.S. Federal Income Tax Considerations.

The company, as the general partner of the operating partnership, has sole discretion to ensure that allocations of income, gain, loss and deduction of the operating partnership are in accordance with the interests of the partners as determined under the Code and all matters concerning allocations of tax items not expressly provided for in the operating partnership agreement may be determined by the company in its sole discretion. In addition, the company, as general partner of the operating partnership, may adopt such conventions and methods of accounting for determining asset values, basis and identities of partners for proper administration of the operating partnership and to preserve the uniformity of each series of operating partnership units that will be traded on the New York Stock Exchange.

**Redemption Rights**

After 12 months of becoming a holder of operating partnership units (including any LTIP units that are converted into Series PR operating partnership units), each limited partner of the operating partnership will have the right, subject to the terms and conditions set forth in the operating partnership agreement, to require the operating partnership to redeem all or a portion of the operating partnership units held by such limited partner in exchange for a cash amount equal to the number of tendered operating partnership units multiplied by the price of a share of the company's Class A common stock (determined in accordance with, and subject to adjustment under, the terms of the operating partnership agreement), unless the terms of such operating partnership units or a separate agreement entered into between the operating partnership and the holder of such operating partnership units provide that they are not entitled to a right of redemption or provide for a shorter or longer period before such limited partner may exercise such right of redemption or impose conditions on the exercise of such right of redemption. On or before the close of business on the fifth business day after the company receives a notice of redemption, the company may, in the company's sole and absolute discretion, but subject to the restrictions on the ownership of the company's common stock imposed under the company's charter and the transfer restrictions and other limitations thereof, elect to acquire some or all of the tendered operating partnership units from the tendering partner in exchange for shares of the company's Class A common stock, based on an exchange ratio of one share of the company's Class A common stock for each operating partnership unit (subject to anti-dilution adjustments provided in the operating partnership agreement). It is the company's current intention to exercise this right in connection with any exchange of operating partnership units.

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### **Transferability of Operating Partnership Units; Extraordinary Transactions**

The company will not be able to withdraw voluntarily from the operating partnership or transfer the company's interest in the operating partnership, including the company's limited partner interest unless the transfer is made in connection with (i) any merger, consolidation or other combination in which, following the consummation of such transaction, the equity holders of the surviving entity are substantially identical to the company's stockholders, (ii) a transfer to a qualified REIT subsidiary or (iii) as otherwise expressly permitted under the operating partnership agreement. The operating partnership agreement permits the company to engage in a merger, consolidation or other combination, or sale of substantially all of the company's assets if:

the company receives the consent of a majority in interest of the limited partners (excluding the company);

following the consummation of such transaction, substantially all of the assets of the surviving entity consist of partnership units; or

as a result of such transaction all limited partners will receive, or will have the right to receive, for each partnership unit an amount of cash, securities or other property equal in value to the greatest amount of cash, securities or other property paid in the transaction to a holder of one share of the company's Class A common stock, provided that if, in connection with the transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of more than 50% of the outstanding shares of the company's common stock, each holder of partnership units shall be given the option to exchange its partnership units for the greatest amount of cash, securities or other property that a limited partner would have received had it exercised its redemption right (described above) and received shares of the company's Class A common stock immediately prior to the expiration of the offer.

With certain limited exceptions, the limited partners who own Series PR operating partnership units or LTIP units may not transfer their interests in the operating partnership, in whole or in part, without the company's prior written consent, which consent may be withheld in the company's sole and absolute discretion. Except with the company's consent to the admission of the transferee as a limited partner with respect to Series PR operating partnership units or LTIP units, no transferee of such units shall have any rights by virtue of the transfer other than the rights of an assignee, and will not be entitled to vote or effect a redemption with respect to such partnership units in any matter presented to the limited partners for a vote. The company, as general partner, will have the right to consent to the admission of a transferee of the interest of a limited partner with respect to Series PR operating partnership units or LTIP units, which consent may be given or withheld by the company in the company's sole and absolute discretion. To the extent they remain listed on a national securities exchange, Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units generally will be freely transferable, and any transferee of such units will be admitted to the partnership with respect to such units. Notwithstanding the foregoing, transfers of operating partnership units and admission of transferees to the partnership are subject to certain limitations described in the partnership agreement.

### **Issuance of Common Stock and Additional Partnership Interests**

Pursuant to the operating partnership agreement, upon the issuance of the company's stock other than in connection with a exchange of operating partnership units, the company will generally be obligated to contribute or cause to be contributed the cash proceeds or other consideration received from the issuance to the operating partnership in exchange for, in the case of common stock, operating partnership units or, in the case of an issuance of preferred stock, preferred operating partnership units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of the preferred stock. In addition, the company may cause the operating partnership to issue additional operating partnership units or other partnership interests and to admit additional limited partners to the operating partnership from time to time, on such terms and conditions and for such capital contributions as the company may establish in the company's sole and absolute discretion, without the approval or consent of any

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limited partner, including: (i) upon the conversion, redemption or exchange of any debt, units or other partnership interests or other securities issued by the operating partnership; (ii) for less than fair market value; or (iii) in connection with any merger of any other entity into the operating partnership.

### **Tax Matters**

Pursuant to the operating partnership agreement, the general partner is the tax matters partner of the operating partnership and has certain other rights relating to tax matters. Accordingly, as both the general partner and tax matters partner, the company has authority to handle tax audits and to make tax elections under the Code, in each case, on behalf of the operating partnership.

### **Term**

The term of the operating partnership commenced on November 28, 2011 and will continue perpetually, unless earlier terminated in the following circumstances:

a final and non-appealable judgment is entered by a court of competent jurisdiction ruling that the general partner is bankrupt or insolvent, or a final and non-appealable order for relief is entered by a court with appropriate jurisdiction against the general partner, in each case under any federal or state bankruptcy or insolvency laws as now or hereafter in effect, unless, prior to the entry of such order or judgment, a majority in interest of the remaining outside limited partners agree in writing, in their sole and absolute discretion, to continue the business of the operating partnership and to the appointment, effective as of a date prior to the date of such order or judgment, of a successor general partner;

an election to dissolve the operating partnership made by the general partner in its sole and absolute discretion, with or without the consent of a majority in interest of the outside limited partners;

entry of a decree of judicial dissolution of the operating partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act;

the occurrence of any sale or other disposition of all or substantially all of the assets of the operating partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the operating partnership;

the redemption (or acquisition by the general partner) of all operating partnership units that the general partner has authorized other than those held by the company; or

the incapacity or withdrawal of the general partner, unless all of the remaining partners in their sole and absolute discretion agree in writing to continue the business of the operating partnership and to the appointment, effective as of a date prior to the date of such incapacity, of a substitute general partner.

### **Amendments to the Operating Partnership Agreement**

Amendments to the operating partnership agreement may only be proposed by the general partner. Generally, the operating partnership agreement may be amended with the general partner's approval and the approval of the limited partners holding a majority of all outstanding limited partner units (excluding limited partner units held by the company or its subsidiaries). Certain amendments that would, among other things, have the following effects, must be approved by each partner adversely affected thereby:



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convert a limited partner's interest into a general partner's interest (except as a result of the general partner acquiring such interest);

modify the limited liability of a limited partner;

alter the rights of any partner to receive the distributions to which such partner is entitled (subject to certain exceptions);

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alter or modify the redemption rights provided by the operating partnership agreement; or

alter or modify the provisions governing transfer of the general partner's partnership interest.

Notwithstanding the foregoing, the company will have the power, without the consent of the limited partners, to amend the operating partnership agreement as may be required to:

add to the company's obligations or surrender any right or power granted to the company or any of its affiliates for the benefit of the limited partners;

reflect the admission, substitution, or withdrawal of partners or the termination of the operating partnership in accordance with the operating partnership agreement and to cause the operating partnership or the operating partnership's transfer agent to amend its books and records to reflect the operating partnership unit and LTIP unit holders in connection with such admission, substitution or withdrawal;

reflect a change that is of an inconsequential nature or does not adversely affect the limited partners as such in any material respect, or to cure any ambiguity, correct or supplement any provision in the operating partnership agreement not inconsistent with the law or with other provisions, or make other changes with respect to matters arising under the operating partnership agreement that will not be inconsistent with the law or with the provisions of the operating partnership agreement;

satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a U.S. federal or state agency or contained in U.S. federal or state law;

set forth or amend the designations, preferences, conversion or other rights, voting powers, duties restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of the holders of any additional partnership units issued or established pursuant to the operating partnership agreement;

reflect such changes as are reasonably necessary for the company to maintain or restore the company's qualification as a REIT, to satisfy the REIT requirements or to reflect the transfer of all or any part of a partnership interest among the company and any qualified REIT subsidiary or entity that is disregarded as an entity separate from the general partner for U.S. federal income tax purposes;

modify either or both the manner in which items of net income or net loss are allocated or the manner in which capital accounts are computed (but only to the extent set forth in the operating partnership agreement, or to the extent required by the Code or applicable income tax regulations under the Code);

to facilitate the trading of the Series ES operating partnership units, Series 60 operating partnership units or Series 250 operating partnership units (including any division of such classes or other actions to facilitate the uniformity of tax consequences within each such operating partnership units listed on a national securities exchange);

comply with any rules, regulation, guideline or requirement of any national securities exchange on which the Series ES operating partnership units, Series 60 operating partnership units or Series 250 operating partnership units are or will be listed;

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issue additional partnership interests;

reflect the admission, substitution, termination or withdrawal of the general partner and limited partners or an increase or decrease in either the general partner's or limited partner's DRO Amount (as defined in the operating partnership agreement) in accordance with the operating partnership agreement;

impose restrictions on the transfer of operating partnership units if the general partner of the operating partnership receives an opinion of counsel reasonably to the effect that such restrictions are necessary in order to comply with any federal or state securities laws or regulations applicable to the operating partnership or the operating partnership units; and

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reflect any other modification to the operating partnership agreement as is reasonably necessary for the business or operations of the operating partnership or the general partner of the operating partnership and which does not otherwise require the consent of each partner adversely affected.

Certain provisions affecting the company's rights and duties as general partner, either directly or indirectly (*e.g.*, restrictions relating to certain extraordinary transactions involving the company or the operating partnership) may not be amended without the approval of a majority of the limited partnership units (excluding limited partnership units held by the company).

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**BUSINESS OF THE SUBJECT LLCs**

The following discussion describes the current business of the subject LLCs and the terms upon which the properties in which the subject LLCs own an interest are leased.

**General**

The three subject LLCs are publicly-registered limited liability companies originally formed as partnerships by Lawrence A. Wien and Peter L. Malkin, affiliates of the supervisor, from 1953 to 1961. Each of these subject LLCs was formed to acquire the fee title or long-term ground lease interest in an office property located in New York, New York and to lease the property to an operating lessee, which operates the property. As lessor, each subject LLC receives from its operating lessee fixed base rent (and, in the case of 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C., primary additional rent) and overage rent (based on a percentage of the operating lessee's profits). Each operating lessee was formed initially as a partnership, the partners of which included Lawrence A. Wien and Harry B. Helmsley, and later converted to a limited liability company. The supervisor provides supervisory and other services for each subject LLC, each operating lessee and the other private entities. The private entities, including the operating lessees, were formed between 1953 and 2008 and own office properties, in one case with adjacent vacant land including development approvals, and retail properties.

In 1953, 250 West 57th St. Associates L.L.C. acquired fee title to 250 West 57th Street and the land thereunder, located at 250 West 57th Street, New York, New York. In 1958, 60 East 42nd St. Associates L.L.C. acquired fee title to One Grand Central Place and the land thereunder, located at One Grand Central Place, New York, New York. In 2002, Empire State Building Associates L.L.C. acquired the fee title to the Empire State Building and the land thereunder, located at 350 Fifth Avenue, New York, New York. The subject LLCs raised capital of \$43.6 million in three public offerings registered with the SEC, and as of September 30, 2012, had 4,375 participants.

**Investment Policies**

Each subject LLC was organized to acquire a single property or long-term ground lease which was to be net leased to an operating lessee formed for the purposes of operating the property. While each subject LLC generally holds its interest in its property for a long-term investment, a subject LLC may dispose of its interest in the property if the supervisor, with consent of the participants, deems such disposition to be in its best interests. The supervisor does not believe that a transfer of the subject LLC's property interest in an individual sale would be in the best interest of the subject LLC, because it believes a buyer would discount substantially the value of the subject LLC's interest if sold without the operating lessee in view of these factors:

- (a) The subject LLC has no say in property operations, improvements, leasing, repairs, maintenance or the other decisions which govern operation of real estate;
- (b) The operating lessee controls the application of property cash flow and thus the amount of overage rent payable each year to such buyer;
- (c) A subject LLC cannot decide whether to take steps to maximize the value of the property or to undertake improvements or repairs and maintenance;
- (d) A subject LLC also cannot determine to obtain additional financing to maximize cash flows and therefore distributions unless the operating lessee also agrees to the financing, because, in view of the operating lessee's rights under the operating lease, lenders generally require in connection with any significant financing that the operating lessee subordinate its interest to the financing; and
- (e) The operating lease remains in effect in each case for a term, including agreed renewals, which currently ranges from 74 to 91 years, and the operating lease is likely to be required to be extended in order to obtain the operating lessee's necessary cooperation for property improvements and financing as noted above.



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Accordingly, the supervisor does not believe that original investors in the subject LLCs contemplated that the subject LLCs would sell the property without an agreement of the operating lessee to join in the sale.

There is no precedent for the supervisor submitting for consent for a sale of a two-tier ownership structure unless the sale included both the lessor and the operating lessee. The supervisor believes that in view of fact that the subject LLCs own the interest in the property, but the operating lessees operate the properties, it would not be in the best interests of the subject LLCs to sell their interests in the properties separate from a sale by the operating lessees. In each case, unless the supervisor determined the proceeds should be reinvested, the proceeds would be distributed between the subject LLC and the operating lessee in accordance with their agreement at the time of such sale. Any proceeds from such disposition that were not reinvestment would be distributed to the participants in the subject LLC according to the terms of the operating agreements governing the subject LLC. Each subject LLC generally intended to hold its interest in its property for an indefinite period.

## **Description of Properties**

### ***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 33rd Street to 34th Street on Fifth Avenue, anchoring the east side of the 34th 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 supervisor's effort to increase the quality of its tenants, since 2007 the supervisors 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 86th and 102nd 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, Empire State Building Associates L.L.C. 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 86th floor observatory has a 360-degree outdoor deck as well as indoor viewing galleries to accommodate

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guests day and night, all year-round. The 102nd 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 Empire State Building Associates L.L.C.'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 Empire State Building Associates L.L.C.'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 80th 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 86th floor observatory, which offers indoor and outdoor viewing areas. From the 86th floor, guests who have purchased an additional ticket may take an elevator to the fully enclosed 102nd floor observatory. Visitors then return first to the 86th floor and then to the 80th floor where they must exit through Empire: The Store, the official Empire State Building souvenir shop operated by Empire State Building Associates L.L.C.'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 Empire State Building Associates L.L.C.'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. Empire State Building Associates L.L.C. 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.

Empire State Building Associates L.L.C.'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, Empire State Building Associates L.L.C.'s broadcasting licenses and related leased space generated approximately \$15.9 million and \$20.6 million, respectively. Various entities transmit from Empire State Building Associates L.L.C.'s building setbacks and surfaces and Empire State Building Associates L.L.C.'s broadcasting mast which rises 230 feet from the ceiling deck of the 103rd 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 Empire State Building Associates L.L.C.'s broadcasting facilities and served the greater New York metropolitan designated market area, which



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includes New York, New Jersey and Connecticut. As of September 30, 2012, Empire State Building Associates L.L.C. leased approximately 85,812 square feet to broadcasting tenants in the aggregate. Tenants that utilize Empire State Building Associates L.L.C.'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. Empire State Building Associates L.L.C.'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 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

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include tenant improvement and leasing commission costs) and are subject to change. Empire State Building Associates L.L.C.'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, Empire State Building Associates L.L.C.'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 Empire State Building Associates L.L.C. has completed, those that are currently in process, and those that Empire State Building Associates L.L.C. expects to complete in the future:

	Completed	In Process	To Be Completed
Lobby restoration and upgrade	x		
Renovate 2nd floor observatory ticketing area	x		
Renovate 86th 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 Empire State Building Associates L.L.C.'s broadcasting and observatory operations. Empire State Building Associates L.L.C.'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 Empire State Building Associates L.L.C.'s results of operations by reducing the demand for broadcast licenses.

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*Empire State Building Primary Tenants*

The following table summarizes information regarding the primary tenants of the Empire State Building 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 Base Rent	Annualized Base Rent Per Square Foot
				1 x 7 years					
LF USA <sup>(3)</sup>	Fashion	Oct. 2028		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 Manhattan Professional Group	Engineering Tax professionals	Mar. 2024		1 x 5 years	25,057	0.9%	\$ 1,219,550	1.4%	\$ 48.67
Bank of America	Bank	Aug. 2026			25,611	0.9%	\$ 1,180,264	1.4%	\$ 46.08
Taylor Global	Public relations	Apr. 2015		1 x 5 years	14,234	0.5%	\$ 1,152,577	1.3%	\$ 80.97
		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 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.

**Table of Contents***Empire State Building Lease Expirations*

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.

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 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.

**Table of Contents***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:

<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	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

- (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 supervisor's effort to increase the credit quality of its tenants, the supervisor 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 supervisor, the Empire State Building is adequately covered by insurance.

*Empire State Building Operating Lease*

Empire State Building Company L.L.C. operates the property pursuant to a sublease with Empire State Building Associates L.L.C. The sublease included an initial term which expired on January 4, 1992 with renewal options to January 4, 2076, which renewals have been exercised by Empire State Building Company L.L.C. As the operating lessee, Empire State Building Company L.L.C. is required to pay Empire State Building Associates L.L.C. a fixed annual basic rent in the amount of \$6,018,750 through January 4, 2013, and after such date, \$5,895,625 through the expiration of all renewal terms. Under the sublease, Empire State Building Company L.L.C. also pays an additional rent of 50% of its net operating profit (as defined in the sublease) in excess of \$1,000,000 for each lease year. Empire State Building Company L.L.C. is additionally required to pay for all operating and maintenance expenses, real estate taxes, and necessary repairs and replacements, and keep the property adequately insured against fire and accident. Pursuant to a modification to the sublease, the basic rent was increased to cover debt service relating to the secured term loan, up to the maximum principal amount as to which the operating lessee has consented. The supervisor provides supervisory and other services for Empire State Building Company L.L.C. and Empire State Building Associates L.L.C.

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

60 East 42nd 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

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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. 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 an effort to increase the quality of tenants, the supervisor 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 supervisor 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; and 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 42nd 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 supervisor expects to complete the renovation program by 2013. The 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 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 that have been completed, those that are currently in process, and those that the supervisor expects to complete in the future:

	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

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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	1/15/2015 <sup>(3)</sup>	1 x 5 years	17,825	1.4%	\$ 937,376	1.9%	\$ 52.59
Special Funds Conservation	Defends special disability fund & workers comp cases	Apr. 2021		1 x 5 years	17,614	1.4%	\$ 704,560	1.5%	\$ 40.00
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.

**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:

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	79.9%	\$ 48.38	\$ 47.67
December 31, 2011	79.6%	\$ 47.58	\$ 47.36



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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

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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 an effort to increase the credit quality of tenants, the supervisor 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 supervisor, One Grand Central Place is adequately covered by insurance.

*One Grand Central Place Operating Lease*

Lincoln Building Associates L.L.C. leases the property from 60 East 42nd St. Associates L.L.C. pursuant to an operating lease currently set to expire on September 30, 2033, and pursuant to such lease, Lincoln Building Associates L.L.C. operates the property. In connection with the renovation program at One Grand Central Place, in 1999, 60 East 42<sup>nd</sup> St. Associates L.L.C. authorized the agents to grant to Lincoln Building Associates L.L.C., upon completion of the renovation program, the right to further extensions of the operating lease to 2083. In connection with the approval of an increase in the estimated cost of the renovation program in 2004, the lease is expected to be extended beyond 2083, based on the net present benefit to 60 East 42<sup>nd</sup> St. Associates L.L.C. of the improvements made. The granting of such operating lease extension rights upon completion of the renovation program is expected to trigger a New York State transfer tax under current tax rules, which will be paid from mortgage proceeds and/or Lincoln Building Associates L.L.C. s operating cash flow. As lessee, Lincoln Building Associates L.L.C. pays to 60 East 42nd St. Associates L.L.C. annual basic rent equal to the sum of \$24,000 plus the constant annual mortgage charges on all mortgages, and annual additional rent, or additional rent, equal to the lesser of Lincoln Building Associates L.L.C. s net operating income (as defined in the operating lease) for the lease year or \$1,053,800. Under the operating lease, Lincoln Building Associates L.L.C. pays further additional rent equal to 50% of any remaining balance of its net operating income. The operating lease also requires an advance against additional rent equal to an annual basis, the lesser of (x) Lincoln Building associates L.L.C. s net operating increase for the preceding lease year or (y) \$1,053,800. The supervisor provides supervisory and other services for Lincoln Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C.

*250 West 57th Street, New York, New York*

250 West 57th St. Associates L.L.C. acquired fee title to 250 West 57th 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 57th 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 57th 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 an effort to increase the quality of tenants, the supervisor has embarked on a renovation and

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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 supervisor 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; N.S. Bienstock, Inc., a leading talent agency.

Since the supervisor gained full control of the day-to-day management of 250 West 57th Street in November 2002, 250 West 57th 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 supervisor expects to complete the renovation program by 2013. The 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 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 that have been completed, those that are currently in process, and those that the supervisor expects to complete in the future:

	Completed	In Process	To Be Completed
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
<i>250 West 57th Street Primary Tenants</i>			

No tenant occupies 10% or more of the aggregate rentable square footage in 250 West 57th Street.

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*250 West 57th Street Lease Expirations*

The following table sets forth the lease expirations for leases in place at 250 West 57th Street 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.

Year of Lease Expiration	Number of Leases Expiring	Square Footage of Leases Expiring	Percent of Property Square Feet	Annualized Base Rent <sup>(1)</sup>	Percent of Property Annualized Base Rent	Annualized Base Rent Per Leased Square Foot
Available		58,955	11.1%			
Signed leases not commenced	1	7,949	1.5%			
Month-to-month leases (June 1, 2012 to December 31, 2012)	1	257	0.0%	22,200	0.1%	\$ 86.38
2012	2	3,978	0.8%	148,482	0.7%	\$ 37.33
2013	37	66,523	12.6%	3,077,766	14.4%	\$ 46.27
2014	40	75,983	14.4%	2,929,940	13.7%	\$ 38.56
2015	45	79,866	15.1%	3,180,747	14.9%	\$ 39.83
2016	18	51,150	9.7%	1,813,018	8.5%	\$ 35.45
2017	8	17,082	3.2%	760,486	3.6%	\$ 44.52
2018	9	53,881	10.2%	2,527,743	11.8%	\$ 46.91
2019	6	31,530	6.0%	1,309,898	6.1%	\$ 41.54
2020	2	37,194	7.0%	2,144,704	10.1%	\$ 57.66
2021	1	7,834	1.5%	1,650,000	7.7%	\$ 210.62
2022	3	36,639	6.9%	1,795,654	8.4%	\$ 49.01
Thereafter	0	0	0.0%	0	0.0%	\$ 0
<b>Total/Weighted Average</b>	<b>173</b>	<b>528,821</b>	<b>100.0%</b>	<b>21,360,639</b>	<b>100.0%</b>	<b>\$ 46.24</b>

(1) 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 \$38,323. Total annualized base rent, net of abatements and free rent is \$21,322,316.

*250 West 57th Street Percent Leased 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 West 57th Street 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	87.3%	\$ 46.24	\$ 45.02
December 31, 2011	85.1%	\$ 44.98	\$ 44.10
December 31, 2010	82.3%	\$ 43.64	\$ 42.39
December 31, 2009	82.8%	\$ 45.39	\$ 43.16
December 31, 2008	88.4%	\$ 38.09	\$ 35.23
December 31, 2007	81.5%	\$ 41.94	\$ 43.25

(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)

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As part of an effort to increase the quality of tenants, the supervisor has been aggregating smaller office spaces to allow for re-leasing of larger blocks of space to higher credit-quality tenants for longer lease terms at higher rents.

- (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.

250 West 57th Street 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 250 West 57th Street is \$101.52 per \$1,000 of assessed value. Real estate taxes for the years ended December 31, 2011 and December 31, 2010 were \$4,156,415 and \$3,945,185, respectively. In the opinion of the supervisor, 250 West 57th Street is adequately covered by insurance.

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*250 West 57th Street Operating Lease*

Fisk Building Associates L.L.C. leases the property from 250 West 57th St. Associates L.L.C. pursuant to an operating lease, as modified, which is currently set to expire on September 30, 2028, with an additional renewal option to September 30, 2053, which option Fisk Building Associates L.L.C. has exercised. Fisk Building Associates L.L.C. has also been granted options to extend the operating lease for two additional 25-year renewal terms expiring in 2103. The lease provides for an annual basic rent payable by Fisk Building Associates L.L.C. to 250 West 57th St. Associates L.L.C. equal to the sum of the constant annual to mortgage charges on all mortgages, plus \$28,000. The lease also provides for payments of primary overage rent equal Fisk Building Associates L.L.C.'s net operating profit (as defined in the lease) in each lease year up to a maximum of \$752,000, and secondary overage rent subsequent to September 30 of the amount equal to 50% of the excess of the net operating profit in excess of \$752,000, less a certain amount representing interest on certain borrowed funds. The supervisor provides supervisory and other services for Fisk Building Associates L.L.C. and 250 West 57th St. Associates L.L.C.

**Financing**

The organizational documents of each subject LLC contain restrictions on the subject LLCs' authority to borrow. Participants holding 100% of the outstanding participation interests in Empire State Building Associates L.L.C. and 60 East 42nd St. Associates L.L.C. must approve a financing and the participants holding greater than 75% of the outstanding participation interests in at least eight out of the ten participating groups of 250 West 57th St. Associates L.L.C. must approve a financing. If holders of 80% of the participation interests in any of the three participating groups in Empire State Building Associates L.L.C. or holders of 90% of the participation interests in any of the seven participating groups in 60 East 42nd St. Associates L.L.C. approve a financing, the agent of each participating group will be entitled to purchase the participation interests of any participants that voted against a financing. If the agent purchases these participation interests, the requirement for consent of participants holding 100% of the participation interests will be satisfied. In addition, if the operating lessees' interest in the property will be securing the loan or will be subordinated to the loan, the operating lessee may be required to approve any financing which will require consent of its participants. As of September 30, 2012, the subject LLCs had a ratio of total indebtedness to total assets ranging from 8.66% to 12.74%.

On July 26, 2011, Empire State Building Associates L.L.C. entered into a three-year term loan or the secured term loan, with institutional lenders, including HSBC Bank USA, National Association as agent and HSBC Bank USA, National Association and DekaBank Deutsche Girozentrale as lead arrangers. The secured term loan is secured by a mortgage on the Empire State Building. The secured term loan was amended by the First Amendment to Loan Agreement, Ratification of Loan Documents and Omnibus Amendment dated as of November 2, 2011 to provide for additional commitments from Capital One, National Association and Bank of America, N.A. so that, collectively, the loan was increased to \$300.0 million. No additional funds were drawn at the time of the modification.

The lenders provided Empire State Building Associates L.L.C. with an advance of \$159.0 million (of which \$92.0 million refinanced existing indebtedness), and subject to the conditions set forth in the secured term loan (as amended), agreed to provide Empire State Building Associates L.L.C. with additional advances of up to \$141.0 million, of which \$60.0 million was subsequently advanced. The loan agreement was amended on October 11, 2012 to increase the aggregate commitments to \$500.0 million. A condition to the lenders' obligation to loan the additional amounts is that the loan-to-value (as defined) based on an updated appraisal does not exceed 50%. Any further advances under the secured term loan are subject to the consent of Empire State Building Company L.L.C.

Pursuant to the terms of the secured term loan agreement, Empire State Building Associates L.L.C. and Empire State Building Company L.L.C. entered into an amendment dated July 26, 2011 to the sublease ( Third Modification of Sublease ) pursuant to which (i) Empire State Building Company L.L.C. consented to the advance of up to \$159.0 million under the secured term loan and (ii) in accordance with the terms of the existing sublease agreement, which terminates on January 4, 2076, between Empire State Building Company L.L.C. and

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Empire State Building Associates L.L.C., the basic rent payable by Empire State Building Company L.L.C. was increased by an amount equal to the debt service on the portion of the borrowing from the secured term loan associated with improvements (excluding any principal payable upon maturity). The original basic rent payable by Empire State Building Company L.L.C. is more than sufficient to pay the debt service on the portion of the borrowing associated with purchasing the fee position in 2002. Empire State Building Company L.L.C. and ESB Observatory LLC, a subsidiary of Empire State Building Company L.L.C., also entered into subordination agreements with the agent on behalf of the lenders pursuant to which the sublease and the lease of the observatory were subordinated to the mortgage securing the secured term loan. As a result, the sublease and the observatory lease can be terminated in connection with a foreclosure by secured term loan lenders.

Subject to the terms and conditions of the secured term loan agreement, the outstanding principal amount of the secured term loan shall bear interest at a rate equal to 2.5% per annum above 30-day LIBOR, unless such rate is not available, in which event the secured term loan would bear interest at 2.5% per annum in excess of (i) HSBC's prime rate or (ii) the BBA LIBOR Daily Floating Rate. In connection with this loan, Empire State Building Associates L.L.C. issued promissory notes, a mortgage encumbering the Empire State Building in favor of the agent for the lenders, and other customary security and other loan documents. The maturity date of this loan is July 26, 2014, which Empire State Building Associates L.L.C. may extend to July 26, 2015 and thereafter to July 26, 2016, in each case upon payment of an extension fee of 0.25% of the total availability under the secured term loan agreement at the time of such extension. Such extensions are subject to customary conditions, including the satisfaction of certain loan-to-value and debt yield ratios and the absence of an event of default.

The initial advance was used to pay and discharge then existing secured mortgage loans relating to the Empire State Building and to fund operations and working capital requirements related to the Empire State Building (including for improvements), including reimbursements to Empire State Building Company L.L.C. for expenditures relating to improvements previously incurred by Empire State Building Company L.L.C., and certain other general entity purposes permitted in the secured term loan including costs of the financing. On each of April 6, 2012 and July 9, 2012, an additional \$30.0 million was drawn on this loan.

Payment obligations relating to the secured term loan may be accelerated upon the occurrence of an event of default under the secured term loan agreement. Events of default under the secured term loan agreement include, subject in some cases to specified cure periods: payment defaults; failure by Empire State Building Associates L.L.C. to pay taxes; failure to keep certain insurance policies in effect; breaches of representations and covenants contained in the mortgage; defaults in the observance or performance of covenants; inaccuracy of representations and warranties in any material respect; bankruptcy and insolvency related defaults; and the entry of one or more final judgments for the payment of more than \$1.0 million that are not satisfied within 30 days.

The secured term loan agreement contains affirmative and negative covenants customary for financings of this type. Negative covenants in the secured term loan agreement limit Empire State Building Associates L.L.C.'s ability, subject to certain exceptions, to transfer all or substantially all of its property; incur indebtedness and liens; dissolve, liquidate or enter into mergers or similar transactions; change its line of business; cancel debt; enter into transactions with affiliates; rezone its property; sell its assets; make certain distributions to investors; and change its organizational documents. Empire State Building Associates L.L.C. must also maintain a debt yield as specified in the secured term loan agreement.

Empire State Building Associates L.L.C. as both the fee owner and the ground lessor of the Empire State Building are mortgagors and their respective estates are therefore mortgaged. Empire State Building Company L.L.C. and the observatory tenant agreed to subordinate their respective leasehold interest to the mortgage. Accordingly, in the event of a foreclosure, their leasehold estates could be terminated.

## **Competition**

The competitive environment in which the subject LLCs operate is substantially similar to that of the company. See The Company Business and Properties.

**Table of Contents****MANAGEMENT****The Company's Directors, Director Nominees and Senior Management Team**

Currently, the company has one director, Anthony E. Malkin. Upon completion of the consolidation and the IPO, the company's board of directors will consist of seven members, including the independent director nominees named below who will become directors upon completion of the IPO. Each of the company's directors is elected by the company's stockholders to serve until the next annual meeting of the company's stockholders and until his or her successor is duly elected and qualifies. Of the seven directors, the company expects that the company's board of directors will determine that each of them other than Anthony E. Malkin will be considered independent in accordance with the requirements of the NYSE. The first annual meeting of the company's stockholders after the IPO will be held in 2013. The company's charter and bylaws provide that a majority of the entire board of directors may at any time increase or decrease the number of directors. However, unless the company's charter and bylaws are amended, the number of directors may never be less than the minimum number required by the MGCL nor more than 15. The company's Chairman Emeritus may attend meetings but will not have voting status. Subject to rights pursuant to any employment agreements, officers serve at the pleasure of the company's board of directors.

The following table sets forth certain information concerning the individuals who will be the company's executive officers, directors, director nominees and certain other senior officers upon the completion of the IPO:

Name	Age	Position
Anthony E. Malkin**	50	Chairman of the company's Board of Directors, Chief Executive Officer and President
Peter L. Malkin	78	Chairman Emeritus
William H. Berkman	47	Director Nominee*
Alice M. Connell	66	Director Nominee*
Thomas J. DeRosa	54	Director Nominee*
Steven J. Gilbert	65	Director Nominee*
S. Michael Giliberto	62	Director Nominee*
Lawrence E. Golub	53	Director Nominee*
David A. Karp**	53	Executive Vice President, Chief Financial Officer and Treasurer
Thomas P. Durels**	51	Executive Vice President and Chief of Property Operations and Leasing
Thomas N. Keltner, Jr.**	66	Executive Vice President, General Counsel and Secretary

\* The company expects the company's board of directors to determine that this director is independent for purposes of the NYSE corporate governance listing standards.

\*\* Denotes the company's expected named executive officers.

The following sets forth biographical information concerning the individuals who will be the company's executive officers, directors, director nominees and certain other senior officers upon the completion of the IPO.

*Anthony E. Malkin* is the company's Chairman, Chief Executive Officer and President. Anthony E. Malkin joined his father and the company's Chairman Emeritus, Peter L. Malkin, as a principal of the supervisor in 1989 and may be deemed to be the company's promoter. As Chief Executive Officer and President, Anthony E. Malkin oversees all acquisitions, capital markets activities, leasing and corporate strategy. Prior to joining the supervisor, Anthony E. Malkin worked for Chemical Venture Partners, L.P. (now CCMP Capital Advisors, LLC), a then-recently formed venture capital and leveraged buyout affiliate of Chemical Financial Corporation and then briefly on his own to consult with and purchase small businesses. Anthony E. Malkin is a member of the Urban Land Institute, the Real Estate Roundtable, the Board of Governors of the Real Estate Board of New York, the Committee Encouraging Corporate Philanthropy, the Advisory Council of the National Resource Defense Council's Center for Market Innovation and the Advisory Council of the Harvard Stem Cell Institute. Anthony E. Malkin is also member of the board of directors of Greenwood Resources, Inc., a sustainable forestry



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management company and a member of the advisory board of MissionPoint Capital Partners, a private investment firm focused on companies in the clean energy, energy efficiency and environmental finance sectors. Anthony E. Malkin guest lectures on real estate and family businesses at the McIntire School of Commerce at the University of Virginia. Anthony E. Malkin received a bachelor's degree cum laude, General Studies, from Harvard College. Anthony E. Malkin was selected to serve as the Chairman of the company's Board of Directors based on his real estate experience, his network of industry relationships and his comprehensive knowledge of the company's business as the president of the supervisor.

*Peter L. Malkin* is the company's Chairman Emeritus. Peter L. Malkin joined his father-in-law and the company's co-founder, Lawrence A. Wien, as a principal of the supervisor in 1958, and was responsible for the syndication of property acquisition transactions completed by the supervisor. Peter L. Malkin is the founding chairman and currently a director of the Grand Central Partnership, a director of The 34th Street Partnership and a director of The Fashion Center Business Improvement District, each of which is a not-for-profit organization that provides supplemental public safety, sanitation and capital improvement services to a designated area in midtown Manhattan. Peter L. Malkin is also a member of the Executive Committee of the Board of Directors of Lincoln Center for the Performing Arts, (the longest serving board member of that institution), Chairman of the Dean's Council of the John F. Kennedy School of Government at Harvard University, Co-Chair Emeritus of The Real Estate Council of the Metropolitan Museum of New York, founder and Honorary Co-Chair of the Committee Encouraging Corporate Philanthropy, a Director Emeritus of U.S. Trust Corporation, a member of the Advisory Committee of the Greenwich Japanese School, a partner in the New York City Partnership and Chamber of Commerce and a director of the Realty Foundation of New York. Peter L. Malkin received a bachelor's degree summa cum laude, Phi Beta Kappa, from Harvard College and a law degree magna cum laude from Harvard Law School.

*William H. Berkman* will serve as a member of the company's Board of Directors upon completion of the IPO. Mr. Berkman is currently the Managing Partner of Associated Partners, L.P. and Liberty Associated Partners, L.P., both of which are private investment funds which focus on communications infrastructure including towers for wireless services, and has served in these capacities since 2007 and 2001, respectively. Mr. Berkman also serves on the Board of Directors of Associated Partners GP Limited, the general partner of Associated Partners, L.P. He also served as the Chairman of the Board of Directors of CURRENT Group, LLC, a commercial fully-integrated broadband over power line (BPL) communications solutions provider, until 2011. Mr. Berkman held various executive positions at Associated Group, Inc., a public company that owned and operated various communications businesses, from 1994 to 2000, until it was sold to Liberty Media Corporation. Formerly, Mr. Berkman was the co-founder of Teligent, Inc., a wireless broadband company, of which he was a Director until 2000. Mr. Berkman also co-founded Mobilcom, S.A. de C.V., a Mexican wireless operator subsequently sold to Nextel. Mr. Berkman has served on a variety of public company boards, including the Board of Directors of IAC/InterActive Corp. (NASDAQ: IACI), an internet company, for which he served as a director from 2006 until 2008. In addition, Mr. Berkman holds patents for a variety of communications systems and components. Mr. Berkman received a bachelor's degree from Harvard College. Mr. Berkman was selected to serve as a member of the company's Board of Directors because of his experience as an investor and operator and as a director of publicly traded companies.

*Alice M. Connell* will serve as a member of the company's Board of Directors upon completion of the IPO. Ms. Connell is currently Managing Principal for Bay Hollow Associates, LLC, a commercial real estate consulting firm founded in late 2009, whose services are primarily targeted to both institutional investors and private owners. Prior to co-founding Bay Hollow, Ms. Connell was the President and Chief Executive Officer of AM Connell Associates LLC, a commercial real estate advisory firm established in 2007. She held a series of senior positions with TIAA-CREF from 1970 to December 2006, most recently as Managing Director, Head of Portfolio Strategy and Management for both the Commercial Mortgage and Private Equity Real Estate Fund portfolios. Since 2009, Ms. Connell has served as a member of the board of directors of Apollo Commercial Real Estate Finance, Inc. (NYSE: ARI), a commercial real estate finance company. Ms. Connell was elected Trustee of the Urban Land Institute (ULI) three times, most recently in May 2009, and serves as a member of its Audit

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Committee and its Urban Development- Mixed Use Council. Ms. Connell is also the Founder and former Chair of ULI New York's District Council, and she is currently a board member or member of the advisory committee of several real estate industry organizations, including the International Advisory Board of EuroHypo A.G. since 2004, the Real Estate Advisory Committee of the New York Common Retirement Fund since June 2007, the Investment Committee of QS REP since 2009, and the Advisory Committees of both Parmenter Realty Partners and Park Madison Partners since 2009 and 2008, respectively. In November 2009, Ms. Connell joined the board of directors of RREEF America III as an independent director. From 2004 to 2007, she was a member of the Executive Committee of the Zell-Lurie Real Estate Center of the Wharton School at the University of Pennsylvania. In 2003, she was honored by Women Executives in Real Estate (WX) as their Real Estate Woman of the Year; she also served on WX's board of directors from 2004 to 2006. Ms. Connell received a bachelor's degree magna cum laude from St. Bonaventure University and a master's degree from New York University. Ms. Connell was selected to serve as a member of the company's board of directors because of her experience with, and strong record of success investing in, real estate-related assets.

*Steven J. Gilbert* will serve as a member of the company's Board of Directors upon completion of the IPO. Mr. Gilbert has over 40 years of experience in private equity investing, investment banking and law, and he has invested in and managed numerous companies during his career. Mr. Gilbert currently serves as Chairman of the Board of Directors of Gilbert Global Equity Partners, L.P., a private equity fund, Vice Chairman of the Executive Board of MidOcean Capital Partners, L.P., a private equity firm, and Director of MBIA, Inc. (NYSE: MBI), a provider of financial guarantee insurance, fixed-income asset management and other specialized financial services, and has served in these capacities since 1998, 2005 and 2011, respectively. He was previously Vice Chairman of Stone Tower Capital, a leading independent investment manager, from 2010 to 2012 and Chairman and Senior Managing Director of SUN Group (USA), an investment firm, from 2007 to 2009. Within the past five years, Mr. Gilbert has served as Chairman of the Board of Directors of DURA Automotive Systems, Inc., an independent designer and manufacturer of driver control systems, CPM Holdings, Inc. (HKG: 0906), a manufacturer of process equipment used for oilseed and animal feed production, and True Temper Sports, Inc., a manufacturer of golf shafts and precision sports equipment, and as Director of Olympus Re, a reinsurance company, as well as several privately held companies. Mr. Gilbert is a member of the Writer's Guild of America (East) and the Council on Foreign Relations, a Trustee of the New York University Langone Medical Center, and a Director of the Lauder Institute at the University of Pennsylvania. Mr. Gilbert received a bachelor's degree in economics from the Wharton School at the University of Pennsylvania, a law degree from the Harvard Law School, and an M.B.A. from Harvard Business School. Mr. Gilbert was selected to serve as a member of the company's Board of Directors based on his extensive experience leading companies in the financial services industry and serving as a director of publicly traded companies.

*S. Michael Giliberto* will serve as a member of the company's Board of Directors upon completion of the IPO. Mr. Giliberto currently consults with investment management firms and has produced the Giliberto-Levy Commercial Mortgage Performance Index, an index that measures the investment performance of institutional-grade commercial mortgage whole loans, since 1993. He previously served as Director of Portfolio Strategy and Senior Portfolio Manager at J.P. Morgan Asset Management from 2002 to 2010, and before that, he served as the head of Real Estate Research at J.P. Morgan Investment Management from 1996 to 2002. Prior to joining J.P. Morgan, Mr. Giliberto worked at Lehman Brothers, Inc. in the Fixed-Income Research department from 1993 to 1996 and at Salomon Brothers Inc. in the Real Estate Research department from 1989 to 1992. Before his career in the financial services industry, Mr. Giliberto was a professor in the Real Estate and Urban Land Economics Department at Southern Methodist University in Dallas, Texas. Mr. Giliberto has authored multiple publications about real estate investment, performance, asset allocation and capital markets, and he has been an Adjunct Professor at Columbia University's Graduate School of Business since 2008. In the past, he has served on the Real Estate Information Standards Board, and he was a Director of the Pension Real Estate Association, where he served as Treasurer and Chairman and was awarded the 1996 Graaskamp Award for research excellence. Mr. Giliberto received a bachelor's degree from Harvard College, a masters degree in business economics from the University of Hartford, a Ph.D in finance from the University of Washington, and holds the Counselor of Real Estate designation and is a Fellow of the Royal Institution of Chartered Surveyors. Mr. Giliberto was

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selected to serve as a member of the company's Board of Directors based on his extensive experience in real estate investment and finance.

*Lawrence E. Golub* will serve as a member of the company's Board of Directors upon completion of the IPO. Mr. Golub is currently Chief Executive Officer of Golub Capital, a credit asset manager that he founded in 1994, where he serves on the investment committee for each of the firm's credit strategies and is responsible for the overall management of the firm. Mr. Golub also serves as Chairman of the Board of Directors of Golub Capital BDC, Inc. (NASDAQ: GBDC), a business development company that makes debt and minority equity investments in middle-market companies, and has served in this capacity since 2009. Mr. Golub previously spent ten years as a principal investor and investment banker, including as a Managing Director of the Risk Merchant Bank at Bankers Trust Company and as a Managing Director of Wasserstein Perella Co., Inc., where he established that firm's capital markets group and debt restructuring practice. Prior to those positions, he served as an officer of Allen & Company Incorporated, where he engaged in principal investing, mergers and acquisitions advisory engagements and corporate finance transactions. Mr. Golub, a former White House Fellow, is active in charitable and civic organizations. He is one of three private members of the Financial Control Board of the State of New York, treasurer of the White House Fellows Foundation, President of the Harvard University J.D./M.B.A. Alumni Association and was a member of the Harvard University Committee on Science and Engineering. He served for over 15 years as a trustee of Montefiore Medical Center, the university hospital of the Albert Einstein Medical School. He was also chairman of Mosholu Preservation Corporation, a developer and manager of low income housing in the Bronx. Mr. Golub received a bachelor's degree from Harvard College, an M.B.A. from Harvard Business School, where he was selected as a Baker Scholar, and a law degree from Harvard Law School, where he served as an editor of the Harvard Law Review. Mr. Golub was selected to serve as a member of the company's Board of Directors based on his experience in the financial services industry and as a director of a publicly traded company.

*Thomas J. DeRosa* will serve as a member of the company's Board of Directors upon completion of the IPO. Mr. DeRosa is currently a private investor based in Aspen, Colorado. Previously, he served as the Vice Chairman and Chief Financial Officer of the Rouse Company, a leading owner, operator and developer of commercial real estate and master planned residential communities, from September 2002 until November 2004 when it was merged with General Growth Properties, Inc. (NYSE: GGP). Prior to joining the Rouse Company, Mr. DeRosa spent over 20 years in investment banking. From 1992 to September 2002, Mr. DeRosa held various positions at Deutsche Bank AG (NYSE: DB), including Global Co-Head of the Health Care Investment Banking Group, and at Alex Brown & Sons, including Managing Director of the Real Estate Investment Banking Group. Since 2005, Mr. DeRosa has served as a member of the board of directors of Health Care REIT, Inc. (NYSE: HCN), a real estate investment trust that invests in senior living and health care real estate, and of CBL & Associates Properties, Inc. (NYSE: CBL), a real estate investment trust that invests in mall properties, since 2010. Mr. DeRosa also served as a member of the board of directors of Dover Corporation (NYSE: DOV), a manufacturer and service provider for a broad range of specialized products and components, from 2007 to 2010. Mr. DeRosa is also a member of the Board of Directors of Georgetown University and Value Retail PLC, a U.K.-based owner, operator and developer of luxury outlet shopping villages in Europe. Mr. DeRosa received a bachelor's degree from Georgetown University and an M.B.A. from Columbia University. Mr. DeRosa was selected to serve as a member of the company's Board of Directors because of his extensive experience as a director of public NYSE listed companies, including real estate investment trusts.

*David A. Karp* is the company's Executive Vice President and Chief Financial Officer and Treasurer. Mr. Karp joined the supervisor in November 2011 and is responsible for activities relating to finance, capital markets, investor relations and administration. Prior to joining the supervisor from February 2006 to February 2011, Mr. Karp served as Managing Director and Chief Financial Officer, and from February 2009 to February 2011, he served as Chief Operating Officer of Forum Partners Investment Management, a global real estate private equity firm, where he was responsible for both firm-level and fund-level financial management and strategy, including risk management, treasury, foreign exchange and interest rate hedging, budgeting and debt financing. From January 1996 to August 2005, Mr. Karp served as President, Chief Operating Officer and Chief

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Financial Officer of Falcon Financial Investment Trust (NASDAQ: FLCN), a publicly traded real estate investment trust and its predecessor. Mr. Karp received a bachelor's degree summa cum laude in Economics, Phi Beta Kappa, from the University of California, Berkeley and an M.B.A. in Finance and Real Estate from the Wharton School at the University of Pennsylvania.

*Thomas P. Durels* is the company's Executive Vice President and Chief of Property Operations and Leasing. Mr. Durels joined the supervisor in 1990 and is responsible for the company's real estate activities, including property redevelopment, repositioning, leasing, management and construction. Mr. Durels also supervises the company's acquisition staff and oversees the development of Metro Tower. Prior to joining the supervisor, from February 1984 to April 1990, he served as Assistant Vice President Engineering and Construction at Helmsley Spear, Inc., where Mr. Durels was responsible for construction and engineering of office, hotel, residential and retail properties, and he was also a licensed real estate salesperson, specializing in the sale of investment properties. Mr. Durels is a member of the Real Estate Board of New York, the Urban Land Institute and the Young Men's and Women's Real Estate Association, for which he served as Treasurer in 2003. Mr. Durels received a bachelor's degree in Mechanical Engineering from Lehigh University.

*Thomas N. Keltner, Jr.* is the company's Executive Vice President, General Counsel and Secretary. Mr. Keltner joined the supervisor in 1978 and became its general counsel in 1997, and is responsible for leading a legal staff that provides and coordinates legal services in the supervisor's transaction, compliance, and litigation matters. Mr. Keltner has served as a chair and/or member of bar association committees on both real estate and business entities, and he is a member of the Real Estate Board of New York and the New York Advisory Board of the Stewart Title Insurance Company. From 1974 to 1975, he served as law clerk to Judge Alfred P. Murrah, U.S. Court of Appeals (10th Circuit). Mr. Keltner received a bachelor's degree cum laude from Harvard College and a law degree as a Stone Scholar from Columbia Law School.

## **Corporate Governance Profile**

The company has structured its corporate governance in a manner the company believes closely aligns its interests with those of its stockholders. Notable features of the company's corporate governance structure include the following:

the company's board of directors is not staggered, with each of the company's directors subject to re-election annually;

of the seven persons who will serve on the company's board of directors immediately after the completion of the consolidation and the IPO, the company expects that the company's board of directors will determine that six, or approximately 85%, of the company's directors are independent for purposes of the NYSE's corporate governance listing standards and Rule 10A-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act;

the company anticipates that at least one of the company's directors will qualify as an audit committee financial expert as defined by the Securities and Exchange Commission, or the SEC;

the company has opted out of the business combination and control share acquisition statutes in the MGCL; and

the company does not have a stockholder rights plan.

The company's business is managed by the company's senior management team, subject to the supervision and oversight of the company's board of directors, which has established investment policies described under Policies with Respect to Certain Activities Investment Policies for the company's senior management team to follow in its day-to-day management of the company's business. The company's directors will stay informed about the company's business by attending meetings of the company's board of directors and its committees and through supplemental reports and communications. The company's independent directors will meet regularly in executive sessions without the presence of the company's corporate officers or non-independent directors.

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### **The Board's Leadership Structure**

The company's board of directors understands there is no single, generally accepted approach to providing board leadership and that given the dynamic and competitive environment in which the company operates, the appropriate leadership may vary as circumstances warrant. The company's board of directors currently believes it is in the company's best interests to have Anthony E. Malkin serve as Chairman of the company's Board of Directors, Chief Executive Officer and President. The company's board of directors believes combining these roles promotes effective leadership and provides the clear focus needed to execute the company's business strategies and objectives.

The company's board of directors intends to appoint a lead independent director upon completion of the IPO. The lead independent director's duties will include chairing executive sessions of the independent directors, facilitating communications and resolving conflicts between the independent directors, other members of the company's board of directors and the management of the company, and consulting with and providing counsel to the company's chief executive officer as needed or requested. It is expected that the lead independent director will be rotated among the company's independent directors every two years.

### **The Board's Role in Risk Oversight**

The company's board of directors will play an active role in overseeing management of the company's risks. Upon completion of the IPO, the committees of the company's board of directors will assist the company's full board in risk oversight by addressing specific matters within the purview of each committee. The company's audit committee will focus on oversight of financial risks relating to the company; the company's compensation committee will focus primarily on risks relating to executive compensation plans and arrangements; and the company's nominating and corporate governance committee will focus on reputational and corporate governance risks relating to the company including the independence of the company's board of directors. While each committee will be responsible for evaluating certain risks and overseeing the management of such risks, the company's full board of directors plans to keep itself regularly informed regarding such risks through committee reports and otherwise. The company believes the leadership structure of the company's board of directors supports effective risk management and oversight.

### **Board Committees**

Upon completion of the IPO, the company's board of directors will form an audit committee, a compensation committee and a nominating and corporate governance committee and adopt charters for each of these committees. Each of these committees will have three directors and will be composed exclusively of independent directors, as defined by the listing standards of the NYSE. Moreover, the compensation committee will be composed exclusively of individuals intended to be, to the extent provided by Rule 16b-3 of the Exchange Act, non-employee directors and will, at such times as the company are subject to Section 162(m) of the Code, qualify as outside directors for purposes of Section 162(m) of the Code.

#### ***Audit Committee***

The audit committee will be comprised of Alice M. Connell, Thomas J. DeRosa and S. Michael Giliberto, each of whom will be an independent director and financially literate under the rules of the NYSE. Alice M. Connell will chair the company's audit committee and Thomas J. DeRosa will serve as the company's audit committee financial expert, as that term is defined by the applicable SEC regulations.

The audit committee assists the company's board of directors in overseeing:

the company's financial reporting, auditing and internal control activities, including the integrity of the company's financial statements;

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the company's compliance with legal and regulatory requirements and ethical behavior;

the independent auditor's qualifications and independence;

the performance of the company's internal audit function and independent auditor; and

the preparation of audit committee reports.

The audit committee is also responsible for engaging the company's independent registered public accounting firm, reviewing with the independent registered public accounting firm the plans and results of the audit engagement, approving professional services provided by the independent registered public accounting firm, reviewing the independence of the independent registered public accounting firm, considering the range of audit and non-audit fees and reviewing the adequacy of the company's internal accounting controls.

***Compensation Committee***

The compensation committee will be comprised of William H. Berkman, Thomas J. DeRosa and Steven J. Gilbert, each of whom will be an independent director. William H. Berkman will chair the company's compensation committee.

The principal functions of the compensation committee will be to:

review and approve on an annual basis the corporate goals and objectives relevant to the compensation paid by the company to the company's president and chief executive officer and the other members of the company's senior management team, evaluate the company's president and chief executive officer's performance and the other members of the company's senior management team's performance in light of such goals and objectives and, either as a committee or together with the company's independent directors (as directed by the board of directors), determine and approve the remuneration of the company's chief executive officer and the other members of the company's senior management team based on such evaluation;

oversee any equity-based remuneration plans and programs;

assist the board of directors and the chairman in overseeing the development of executive succession plans;

determine from time to time the remuneration for the company's non-executive directors; and

prepare compensation committee reports.

***Nominating and Corporate Governance Committee***

The nominating and corporate governance committee will be comprised of William H. Berkman and Lawrence E. Golub, each of whom will be an independent director. Lawrence E. Golub will chair the company's nominating and corporate governance committee.

The nominating and corporate governance committee will be responsible for:

providing counsel to the board of directors with respect to the organization, function and composition of the board of directors and its committees;

overseeing the self-evaluation of the board of directors as a whole and of the individual directors and the board's evaluation of management and report thereon to the board;

periodically reviewing and, if appropriate, recommending to the board of directors changes to, the company's corporate governance policies and procedures;

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identifying and recommending to the board of directors potential director candidates for nomination; and

recommending to the full board of directors the appointment of each of the company's executive officers.

### **Code of Business Conduct and Ethics**

Upon completion of the IPO, the company's board of directors will establish a code of business conduct and ethics that applies to the company's directors and officers. Among other matters, the company's code of business conduct and ethics will be designed to deter wrongdoing and to promote:

honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

full, fair, accurate, timely and understandable disclosure in the company's SEC reports and other public communications;

compliance with applicable governmental laws, rules and regulations;

prompt internal reporting of violations of the code to appropriate persons identified in the code; and

accountability for adherence to the code.

Any waiver of the code of business conduct and ethics for the company's directors or officers may be made only by the company's board of directors or one of the company's board committees and will be promptly disclosed as required by law or stock exchange regulations.

### **Director Compensation**

In order to align the interests of the company's independent directors and stockholders, the company will award each independent director a one-time grant of \$150,000 in LTIP units and/or restricted shares of the company's Class A common stock (at such director's election) under the equity incentive plan, effective upon completion of the IPO, which will vest pro rata on an annual basis over a period of three years, subject to acceleration in the event an independent director has a termination of service on account of death, "disability" or in the event of a "change in control" and subsequent termination of service thereafter (each of the foregoing terms as defined in the company's equity incentive plan). Each independent director will also receive an annual base retainer for his or her services of \$150,000. The annual base retainer will be paid 40% in cash and 60% in LTIP units and/or restricted shares of the company's Class A common stock (at such director's election) under the equity incentive plan, which will vest pro rata on an annual basis over a period of three years, provided that, each independent director may elect to receive up to 100% of the annual base retainer in the form of LTIP units and/or restricted shares of the company's Class A common stock under the equity incentive plan. The independent director who is appointed as the lead independent director will receive an additional annual cash retainer of \$22,500. The chair of the audit committee, compensation committee and nominating and corporate governance committee of the company's board of directors will receive an additional annual cash retainer of \$15,000, \$12,500 and \$10,000, respectively. In addition, each independent director who serves on the audit, compensation and nominating and corporate governance committee of the company's board of directors, other than in the capacity of chair, will receive an additional annual cash retainer of \$5,000 per committee, up to a maximum of \$10,000 per annum. Independent directors and committee members will generally not be eligible to receive fees for attending meetings of the company's board of directors or meetings of committees of the company's board of directors. However, to the extent that the company's board of directors or a particular committee of the company's board of directors meets in excess of eight times per annum, the independent directors or committee members, as applicable, will receive a fee of \$1,500 for attending each meeting of the company's board of directors or meeting of the committee of the company's board of directors in excess of such threshold. The company will also reimburse each of its independent directors for his or her travel expenses



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incurred in connection with his or her attendance at full board of directors and committee meetings. The company has not made any payments to any of its independent director nominees to date. A member of the company's board of directors who is also an employee or affiliate of the company is referred to as an executive director. Executive directors will not receive compensation for serving on the company's board of directors.

The company intends to adopt stock ownership guidelines for its independent directors. Pursuant to the guidelines, the company's independent directors will be required to hold a number of shares of the company's Class A common stock (including LTIP units) having a market value equal to or greater than five times the portion of the annual base retainer which is eligible to be paid in cash. Each independent director will have five years from the later of the date of the completion of the IPO and the date of such director's election to the company's board of directors to attain compliance with the stock ownership requirements.

## **Executive Compensation**

### ***Compensation Discussion and Analysis***

The company believes the primary goal of executive compensation is to attract and retain the best executive talent in a way that allows the company to align the interests of the company's senior management team with those of the company's stockholders. The company's board of directors has not yet formed the company's compensation committee. Accordingly, the company has not adopted compensation policies with respect to, among other things, setting base salaries, awarding bonuses or making future grants of equity awards to the company's senior management team. The company anticipates the compensation committee, once formed, will design a compensation program that rewards, among other things, favorable stockholder returns, share appreciation, the company's competitive position within its segment of the real estate industry and each member of the company's senior management team's long-term career contributions to the company. The company expects compensation incentives designed to further these goals will take the form of annual cash compensation and equity awards, and long-term cash and equity incentives measured by objective and individual performance targets to be established by the compensation committee. In addition, the company's compensation committee may determine to make awards to new executive officers in order to attract talented professionals to serve the company. The company will pay base salaries and annual bonuses to its executive officers and expects to make grants of awards under the equity incentive plan to certain members of the company's senior management team (other than Anthony E. Malkin), effective upon completion of the IPO. These awards under the equity incentive plan will be granted to recognize such individuals' efforts on the company's behalf in connection with the company's formation and the IPO and to provide a retention element to their compensation.

The company has retained FPL Associates LP, a compensation consulting firm, to provide advice regarding the executive compensation program for the company's senior management team following the completion of the IPO. FPL Associates LP has not performed and does not currently provide any other services to management, the company or its predecessor. The company has requested that FPL Associates LP provide analysis and recommendations regarding base salaries, annual bonuses and long-term incentive compensation for the company's executive management team, and a director compensation program for non-employee members of the company's board of directors.

### ***Compensation of Named Executive Officers***

Because the company was only recently organized, meaningful individual compensation information is not available for prior periods. The following table sets forth the annualized base salary and other compensation that would have been paid in 2012 to the company's chief executive officer, the company's chief financial officer and the two other most highly compensated members of the company's senior management team, whom the company refer to collectively as the company's named executive officers, assuming they were executive officers for all of 2012. Other than with respect to the annual base salary and target cash bonus of Mr. Karp, which the company negotiated with him after receiving advice from FPL Associates LP, the company's compensation consultant, the anticipated 2012 compensation for each of the company's named executive officers listed in the table below was

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determined by the company based on a review of publicly disclosed compensation packages of executives of other public real estate companies and other information provided to the company by FPL Associates LP. While the table below accurately reflects the company's current expectations with respect to 2012 named executive officer compensation, actual 2012 compensation for these officers may be increased or decreased, including through the use of compensation components not currently contemplated or described herein. The company expects to disclose actual 2012 compensation for the company's named executive officers in 2013, to the extent required by applicable SEC disclosure rules.

**Summary Compensation Table**

<b>Name and Principal Position</b>	<b>Salary (\$)<sup>(1)</sup></b>	<b>Target Bonus (\$)<sup>(2)</sup></b>	<b>Stock Awards (\$)<sup>(2)(3)</sup></b>	<b>All Other Compensation (\$)<sup>(4)</sup></b>	<b>Total (\$)<sup>(5)</sup></b>
Anthony E. Malkin <i>Chairman of the Board, Chief Executive Officer and President</i>	500,000				500,000
David A. Karp <i>Chief Financial Officer, Executive Vice President and Treasurer</i>	450,000				450,000
Thomas P. Durels <i>Executive Vice President and Chief of Property Operations and Leasing</i>	450,000				450,000
Thomas N. Keltner, Jr <i>Executive Vice President, General Counsel and Secretary</i>	450,000				450,000

- (1) Salary amounts are annualized for the year ending December 31, 2012 based on the expected base salary levels to be effective upon consummation of the IPO.
- (2) Any cash bonus awards and stock awards will be determined in the sole discretion of the company's compensation committee based upon such factors to be established by the compensation committee, including objective and individual performance targets. The company anticipates that its compensation committee will initially establish performance targets for the 2013 fiscal year during 2013. The company anticipates that the target bonus with respect to the company's named executive officers' cash bonuses will be based on 200%, 78%, 78%, and 45% of Mr. Malkin's, Mr. Karp's, Mr. Durels' and Mr. Keltner's respective annual base salaries.
- (3) Stock awards have not yet been granted to the company's named executive officers but upon completion of the IPO, assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the company's Class A common stock), and assuming an IPO price of \$10 per share, the company expects to grant 114,500 units/shares (of which 85,875 units/shares will be subject to time-based vesting and 28,625 shares/units will be subject to performance-based vesting), 395,700 units/shares (of which 296,775 units/shares will be subject to time-based vesting and 98,925 shares/units will be subject to performance-based vesting) and 252,800 units/shares (of which 189,600 units/shares will be subject to time-based vesting and 63,200 shares/units will be subject to performance-based vesting) to each of Messrs. Karp, Durels and Keltner, respectively. The units/shares subject to performance-based vesting represent the maximum number of units/shares subject to such awards that may vest, assuming the highest performance hurdles are achieved and all of the units/shares subject to such awards ultimately vest. For additional information regarding the IPO grant calculation, see IPO Grants Under the Equity Incentive Plan. In addition, the company anticipates that its officers' target long-term equity incentive awards will be based on 150%, 100%, 100%, and 40% of Mr. Malkin's, Mr. Karp's, Mr. Durels' and Mr. Keltner's respective aggregate annual base salaries and target cash bonuses.
- (4) The company expects that its full-time employees, including the company's named executive officers, will be eligible to participate in health and welfare benefit plans, such as medical, dental and other health related benefits. In addition, Mr. Malkin, pursuant to his employment agreement, will be entitled to a company-owned or leased automobile and a driver, and reimbursement of certain professional expenses. See Employment Agreement.
- (5) Amounts shown in this column do not include (i) the value of the LTIP unit/restricted Class A common stock grants (described in Note 3 above) that are expected to be granted to the company's named executive officers (other than Anthony E. Malkin) in connection with the IPO or (ii) the value of the perquisites or other personal benefits the company's named executive officers will receive.

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### **IPO Grants Under the Equity Incentive Plan**

Upon completion of the IPO, the company expects to grant LTIP units and/or restricted shares of its Class A common stock (at the grantee's discretion) to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees, which will be subject to time-based and performance-based vesting over a three to four year period. The aggregate number of LTIP units/shares the company intends to grant to such individuals will be in an amount equal to 1.5% of the gross proceeds raised in the IPO (excluding the underwriters' option to purchase additional shares of the Class A common stock) divided by the IPO price. Assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the Class A common stock), and assuming an IPO price of \$10 per share, the aggregate number of LTIP units and/or restricted shares of the Class A common stock the company intends to grant to its independent directors, executive officers (other than Anthony E. Malkin) and certain other employees will be 1,500,000 units/shares and will have an aggregate dollar value of \$15,000,000. The aggregate number of LTIP units and/or restricted shares to be granted upon completion of the IPO may be increased by a modest amount based on future events, such as the hiring of additional officers.

### **Employment Agreement**

Upon completion of the IPO, the company intends to enter into a written employment agreement with Anthony E. Malkin. The company anticipates that the employment agreement for Mr. Malkin will have an initial term of three years. The employment agreement will provide for up to two automatic one-year extensions thereafter, unless either party provides at least 60 days notice of non-renewal prior to the expiration of the then current term. The employment agreement will require Mr. Malkin to devote a majority of his business time and attention to the performance of his duties under the employment agreement, except as describe below.

The company anticipates that Mr. Malkin's employment agreement will provide for:

an annual base salary of \$500,000, subject to further increases on an annual basis in the discretion of the compensation committee of the company's board of directors,

after the company's 2012 fiscal year, eligibility for annual cash performance bonuses based on the satisfaction of objective and individual performance goals established by the compensation committee of the company's board of directors (with a target bonus based on 200% of Mr. Malkin's annual base salary), or the annual bonus,

participation in the company's long-term incentive program, including grants under the equity incentive plan, as well as other incentive, savings and 401(k) or other retirement plans applicable generally to the company's senior executives, provided that, other than with respect to the grants upon completion of the IPO, described above, the amount of awards granted to Mr. Malkin under the equity incentive plan will be no less than that granted to other senior executives and shall be reasonable in light of the contribution made, or expected to be made, by Mr. Malkin for the period for which such grant is made,

participation in all of the company's benefit plans and entitlement to receive benefits and perquisites, which shall be at a level no less favorable than those provided to the company's other senior executives,

a company-owned or leased automobile and a driver,

administrative assistance and office space for Mr. Malkin and services reasonably acceptable to him, so long as Mr. Malkin is providing services to the company in any capacity, and

reimbursement of all reasonable professional expenses relating to the negotiation and documentation of the employment agreement and other agreements entered into by Mr. Malkin in connection with the IPO and the consolidation.



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The company anticipates that Mr. Malkin's employment agreement will provide that upon a termination of employment (i) by the company for any reason other than for cause or by Mr. Malkin for good reason (each as defined in the employment agreement) or (ii) in either event described under clause (i) of this paragraph within two years following a change in control (as defined in the equity incentive plan), Mr. Malkin will be entitled to the following severance payments and benefits, subject to Mr. Malkin's and the company's execution of a mutual release of claims in the form provided for in the employment agreement:

annual base salary, annual bonus for prior fiscal years and other benefits earned but unpaid (including payment for accrued, but unused vacation days and reimbursement for business expenses incurred) prior to the date of termination,

an amount equal to the sum of Mr. Malkin's then-current annual base salary plus the greater of his target annual bonus for the termination year and the average annual bonus paid to Mr. Malkin over the three most-recently completed fiscal years, multiplied by two (three, in the case of a termination in connection with a change in control (as described under clause (ii) above)),

a pro-rated annual bonus for the year in which the termination of employment occurs, calculated based on actual performance for the entire performance period and calculated and paid at the end of the performance period without the exercise of any negative discretion,

a monthly payment equal to the difference between the monthly COBRA premium cost and the premium cost to Mr. Malkin as if he was the company's employee following Mr. Malkin's termination of employment, and

100% of the unvested equity awards granted pursuant to the equity incentive plan subject to time-based vesting shall immediately vest. Any equity awards subject to performance-based vesting that have not yet been earned but may do so based on the achievement of certain performance criteria may vest at the greater of the target amount of awards (if applicable) and a pro-rata amount based on performance from the commencement of the performance period through the date of termination (or in the case of a termination in connection with a change in control (as described under clause (ii) above), 100% of the unvested equity awards granted pursuant to the equity incentive plan subject to performance-based vesting shall vest to the extent the underlying performance requirements have been met at such time). Any stock option then held by Mr. Malkin will remain exercisable for at least three years following such termination, but in no event later than the actual expiration of the stock option term.

The company anticipates that Mr. Malkin's employment agreement will also provide that Mr. Malkin or his estate will be entitled to certain severance benefits in the event of his death or disability (as defined in the employment agreement). Specifically, Mr. Malkin, or, in the event of his death, his beneficiaries will receive:

annual base salary, annual bonus for prior fiscal years and other benefits earned but unpaid (including payment for accrued, but unused vacation days and reimbursement for business expenses incurred) prior to the date of termination,

a pro-rated annual bonus for the year in which the termination of employment occurs, calculated based on actual performance for the entire performance period and calculated and paid at the end of the performance period without the exercise of any negative discretion,

100% of the unvested equity awards granted pursuant to the equity incentive plan subject to time-based vesting shall immediately vest. Any equity awards that have not yet been earned but may do so based on the achievement of certain performance criteria may vest at the greater of the target amount of awards (if applicable) and a pro-rata amount based on performance from the commencement of the performance period through the date of termination. Any stock option then held by Mr. Malkin will remain exercisable for at least three years following such termination, but in no event later than the actual expiration of the stock option

term.

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The company anticipates that Mr. Malkin's employment agreement will provide that upon a termination of employment (i) by the company for cause or by Mr. Malkin for any reason other than good reason (each as defined in the employment agreement) or (ii) by notice of non-renewal of the employment agreement, subject to Mr. Malkin's and the company's execution of a mutual release of claims in the form provided for in the employment agreement:

Mr. Malkin will be entitled to his annual base salary and other benefits earned but unpaid (including payment for accrued, but unused vacation days and reimbursement for business expenses incurred) prior to the date of termination,

other than in connection with a termination of employment by the company for cause (as defined in the employment agreement), Mr. Malkin will be entitled to any earned but unpaid annual bonus for prior fiscal years, and

100% of all unvested (and in connection with a termination of employment by the company for cause (as defined in the employment agreement), 100% of all vested and unvested) equity awards granted pursuant to the equity incentive plan shall be forfeited by Mr. Malkin.

Mr. Malkin shall not be required to seek other employment or attempt to reduce severance payments. Severance benefits are not subject to any offset, except benefit coverage shall cease upon Mr. Malkin's eligibility for substantially similar or improved replacement health coverage from a successor employer.

In the event that any amount payable to Mr. Malkin is determined to be an excess parachute payment under Section 280G of the Code, such amount will be reduced to one dollar less than the threshold amount that would trigger an excise tax under Section 280G of the Code.

Although the company anticipates that the employment agreement will require Mr. Malkin to devote a majority of his business time and attention to the performance of his duties under the employment agreement, Mr. Malkin may (i) serve on the board of one or more business corporations identified by Mr. Malkin and with the consent of the company's board of directors (such consent not to be unreasonably withheld), (ii) participate in charitable, civic, educational, professional, community or industry affairs, and (iii) manage his and his family's personal investments (including the excluded properties and excluded businesses), including providing services to or maintaining a family office for purposes of managing such investments, provided that Mr. Malkin does not manage the investments or assets of any unrelated third party. See

Related Party Transactions Excluded Properties and Businesses for more information regarding Mr. Malkin's right to devote a portion of his business time and attention to the management of the excluded properties and excluded businesses.

The company anticipates that the employment agreement will also contain standard confidentiality and mutual non-disparagement provisions, which will apply indefinitely, and non-competition and non-solicitation provisions, which will apply during the term of the employment agreement and will continue for a period of two years following the termination of Mr. Malkin's employment.

All disputes, except equitable enforcement of restrictive covenants, under the employment agreement will be resolved by arbitration in accordance with the rules of the American Arbitration Association in New York City. The company will agree to pay all costs of the arbitration except, if applicable, Mr. Malkin's petitioner's filing fee. If an arbitrator determines that Mr. Malkin has prevailed on the issues in dispute in the arbitration, the company will pay or reimburse any reasonable expenses, including reasonable attorney's fees which Mr. Malkin incurs in such arbitration.

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### **Change in Control Severance Agreements**

Upon completion of the IPO, the company intends to enter into written change in control severance agreements with Messrs. Karp, Durels and Keltner. The change in control severance agreements will terminate two years after the date of any written notice of termination from the company to the applicable executive officer; provided, that if a change in control (as defined in the equity incentive plan) occurs while the agreement is still operative, any written notice to the executive officer terminating the agreement will not be effective prior to the second anniversary of the "change in control" (as defined in the equity incentive plan).

The company anticipates that the change in control severance agreements will provide that upon a termination of employment by the company for any reason other than for "cause" or by the applicable executive officer for "good reason" (each as defined in the change in control severance agreements), within two years following a "change in control" (as defined in the equity incentive plan), the applicable executive officer will be entitled to the following severance payments and benefits, subject to the executive officer's execution of a release of claims in the form provided for in the change in control severance agreement:

annual base salary, annual bonus for prior fiscal years and other benefits earned but unpaid (including payment for accrued, but unused vacation days and reimbursement for business expenses incurred) prior to the date of termination,

an amount equal to the sum of the executive officer's then-current annual base salary plus the greater of his then-current target cash bonus and the average bonus earned over the three most-recently completed fiscal years, multiplied by two,

a pro-rated annual bonus for the year in which the termination of employment occurs, calculated based on actual performance for the entire performance period and calculated and paid at the end of the performance period without the exercise of any negative discretion,

a monthly payment equal to the difference between the monthly COBRA premium cost and the premium cost to the executive officer as if he was the company's employee for each month of COBRA eligibility, and

100% of the unvested equity awards granted pursuant to the equity incentive plan subject to time-based vesting shall immediately vest and 100% of the unvested equity awards granted pursuant to the equity incentive plan subject to performance-based vesting shall vest to the extent the underlying performance requirements have been met at such time.

The company anticipates that the change in control severance agreements will provide that upon a termination of employment by the company for cause or by the executive officer for any reason other than "good reason" (each as defined in the change in control severance agreements), the applicable executive officer will be entitled to his accrued and unpaid annual base salary through the date of termination, annual bonus for prior fiscal years (other than in connection with a termination for "cause" (as defined in the change in control severance agreements)) and other benefits earned but unpaid (including payment for accrued, but unused vacation days and reimbursement for business expenses incurred) prior to the date of termination.

The company anticipates that the change in control severance agreements will provide that the executive officers shall not be required to seek other employment or attempt to reduce severance payments. Severance benefits are not subject to any offset, except benefit coverage shall cease upon the applicable executive officer's eligibility for substantially similar or improved replacement health coverage from a successor employer.

In the event that any amount payable to an executive officer is determined to be an excess parachute payment under Section 280G of the Code, such amount will be reduced to one dollar less than the threshold amount that would trigger an excise tax under Section 280G of the Code.

The company anticipates that the change in control severance agreements will also contain standard confidentiality provisions, which will apply indefinitely, and non-competition and non-solicitation provisions,





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which will apply during the term of the agreements and will continue for a period of two years following such termination of employment. The company anticipates that the change in control severance agreements will also contain mutual non-disparagement provisions, which will apply indefinitely.

All disputes, except equitable enforcement of restrictive covenants, under the change in control severance agreements will be resolved by arbitration in accordance with the rules of the American Arbitration Association in New York City. The company will agree to pay all costs of the arbitration except, if applicable, the executive officer's petitioner's filing fee. If an arbitrator determines that the applicable executive officer has prevailed on the issues in dispute in the arbitration, the company will pay or reimburse any reasonable expenses, including reasonable attorney's fees which the executive officer incurs in such arbitration.

### **401(k) Plan**

The company intends to adopt a tax-qualified 401(k) Retirement Savings Plan, or the 401(k) Plan. All eligible employees will be able to participate in the company's 401(k) plan, including the company's named executive officers. The company intends to provide this plan to help the company's employees save some amount of their cash compensation for retirement in a tax efficient manner. Under the company's 401(k) plan, employees will be eligible to defer a portion of their salary, and the company expects to match a portion of each eligible employee's contributions. The company does not intend to provide an option for the company's employees to invest in the company's Class A common stock through the company's 401(k) plan.

### **Equity Incentive Plan**

Prior to the completion of the IPO, the company and the operating partnership will jointly adopt an equity incentive plan to provide incentive distributions to members of the company's senior management team, the company's independent directors, advisers, consultants and other personnel. The equity incentive plan provides for grants of stock options, shares of restricted Class A common stock, phantom shares, dividend equivalent rights and other equity-based awards, including LTIP Units.

The equity incentive plan is administered by the compensation committee, as appointed by the company's board of directors for such purposes. The compensation committee has the full authority to (i) authorize the granting of awards to eligible persons, (ii) determine the eligibility of directors, members of the company's senior management team, advisers, consultants and other personnel to receive an equity award, (iii) determine the number of shares of Class A common stock to be covered by each award (subject to the individual participant limitations provided in the equity incentive plan), (iv) determine the terms, provisions and conditions of each award (which may not be inconsistent with the terms of the equity incentive plan), (v) prescribe the form of instruments evidencing such awards, (vi) construe and interpret the equity incentive plan and award agreements and correct defects, supply omissions, and reconcile inconsistencies therein, (vii) suspend the right to exercise awards during any period that the compensation committee deems appropriate to comply with applicable securities laws, and thereafter extend the exercise period of an award by an equivalent period of time and (viii) take any other actions and make all other determinations that it deems necessary or appropriate in connection with the equity incentive plan or the administration or interpretation thereof. In connection with this authority, the compensation committee may, among other things, establish performance goals that must be met in order for awards to be granted or to vest, or for the restrictions on any such awards to lapse. From and after the consummation of the IPO, the compensation committee will consist solely of independent directors, each of whom is intended to be, to the extent required by Rule 16b-3 under the Exchange Act, a non-employee director and will, at such times as the company is subject to Section 162(m) of the Code and intend for awards to be treated as performance-based compensation for purposes of Section 162(m), qualify as an outside director for purposes of Section 162(m) of the Code, or, if no committee exists, the board of directors.

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**Table of Contents***Available Shares*

The equity incentive plan provides for grants of stock options, shares of restricted Class A common stock, phantom shares, dividend equivalent rights and other equity-based awards up to an aggregate of 5% of the issued and outstanding shares of the company's common stock as of the later of the date of the IPO or the last closing date of any shares of the company's Class A common stock sold pursuant to the underwriters exercise of their option to purchase additional shares (on a fully diluted basis (assuming, if applicable, the exercise of all outstanding stock options, the conversion of all warrants and convertible securities into shares of Class A common stock and the exchange of all outstanding operating partnership units into shares of Class A common stock) and including shares to be sold pursuant to the underwriters' exercise of their option to purchase up to an additional shares of the company's Class A common stock), but excluding any shares issued or issuable under the equity incentive plan. If an award granted under the equity incentive plan expires, is forfeited or terminates, the shares of the company's Class A common stock subject to any portion of the award that expires, is forfeited or terminates without having been exercised or paid, as the case may be, will again become available for the issuance of additional awards. Unless previously terminated by the company's board of directors, no new award may be granted under the equity incentive plan after the tenth anniversary of the earlier of date that such plan was approved by the company's board of directors or the holders of the company's common stock. Upon the completion of the IPO, the company will grant LTIP units and/or shares of the company's restricted Class A common stock to the company's independent directors, executive officers (other than Anthony E. Malkin) and other employees under the equity incentive plan, which will be subject to certain vesting requirements. See *IPO Grants Under the Equity Incentive Plan*.

To the extent the compensation committee deems appropriate, it will establish performance criteria and satisfy such other requirements as may be applicable in order to satisfy the requirements for performance-based compensation under Section 162(m) of the Code.

*Awards Under the Plan*

*Stock Options.* The terms of specific stock options, including whether stock options shall constitute incentive stock options for purposes of Section 422(b) of the Code, shall be determined by the compensation committee. The exercise price of a stock option shall be determined by the committee and reflected in the applicable award agreement. The exercise price with respect to stock options may not be lower than 100% (110% in the case of an incentive stock option granted to a 10% stockholder, if permitted under the equity incentive plan) of the fair market value of the company's Class A common stock on the date of grant. Each stock option will be exercisable after the period or periods specified in the award agreement, which will generally not exceed ten years from the date of grant (or five years in the case of an incentive stock option granted to a 10% stockholder, if permitted under the equity incentive plan). Incentive stock options may only be granted to the company's employees and employees of the company's subsidiaries. Stock options will be exercisable at such times and subject to such terms as determined by the compensation committee. The company may also grant stock appreciation rights, which are stock options that permit the recipient to exercise the stock option without payment of the exercise price and to receive shares of Class A common stock (or cash or a combination of the foregoing) with a fair market value equal to the excess of the fair market value of the shares of the company's Class A common stock with respect to which the stock option is being exercised over the exercise price of the stock option with respect to those shares. The exercise price with respect to stock appreciation rights may not be lower than 100% of the fair market value of the company's Class A common stock on the date of grant.

*Shares of Restricted Common Stock.* A restricted stock award is an award of shares of Class A common stock that is subject to restrictions on transferability and such other restrictions the compensation committee may impose at the date of grant. Grants of shares of restricted Class A common stock will be subject to vesting schedules and other restrictions as determined by the compensation committee. The restrictions may lapse separately or in combination at such times, under such circumstances, including, without limitation, a specified period of employment or the satisfaction of pre-established criteria, in such installments or otherwise, as the compensation committee may determine. Except to the extent restricted under the award agreement relating to

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the shares of restricted Class A common stock, a participant granted shares of restricted Class A common stock generally has all of the rights of a stockholder, including, without limitation, the right to vote and the right to receive dividends on the shares of restricted Class A common stock. Although dividends may be paid on shares of restricted Class A common stock, whether or not vested, at the same rate and on the same date as on shares of the company's Class A common stock (unless otherwise provided in an award agreement), holders of shares of restricted Class A common stock are prohibited from selling such shares until they vest.

*Phantom Shares.* A phantom share represents a right to receive the fair market value of a share of Class A common stock, or, if provided by the compensation committee, the right to receive the fair market value of a share of Class A common stock in excess of a base value established by the compensation committee at the time of grant. Phantom shares may generally be settled in cash or by transfer of shares of Class A common stock (as may be elected by the participant or the compensation committee or as may be provided by the compensation committee at grant). The compensation committee may, in its discretion and under certain circumstances (taking into account, without limitation, Section 409A of the Code), permit a participant to receive as settlement of the phantom shares installment payments over a period not to exceed ten years.

*Dividend Equivalents.* A dividend equivalent is a right to receive (or have credited) the equivalent value (in cash or shares of common stock) of dividends paid on shares of common stock otherwise subject to an award. The compensation committee may provide that amounts payable with respect to dividend equivalents shall be converted into cash or additional shares of common stock. The compensation committee will establish all other limitations and conditions of awards of dividend equivalents as it deems appropriate.

*Other Share-Based Awards.* The equity incentive plan authorizes the granting of other awards based upon shares of the company's Class A common stock (including the grant of securities convertible into shares of Class A common stock and the grant of LTIP units), subject to terms and conditions established at the time of grant. LTIP units are awards of units of the company's operating partnership intended to constitute profits interests within the meaning of the relevant IRS guidance, which may be convertible on a one-for-one basis into the company's Series PR operating partnership units. See Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership LTIP Units.

The company intends to file with the SEC a Registration Statement on Form S-8 covering the shares of the company's Class A common stock issuable under the equity incentive plan.

### *Change in Control*

Under the equity incentive plan, a change in control is defined as the occurrence of any of the following events: (i) the acquisition of more than 50% of the company's then outstanding shares of common stock or the combined voting power of the company's outstanding securities by any person; (ii) the sale or disposition of all or substantially all of the company's assets, other than certain sales and dispositions to entities owned by the company's stockholders; (iii) a merger, consolidation or statutory share exchange where the company's stockholders immediately prior to such event hold less than 50% of the voting power of the surviving or resulting entity; or (iv) during any consecutive twenty-four calendar month period, the members of the company's board of directors at the beginning of such period, the incumbent directors, cease for any reason (other than due to death) to constitute at least a majority of the members of the company's board (for these purposes, any director whose election or nomination for election was approved or ratified by a vote of at least a majority of the incumbent directors shall be deemed to be an incumbent director).

Upon a change in control, the compensation committee may make such adjustments as it, in its discretion, determines are necessary or appropriate in light of the change in control, but only if the compensation committee determines that the adjustments do not have an adverse economic impact on the participants (as determined at the time of the adjustments).

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### *Amendments and Termination*

The company's board of directors may amend, suspend, alter or discontinue the equity incentive plan but cannot take any action that would impair the rights of an award recipient with respect to an award previously granted without such award recipient's consent unless such amendments are required in order to comply with applicable laws. The company's board of directors may not amend the equity incentive plan without stockholder approval in any case in which amendment in the absence of such approval would cause the company's equity incentive plan to fail to comply with any applicable legal requirement or applicable exchange or similar requirement, such as an amendment that would:

other than through adjustment as provided in the equity incentive plan, increase the total number of shares of Class A common stock reserved for issuance under the equity incentive plan;

materially expand the class of directors, officers, employees, consultants and advisors eligible to participate in the equity incentive plan;

reprice any stock options under the equity incentive plan; or

otherwise require such approval.

### **Limitation of Liability and Indemnification**

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (1) actual receipt of an improper benefit or profit in money, property or services or (2) active and deliberate dishonesty established by a final judgment as being material to the cause of action. The company's charter contains such a provision and eliminates the liability of the company's directors and officers to the maximum extent permitted by Maryland law. For further details with respect to the limitation on the liability of the company's directors and officers, the indemnification of the company's directors and officers and the relevant provisions of the MGCL, see Certain Provisions of the Maryland General Corporation Law and the Company's Charter and Bylaws Indemnification and Limitation of Directors' and Officers' Liability. In addition, the company's directors and officers will be entitled to indemnification under the partnership agreement of the company's operating partnership; for further details see Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership Management Liability and Indemnification.

The company will obtain a policy of insurance under which the company's directors and officers will be insured, subject to the limits of the policy, against certain losses arising from claims made against such directors and officers by reason of any acts or omissions covered under such policy in their respective capacities as directors or officers, including certain liabilities under the Securities Act. Additionally, the company intends to enter into indemnification agreements with each of the company's directors, executive officers, chairman emeritus and certain other parties upon the closing of the IPO, which will require, among other things, that the company maintain a comparable tail directors' and officers' liability insurance policy for six years after each director or executive officer ceases to serve in such capacity.

### **Rule 10b5-1 Sales Plans**

The company's directors and officers may adopt written plans, known as Rule 10b5-1 plans, in which they will contract with a broker to buy or sell shares of the company's Class A common stock on a periodic basis. Under a Rule 10b5-1 plan, a broker executes trades pursuant to parameters established by the director or officer when entering into the plan, without further direction from them. The director or officer may amend a Rule 10b5-1 plan in some circumstances and may terminate a plan at any time. The company's directors and officers also may buy or sell additional shares outside of a Rule 10b5-1 plan when they are not in possession of material non-public information subject to compliance with the terms of the company's insider trading policy. Prior to one year after the date of the completion of the IPO (subject to potential extension, early termination and certain

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other conditions contained in the lock-up agreement) with respect to the company's senior management team, the sale of any shares under such plan will be subject to the lock-up agreement that the director or executive officer has entered into with the underwriters.

**Compensation Committee Interlocks and Insider Participation**

No member of the compensation committee is a current or former officer or employee of the company or any of its subsidiaries. None of the company's named executive officers serves as a member of the board of directors or compensation committee of any company that has one or more of its executive officers serving as a member of the company's board of directors or compensation committee.

**Table of Contents****PRINCIPAL STOCKHOLDERS OF THE COMPANY**

The following table sets forth certain information regarding the beneficial ownership of shares of the company's common stock and shares of the company's common stock into which operating partnership units are exchangeable immediately following the completion of the consolidation and the IPO for:

the company's directors and each of the director nominees;

each of the company's named executive officers;

each person who is expected to be the beneficial owner of 5% or more of the company's outstanding common stock immediately following the completion of the IPO; and

all of the company's directors, director nominees and executive officers as a group.

In accordance with SEC rules, each listed person's beneficial ownership includes:

all shares the investor actually owns beneficially or of record;

all shares over which the investor has or shares voting or dispositive control (such as in the capacity as a general partner of an investment fund); and

all shares the investor has the right to acquire within 60 days (such as shares of restricted Class A common stock that are currently vested or which are scheduled to vest within 60 days).

Unless otherwise indicated, all shares are owned directly, and the indicated person has sole voting and investment power. Unless otherwise indicated in the footnotes to the table below, the business address of the stockholders listed below is the address of the company's principal executive office, Empire State Realty Trust, Inc., One Grand Central Place, New York, New York. No shares beneficially owned by any executive officer, director or director nominee have been pledged as security.

Name and Address	Number of Shares of Common Stock Beneficially Owned <sup>(1)</sup>	Percent of All Shares of Common Stock <sup>(1)</sup>	Number of Shares of Common Stock and Operating Partnership Units Beneficially Owned <sup>(2)(3)</sup>	Percent of All Shares of Common Stock and Operating Partnership Units <sup>(2)(3)</sup>
Anthony E. Malkin <sup>(4)</sup>	36,394,253	15.2%	36,504,699	8.3%
Peter L. Malkin <sup>(5)</sup>	15,465,705	6.5%	17,282,906	3.9%
William H. Berkman	15,000	*	15,000	**
Alice M. Connell	15,000	*	15,000	**
Thomas J. DeRosa	15,000	*	15,000	**
Steven J. Gilbert	15,000	*	15,000	**

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S. Michael Giliberto	15,000	*	15,000	**
Lawrence E. Golub	15,000	*	15,000	**
David A. Karp	114,500	*	114,500	**
Thomas P. Durels	621,531	*	630,902	**
Thomas N. Keltner, Jr.	885,861	*	1,104,030	**
The Helmsley estate <sup>(6)</sup>	34,773,539	14.5%	34,773,539	7.9%
All directors, director nominees and executive officers as a group (10 persons)	38,106,144	15.9%	38,444,130	8.7%

\* Represents less than 1% of the number of shares of common stock outstanding upon the closing of the IPO.

\*\* Represents less than 1% of the number of shares of common stock and operating partnership units, including LTIP units/shares of restricted Class A common stock outstanding immediately after the closing of the consolidation and the IPO.

(1) Assumes a total of 239,721,872 shares of common stock outstanding immediately after the closing of the consolidation and the IPO. The number of shares outstanding is based on the number of votes (i.e., each share of Class B common stock is treated as 50 shares of common stock for this purpose). The number of shares of common stock assumes that each participant in the subject LLCs elects to receive Class A common stock, Class B common stock and operating partnership units in the same proportion as participants (other than



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the Malkin Holdings group and the Helmsley estate) in the private entities and that net proceeds from the IPO are used as set forth in the pro forma financial statements (unaudited) of the company. The total number of shares of common stock outstanding used in calculating this percentage assumes that none of the operating partnership units held by other persons are exchanged for shares of Class A common stock.

- (2) Assumes a total of 441,634,690 shares of the company's common stock and operating partnership units are outstanding immediately after the closing of the consolidation and the IPO comprised of 132,533,203 shares of Class A common stock, including 1,500,000 LTIP units and/or shares of restricted Class A common stock and 2,143,774 shares of Class B common stock, which may be exchanged on a one-for-one basis for shares of the company's Class A common stock and 306,957,713 operating partnership units which may be exchanged for cash or, at the company's option, shares of Class A common stock on a one-for-one basis beginning 12 months after the closing of the IPO and LTIP units. In addition, share amounts for individuals, directors, director nominees and executive officers as a group assume that all operating partnership units, including LTIP units, held by the person are exchanged for shares of Class A common stock.
- (3) Peter L. Malkin and Anthony E. Malkin will hold only Series PR operating partnership units.
- (4) Includes 583,616 shares of Class A common stock, 716,213 shares of Class B common stock and 35,204,870 operating partnership units which are expected to be issued in the consolidation to (i) family limited liability companies and trusts for which Anthony E. Malkin has sole voting and investment power as sole manager or sole trustee, as applicable, and of which Anthony E. Malkin disclaims beneficial ownership of such shares and units except to the extent of his pecuniary interest therein and/or (ii) family trusts for which Anthony E. Malkin has shared voting and investment power as trustee with others, and of which Anthony E. Malkin disclaims beneficial ownership of such shares and units except to the extent of his pecuniary interest therein. Anthony E. Malkin will have the right to vote 36,394,253 shares of Common Stock (including 50 votes for each share of Class B common stock), which will represent approximately 15.2% of the number of shares of the outstanding common stock (including 50 votes for each share of Class B common stock). The Malkin Holdings group will beneficially own 754,878 shares of Class A common stock, 1,443,267 shares of Class B common stock and 70,880,008 operating partnership units, which are expected to be issued in the consolidation. The Malkin Holdings group will have the right to vote 72,918,219 shares of common stock (including 50 votes for each share of Class B common stock), which will represent approximately 30.4% of the number of shares of the company's outstanding common stock.
- (5) Includes 26,899 shares of Class A common stock, 308,776 shares of Class B common stock and 16,947,231 operating partnership units which are expected to be issued in the consolidation to (i) trusts for which Peter L. Malkin has sole voting and investment power as sole manager or sole trustee, as applicable, and of which Peter L. Malkin disclaims beneficial ownership of such shares and units except to the extent of his pecuniary interest therein and/or (ii) family trusts for which Peter L. Malkin has shared voting and investment power as trustee with others, and of which Peter L. Malkin disclaims beneficial ownership of such shares and units except to the extent of his pecuniary interest therein. Peter L. Malkin will have the right to vote 15,465,705 shares of Common Stock (including 50 votes for each share of Class B common stock), which will represent approximately 6.5% of the number of shares of the outstanding common stock (including 50 votes for each share of Class B common stock).
- (6) The Helmsley estate would have received 102,862,312 shares of common stock on a fully diluted basis prior to its receipt of cash pursuant to the cash election. The number of shares of common stock beneficially owned by the Helmsley estate assumes the Helmsley estate receives cash in lieu of 68,088,773 shares of common stock on exercise of its cash election and does not give effect to any additional cash that the Helmsley estate may receive as a result of any exercise of the underwriters' option to purchase additional shares of the company's Class A common stock in the IPO.

The company currently has outstanding 1,000 shares of common stock, all of which are owned by Anthony E. Malkin, the company's Chairman, Chief Executive Officer and President. Upon completion of the IPO, the company will repurchase all 1,000 shares of Class A common stock from Anthony E. Malkin at cost of \$0.10 per share.

**Table of Contents****RELATED PARTY TRANSACTIONS****Transactions Relating to the Consolidation**

Following the consolidation, certain executives of the supervisor will be members of the senior management team and Anthony E. Malkin, an executive and principal of the supervisor, will be Chairman, Chief Executive Officer, President and a director of the company. These executives and the Malkin Holdings group hold interests in the subject LLCs, the private entities and the management companies. Upon completion of the consolidation, the Malkin Holdings group will receive, in exchange for their interests in the subject LLCs and private entities, including their override interests, 73,078,153 shares of Class A common stock and Class B common stock and operating partnership units having an aggregate value, based on the exchange value of \$730,781,533, which they will receive in accordance with the allocation of exchange value based on the Appraisal of the independent valuer. The amounts allocated to the Malkin Holdings group are based on the hypothetical \$10 per share exchange value that the supervisor arbitrarily assigned for illustrative purposes, and consist of their interests as participants which will be allocated to them on the same basis as other participants; their interests as holders of override interests which will be allocated to them in accordance with the subject LLCs and private entities organizational documents; and their interests in the management companies, which will be allocated to them in accordance with the valuations of the management companies by the independent valuer. This is in addition to shares of Class A common stock issuable in respect of the voluntary pro rata reimbursement program consented to by participants in the subject LLCs and its share of distributions of any cash available for distribution from the subject LLCs prior to the consolidation. The Helmsley estate will receive Class A common stock, Class B common stock and/or operating partnership units and cash having an aggregate exchange value of \$1,028,623,118. The Helmsley estate has exercised the cash option as to all of the operating partnership units issuable to it by the private entities in the consolidation (which based on the exchange values represents 24.53% of the common stock on a fully-diluted basis) and will receive Class A common stock, Class B common stock and/or operating partnership units to the extent that the cash available for this purpose is insufficient to pay all of the consideration in cash. The Helmsley estate is expected to receive a substantial portion of the proceeds from the IPO pursuant to the cash election. The Helmsley estate will also receive an amount equal to any New York City transfer tax savings resulting from its status as a charitable organization. In addition, the company and the Helmsley estate have agreed that if the IPO is upsized after the effective time of the registration statement filed in connection with the IPO or if the underwriters in the IPO exercise their option to purchase additional shares of Class A common stock, all additional net proceeds from the sale of shares of Class A common stock issued by the company in such upsized option will be allocated solely to the Helmsley estate for purposes of the consolidation at the same value as the cash option described above. For more information on transactions in connection with the consolidation, see The Consolidation.

**Tax Protection Agreement**

The operating partnership intends to enter into a tax protection agreement with Peter L. Malkin and Anthony E. Malkin pursuant to which the operating partnership will agree to indemnify the Wien group and an additional third party investor in Metro Center (who was one of the original landowners and was involved in the development of the property) against certain tax liabilities if those tax liabilities result from (i) the operating partnership's sale, transfer, conveyance or other taxable disposition of four specified properties (First Stamford Place, Metro Center, 10 Bank Street and 1542 Third Avenue, which collectively represent approximately 2.44% of the aggregate exchange value) to be acquired by the operating partnership in the consolidation, for a period of 12 years with respect to First Stamford Place and for the later of (x) eight years or (y) the death of both of Peter L. Malkin and Isabel W. Malkin, who are 78 and 76 years old, respectively, for the three other properties, (ii) the operating partnership's failing to maintain until maturity the indebtedness secured by these properties or failing to use commercially reasonable efforts to refinance such indebtedness upon maturity in an amount equal to the principal balance of such indebtedness, or, if the operating partnership is unable to refinance such indebtedness at its current principal amount, at the highest principal amount possible, or (iii) the operating partnership's failing to make available to any of these investors the opportunity to guarantee, or otherwise bear the risk of loss, for U.S. federal income tax purposes, of their allocable share of \$160 million of aggregate indebtedness meeting certain

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requirements, until such investor owns less than the aggregate number of operating partnership units and shares of common stock equal to 50% of the aggregate number of such units and shares such investor received in the consolidation.

The operating partnership estimates that if all of its assets subject to the tax protection agreement were sold in a taxable transaction immediately after the IPO, the amount of the operating partnership's indemnification obligations (based on tax rates applicable for the taxable year ending December 31, 2012, and exchange values, and including additional payments to compensate the indemnified partners for additional tax liabilities resulting from the indemnification payments) would be approximately \$97.7 million (which will be \$119.6 million beginning after December 31, 2012 if certain sunset provisions under the Internal Revenue Code are not altered or reversed).

The company does not presently intend to sell or take any other action which would result in a tax protection payment with respect to the properties covered by the tax protection agreement. The tax protection agreement will not apply to a third-party portfolio transaction. See The Consolidation Description of the Tax Protection Agreement.

## **Partnership Agreement**

Concurrently with the completion of the IPO, the company will enter into the operating partnership agreement with the various persons receiving operating partnership units in the consolidation, including certain members of the company's senior management team and participants in the private entities and equity holders in the management companies. As a result, such persons will become limited partners of the operating partnership. See Description of Operating Partnership Units and the Partnership Agreement of the Operating Partnership.

Pursuant to the operating partnership agreement, limited partners of the operating partnership will have rights beginning 12 months after the completion of the IPO to require the operating partnership to redeem all or part of their operating partnership units for cash equal to the then-current market value of an equal number of shares of the company's Class A common stock (determined in accordance with and subject to adjustment under the partnership agreement), or, at the company's election, to exchange their operating partnership units for shares of the company's Class A common stock on a one-for-one basis subject to certain adjustments and the restrictions on ownership and transfer of the company's stock set forth in the company's charter and described under the section entitled Description of Capital Stock Restrictions on Ownership and Transfer.

## **Registration Rights**

Upon completion of the IPO and the consolidation, the company will enter into a registration rights agreement with certain persons receiving shares of the company's common stock or operating partnership units in the consolidation, including certain members of the company's senior management team. Under the terms of the registration rights agreement, the participants in the consolidation, including the Helmsley estate, will receive rights to have shares of common stock held by them registered for resale under the Securities Act and the Malkin Family and the Helmsley estate will have rights to demand underwritten offerings with respect to such resales. See The Consolidation Registration Rights Agreement.

## **Employment Agreement and Change in Control Severance Agreements**

The company intends to enter into an employment agreement with Anthony E. Malkin that will become effective upon the consummation of the IPO. This agreement will provide for salary, bonuses and other benefits, including among other things, severance benefits upon a termination of employment under certain circumstances and the issuance of equity awards. See Management Employment Agreement. In addition, the company intends to enter into change in control severance agreements with David A. Karp, Thomas P. Durels and Thomas N. Keltner, Jr. that will become effective upon the consummation of the IPO. See Management Change in Control Severance Agreements.

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### **Indemnification of the Company's Directors and Officers**

Upon completion of the IPO, the company intends to enter into indemnification agreements with each of the company's directors, executive officers, chairman emeritus and certain other parties, providing for the indemnification by the company for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against (i) the company's directors, executive officers and chairman emeritus and (ii) the company's executive officers, chairman emeritus and certain other parties who are former members, managers, shareholders, directors, limited partners, general partners, officers or controlling persons of the supervisor in their capacities as such as described in Management Limitation of Liability and Indemnification.

### **Option Agreements**

The company has entered into the option agreements with certain of the private entities supervised by the supervisor granting the company the right to acquire each of the following two option properties or interests therein.

#### **112-122 West 34th Street**

Pursuant to the company's option agreements for 112-122 West 34th Street, the company may acquire from 112 West 34th Street Associates L.L.C. and 112 West 34th Street Company Associates L.L.C. their rights in the property, on or before the later of (i) 12 months after the company receive notice of a settlement or a final, non-appealable judgment of certain ongoing litigation with respect to the property or (ii) six months after the completion of independent valuations described below, but in no event later than seven years from the completion of the IPO. The purchase price will be based on an appraisal by independent third parties, unless the company and the owners of 112-122 West 34th Street, with the consent of the Helmsley estate, agree to a negotiated price, and unless the litigation related to 112-122 West 34th Street is resolved prior to the closing of the consolidation, in which case investors in 112 West 34th Street Associates L.L.C. and 112 West 34th Street Company Associates L.L.C. 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 the company's option property. 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. As a result of the ongoing litigation, the company cannot predict when or if the company will acquire this property.

#### **1400 Broadway**

Pursuant to the company's option agreement for 1400 Broadway, the company may acquire from 1400 Broadway Associates L.L.C. its rights in the property, on or before the later of (i) 12 months after the company receive notice of a settlement or a final, non-appealable judgment of certain ongoing litigation with respect to the property or (ii) six months after the completion of independent valuations described below, but in no event later than seven years from the completion of the IPO. The purchase price will be based on an appraisal by independent third parties, unless the company and the owners of 1400 Broadway, with the consent of the Helmsley estate, agree to a negotiated price, and unless the litigation related to 1400 Broadway is resolved prior to the closing of the consolidation, in which case investors in 1400 Broadway Associates L.L.C. 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

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negotiation process on the company's behalf and a majority of the company's independent directors must approve the acquisition of interests in the company's option property. 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. As a result of the ongoing litigation, the company cannot predict when or if the company will acquire this property.

Concurrently with the consummation of the IPO, the company intends to enter into management agreements with respect to each of the option properties.

## **Cash Amounts**

As permitted under the contribution agreements and merger agreements entered into by the company and the subject LLCs, private entities or the management companies, as applicable, the subject LLCs, private entities and the management companies will declare final distributions to the participants in such entities, including members of the company's senior management team and certain of their affiliates and related persons, in the amount of approximately \$145,800,000 in the aggregate (which amount is the company's estimate based on the company's historical combined balance sheet as of September 30, 2012), of which \$53,600,000 will be paid to the Malkin Family, including Anthony E. Malkin and Peter L. Malkin, in accordance with their ownership interests in each applicable subject LLC, private entity and management company. These amounts are in addition to the consideration to be received by the Malkin Holdings group in the consolidation, as set forth elsewhere in this prospectus/consent solicitation. The company anticipates this amount will be lower on the date the subject LLCs and private entities declare their respective final distributions due to expenses they will incur and pay in operating their business prior to such declaration date. The contribution agreements and merger agreements provide that the subject LLCs, private entities and management companies may distribute their cash (in the case of the existing entities, excluding from such distributable cash, any reserves on deposit with lenders for escrow accounts; amounts attributable to certain prepayments of rent, management fees or other income streams or expense reimbursements; and amounts held by the existing entities as security deposits or amounts otherwise required to be reserved by the existing entities pursuant to existing agreements with third parties) to their participants in accordance with the provisions of such entities' organizational documents; provided that cash will only be distributed by any entity to the extent that it exceeds the normalized level of net working capital for such entity, as determined by the supervisor (determined based on the most recent quarterly financial statements). Such payments will not be made from the net proceeds of the IPO.

## **Excluded Properties and Businesses**

In addition to the interests in the properties being acquired from the subject LLCs and the private entities or entities organized by them, the Malkin Family owns non-controlling interests in, and Anthony E. Malkin and Peter L. Malkin control the general partners or managers of, the entities that own interests in six multi-family properties, five net leased retail properties, one former post office property which is subject to rezoning before it will be converted into a single tenant retail property, and a development parcel that is zoned for residential use. The Malkin Family also owns non-controlling interests in one Manhattan office property, two Manhattan retail properties and several retail properties outside of Manhattan, none of which will be contributed to the company in the consolidation. The non-controlling interests described above are referred to collectively herein as the excluded properties. In addition, the Malkin Family owns interests in six mezzanine and senior equity funds, two industrial funds, five residential property managers and a registered broker dealer, none of which will be contributed to the company in the consolidation, and which is referred to collectively herein as the excluded businesses. The Malkin Family owns certain non-real estate family investments that will not be contributed to the company in the consolidation. The company does not believe that the excluded properties or the excluded businesses are consistent with its portfolio geographic or property type composition, management or strategic direction.

Pursuant to management and/or services agreements with the owners of interests in those excluded properties and services agreements with the five residential property managers and the managers of certain other

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excluded businesses which historically were managed by the supervisor and its affiliates, the company will be designated as the manager of the excluded properties and will provide services to the owners of certain of the excluded properties and the five residential property managers and provide services and access to office space to the existing managers of the other excluded businesses (other than with respect to the registered broker dealer). As the manager or service provider, the company will be paid a management or other fee with respect to those excluded properties and excluded businesses (other than with respect to the registered broker dealer) where the supervisor and its affiliates had previously received a management fee on the same terms as the fee paid to the supervisor and its affiliates, and reimbursed for the company's costs in providing the management and other services to those excluded properties and businesses where the supervisor and its affiliates had not previously received a management fee. The company's management of the excluded properties and provision of services to the owners of certain of the excluded properties, the five residential property managers and the existing managers of the other excluded businesses will represent a minimal portion of the company's overall business. There is no established time period in which the company will manage such properties or provide services to such entities and Peter L. Malkin and Anthony E. Malkin expect to sell certain of these properties or unwind certain of these businesses over time.

### **Reimbursement of Pre-Closing Transaction Costs**

As part of the contribution and option agreements, the operating partnership will reimburse expenses incurred in connection with the consolidation and the IPO that have been paid by subject LLCs, the private entities and the option entities to each applicable subject LLC, private entity and the option entities, and of which \$ will be paid to the Malkin Holdings group, including Anthony E. Malkin and Peter L. Malkin, in accordance with their ownership interests in each applicable subject LLC and private entity and the supervisor. These amounts are in addition to the consideration to be received by the Malkin Holdings group in the consolidation, as set forth elsewhere in this prospectus/consent solicitation.

### **Repayment of Loan to Existing Entity**

The company expects to use a portion of the net proceeds from the IPO to repay a loan in the amount of \$3.6 million made in connection with 500 Mamaroneck Avenue to fund leasing costs at the property, of which approximately \$1.2 million of such loan was made by Anthony E. Malkin and Peter L. Malkin.

### **Releases of Guarantees**

Peter L. Malkin and Anthony E. Malkin will be released from or otherwise indemnified for liabilities arising under certain guarantees and indemnities with respect to approximately \$1.11 billion of mortgage loans (including currently undrawn amounts) on the company's properties, which will be assumed by the company upon closing of the consolidation in respect of obligations arising after the closing. The guarantees and indemnities with respect to mortgage loans of many of the existing entities, including the subject LLCs, were undertaken by Messrs. Malkin and Malkin to meet a conventional lender requirement which became standard only long after such entities were formed. In each case, Messrs. Malkin and Malkin provided such guarantee while serving in a representative capacity as an agent or member of a subject LLC or private entity which was then seeking a mortgage loan. The lender required such guarantee, and no party was available or willing to provide it except Messrs. Malkin and Malkin. They received no compensation for the guarantee and provided it as an accommodation to benefit such subject LLC or private entity in obtaining financing. The guarantees and indemnities with respect to all of the indebtedness are, in most instances, limited to losses incurred by the applicable lender arising from acts such as fraud, misappropriation of funds, intentional breach, bankruptcy and certain environmental matters. In connection with the company's assumption of these mortgage loans, it will seek to have the guarantors and/or indemnitors released from these guarantees and indemnities and to have the company's operating partnership assume any such guarantee and indemnity obligations as replacement guarantor and/or indemnitor. To the extent lenders do not consent to the release of these guarantors and/or indemnitors, and they remain guarantors and/or indemnitors on assumed indebtedness following the IPO and the consolidation, the operating partnership will enter into indemnification agreements with the guarantors and/or indemnitors pursuant

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to which the operating partnership will be obligated to indemnify such guarantors and/or indemnitors for any amounts paid by them under guarantees and/or indemnities with respect to the assumed indebtedness.

The company believes that since the mortgage loans relating to these guarantees and indemnities will be assumed by the company upon closing of the consolidation, and it will have greater financial resources than the individual property owning entities which are subject to the mortgage loans, it is appropriate, and consistent with market practice, for Messrs. Malkin and Malkin to be indemnified by the company's operating partnership if the lenders do not consent to the release of these guarantors and/or indemnitors. Under the organizational documents of the subject LLCs and private entities and applicable law, Messrs. Malkin and Malkin are already generally entitled to indemnification from the participants in the subject LLCs and the private entities for liabilities incurred by them in good faith and not arising out of their own willful misconduct or gross negligence, including any such liabilities under these guarantees and indemnities. In addition, in connection with future mortgage loans that the company would enter into in connection with future property acquisitions or refinancing of the company's properties, the company intends to enter into any necessary guarantees directly and neither Messrs. Malkin and Malkin nor any of the company's other directors, executive officers or stockholders would be expected to enter into such guarantees.

### **IPO Grants Under the Equity Incentive Plan**

Prior to the completion of the IPO, the company and the operating partnership will jointly adopt an equity incentive plan. The equity incentive plan provides for the grant of incentive awards to the company's senior management team, the company's independent directors, advisers, consultants and other personnel. Assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the Class A common stock), and assuming an IPO price of \$10 per share, the company intends to grant an aggregate of 1,500,000 LTIP units/shares of restricted Class A common stock to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees upon completion of the IPO, and intends to authorize and reserve an additional 18,500,000 shares of the company's Class A common stock for issuance under the equity incentive plan. See Management IPO Grants Under the Equity Incentive Plan.

The company anticipates that the company will file a registration statement with respect to the shares of the company's Class A common stock issuable under the equity incentive plan following the consummation of the IPO. Shares of the company's Class A common stock covered by this registration statement, including shares of the company's Class A common stock issuable upon the exercise of options or restricted shares of the company's Class A common stock, will be eligible for transfer or resale without restriction under the Securities Act unless held by affiliates. See Management Equity Incentive Plan.

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**FIDUCIARY RESPONSIBILITY**

**Directors and Officers of the Company**

The company's directors and officers have duties under applicable Maryland law to manage the company in a manner consistent with the company's best interests. At the same time, the general partner of the operating partnership has fiduciary duties to manage the operating partnership in a manner beneficial to the operating partnership and its partners. The company's duties, as the general partner, to the operating partnership and its limited partners, therefore, may come into conflict with the duties of the company's directors and officers to the company and its stockholders. The company will be under no obligation to give priority to the separate interests of the limited partners of the operating partnership or the company's stockholders in deciding whether to cause the operating partnership to take or decline to take any actions. The limited partners of the operating partnership have agreed that in the event of a conflict in the duties owed by the company's directors and officers to the company and its stockholders and the fiduciary duties owed by the company, in its capacity as general partner of the operating partnership, to such limited partners, the company will fulfill its fiduciary duties to such limited partners by acting in the best interests of the company's stockholders.

The limited partners of the operating partnership expressly acknowledged that the company is acting for the benefit of the operating partnership, the limited partners and the company's stockholders collectively.

**Supervisor of the Subject LLCs and Agent for Participants**

The operating agreement of each subject LLC appoints the supervisor to provide supervisory and other services for the subject LLC. The supervisor is accountable to the subject LLC as a fiduciary and owes the subject LLCs a duty of loyalty and a duty of care. The supervisor's fiduciary duty to the subject LLCs also runs to the participants, as holders of participation interests in the membership interests of the subject LLCs. The supervisor is required to exercise good faith and fair dealing in providing supervisory and other services. The operating agreement of each subject LLC does not limit the liability of the supervisor in connection with providing supervisory and other services to the subject LLC.

The agents hold their membership interests in the subject LLCs as agents for their participants. The agent for each participating group is a fiduciary for the participants in its participating group and owes such participants a duty of loyalty and a duty of care. In connection with these duties, the agent is required to exercise good faith and fair dealing in conducting the affairs of the subject LLC on behalf of its participating group. Each participating agreement for Empire State Building Associates L.L.C. provides that an agent may be personally liable for liabilities under the Securities Act. Each participating agreement for the subject LLCs provides that the agent of a participating group shall not be personally liable for any act performed in good faith or for anything save their willful misconduct or gross negligence. Each participating agreement provides that the participants in a participating group shall indemnify the agent, in proportion to their participation interests, against any liability to which the agent may be subject by reason of having the participating group's interest in a subject LLC in their name. Each participating agreement for Empire State Building Associates L.L.C. provides that the participants in a participating group need not indemnify an agent who incurs a loss or liability as a result of his bad faith or contravention of such participating agreement.

Insofar as the foregoing provisions permit indemnification for liability arising under the Securities Act, the company has been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and therefore is unenforceable.



**Table of Contents****DESCRIPTION OF CAPITAL STOCK**

*The following is a summary of the rights and preferences of the company's capital stock. While the company believes the following description covers the material terms of its securities, the description does not purport to be complete and is subject to and is qualified in its entirety by reference to the MGCL and the company's charter and bylaws. The company encourages you to read carefully this entire prospectus, the company's charter and bylaws and the other documents the company refers to for a more complete understanding of the company's securities. Copies of the company's charter and bylaws are filed as exhibits to the registration statement of which this prospectus/consent solicitation is a part. See [Where You Can Find More Information](#).*

**General**

The company's charter provides that it may issue up to 400,000,000 shares of Class A common stock, \$0.01 par value per share, which is referred to herein as the Class A common stock, up to 50,000,000 shares of Class B common stock, \$0.01 par value per share, which is referred to herein as the Class B common stock and, together with the Class A common stock, is referred to herein as the common stock, and up to 50,000,000 shares of preferred stock, \$0.01 par value per share. The company's charter authorizes the board of directors to amend the company's charter from time to time to increase or decrease the aggregate number of authorized shares of stock or the number of shares of stock of any class or series that the company has authority to issue without stockholder approval. After giving effect to the consolidation and the IPO, assuming the company receives gross proceeds from the IPO of \$1,000,000,000 (excluding the underwriters' option to purchase additional shares of the Class A common stock), assuming an IPO price of \$10 per share, and assuming the grant of 1,500,000 LTIP units and/or restricted shares of Class A common stock to the company's independent directors, executive officers (other than Anthony E. Malkin) and certain other employees upon completion of the IPO, 132,856,817 shares of Class A common stock (147,856,817 shares if the underwriters' option to purchase up to 15,000,000 additional shares of Class A common stock is exercised in full) and 2,117,800 shares of Class B common stock will be issued and outstanding on a fully diluted basis and no shares of preferred stock will be issued and outstanding. Under Maryland law, stockholders are not generally liable for the company's debts or obligations solely as a result of their status as stockholders.

**Shares of Common Stock**

All of the shares of Class A common stock and Class B common stock issued in the consolidation will be duly authorized, validly issued, fully paid and nonassessable. Subject to the preferential rights of any other class or series of the company's stock and to the provisions of the company's charter regarding the restrictions on ownership and transfer of the company's stock, holders of shares of common stock are entitled to receive dividends on such shares of common stock out of assets legally available therefore if, as and when authorized by the company's board of directors and declared by the company, and the holders of shares of common stock are entitled to share ratably in the company's assets legally available for distribution to the company's stockholders in the event of the company's liquidation, dissolution or winding up after payment of or adequate provision for all the company's known debts and liabilities.

Subject to the provisions of the company's charter regarding the restrictions on ownership and transfer of the company's stock and except as may otherwise be specified in the company's charter, each outstanding share of Class A common stock entitles the holder thereof to one vote, and each outstanding share of Class B common stock entitles the holder thereof to 50 votes on all matters on which the stockholders of Class A common stock are entitled to vote, including the election of directors, and, except as provided with respect to any other class or series of stock, the holders of shares of Class A common stock and Class B common stock will vote together as a single class and will possess the exclusive voting power. The Class B common stock provides its holder with a voting right that is no greater than if such holder had received solely Class A common stock in the consolidation. Each share of Class B common stock has the same economic interest as a share of Class A common stock, and one share of Class B common stock and 49 operating partnership units together represent a similar economic value as 50 shares of Class A common stock. There is no cumulative voting in the election of the company's directors, which means that the stockholders entitled to cast a majority of the votes of the outstanding shares of common stock can elect all of the directors then standing for election, and the holders of the remaining shares

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will not be able to elect any directors. Directors are elected by a plurality of all the votes cast in the election of directors. Under a plurality voting standard, directors who receive the greatest number of votes cast in their favor are elected to the board of directors. Please see Certain provisions of the Maryland General Corporation Law and the Company's Charter and Bylaws Policy on Majority Voting.

Holders of shares of common stock have no preference, conversion, exchange, sinking fund or redemption rights (other than as described below with respect to the Class B common stock), have no preemptive rights to subscribe for any securities of the company and generally have no appraisal rights unless the company board of directors determines that appraisal rights apply, with respect to all or any such classes or series of stock, to one or more transactions occurring after the date of such determination in connection with which holders of such shares would otherwise be entitled to exercise appraisal rights. Subject to the provisions of the company's charter regarding the restrictions on ownership and transfer of the company's stock and except as otherwise provided in the company's charter, shares of common stock will have equal dividend, liquidation and other rights. One share of Class B common stock may be converted into one share of Class A common stock at any time, and one share of Class B common stock is subject to automatic conversion into one share of Class A common stock upon a direct or indirect transfer of such share of Class B common stock held by the holder of Class B common stock (or a permitted transferee thereof) to a person other than a permitted transferee. Shares of Class B common stock are also subject to automatic conversion upon certain direct or indirect transfers of operating partnership units held by the holder of such Class B common stock at a ratio of one share of Class B common stock for every 49 operating partnership units transferred to a person other than a permitted transferee. A permitted transferee with respect to a person is defined in the company's charter as a family member, affiliate or controlled entity of such person.

Under the MGCL, a Maryland corporation generally cannot dissolve, amend its charter, merge or consolidate with another entity, sell all or substantially all of its assets or engage in a share exchange unless the action is approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter. The company's charter provides that these actions (other than certain amendments to the provisions of the company charter related to the removal of directors, the restrictions on ownership and transfer of the company's stock and the vote required to amend these provisions) may be approved by a majority of all of the votes entitled to be cast on the matter.

### **Power to Reclassify the Company's Unissued Shares of Stock**

The company's charter authorizes the company's board of directors to classify and reclassify any unissued shares of common or preferred stock into other classes or series of stock. Prior to issuance of shares of each class or series, the company's board of directors is required by Maryland law and by the company's charter to set, subject to the provisions of the company's charter regarding restrictions on ownership and transfer of the company's stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series. Therefore, the company's board of directors could authorize the issuance of shares of common or preferred stock with terms and conditions that may have the effect of delaying, deferring or preventing a change in control or other transaction that might involve a premium price for the company's shares of common stock or otherwise be in the best interest of the company's stockholders. No shares of preferred stock are presently outstanding, and the company has no present plans to issue any shares of preferred stock.

### **Power to Increase or Decrease Authorized Shares of Common Stock and Issue Additional Shares of Common and Preferred Stock**

The company believes the power of the company's board of directors to amend the company's charter from time to time to increase or decrease the number of authorized shares of stock, to issue additional authorized but unissued shares of common or preferred stock and to classify or reclassify unissued shares of common or preferred stock and thereafter to issue such classified or reclassified shares of stock will provide the company with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs

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that might arise. The additional classes or series, as well as the additional shares of common stock, will be available for issuance without further action by the company's stockholders, unless such approval is required by applicable law or the rules of any stock exchange or automated quotation system on which the company's securities may be listed or traded. Although the company's board of directors does not intend to do so, it could authorize the company to issue a class or series of stock that may, depending upon the terms of the particular class or series, delay, defer or prevent a change in control or other transaction that might involve a premium price for the company's shares of common stock or otherwise be in the company's best interest.

### **Restrictions on Ownership and Transfer**

In order for the company to qualify as a REIT under the Code, the company's shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. In addition, no more than 50% of the value of the outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of any taxable year (other than the first year for which an election to be a REIT has been made). To qualify as a REIT, the company must satisfy other requirements as well. See U.S. Federal Income Tax Considerations Requirements for Qualification General.

The company's charter contains restrictions on the ownership and transfer of the company's shares of common stock and other outstanding shares of stock. The relevant sections of the company's charter provide that no person or entity may own, or be deemed to own, by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of the company's common stock (the common stock ownership limit), or 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of all classes or series of the company's capital stock (the aggregate stock ownership limit). The common stock ownership limit and the aggregate stock ownership limit are collectively referred to herein as the ownership limits. A person or entity that, but for operation of the ownership limits or another restriction on ownership and transfer of the company's stock as described below, would beneficially own or be deemed to beneficially own, by virtue of the applicable constructive ownership provisions of the Code, shares of the company's stock and/or, if appropriate in the context, a person or entity that would have been the record owner of such shares of the company's stock is referred to as a prohibited owner.

The constructive ownership rules under the Code are complex and may cause shares of stock owned actually or constructively by a group of related individuals and/or entities to be owned constructively by one individual or entity. As a result, the acquisition of less than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of the company's common stock or 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of all classes or series of the company's stock (or the acquisition of an interest in an entity that owns, actually or constructively, shares of the company's stock) by an individual or entity, could, nevertheless, cause that individual or entity, or another individual or entity, to own constructively in excess of the ownership limits.

The company's board of directors may, in its sole discretion and subject to the receipt of such certain representations, covenants and undertakings deemed reasonably necessary by the board, prospectively or retroactively, exempt a person from the ownership limits and establish an excepted holder limit for such person. However, the company's board of directors may not exempt any person whose ownership of the company's outstanding stock would result in the company's being closely held within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise would result in the company's failing to qualify as a REIT. In order to be considered by the board of directors for exemption, a person also must provide the company's board of directors with information and undertakings deemed satisfactory to the company's board of directors that such person does not own, actually or constructively, an interest in one of the company's tenants (or a tenant of any entity which the company owns or controls) that would cause the company to own beneficially or constructively more than a 9.9% interest in the

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tenant if the income derived by the company from such tenant would reasonably be expected to equal or exceed the lesser of (i) one percent of the company's gross income (as determined for purposes of Section 856(c) of the Code) or (ii) an amount that would cause the company to fail to satisfy any of the gross income requirements of Section 856(c) of the Code. The person seeking an exemption must provide representations and undertakings to the satisfaction of the company's board of directors that it will not violate these restrictions. The person also must agree that any violation or attempted violation of these restrictions will result in the automatic transfer to a trust of the shares of stock causing the violation. As a condition of its waiver, the company's board of directors may require an opinion of counsel or IRS ruling satisfactory to the company's board of directors with respect to the company's qualification as a REIT.

In connection with the waiver of the ownership limits, creating an excepted holder limit or at any other time, the company's board of directors may, in its sole and absolute discretion, from time to time increase or decrease the ownership limits subject to the restrictions in the paragraph above; provided, however, that the ownership limits may not be decreased or increased if, after giving effect to such decrease or increase, five or fewer persons could own or beneficially own in the aggregate, more than 49.9% in value of the company's shares then outstanding. Prior to the modification of the ownership limits, the company's board of directors may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the company's qualification as a REIT. Reduced ownership limits will not apply to any person or entity whose percentage ownership in the company's shares of common stock or stock of all classes and series, as applicable, is in excess of such decreased ownership limits until such time as such person's or entity's percentage ownership of the company's common stock or stock of all classes and series, as applicable, equals or falls below the decreased ownership limits, but any further acquisition of shares of the company's common stock or stock of all classes and series, as applicable, in excess of such percentage ownership of the company's shares of common stock or total shares of stock will be in violation of the ownership limits.

The company's charter further prohibits:

any person from beneficially or constructively owning (taking into account applicable attribution rules under the Code) shares of the company's stock that would result in the company's being closely held under Section 856(h) of the Code or otherwise cause the company to fail to qualify as a REIT;

any person from beneficially or constructively owning shares of the company's stock to the extent that such ownership would result in the company owning (directly or indirectly) more than a 9.9% interest in one of the company's tenants (or a tenant of any entity which the company owns or controls) if the income derived by the company (either directly or indirectly through one or more partnerships or limited liability companies) from such tenant would reasonably be expected to equal or exceed the lesser of (a) one percent of the company's gross income (as determined for purposes of Section 856(c) of the Code) or (b) an amount that would cause the company to fail to satisfy any of the gross income requirements of Section 856(c) of the Code; and

any person from transferring the company's shares of stock if such transfer would result in the company's shares of stock being beneficially owned by fewer than 100 persons (determined, as a general matter, without reference to any attribution rules).

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of the company's stock that will or may violate the ownership limits or any of the foregoing restrictions on ownership and transfer will be required to give written notice immediately to the company (or, in the case of a proposed or attempted acquisition, at least 15 days prior written notice to the company) and provide the company with such other information as the company may request in order to determine the effect of such transfer on the company's qualification as a REIT. These restrictions on ownership and transfer will not apply if the company's board of directors determines that it is no longer in the company's best interests to qualify as a REIT or that compliance with such provisions is no longer required for REIT qualification.

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If any transfer of shares of the company's stock would result in shares of the company's stock being beneficially owned by fewer than 100 persons, such transfer will be null and void and the intended transferee will acquire no rights in such shares. In addition, if any purported transfer of shares of the company's stock or any other event would otherwise result in any person violating the ownership limits or such other limit established by the company's board of directors or in the company's being closely held under Section 856(h) of the Code or otherwise failing to qualify as a REIT or in the company's owning (directly or indirectly) more than a 9.9% interest in one of the company's tenants (or a tenant of any entity which the company owns or controls) if the income derived by the company from such tenant would reasonably be expected to equal or exceed the lesser of (i) one percent of the company's gross income (as determined for purposes of Section 856(c) of the Code) or (b) an amount that would cause the company to fail to satisfy any of the gross income requirements of Section 856(c) of the Code, then generally that number of shares (rounded up to the nearest whole share) that would cause the company to violate such restrictions will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by the company and the intended transferee will acquire no rights in such shares. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. Any dividend or other distribution paid to the prohibited owner, prior to the company's discovery that the shares had been automatically transferred to a trust as described above, must be repaid to the trustee upon demand for the benefit of the charitable beneficiary of the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limits or the company's being closely held under Section 856(h) of the Code or otherwise failing to qualify as a REIT, then the company's charter provides that the transfer of the shares will be null and void.

Shares of stock transferred to the trustee are deemed offered for sale to the company, or the company's designee, at a price per share equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, in the event of a gift, devise or other such transaction, the last reported sales price reported on the NYSE (or other applicable exchange) on the day of the event which resulted in the transfer of such shares of stock to the trust) and (ii) the market price on the date the company, or the company's designee, accepts such offer. The company has the right to accept such offer until the trustee has sold the shares of the company's stock held in the trust pursuant to the clauses discussed below. Upon a sale to the company, the interest of the charitable beneficiary in the shares sold terminates, the trustee must distribute the net proceeds of the sale to the prohibited owner but the trustee may reduce the amount payable to the prohibited owner by the amount of dividends and other distributions which have been paid to the prohibited owner and are owed by the prohibited owner to the trustee. To the extent the prohibited owner would receive an amount for such shares that exceeds the amount that such prohibited owner would have been entitled to receive had the trustee sold the shares held in the trust to a third party, such excess shall be retained by the trustee for the benefit of the charitable beneficiary.

If the company does not buy the shares, the trustee must, within 20 days of receiving notice from the company of the transfer of shares to the trust, sell the shares to a person designated by the trustee who could own the shares without violating the ownership limitations set forth in the charter. Upon such sale, the trustee must distribute to the prohibited owner an amount equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, in the event of a gift, devise or other such transaction, the last reported sales price reported on the NYSE (or other applicable exchange) on the day of the event which resulted in the transfer of such shares of stock to the trust) and (ii) the sales proceeds (net of commissions and other expenses of sale) received by the trustee for the shares. The trustee will reduce the amount payable to the prohibited owner by the amount of dividends and other distributions which have been paid to the prohibited owner and are owed by the prohibited owner to the trustee. Any net sales proceeds in excess of the amount payable to the prohibited owner will be immediately paid to the beneficiary of the trust and any dividend or other distribution paid to trustee shall be held in trust for the charitable beneficiary. In addition, if, prior to discovery by the company that shares of stock have been transferred to a trust, such shares of stock are sold by a prohibited owner, then such shares will be deemed to have been sold on behalf of the trust and to the extent that the prohibited owner received an amount for such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount will be paid to the trustee upon demand. The prohibited owner has no rights in the shares held by the trustee.

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The trustee will be designated by the company and will be unaffiliated with the company and with any prohibited owner. Prior to the sale of any shares by the trust, the trustee will receive, in trust for the beneficiary of the trust, all dividends and other distributions paid by the company with respect to the shares held in trust and may also exercise all voting rights with respect to the shares held in trust. These rights will be exercised for the exclusive benefit of the beneficiary of the trust. Any dividend or other distribution paid prior to the company's discovery that shares of stock have been transferred to the trust will be paid by the recipient to the trustee upon demand. Any dividend or other distribution authorized but unpaid will be paid when due to the trustee.

Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee will have the authority, at the trustee's sole discretion:

to rescind as void any vote cast by a prohibited owner prior to the company's discovery that the shares have been transferred to the trust; and

to recast the vote in accordance with the desires of the trustee acting for the benefit of the beneficiary of the trust. However, if the company has already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

In addition, if the company's board of directors or other permitted designees determine in good faith that a proposed transfer would violate the restrictions on ownership and transfer of the company's shares of stock set forth in the company's charter, the company's board of directors or other permitted designees will take such action as it deems or they deem advisable to refuse to give effect to or to prevent such transfer, including, but not limited to, causing the company to redeem the shares of stock, refusing to give effect to the transfer on the company's books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of the company's stock, within 30 days after the end of each taxable year, is required to give the company written notice, stating the stockholder's name and address, the number of shares of each class and series of the company's stock that the stockholder beneficially owns and a description of the manner in which the shares are held. Each such owner must provide the company with such additional information as the company may request in order to determine the effect of the stockholder's beneficial ownership on the company's qualification as a REIT and to ensure compliance with the ownership limits. In addition, each stockholder must provide the company with such information as the company may request in good faith in order to determine the company's qualification as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

Any certificates, or written statements of information delivered in lieu of certificates, representing shares of the company's stock will bear a legend referring to the restrictions described above.

These restrictions on ownership and transfer will not apply if the company's board of directors determines that it is no longer in the company's best interests to qualify as a REIT or that compliance with such provisions is no longer required for REIT qualification.

These ownership limits could delay, defer or prevent a transaction or a change in control that might involve a premium price for the company's common stock or otherwise be in the best interest of the company's stockholders.

### **Transfer Agent and Registrar**

The company expects the transfer agent and registrar for the company's shares of common stock to be American Stock Transfer & Trust Company, LLC.

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**U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of the material U.S. federal income tax consequences relating to the consolidation, the voluntary pro rata reimbursement program for the former property manager and leasing agent legal proceedings, a third-party portfolio transaction, the company's qualification and taxation as a REIT, and the acquisition, holding, and disposition of operating partnership units and the company's common stock. Except to the limited extent discussed below, this summary does not address the tax consequences relating to any amounts, whether cash or securities, received by a participant as a result of the Stipulation of Settlement resolving the Class Actions. For purposes of this section under the heading U.S. Federal Income Tax Considerations, references to the company, mean only Empire State Realty Trust, Inc. and not its subsidiaries or other lower-tier entities, except as otherwise indicated. You are urged to both review the following discussion and to consult your tax advisor to determine the effects of the consolidation, the voluntary pro rata reimbursement program for the former property manager and leasing agent legal proceedings, a third-party portfolio transaction, and ownership and disposition of operating partnership units and the company's shares on your individual tax situation, including any state, local or non-U.S. tax consequences.

This summary is based upon the Code, the regulations promulgated by the U.S. Treasury Department, or the Treasury Regulations, current administrative interpretations and practices of the IRS (including administrative interpretations and practices expressed in private letter rulings which are binding on the IRS only with respect to the particular taxpayers who requested and received those rulings) and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. Except to the extent described below, no advance ruling has been or will be sought from the IRS regarding any matter discussed in this summary.

This summary is also based upon the assumption that the operation of the company, and of its subsidiaries and other lower-tier and affiliated entities, will in each case be in accordance with its applicable organizational documents or partnership agreements. This summary does not discuss the impact that U.S. state and local taxes and taxes imposed by non-U.S. jurisdictions could have on the matters discussed in this summary, except to the limited extent discussed below. In addition, this summary assumes that you will hold the company's common stock or operating partnership units as a capital asset, which generally means as property held for investment. This summary is for general information only, and does not purport to discuss all aspects of U.S. federal income taxation that may be important to a particular participant in light of the participant's investment or tax circumstances, or to participants subject to special tax rules, such as:

U.S. expatriates;

persons who mark-to-market the company's common stock;

subchapter S corporations;

U.S. persons, as defined below, whose functional currency is not the U.S. dollar;

financial institutions;

insurance companies;

broker-dealers;

regulated investment companies, or RICs ;

REITs;

trusts and estates;

holders who receive common stock through the exercise of employee stock options or otherwise as compensation;

persons holding common stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment



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persons subject to the alternative minimum tax provisions of the Code;

persons holding their interest through a partnership or similar pass-through entity;

persons holding a 10% or more (by vote or value) beneficial interest in the company and, except to the extent discussed below:

tax-exempt organizations and

non-U.S. persons who hold common stock (a non-U.S. stockholder ) or operating partnership units, as defined below. For purposes of this summary, a U.S. person is a participant who for U.S. federal income tax purposes is:

a citizen or resident of the U.S.;

a corporation (including an entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S. or of a political subdivision thereof (including the District of Columbia);

an estate whose income is subject to U.S. federal income taxation regardless of its source or

any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

A non-U.S. person who holds common stock or operating partnership units is a participant who is neither a U.S. person nor an entity that is treated as a partnership for U.S. federal income tax purposes. The U.S. federal, state, local, and foreign tax consequences to a non-U.S. person of the consolidation and holding operating partnership units are complex and will depend on certain facts, including whether the series of operating partnership units received by such non-U.S. holder are regularly traded on an established securities market. Accordingly, non-U.S. holders are urged to consult with their tax advisor regarding the U.S. federal, state, local, and foreign tax consequences of the consolidation and the holding of operating partnership units in light of their particular circumstances.

THE U.S. FEDERAL INCOME TAX TREATMENT OF THE CONSOLIDATION, THE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM FOR THE FORMER PROPERTY MANAGER AND LEASING AGENT LEGAL PROCEEDINGS, A THIRD-PARTY PORTFOLIO TRANSACTION, AND OF HOLDERS OF OPERATING PARTNERSHIP UNITS AND COMMON STOCK DEPENDS IN SOME INSTANCES ON DETERMINATIONS OF FACT AND INTERPRETATIONS OF COMPLEX PROVISIONS OF U.S. FEDERAL INCOME TAX LAW FOR WHICH NO CLEAR PRECEDENT OR AUTHORITY MAY BE AVAILABLE. IN ADDITION, THE TAX CONSEQUENCES OF THE CONSOLIDATION, THE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM FOR THE FORMER PROPERTY MANAGER AND LEASING AGENT LEGAL PROCEEDINGS, A THIRD-PARTY PORTFOLIO TRANSACTION, AND HOLDING OPERATING PARTNERSHIP UNITS AND COMMON STOCK TO ANY PARTICULAR PARTICIPANT WILL DEPEND ON THE PARTICIPANT'S PARTICULAR TAX CIRCUMSTANCES. AMONG OTHER THINGS, THE CONSOLIDATION MAY HAVE SIGNIFICANT AND ADVERSE TAX CONSEQUENCES TO YOU, EVEN IF YOU RECEIVE OPERATING PARTNERSHIP UNITS. YOU ARE URGED TO CONSULT YOUR TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES TO YOU, IN LIGHT OF YOUR PARTICULAR INVESTMENT OR TAX CIRCUMSTANCES, OF THE CONSOLIDATION, THE VOLUNTARY PRO RATA REIMBURSEMENT PROGRAM FOR THE FORMER PROPERTY MANAGER AND LEASING AGENT LEGAL PROCEEDINGS, A THIRD-PARTY PORTFOLIO TRANSACTION, AND OF ACQUIRING, HOLDING, AND DISPOSING OF OPERATING PARTNERSHIP UNITS AND COMMON STOCK.



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### **U.S. Federal Income Tax Consequences of the Consolidation**

The following discussion assumes that the operating partnership is treated as a partnership and not as a publicly traded partnership taxable as a corporation (as described below) for U.S. federal income tax purposes.

#### ***General***

The intended U.S. federal income tax consequences of the consolidation to a participant will depend on the type of consideration the participant receives in the consolidation. If a participant receives a combination of operating partnership units and shares of common stock in the consolidation, the U.S. federal income tax consequences of the consolidation to such participant generally depend on whether the fair market value of the shares of common stock received by the participant exceeds such participant's reimbursement amount (as defined below). For any participant who receives operating partnership units in the consolidation, the fair market value of any shares of common stock (taking into account shares of common stock deemed to be received in connection with the voluntary pro rata reimbursement program, as described below) that such participant also receives that do not exceed the participant's reimbursement amount is referred to as reimbursement shares of common stock, and any shares of common stock (taking into account shares of common stock deemed to be received in connection with the voluntary pro rata reimbursement program, as described below) that such participant receives in excess of such participant's reimbursement amount is referred to as excess shares of common stock.

It is expected that the consolidation should be treated for U.S. federal income tax purposes as follows:

- (i) If you receive solely shares of Class A common stock, the consolidation should be treated as a taxable sale of your participation interest in which gain or loss is fully recognized. See Receipt of Common Stock Solely Class A Common Stock.
- (ii) If you receive solely operating partnership units, or if you receive a combination of (a) operating partnership units and (b) shares of common stock that do not exceed your allocable share, after certain adjustments, of certain qualified capital expenditures of the subject LLC, as further described below under Receipt of Operating Partnership Units (the reimbursement amount), the subject LLC should be treated as contributing its property to the operating partnership in exchange for operating partnership units and reimbursement shares of common stock as a reimbursement of qualified capital expenditures in a tax-deferred contribution, and the subject LLC should be treated as distributing operating partnership units and reimbursement common stock to you in a tax-deferred distribution. See Receipt of Operating Partnership Units.
- (iii) If you receive a combination of (a) operating partnership units and (b) shares of common stock in excess of your reimbursement amount, you should be treated as first selling a portion of your participation interest for such excess shares of common stock in a transaction in which gain or loss is recognized. Following such sale, the subject LLC should be treated as contributing the portion of its property not attributable to participation interests otherwise treated as having been sold to the operating partnership in exchange for operating partnership units and reimbursement shares of common stock as a reimbursement of qualified capital expenditures in a tax-deferred contribution, and the subject LLC should be treated as distributing operating partnership units and reimbursement shares of common stock equal to your reimbursement amount to you in a tax-deferred distribution. See Receipt of Common Stock Excess Common Stock.

If you receive solely shares of common stock in the consolidation, you will be deemed to have consented to treat the consolidation as a sale of your participation interest in exchange for such shares of common stock for U.S. federal income tax purposes. If you receive a combination of (a) operating partnership units and (b) common stock in excess of your reimbursement amount in the consolidation, upon receipt of such excess shares of common stock, you will be deemed to have consented to treat the consolidation as a sale of a portion of your participation interest in exchange for such excess shares of common stock for U.S. federal income tax purposes. When a partnership contributes all of its assets to another partnership and liquidates, the Treasury Regulations generally allow a partner in the liquidating partnership who receives consideration other than an

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interest in the surviving partnership to consent to be treated as if such partner sold all or a portion of its interest in the liquidating partnership for such other consideration. However, the Treasury Regulations do not specifically indicate whether such partner can be deemed to consent to treat the transaction as a sale of a portion of its partnership interest in exchange for only a portion of such additional consideration, with the remaining portion being treated as a reimbursement of qualified capital expenditure. The remainder of this discussion assumes that such parties can so consent. If, however, the IRS were to challenge the treatment of the consolidation as a sale of your participation interest only to the extent of the excess shares of common stock that you receive, you could recognize a greater amount of gain than the amount described herein.

If you consent to the voluntary pro rata reimbursement program, you may be treated as receiving shares of common stock that you would otherwise receive in the consolidation and immediately transferring such shares of common stock to the supervisor as a reimbursement payment. For this purpose, even if you elect to receive solely operating partnership units in the consolidation, you should be treated as receiving shares of common stock equal to the amount that you are treated as transferring to the supervisor as a reimbursement payment. Accordingly, the gain or loss that you recognize in the consolidation transaction should take into account your deemed receipt of such common stock. You should be entitled to deduct the value of the shares of common stock that you are deemed to pay to the supervisor as an expense associated with your participation interest in your subject LLC. This deduction should offset the amount of gain you recognize, or increase the amount of losses you would otherwise recognize, as a result of your deemed receipt of shares of common stock. However, this deduction may be subject to certain limitations depending on your individual circumstances and may be required to be capitalized, and you should consult with your tax advisor regarding your ability to utilize all or a portion of this deduction for U.S. federal income tax purposes. See U.S. Federal Income Tax Considerations U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former Property Manager and Leasing Agent Legal Proceedings.

***Receipt of Common Stock***

***Solely Class A Common Stock.*** If you elect to receive solely Class A common stock in exchange for your participation interest, as a general matter, you will recognize gain or loss for U.S. federal income tax purposes with respect to your participation interest equal to the amount by which the value of any shares of Class A common stock you receive in connection with the consolidation, plus any distribution you receive of consolidation expenses that the operating partnership pays as a reimbursement to your subject LLC, plus the amount of liabilities allocable to your participation interest, exceeds your adjusted tax basis in your participation interest. You generally will recognize phantom income (*i.e.*, income or gain in excess of the value of any shares of Class A common stock you receive) if you have a negative capital account with respect to your participation interest. As a result, the amount of gain you recognize in connection with the consolidation, or even any resulting U.S. federal income tax liability, may exceed the value of Class A common stock that you receive in connection with the consolidation. The supervisor believes that participants in 60 East 42nd St. Associates L.L.C. who have held their participation interests since the subject LLC's original investment had a negative capital account of approximately \$22,500 per original \$10,000 investment and participants in 250 West 57th St. Associates L.L.C. who have held their participation interests since the subject LLC's original investment had a negative capital account of approximately \$14,000 per original \$10,000 investment as of December 31, 2011.

***Excess Common Stock.*** If you are treated as selling a portion of your participation interest for U.S. federal income tax purposes because you receive a combination of operating partnership units and excess shares of common stock in the consolidation, you generally should recognize gain or loss with respect to such portion of your participation interest sold equal to the difference between your amount realized (which generally will equal the fair market value of any excess shares of common stock you receive in connection with the consolidation, plus your share of liabilities allocated to the portion of your participation interest that is treated as sold) and your adjusted tax basis in the portion of your participation interest treated as sold. For those purposes, your adjusted tax basis in your participation interest and your share of liabilities from such subject LLC must be allocated between (a) the portion of your participation interest treated as sold for such excess shares of common stock and (b) the portion of your participation interest for which you are deemed to receive a liquidating distribution of

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operating partnership units and reimbursement shares of common stock from your subject LLC. In most circumstances, your adjusted tax basis and your share of liabilities should be allocated between the two portions of your participation interest based on their relative fair market values. However, the applicable allocation rules are complex, and you are urged to consult with your tax advisor regarding the tax consequences of receiving a combination of operating partnership units and excess shares of common stock in the consolidation.

*Character of Gain Recognized.* Except as described in the following paragraph, and provided you are a U.S. individual participation interest holder, gain that you recognize, computed as described above, generally will be capital gain and will be treated as long term capital gain subject to a maximum U.S. federal income tax rate of 20% for non-corporate holders with respect to taxable years beginning after December 31, 2012, except to the extent such gain is attributable to the recapture of your share of prior real estate depreciation, in which case such gain is currently subject to a maximum U.S. federal income tax rate of 25% for non-corporate holders, in each case, provided you have a holding period in your participation interest of more than one year. In addition, if you acquired your participation interest after December 31, 2000 and you have a holding period in your participation interest of more than five years, gain that you recognize with respect to your participation interest may be eligible for a maximum U.S. federal income tax rate of 18% applicable to non-corporate holders for taxable years beginning after December 31, 2012, except to the extent that such gain is attributable to the recapture of your share of prior real estate depreciation, as described above.

Notwithstanding the general rule that any gain or loss you recognize will be capital gain or loss, you may recognize ordinary income or loss under the special rules of Section 751(a) of the Code. Under Section 751(a), you generally will recognize ordinary income (or loss) with respect to a sale of all or a portion of your participation interest to the extent that the amount realized (*i.e.*, the fair market value of the shares of common stock received for your participation interests, increased by the liabilities allocable to such participation interests) is attributable to any of your subject LLC's inventory and unrealized receivables (customarily referred to as hot assets). For this purpose, unrealized receivables are defined generally as rights to receive payment for goods and services to the extent not already recognized in income, as well as certain amounts of ordinary income the subject LLC would recognize if it sold its properties for fair market value (for example, depreciation recapture under Code Section 1245 attributable to depreciable non-real estate assets that have a fair market value in excess of their adjusted tax basis). The amount of ordinary income or loss recognized under Section 751(a) of the Code is generally equal to the amount of income or loss from hot assets that would be allocated to you if your subject LLC sold all of its assets for fair market value in a fully-taxable transaction. It is anticipated that a small portion of any gain you recognize in the consolidation may be treated as ordinary income under Section 751(a) of the Code.

*Basis in Common Stock.* As a general matter, if you receive shares of common stock of the company in the consolidation as part of a sale of all of your participation interest, or if you receive excess shares of common stock in the consolidation as part of a sale of a portion of your participation interest, you will have an initial aggregate tax basis in those shares equal to the aggregate fair market value of those shares on the date of the consolidation, and your holding period in such shares generally will begin on the day after the consolidation.

***Receipt of Operating Partnership Units***

*General.* It is intended that the exchange of participation interests solely for operating partnership units generally should be treated as a tax-deferred exchange for U.S. federal income tax purposes. Accordingly, if you receive solely operating partnership units in exchange for your participation interests, gain should generally not be recognized with respect to the operating partnership units received for U.S. federal income tax purposes unless (i) the disguised sale rules of the Code apply, (ii) you are deemed to receive a distribution of cash in excess of your adjusted tax basis under Sections 731 and 752(b) of the Code due to a reduction in your share of partnership liabilities, or (iii) you have at-risk recapture income under Section 465(e) of the Code.

Section 731(a) of the Code generally provides that, when a partnership distributes money and other property to a partner, the partner does not recognize gain except to the extent that the amount of money exceeds the

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partner's basis in the partner's partnership interest. Section 731(c) of the Code generally provides that marketable securities are treated as cash for purposes of Section 731 of the Code, subject to certain exceptions. Among the exceptions, the Treasury Regulations provide that a marketable security distributed by a partnership is not treated as cash for purposes of Section 731 of the Code if (i) the security was acquired by the partnership in a nonrecognition transaction (*i.e.*, a transaction in which gain is not recognized in whole or in part for U.S. federal income tax purposes), (ii) less than 20% of the property transferred by the partnership in the nonrecognition transaction by value consisted of cash and/or marketable securities, and (iii) the partnership distributed the security within five years of the date the partnership acquired the security (the Marketable Securities Exception). The operating partnership units acquired by the subject LLC and distributed to participants will be treated as marketable securities for this purpose because certain operating partnership units will be listed on the NYSE following the IPO. However, the deemed distribution of operating partnership units from the subject LLC to participants should qualify for the Marketable Securities Exception. As a result, Section 731(c) of the Code should not cause a participant who receives solely operating partnership units to recognize gain for U.S. federal income tax purposes.

*Receipt of Reimbursement Shares of Common Stock and Reimbursement of Consolidation Expenses.* It is intended that the receipt of reimbursement shares of common stock by a participant generally should be treated as (i) a distribution of such reimbursement shares of common stock from the operating partnership to the subject LLC in reimbursement of certain capital expenditures incurred by the subject LLC during the two years preceding the consolidation and (ii) a liquidating distribution of such reimbursement shares of common stock (along with operating partnership units that you receive in the consolidation) by the subject LLC to you.

As noted above, under Section 731(a) of the Code, a partner in a partnership who receives a distribution from the partnership does not generally recognize gain unless the partner receives cash, or marketable securities treated as cash under Section 731(c) of the Code, in excess of such partner's basis in its interest in the partnership. Although reimbursement shares of common stock are likely to be treated as marketable securities for this purpose, it is intended that any reimbursement shares of common stock distributed to any participant should qualify for the Marketable Securities Exception because such shares of common stock should be transferred from the operating partnership to the subject LLC in a nonrecognition transaction and should meet the other requirements applicable to this exception, described above. See *Receipt of Operating Partnership Units - General*. Accordingly, under these rules, you should not recognize gain or loss from your receipt of any reimbursement shares of common stock.

If you receive any reimbursement shares of common stock, your basis in your operating partnership units and your basis in any reimbursement shares of common stock that you receive generally should be determined by reference to the adjusted tax basis of such operating partnership units and any such shares of common stock in the hands of the subject LLC. However, to the extent that the aggregate tax basis, to your subject LLC, of such operating partnership units and any reimbursement shares of common stock that you receive is different than the basis of your participation interest (without taking into account the basis of any portion of your participation interest treated as sold for excess shares of common stock, and less any cash distributed to you from the operating partnership's reimbursement payment of consolidation expenses to your subject LLC), the basis of such operating partnership units and any such shares of common stock generally should be adjusted to take into account such difference in the manner provided under applicable Treasury Regulations. Although not entirely clear under current law, it is generally expected that your subject LLC's adjusted tax basis in any reimbursement shares of common stock should be equal to the fair market value of such shares of common stock. Your basis in your operating partnership units and any reimbursement shares of common stock that you receive may also be adjusted to take into account any change in your allocable share of liabilities, as described under *Receipt of Operating Partnership Units - Relief from Liabilities and Share of Liabilities*. You should consult your tax advisor regarding the adjusted tax basis of any reimbursement shares of common stock and operating partnership units you receive in the consolidation.

*Potential Application of the Disguised Sale Regulations.* Section 707(a)(2)(B) of the Code and the Treasury Regulations thereunder (referred to herein as the *Disguised Sale Regulations*) generally provide that, unless one of certain prescribed exceptions is applicable, a partner's contribution of property to a partnership and a simultaneous or subsequent transfer of money or other consideration (including the assumption of or taking

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subject to a liability) by the partnership to the partner within two years of such contribution will be presumed to be a sale, in whole or in part, of such property by the partner to the partnership unless the facts and circumstances clearly establish that the transfers do not constitute a sale. The Disguised Sale Regulations also provide, however, that if more than two years have passed between the transfer of money or other consideration and the contribution of property, the transactions will be presumed not to be a sale unless the facts and circumstances clearly establish that the transfers constitute a sale. In general, a payment that is dependent on the entrepreneurial risks of partnership operations is not treated as part of a disguised sale. As further discussed below, it is intended that the Disguised Sale Regulations should not apply to (i) the assumption of liabilities of your subject LLC by the operating partnership in the consolidation, (ii) the receipt by the subject LLC of operating partnership units, any cash your subject LLC receives from the operating partnership as a reimbursement of consolidation expenses, and reimbursement shares of common stock in exchange for its assets and the liquidation of the subject LLC and corresponding distribution to you of operating partnership units and reimbursement shares of common stock (iii) actual distributions of operating cash flow to you following the consolidation, or (iv) to any redemption of your operating partnership units by the operating partnership. Nonetheless, there can be no assurance that the IRS might not seek to contend that the Disguised Sale Regulations will apply to these transactions and/or to certain other circumstances. In particular, the IRS could contend that your receipt of reimbursement shares, your receipt of cash paid to your subject LLC by the operating partnership as a reimbursement of consolidation expenses, the assumption by the operating partnership of your subject LLC's liabilities, or certain other distributions with respect to your operating partnership units during the two-year period following the consolidation are taxable as consideration received in a disguised sale under the Disguised Sale Regulations.

The Disguised Sale Regulations provide that distributions from a partnership to a partner in connection with a contribution by the partner to the partnership are not treated as a disguised sale to the extent that such distributions do not exceed the amount of certain qualified capital expenditures incurred by the partner. For this purpose, qualified capital expenditures generally include capital expenditures and certain costs related to the organization and syndication of the partnership that (i) are incurred by the partner during the two-year period preceding the contribution by the partner to the partnership, (ii) are incurred with respect to property contributed by the partner to the partnership, and (iii) do not exceed 20 percent of the fair market value of such property at the time of such contribution. Qualified capital expenditures may exceed the limitation described in clause (iii), however, if the fair market value of the contributed property does not exceed 120% of the partner's adjusted basis in the property at the time of the contribution. We refer to your allocable share of the excess of the qualified capital expenditures of your subject LLC over any cash your subject LLC receives from the operating partnership as a reimbursement of consolidation expenses as your reimbursement amount. Each of the subject LLCs will receive a payment from the operating partnership reimbursing the subject LLC for consolidation costs incurred by the subject LLC, including consolidation costs that were incurred more than two years prior to the closing of the consolidation. It is currently expected that the reimbursement payment received by each subject LLC from the operating partnership will not exceed the qualified capital expenditures incurred by the subject LLC. As a result, any reimbursement shares of common stock you receive, as well as any cash your subject LLC receives as a reimbursement of any consolidation expenses paid by it, are intended to qualify for this exception from the Disguised Sale Regulations, and subject to the discussion below, should not be treated as part of a disguised sale. However, if the amount of cash your subject LLC receives from the operating partnership as a reimbursement of consolidation expenses were to exceed your subject LLC's qualified capital expenditures, the receipt of such excess cash as well as the receipt of any shares of common stock would be presumed to be a sale of a portion of your participation interest in which gain or loss is recognized unless the operating partnership can clearly establish that the reimbursement of consolidation expenses does not constitute a sale. See Receipt of Common Stock Excess Common Stock.

Although the operating partnership's assumption of a subject LLC's liabilities (or the taking by the operating partnership of the property of a subject LLC subject to any such liability) constitutes a transfer by the operating partnership to the subject LLC, no disguised sale should result where the liabilities assumed or taken subject to by the operating partnership constitute qualified liabilities. Qualified liabilities generally include, among others, (i) a liability that was incurred by a subject LLC more than two years prior to the consolidation

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and that has encumbered the subject LLC's property throughout such two year period, (ii) a liability properly allocated to qualified capital expenditures with respect to the subject LLC's property, and (iii) a liability incurred in the ordinary course of the trade or business in which the property of the subject LLC was used. Furthermore, no disguised sale should result from the operating partnership's assumption of a subject LLC's liabilities (or the taking by the operating partnership of the property of a subject LLC subject to any such liability) even if the assumed liabilities do not constitute qualified liabilities provided your share of operating partnership liabilities immediately following the transfer, excluding any qualified liabilities assumed by the operating partnership from your subject LLC or otherwise allocated to you prior to the consolidation, is not less than your share of the subject LLC's liabilities immediately prior to the transfer (applying certain special liability allocation rules).

As an example, if, within two years prior to the consolidation, you received a distribution of proceeds from a financing by a subject LLC whose property is being contributed, your receipt of operating partnership units in exchange for participation interests in such subject LLC may be treated as a disguised sale if such liability is considered to not be a qualified liability and you do not maintain a sufficient share of operating partnership liabilities for purposes of the Disguised Sale Regulations as described in the preceding paragraph.

In addition, certain ambiguities exist with respect to the interaction of the capital expenditure reimbursement rules and the qualified liability rules of the Disguised Sale Regulations; specifically as to whether the reimbursement of qualified capital expenditures needs to be reduced by liabilities used to fund such capital expenditures that are otherwise treated as qualified liabilities. Accordingly, although the operating partnership intends to treat any such liability of a subject LLC as a qualified liability, to the extent any participant's reimbursement amount includes capital expenditures funded with the proceeds of such a liability incurred by a subject LLC, and such participant receives reimbursement shares, such participant could be subject to the Disguised Sale Regulations to the extent the IRS were to successfully assert that such a liability is not a qualified liability and such participant does not otherwise maintain a sufficient share of operating partnership liabilities for purposes of the Disguised Sale Regulations as described above.

With respect to any actual cash distributions by the operating partnership within two years of the consolidation, the Disguised Sale Regulations provide that payments to partners that constitute operating cash flow distributions generally are presumed not to be a part of a sale of property to the partnership, even if they occur within two years of the contribution to the partnership. Distributions to a partner during a particular year qualify as operating cash flow distributions for this purpose so long as the total amount of distributions to such partner do not exceed the product of the partnership's net cash flow from operations for the year multiplied by the partner's applicable percentage share of overall profits for that year, or, if less, for the life of the partnership. It is not clear whether the operating cash flow safe harbor will apply to distributions to the holders of operating partnership units. The operating partnership generally intends to take the position that distributions with respect to your operating partnership units during the two-year period following the closing of the consolidation (including any redemption of operating partnership units prior to the second anniversary of the consolidation, as described herein) are not taxable as consideration received in a disguised sale because such distributions, as well as any other redemption payments, will be subject to the entrepreneurial risks of the operating partnership, and accordingly, any regulatory presumption regarding disguised sale treatment should likely be rebuttable. However, the operating partnership may, under the Disguised Sale Regulations, be required to disclose such distributions, as well as any redemption payments, to the IRS, to the extent the operating partnership determines that they are not eligible for any safe harbor. Moreover, there can be no guarantee that circumstances will not change and that the operating partnership will not make one or more extraordinary cash distributions and/or distributions of other property to all holders of operating partnership units that could be viewed as part of a disguised sale to the extent received by a holder of operating partnership units that was a participant.

If the IRS is successful in arguing that either a distribution or a redemption is a disguised sale, any such disguised sale may qualify as an installment sale under Section 453 of the Code, and thus you may be entitled to defer any taxable gain until the date of the deemed payment. However, other general tax principles applicable in the case of installment sales would apply. For example, interest expense and interest income may be imputed



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for U.S. federal income tax purposes to you and the operating partnership, respectively, and you may be required under Section 453A of the Code to pay interest to the IRS (at the U.S. federal underpayment rate) on the amount of deferred tax attributable to such deemed installment sale.

To the extent the Disguised Sale Regulations apply to any portion of a participant's transfer of participation interests to the operating partnership, such transfer should be treated as a sale by the participant and a purchase of such participation interest by the operating partnership directly from the participant as described above in *General*.

*Relief from Liabilities and Share of Liabilities.* Your share of liabilities associated with your participation interest in a subject LLC has a significant impact on the U.S. federal income tax consequences to you regardless of whether you receive solely shares of Class A common stock for your participation interests in the consolidation or if you receive operating partnership units in the consolidation. In addition, if you receive operating partnership units in the consolidation, your share of the operating partnership's liabilities will also have a significant impact on the U.S. federal income tax consequences to you following the consolidation. The following is a general summary of the rules for determining your share of liabilities. Due to the complexity of the rules under which partnership liabilities are allocated, you are strongly encouraged to consult your tax advisor regarding the application of these rules to your particular circumstances.

A partner's share of the liabilities of a partnership is determined under Section 752 of the Code and the Treasury Regulations thereunder. In general, each liability of a partnership is allocated to those partners who bear the economic risk of loss if each liability is not paid by the partnership, whether they bear the risk of loss as general partners of the partnership, by contract, by reason of being the lender to the partnership with respect to such liability or otherwise. In general, liabilities for which no partner bears the economic risk of loss, so-called nonrecourse liabilities, are allocated among the partners in three tiers: *first*, among the partners in accordance with their share of partnership minimum gain; *second*, in proportion to the taxable gain that would be allocated under Section 704(c) of the Code (or under the principles of Section 704(c)) if the assets of the partnership subject to the nonrecourse liabilities were sold for an amount equal to the nonrecourse liabilities; and *third*, generally speaking, in proportion to the partners' interests in partnership profits. The operating partnership anticipates that participants should receive allocations of liabilities under the second and third tiers.

If you receive operating partnership units in the consolidation and do not receive excess shares of common stock, you will be deemed to receive a constructive distribution of money from the operating partnership under Section 752(b) of the Code to the extent, if any, that (i) your share of the subject LLC's liabilities immediately prior to the consolidation exceeds (ii) your share of the operating partnership's liabilities immediately after the consolidation. If you receive operating partnership units and excess shares of common stock in the consolidation, as discussed above, your allocable share of your subject LLC's liabilities will be allocated between the portion of your participation interest treated as sold for excess shares of common stock and the remaining portion of your participation interest. Following such allocation, you will be deemed to receive a constructive distribution of money from the operating partnership under Section 752(b) of the Code to the extent, if any, that (i) the share of liabilities allocated to the portion of your participation interest not treated as sold exceeds (ii) your share of the operating partnership's liabilities immediately after the consolidation.

As noted above, a partner's share of partnership liabilities is determined under Section 752 of the Code and the Treasury Regulations thereunder, with different allocation rules applying depending on whether the liability is recourse or nonrecourse. A reduction in a partner's share of partnership liabilities is treated as a deemed cash distribution to such partner. Such deemed distribution will first decrease your adjusted tax basis in your operating partnership units, and the excess will be treated as a gain from the sale or exchange of your operating partnership units.

In general, after the consolidation, if you receive operating partnership units, to the extent the current mortgage debt on your subject LLC's property is maintained, or such mortgage debt is refinanced with similar mortgage debt, your share of the operating partnership's liabilities may be an amount sufficient to avoid your

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recognizing gain for U.S. federal income tax purposes as a result of a reduction in your allocable share of liabilities in the consolidation. The operating partnership generally expects to take into account certain built-in gain on contributed properties to maximize the nonrecourse liabilities allocated to the partners of the subject LLCs contributing such properties, and it is expected that you will initially be allocated an amount of liabilities sufficient to avoid the recognition of taxable gain. However, there can be no assurance that this will be the case and you should consult your tax advisor in this regard.

The operating partnership may apply some of the proceeds of the IPO to reduce a portion of the operating partnership's indebtedness, including indebtedness secured by properties currently owned by the subject LLCs. Over time, property depreciation, capital improvements made to properties, and debt amortization and repayment may reduce your share of the operating partnership's liabilities. In addition, the operating partnership's commitment pursuant to the tax protection agreement entered into with Peter L. Malkin and Anthony E. Malkin for the benefit of the Wien group (and an additional third party investor in Metro Center who was one of the original landowners and was involved in the development of the property) could result in less operating partnership liabilities being available to be allocated to participants. A reduction in your share of the operating partnership's liabilities (either as a result of the consolidation, from debt pay downs, or over time) that exceeds your U.S. federal income tax basis in your operating partnership units is treated as taxable gain from the sale or exchange of your operating partnership units.

You should consult your tax advisor to determine the effect of the consolidation and your ownership of operating partnership units on your allocable share of partnership liabilities (including the tax consequences to you of the exchange and ownership of operating partnership units under Section 752 of the Code).

*Possible At-Risk Recapture Under Section 465(e).* Under Section 465 of the Code, a taxpayer's ability to use losses to offset taxable income is limited by rules that are referred to as the at-risk rules. In addition, the at-risk rules may require a taxpayer to recapture losses that were previously taken by the taxpayer with respect to an activity if the taxpayer's at-risk amount for the activity falls below zero at the close of the taxable year. Losses are recaptured by including the amount of the losses previously taken by the taxpayer in the taxpayer's taxable income for the year of the recapture. The at-risk rules are only applicable to taxpayers who are individuals, trusts, estates, and certain closely-held corporations.

The identification and scope of an activity and the calculation of the at-risk amount under the at-risk rules are highly complex and can involve uncertainties. Generally, a taxpayer's at-risk amount for an activity is the amount of the taxpayer's investment in the activity, which is increased by the taxpayer's income from the activity and the taxpayer's share of the qualified nonrecourse financing, as defined in Section 465(b)(6) of the Code, with respect to the activity, and reduced by the taxpayer's losses and distributions from the activity. It is possible that the consolidation and/or the operating partnership's repayment or refinancing of some outstanding indebtedness that constitutes qualified nonrecourse financing could cause a participant's at-risk amount to be reduced below zero, which could, in turn, cause the participant to recognize taxable income as a result of the Section 465(e) recapture provisions. The definition of qualified nonrecourse financing is different from, and sometimes more restrictive than, the definition of nonrecourse liabilities for purposes of determining a partner's basis in its partnership interest, discussed above. It is therefore possible that a participant could incur a reduction in its share of qualified nonrecourse financing that causes it to recognize taxable income under the Section 465(e) recapture rules even if the participant does not have a reduction in its nonrecourse liabilities that causes it to recognize gain as the result of a deemed cash distribution, as described above. Each participant is urged to consult its tax advisor regarding the application of the Section 465(e) recapture rules to the participant in the consolidation.

### ***Use of Suspended Losses***

The basis rules under Section 704(d) of the Code or the at-risk rules under Section 465 may have prevented you from deducting all or a portion of your distributive share of any partnership losses attributable to your subject LLC. These limitations are applied separately and in sequence. Losses previously suspended under

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Section 704(d) will not be available to offset any gain that you recognize with respect to your participation interest. Losses previously allowed under Section 704(d) but suspended under Section 465, by contrast, generally may be used to offset gain that you recognize with respect to your participation interest to the extent that the gain gives you a positive at-risk basis in your participation interest.

Any gain that you recognize with respect to your participation interests will generally be treated as passive activity income (except to the extent attributable to any activity of a subject LLC that is not a passive activity with respect to you), and thus may be offset, as applicable, by any passive activity losses that you incur in the taxable year in which the consolidation occurs or by suspended passive activity losses from prior years (*i.e.*, losses previously allowed under Sections 704(d) and 465 of the Code, but disallowed under Section 469). In addition, suspended passive activity losses associated with your participation interests, if any, may be eligible for treatment as losses that are not from a passive activity. You are urged to consult your tax advisor with regard to potential passive activity losses associated with your participation interests and the impact of recognizing such losses in connection with your exchange of participation interests in the consolidation.

### ***Termination of the Subject LLCs and Distribution of Cash from the Subject LLCs***

As a result of the consolidation, the taxable year of each subject LLC will end. The subject LLCs will issue to each participant an IRS Schedule K-1 reflecting such participant's share of all income, gain, loss, deduction and credit of the subject LLC for the period ending on the date of the consolidation (including any amounts attributable to overage rent that will have accrued through the date of the closing of the consolidation), and you will be required to take such items into account for your year that includes the consolidation. Your basis in your participation interest will be increased by your allocable share of any such income and gain and decreased by your allocable share of any such loss and deduction.

It is expected that any distributions of excess cash held by the subject LLCs and any distributions of overage rent accrued through the date of the closing of the consolidation should be treated as distributions of cash from the subject LLC prior to the liquidation of the subject LLC. Accordingly, you should not generally be taxable for U.S. federal income tax purposes on any such distribution to the extent such distribution does not exceed your basis in your participation interest in the subject LLC immediately prior to the liquidation of the subject LLC, and your basis in your participation interest in your subject LLC should be reduced (but not below zero) by the amount of such distribution. To the extent any such distribution exceeds your basis in your participation interest in your subject LLC, such excess should generally be treated as gain from the sale of your participation interest.

### ***Withholding Considerations for Participants***

Under certain circumstances, you may be subject to information reporting and backup withholding in connection with the consolidation. Backup withholding generally will not apply if you are an exempt entity, or if you furnish a correct taxpayer identification number and certify on IRS Form W-9, or an appropriate substitute form, that you are not subject to backup withholding. Any amounts withheld under the backup withholding rules will be allowed as a refund or credit against a participant's U.S. federal income tax liability, provided such participant furnishes the required information to the IRS. In addition, the Code provides that the transferee of a U.S. real property interest, or USRPI, must withhold 10% of the amount realized by the transferor of such an interest if the transferor is a foreign person. It is likely that the participation interests are subject to withholding as USRPIs under the Code. As a result, the operating partnership intends to withhold 10% of the amount realized by you in connection with the consolidation unless you timely provide the operating partnership with a certificate of your non-foreign status, or FIRPTA Affidavit, in the form provided with the accompanying materials, or another certificate that relieves the operating partnership of its obligation to withhold under the Code and Treasury Regulations.

Amounts withheld from you do not constitute an additional tax, but rather are credited against your U.S. federal income tax liability, or otherwise refundable, provided you furnish the required information to the IRS in a timely manner.

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### ***New York State and New York City Personal Income Tax Considerations***

To the extent that you do not recognize gain in the consolidation for U.S. federal income tax purposes, you also generally should not recognize gain for purposes of the New York State personal income tax and, if applicable, the New York City personal income tax. If you are an individual or a partnership for New York State personal income tax purposes, any gain that you recognize with respect to your participation interests will generally be treated as New York source income for purposes of the New York State personal income tax. As a result, you (or, if you are a partnership, any of your partners who are individuals) will generally be subject to New York State personal income tax on such gain even if you are treated as a New York nonresident for purposes of the New York State personal income tax. If you are a resident of another U.S. state, you may be entitled to credit all or a portion of any New York State personal income tax that you pay as a result of the consolidation against any income taxes that you pay in your state of residence, depending on the laws of such state. The New York City personal income tax should not apply to individuals who are treated as New York City nonresidents for purposes of the tax. You are urged to consult with your tax advisor regarding the state and local tax consequences of the consolidation.

### **U.S. Federal Income Tax Considerations of the Voluntary Pro Rata Reimbursement Program for the Former Property Manager and Leasing Agent Legal Proceedings**

The following is a general summary of certain U.S. federal income tax considerations that you should take into account in connection with the voluntary pro rata reimbursement program for the former property manager and leasing agent legal proceedings expenses.

Although not entirely clear, if you consent to the voluntary pro rata reimbursement program, you should be treated for U.S. federal income tax purposes as if you received any distributions from your subject LLC that you forego as a result of such consent and transferred such distributions to the supervisor as a reimbursement payment. You should be entitled to deduct the amount of this deemed payment as an expense associated with your participation interest in your subject LLC. This deduction is generally expected to offset any income allocations that are attributable to the distribution you forego as a result of providing your consent. However, this deduction may be subject to certain limitations depending on your individual circumstances and may be required to be capitalized, and you should consult with your tax advisor regarding your ability to utilize all or a portion of this deduction for U.S. federal income tax purposes.

Although not entirely clear, if you consent to the voluntary pro rata reimbursement program, your subject LLC participates in the consolidation and any distributions that you forego as a result of such consent have not been paid at the time of the consolidation, you should be treated as receiving the shares of common stock that you would otherwise receive in the consolidation and immediately transferring such shares of common stock to the supervisor as a reimbursement payment. For this purpose, even if you elect to receive solely operating partnership units in the consolidation, you should be treated as receiving shares of common stock equal to the amount of common stock that you are treated as transferring to the supervisor as a reimbursement payment. Accordingly, the tax consequences of the consolidation, including the gain or loss that you recognize in the consolidation, should take into account your deemed receipt of such common stock. See U.S. Federal Income Tax Consequences of the Consolidation. You should be entitled to deduct the amount of the value of the shares of common stock that you are deemed to pay to the supervisor as an expense associated with your participation interest in your subject LLC. This deduction should offset the amount of gain you recognize, or increase the amount of losses you would otherwise recognize, as a result of your deemed receipt of shares of common stock. However, this deduction may be subject to certain limitations depending on your individual circumstances and may be required to be capitalized, and you should consult with your tax advisor regarding your ability to utilize all or a portion of this deduction for U.S. federal income tax purposes.

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### **U.S. Federal Income Tax Consequences of a Third-Party Portfolio Transaction**

Although the structure that will be used in a third-party portfolio transaction will depend on the circumstances of the transaction, the supervisor expects that it may not be possible to structure a third-party portfolio transaction as a tax-deferred transaction. To the extent that a third-party portfolio transaction is treated as a sale by your subject LLC of its underlying property for cash consideration, your subject LLC would likely recognize gain or loss equal to the difference between the amount of cash received, plus any liabilities that are assumed in the sale, and your subject LLC's adjusted basis in the property. Any such gain or loss would be allocated between you and the other holders of participation interests in your subject LLC pursuant to the terms of your subject LLC's partnership agreement. In addition, you may recognize additional gain or loss when your subject LLC distributes the cash consideration in liquidation of your participation interest. Any gain or loss that you recognize in connection with the liquidating distribution would generally have the character described above under U.S. Federal Income Tax Consequences of the Consolidation Character of Gain Recognized. However, notwithstanding the foregoing, a third-party portfolio transaction could have a different structure than described above, which could affect the U.S. federal income tax consequences of the transaction to you. Alternatively, to the extent that, in connection with a third-party portfolio transaction, you are treated as selling all or a portion of your participation interest, the U.S. federal income tax consequences to you will generally be described in U.S. Federal Income Tax Consequences of the Consolidation Receipt of Common Stock and U.S. Federal Income Tax Consequences of the Consolidation Character of Gain Recognized.

### **U.S. Federal Income Tax Considerations Regarding the Stipulation of Settlement Resolving the Class Actions**

It is expected that the amount of any cash and the fair market value of any securities received by a participant as a result of the Stipulation of Settlement resolving the Class Actions should be recognized as income upon receipt by such participant. Participants receiving amounts as a result of the Stipulation of Settlement must consult with their tax advisor to determine the tax consequences of the receipt of such amounts, including the character of such income resulting from such receipt.

### **Taxation of the Company**

The company intends to elect and to qualify to be taxed as a REIT under the Code, commencing with its taxable year ending December 31, 2013. The company believes it has been organized and the company intends to operate in a manner that will allow the company to qualify for taxation as a REIT under the Code commencing with its taxable year ending December 31, 2013.

The law firm of Clifford Chance US LLP has acted as the company's counsel in connection with the IPO. The company will receive the opinion of Clifford Chance US LLP prior to effectiveness of the registration statement on Form S-11 to the effect that, commencing with the company's taxable year ending December 31, 2013, the company will be organized in conformity with the requirements for qualification and taxation as a REIT under the Code, and the company's proposed method of operation will enable it to meet the requirements for qualification and taxation as a REIT under the Code. The opinion of Clifford Chance US LLP will be based on various assumptions relating to the company's organization and operation, including that all factual representations and statements set forth in all relevant documents, records and instruments are true and correct, all actions described herein are completed in a timely fashion and that the company will at all times operate in accordance with the method of operation described in the company's organizational documents and registration statement. Additionally, the opinion of Clifford Chance US LLP is conditioned upon factual representations and covenants made by the company's management regarding the company's organization, assets, and present and future conduct of the company's business operations and other items regarding the company's ability to meet the various requirements for qualification as a REIT, and assumes that such representations and covenants are accurate and complete and that the company will take no action that could adversely affect the company's qualification as a REIT. Although the company believes it will be organized and intends to operate so that the

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company will qualify as a REIT commencing with its taxable year ending December 31, 2013, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in the company's circumstances or applicable law, no assurance can be given by Clifford Chance US LLP or the company that the company will so qualify for any particular year. Clifford Chance US LLP will have no obligation to advise the company or the holders of Class A common stock of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. You should be aware that opinions of counsel are not binding on the IRS or any court, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

Qualification and taxation as a REIT depend on the company's ability to meet, on a continuing basis, through actual operating results, distribution levels, and diversity of stock ownership, various qualification requirements imposed upon REITs by the Code, the compliance with which will not be reviewed by Clifford Chance US LLP. In addition, the company's ability to qualify as a REIT depends in part upon the operating results, organizational structure and entity classification for U.S. federal income tax purposes of certain entities in which the company invests. The company's ability to qualify as a REIT for a particular year also requires that the company satisfy certain asset and income tests during such year, some of which depend upon the fair market values of assets in which the company directly or indirectly own an interest. Such values may not be susceptible to a precise determination. Accordingly, no assurance can be given that the actual results of the company's operations for any taxable year will satisfy such requirements for qualification and taxation as a REIT.

***Certain Tax Considerations Related to the Consolidation***

In connection with the consolidation, Malkin Properties CT and Malkin Construction will merge with and into the company in a transaction that is intended to be treated as a tax-deferred reorganization under the Code. If each of the mergers qualifies as a reorganization for U.S. federal income tax purposes, the company will succeed to the earnings and profits of Malkin Properties CT and Malkin Construction, and the company's tax basis of those assets acquired from Malkin Properties CT and Malkin Construction will be determined by reference to the tax basis of the asset in the hands of, as relevant, Malkin Properties CT and Malkin Construction.

Each of Malkin Properties CT and Malkin Construction has elected to be treated as an S Corporation for U.S. federal income tax purposes under Section 1361 of the Code. If the merger of either or both of Malkin Properties CT and Malkin Construction into the company does not qualify as a reorganization for U.S. federal income tax purposes, and if such corporation failed to qualify as an S corporation for U.S. federal income tax purposes, such merger would generally be treated as a sale by such corporation of its assets to the company in a taxable transaction, and the company would succeed to any tax liability of such corporation with respect to such gain. Assuming that Malkin Properties CT and Malkin Construction, as the case may be, qualified as an S corporation at the time of the merger and had not otherwise succeeded to any such tax liabilities or to the assets of a subchapter C corporation in a carryover basis transaction, such corporation generally would not have any such U.S. federal income tax liability from the merger. However, in such event, such corporation may have certain state and local tax liabilities, and the company would succeed to any such tax liabilities as the legal successor-in-interest to such corporation. If either or both of such mergers do not qualify as a reorganization for U.S. federal income tax purposes, as a general matter, the company would not succeed to the earnings and profits of the merging corporation and the company's tax basis in the assets it acquires from such corporation would not be determined by reference to the tax basis of the asset in the hands of such corporation, regardless of whether such corporation qualified as an S corporation.

In addition, the U.S. federal income tax treatment of the consolidation could affect the company's ability to qualify as a REIT, as discussed below under [Taxation of REITs Requirements for Qualification General](#) and [Taxation of REITs Requirements for Qualification Tax on Built-In Gains](#).

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### ***Taxation of REITs in General***

As indicated above, the company's qualification and taxation as a REIT for a particular year depend upon its ability to meet, on a continuing basis during such year, through actual results of operations, distribution levels, diversity of share ownership and various qualification requirements imposed upon REITs by the Code. The material qualification requirements are summarized below under Requirements for Qualification General. While the company intends to operate so that it qualifies as a REIT, no assurance can be given that the IRS will not challenge the company's qualification as a REIT, or that the company will be able to operate in accordance with the REIT requirements in the future. See Failure to Qualify.

Provided that the company qualifies as a REIT, the company will generally be entitled to a deduction for dividends that it pays and therefore will not be subject to U.S. federal corporate income tax on its net taxable income that is currently distributed to the company's stockholders. This treatment substantially eliminates the double taxation at the corporate and stockholder levels that generally results from investment in a corporation. Rather, income generated by a REIT generally is taxed only at the stockholder level upon a distribution of dividends by the REIT.

Net operating losses, foreign tax credits and other tax attributes of a REIT generally do not pass through to the stockholders of the REIT, subject to special rules for certain items such as capital gains recognized by REITs. See Taxation of Stockholders.

If the company qualifies as a REIT, it will nonetheless be subject to U.S. federal income tax as follows:

The company will be taxed at regular corporate rates on any undistributed income, including undistributed net capital gains.

The company may be subject to the alternative minimum tax on the company's items of tax preference, if any.

If the company has net income from prohibited transactions, which are, in general, sales or other dispositions of property held primarily for sale to customers in the ordinary course of business, other than foreclosure property, as described below, such income will be subject to a 100% tax. See Requirements for Qualification Prohibited Transactions, and Requirements for Qualification Foreclosure Property, below.

If the company elects to treat property that the company acquires in connection with a foreclosure of a mortgage loan or leasehold as foreclosure property, the company may thereby avoid (1) the 100% tax on gain from a resale of that property (if the sale would otherwise constitute a prohibited transaction), and (2) the inclusion of any income from such property not qualifying for purposes of the REIT gross income tests discussed below, but the income from the sale or operation of the property may be subject to corporate income tax at the highest applicable rate (currently 35%).

If the company fails to satisfy the 75% gross income test or the 95% gross income test, as discussed below, but nonetheless maintain the company's qualification as a REIT because other requirements are met, the company will be subject to a 100% tax on an amount equal to (1) the greater of (A) the amount by which the company fails the 75% gross income test or (B) the amount by which the company fails the 95% gross income test, as the case may be, multiplied by (2) a fraction intended to reflect the company's profitability.

If the company fails to satisfy any of the REIT asset tests, as described below, other than a failure of the 5% or 10% REIT assets tests that does not exceed a statutory *de minimis* amount as described more fully below, but the company's failure is due to reasonable cause and not due to willful neglect and the company nonetheless maintains its REIT qualification because of specified cure provisions, the company will be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate (currently 35%) of the net income generated by the non-qualifying assets during the period in which the company failed to satisfy the asset tests.

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If the company fails to satisfy any provision of the Code that would result in the company's failure to qualify as a REIT (other than a gross income or asset test requirement) and that violation is due to reasonable cause, the company may retain the company's REIT qualification, but the company will be required to pay a penalty of \$50,000 for each such failure.

If the company fails to distribute on an annual basis at least the sum of (1) 85% of the company's REIT ordinary income for such year, (2) 95% of the company's REIT capital gain net income for such year and (3) any undistributed taxable income from prior periods, or the required distribution, the company will be subject to a 4% excise tax on the excess of the required distribution over the sum of (A) the amounts actually distributed (taking into account excess distributions from prior years), plus (B) retained amounts on which U.S. federal income tax is paid at the corporate level.

The company may be required to pay monetary penalties to the IRS in certain circumstances, including if the company fails to meet record-keeping requirements intended to monitor the company's compliance with rules relating to the composition of the company's stockholders, as described below in Requirements for Qualification General.

The company may be subject to a 100% excise tax on some items of income and expense that are directly or constructively paid between the company, the company's tenants and/or any TRSs if and to the extent that the IRS successfully adjusts the reported amounts of these items.

If the company acquires appreciated assets from a subchapter C corporation (generally a corporation that is not a REIT, an RIC or an S corporation) in a transaction in which the adjusted tax basis of the assets in the company's hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation, the company will be subject to tax on such appreciation at the highest corporate income tax rate then applicable if the company subsequently recognizes gain on a disposition of any of the assets during the 10-year period following the company's acquisition of the assets from the subchapter C corporation. The results described in this paragraph assume that the subchapter C corporation will not elect, in lieu of this treatment, to be subject to an immediate tax when the company acquires the assets. See Tax on Built-in Gains below.

The company may elect to retain and pay income tax on the company's net long-term capital gain. In that case, a stockholder would include the stockholder's proportionate share of the company's undistributed long-term capital gain (to the extent the company makes a timely designation of such gain to the stockholder) in the stockholder's income, would be deemed to have paid the tax that the company paid on such gain, and would be allowed a credit for the stockholder's proportionate share of the tax deemed to have been paid, and an adjustment would be made to increase the stockholder's basis in the common stock. Stockholders that are U.S. corporations will also appropriately adjust their earnings and profits for the retained capital gain in accordance with Treasury Regulations to be promulgated.

The company will have subsidiaries or own interests in other lower-tier entities that are taxable C corporations, including Observatory TRS, Holding TRS, and any other TRSs, the earnings of which could be subject to U.S. federal corporate income tax. In addition, the company and the company's subsidiaries may be subject to a variety of taxes other than U.S. federal income tax, including payroll taxes and state, local, and foreign income, transfer, franchise, property and other taxes. The company could also be subject to tax in situations and on transactions not presently contemplated.

### **Requirements for Qualification**

#### ***General***

The Code defines a REIT as a corporation, trust or association:



- (1) that is managed by one or more trustees or directors;

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- (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- (3) that would be taxable as a domestic corporation but for the special Code provisions applicable to REITs;
- (4) that is neither a financial institution nor an insurance company subject to specific provisions of the Code;
- (5) the beneficial ownership of which is held by 100 or more persons during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months;
- (6) in which, during the last half of each taxable year, not more than 50% in value of the outstanding stock is owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include specified entities);
- (7) that makes an election to be a REIT for the current taxable year or has made such an election for a previous taxable year that has not been terminated or revoked;
- (8) that has no earnings and profits from any non-REIT taxable year as of a successor to any subchapter C corporation at the close of any taxable year;
- (9) that uses the calendar year for U.S. federal income tax purposes; and
- (10) that meets other tests described below, including with respect to the nature of its income and assets and the amount of its distributions.

The Code provides that conditions (1) through (4) must be met during the entire taxable year, and that condition (5) must be met during at least 335 days of a taxable year of 12 months, or during a proportionate part of a shorter taxable year. Conditions (5) and (6) do not need to be satisfied for the first taxable year for which an election to become a REIT has been made. The company's charter provides restrictions regarding the ownership and transfer of the company's shares, which are intended, among other purposes, to assist the company in satisfying the share ownership requirements described in conditions (5) and (6) above. The company intends to monitor the beneficial owners of the company's stock to ensure that the company's stock is at all times beneficially owned by 100 or more persons, but no assurance can be given that the company will be successful in this regard. For purposes of condition (6), an individual generally includes a supplemental unemployment compensation benefit plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes, but does not include a qualified pension plan or profit sharing trust.

To monitor compliance with the share ownership requirements, the company is required to maintain records regarding the actual ownership of the company's shares. To do so, the company must demand written statements each year from the record holders of significant percentages of the company's stock in which the record holders are to disclose the actual owners of the shares (*i.e.*, the persons required to include in gross income the dividends paid by the company). A list of those persons failing or refusing to comply with this demand must be maintained as part of the company's records. Failure by the company to comply with these record-keeping requirements could subject the company to monetary penalties. If the company satisfies these requirements and after exercising reasonable diligence would not have known that condition (6) is not satisfied, the company will be deemed to have satisfied such condition. A stockholder that fails or refuses to comply with the demand is required by Treasury Regulations to submit a statement with the stockholder's tax return disclosing the actual ownership of the shares and other information.

With respect to condition (8), the company believes it will not initially have any earnings and profits from any non-REIT taxable year or as a successor to any subchapter C corporation. As described above in the section entitled "The Consolidation" and under "Certain Tax Considerations Related to the Consolidation," in connection with the IPO, the company will acquire Malkin Properties CT and Malkin Construction in a transaction pursuant to which the company will succeed to the earnings and profits of the corporations. The



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company believes that such corporations are S corporations that have distributed all accumulated earnings and profits and therefore will not cause the company to have any non-REIT earnings and profits. If, however, either Malkin Properties CT or Malkin Construction did not, at any time, qualify as an S Corporation, or otherwise succeeded to the earnings and profits of a subchapter C Corporation, and assuming that either or both of the mergers qualified as a reorganization for U.S. federal income tax purposes, the company generally would succeed to the subchapter C earnings and profits of Malkin Properties CT and/or Malkin Construction. In such case, the company would be required to distribute any such earnings and profits by the close of the taxable year in which the mergers occur or the company would fail to qualify as a REIT.

With respect to condition (9), the company intends to adopt December 31 as the company's taxable year-end and thereby satisfy this requirement.

### ***Effect of Subsidiary Entities***

***Ownership of Partnership Interests.*** In the case of a REIT that is a partner in a partnership, Treasury Regulations provide that the REIT is deemed to own its proportionate share of the partnership's assets and to earn its proportionate share of the partnership's gross income based on its *pro rata* share of capital interests in the partnership for purposes of the asset and gross income tests applicable to REITs, as described below. However, solely for purposes of the 10% value test described below, the determination of a REIT's interest in partnership assets will be based on the REIT's proportionate interest in any securities issued by the partnership, excluding, for these purposes, certain excluded securities as described in the Code. In addition, the assets and gross income of the partnership generally are deemed to retain the same character in the hands of the REIT. Thus, the company's proportionate share of the assets and items of income of partnerships in which the company owns an equity interest (including the company's interest in the company's operating partnership and its equity interests in any lower-tier partnerships), is treated as the company's assets and items of income for purposes of applying the REIT requirements described below. Consequently, to the extent that the company directly or indirectly holds a preferred or other equity interest in a partnership, the partnership's assets and operations may affect the company's ability to qualify as a REIT, even though the company may have no control, or only limited influence, over the partnership.

As discussed in greater detail in **Tax Aspects of Investments in Partnerships** below, an investment in a partnership involves special tax considerations. For example, it is possible that the IRS could treat a subsidiary partnership as a corporation for U.S. federal income tax purposes. In this case, the subsidiary partnership would be subject to entity-level tax and the character of the company's assets and items of gross income would change, possibly causing the company to fail the requirements to qualify as a REIT. See **Tax Aspects of Investments in Partnerships Entity Classification and Failure to Qualify** below. In addition, special rules apply in the case of appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership. In general terms, these rules require that certain items of income, gain, loss and deduction associated with the contributed property be allocated to the contributing partner for U.S. federal income tax purposes. These rules could adversely affect the company, for example, by requiring that a lower amount of depreciation deductions be allocated to the company, which in turn would cause the company to have a greater amount of taxable income without a corresponding increase in cash and result in a greater portion of the company's distributions being taxed as dividend income. See **Tax Aspects of Investments in Partnerships Tax Allocations with Respect to Partnership Properties** below.

***Disregarded Subsidiaries.*** If a REIT owns a corporate subsidiary that is a qualified REIT subsidiary, that subsidiary is disregarded for U.S. federal income tax purposes, and all assets, liabilities and items of income, deduction and credit of the subsidiary are treated as assets, liabilities and items of income, deduction and credit of the REIT, including for purposes of the gross income and asset tests applicable to REITs as summarized below. A qualified REIT subsidiary is any corporation, other than a TRS, as described below under **Requirements for Qualification Effect of Subsidiary Entities Taxable REIT Subsidiaries**, that is wholly owned by a REIT, or by other disregarded subsidiaries, or by a combination of the two. Single member limited

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liability companies that are wholly owned by a REIT are also generally disregarded as separate entities for U.S. federal income tax purposes, including for purposes of the REIT gross income and asset tests. Disregarded subsidiaries, along with partnerships in which the company holds an equity interest, are sometimes referred to herein as pass-through subsidiaries.

In the event that a disregarded subsidiary ceases to be wholly owned by the company for example, if any equity interest in the subsidiary is acquired by a person other than the company or another disregarded subsidiary of the company the subsidiary's separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, it would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect the company's ability to satisfy the various asset and gross income tests applicable to REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the value or voting power of the outstanding securities of another corporation. See Requirements for Qualification Asset Tests and Requirements for Qualification Gross Income Tests.

*Taxable REIT Subsidiaries.* A REIT generally may jointly elect with a subsidiary corporation, whether or not wholly owned, to treat the subsidiary corporation as a TRS. The separate existence of a TRS or other taxable corporation, unlike a disregarded subsidiary as discussed above, is not ignored for U.S. federal income tax purposes. Accordingly, such an entity would generally be subject to corporate U.S. federal, state, local and income and franchise taxes on its earnings, which may reduce the cash flow generated by the company and the company's subsidiaries in the aggregate, and the company's ability to make distributions to the company's stockholders. Observatory TRS and Holding TRS will each elect to be treated as a corporation for U.S. federal income tax purposes, and the company intends to jointly elect with each of Observatory TRS and Holding TRS, respectively, for each to be treated as a TRS. This will allow Observatory TRS and Holding TRS to invest in assets and engage in activities that could not be held or conducted directly by the company without jeopardizing its qualification as a REIT.

For purposes of the gross income and asset tests applicable to REITs, a REIT is not treated as holding the assets of a TRS or other taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by the subsidiary is an asset in the hands of the REIT, and the REIT recognizes as income the dividends that it receives from the subsidiary. This treatment can affect the gross income and asset test calculations that apply to the REIT, as described below. Because a REIT does not include the assets and income of such subsidiary corporations in determining the REIT's compliance with the REIT requirements, such entities may be used by the parent REIT to undertake indirectly activities that a REIT, due to the requirements applicable to REITs, might otherwise not be able to undertake directly or through pass-through subsidiaries (or, if such activities could be undertaken, it would only be in a commercially unfeasible manner) such as, for example, activities that give rise to certain categories of income such as management fees. See Requirements for Qualification Annual Distribution Requirements.

Certain restrictions imposed on TRSs are intended to ensure that such entities will be subject to appropriate levels of U.S. federal income taxation. First, if a TRS has a debt to equity ratio as of the close of the taxable year exceeding 1.5 to 1, it may not deduct interest payments made in any year to an affiliated REIT to the extent that such payments exceed, generally, 50% of the TRS's adjusted taxable income for that year (although the TRS may carry forward to, and deduct in, a succeeding year the disallowed interest amount if the 50% test is satisfied in that year). In addition, if amounts are paid to a REIT or deducted by a TRS due to transactions between a REIT, its tenants and/or a TRS, that exceed the amount that would be paid to or deducted by a party in an arm's-length transaction, the REIT generally will be subject to an excise tax equal to 100% of such excess.

Rents received by the company that include amounts for services furnished by a TRS to any of the company's tenants will not be subject to the excise tax if such amounts qualify for the safe harbor provisions contained in the Code. Safe harbor provisions are provided where (1) amounts are excluded from the definition of impermissible tenant service income as a result of satisfying a 1% de minimis exception; (2) a TRS renders a significant amount of similar services to unrelated parties and the charges for such services are substantially

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comparable; (3) rents paid to the company by tenants leasing at least 25% of the net leasable space at a property that are not receiving services from the TRS are substantially comparable to the rents paid to the company by tenants leasing comparable space at such property and that are receiving such services from the TRS (and the charge for the services is separately stated); or (4) the TRS's gross income from the service is not less than 150% of the TRS's direct cost of furnishing the service. The company intends that Holding TRS and/or its wholly owned subsidiaries will provide certain services to the company's tenants following the consolidation. Although the company intends to operate Holding TRS in a manner that does not cause the company to be subject to the excise tax discussed above, there is no assurance that the company will be successful in this regard.

***Gross Income Tests***

In order to maintain the company's qualification as a REIT, the company annually must satisfy two gross income tests. First, at least 75% of the company's gross income for each taxable year, excluding gross income from sales of inventory or dealer property in prohibited transactions and certain hedging and foreign currency transactions, must be derived from investments relating to real property or mortgages on real property, including rents from real property, dividends received from and gain from the disposition of shares of other REITs, interest income derived from mortgage loans secured by real property (including certain types of mortgage-backed securities), and gains from the sale of real estate assets, as well as income from certain kinds of temporary investments. Second, at least 95% of the company's gross income in each taxable year, excluding gross income from prohibited transactions and certain hedging and foreign currency transactions, must be derived from some combination of income that qualifies under the 75% income test described above, as well as other dividends, interest, and gain from the sale or disposition of stock or securities, which need not have any relation to real property.

For purposes of the 75% and 95% gross income tests, a REIT is deemed to have earned a proportionate share of the income earned by any partnership, or any limited liability company treated as a partnership for U.S. federal income tax purposes, in which it owns an interest, which share is determined by reference to its capital interest in such entity, and is deemed to have earned the income earned by any qualified REIT subsidiary.

Rents received by the company will qualify as rents from real property in satisfying the 75% gross income test described above only if several conditions are met, including the following. The rent must not be based in whole or in part on the income or profits of any person. However, an amount will not be excluded from rents from real property solely by reason of being based on a fixed percentage or percentages of receipts or sales or being based on the net income or profits of a tenant which derives substantially all of its income with respect to such property from subleasing of substantially all of such property, to the extent that the rents paid by the sublessees would qualify as rents from real property, if earned directly by the company. If rent is partly attributable to personal property leased in connection with a lease of real property, the portion of the total rent that is attributable to the personal property will not qualify as rents from real property unless it constitutes 15% or less of the total rent received under the lease. Moreover, for rents received to qualify as rents from real property, the company generally must not operate or manage the property or furnish or render certain services to the tenants of such property, other than through an independent contractor who is adequately compensated and from which the company derives no income, or through a TRS. The company is permitted, however, to perform services that are usually or customarily rendered in connection with the rental of space for occupancy only and are not otherwise considered rendered to the occupant of the property. In addition, the company may directly or indirectly provide non-customary services to tenants of the company's properties if the gross income from such services does not exceed 1% of the total gross income from the property for the relevant taxable year. In such a case, only the amounts for non-customary services are not treated as rents from real property and the provision of the services does not disqualify the rents from treatment as rents from real property. If, however, the gross income from such non-customary services exceeds this 1% threshold, none of the gross income derived from the property for the relevant property is treated as rents from real property. For purposes of this test, the gross income received from such non-customary services is deemed to be at least 150% of the direct cost of providing the services. Moreover, the company is permitted to provide services to tenants through a TRS without

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disqualifying the rental income received from tenants as rents from real property. While the company will provide services to the company's tenants directly following the consolidation in a manner consistent with the company's qualification as a REIT, the company intends to also cause Holding TRS and/or its wholly owned subsidiaries to provide certain other services following the consolidation. Also, rental income will qualify as rents from real property only to the extent it is not treated as unrelated party rent, which generally includes rent from a tenant if the company directly or indirectly (through application of certain constructive ownership rules) owns, (1) in the case of any tenant which is a corporation, stock possessing 10% or more of the total combined voting power of all classes of stock entitled to vote, or 10% or more of the total value of shares of all classes of stock of such tenant, or (2) in the case of any tenant which is not a corporation, an interest of 10% or more in the assets or net profits of such tenant. However, rental payments from a TRS will qualify as rents from real property even if the company owns more than 10% of the total value or combined voting power of the TRS if at least 90% of the property is leased to unrelated tenants and the rent paid by the TRS is substantially comparable to the rent paid by the unrelated tenants for comparable space.

Income from admissions to the Empire State Building observatory, and certain other income generated by the observatory, would not likely be qualifying income for purposes of the REIT gross income tests. The company will jointly elect with Observatory TRS, the current lessee and operator of the observatory, which will be wholly owned by the operating partnership following the completion of the IPO, for Observatory TRS to be treated as a TRS of the company's for U.S. federal income tax purposes following the completion of the IPO. Observatory TRS will lease the Empire State Building observatory from the operating partnership pursuant to an existing lease that provides for fixed base rental payments and variable rental payments equal to certain percentages of Observatory TRS's gross receipts from the operation of the observatory. Given the unique nature of the real estate comprising the observatory, the company does not believe that there is any space in the Empire State Building or in the same geographic area as the Empire State Building that would likely be considered sufficiently comparable to the observatory for the purpose of applying the exception to related party rent described above. The company has received from the IRS a private letter ruling that the rent that the operating partnership will receive from Observatory TRS pursuant to the lease described above will be qualifying income for purposes of the REIT gross income tests.

In addition, following completion of the offering the operating partnership will acquire various license agreements (i) granting certain third party broadcasters the right to use space on the tower on the top of the Empire State Building for certain broadcasting and other communication purposes and (ii) granting certain third party vendors the right to operate concession stands in the observatory. The company has received from the IRS a private letter ruling that the license fees that the operating partnership will receive under these agreements will be treated as rental payments for the use of real property and therefore as qualifying income for purposes of the REIT gross income tests.

The company is entitled to rely upon these rulings only to the extent that the company did not misstate or omit a material fact in the ruling request and that the company continues to operate in the future in accordance with the material facts described in such request, and no assurance can be given that the company will always be able to do so. If the company was not able to treat the rent that the operating partnership receives from Observatory TRS as qualifying income for purposes of the REIT gross income tests, the company would be required to restructure the manner in which it operates the observatory, which would likely require the company to cede operating control of the observatory by leasing the observatory to an affiliate or third party operator. If the company was not able to treat the license fees that the operating partnership will receive from the license agreements described above as qualifying income for purposes of the REIT gross income tests, the company would be required to enter into the license agreements described above through a TRS, which would cause the license fees to be subject to U.S. federal income tax and accordingly reduce the amount of the company's cash flow available to be distributed to the company's stockholders. In either case, if the company is not able to appropriately restructure the company's operations in a timely manner, the company would likely realize significant income that does not qualify for the REIT gross income tests, which could cause the company to fail to qualify as a REIT.

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Unless the company determines that the resulting non-qualifying income under any of the following situations, taken together with all other non-qualifying income earned by the company in the taxable year, will not jeopardize the company's qualification as a REIT, the company does not intend to:

charge rent for any property that is based in whole or in part on the income or profits of any person, except by reason of being based on a fixed percentage or percentages of receipts or sales, as described above;

rent any property to a related party tenant, including Observatory TRS, Holding TRS, or any other TRS, unless the rent from the lease to the TRS would qualify for the special exception from the related party tenant rule applicable to certain leases with a TRS;

derive rental income attributable to personal property other than personal property leased in connection with the lease of real property, the amount of which no more than 15% of the total rent received under the lease; or

directly perform services considered to be non-customary or rendered to the occupant of the property.

The company may receive distributions from Observatory TRS, Holding TRS, and any other TRSs or other C corporations that are neither REITs nor qualified REIT subsidiaries. These distributions will be classified as dividend income to the extent of the earnings and profits of the distributing corporation. Such distributions will generally constitute qualifying income for purposes of the 95% gross income test, but not for purposes of the 75% gross income test. Any dividends received by the company from a REIT, however, will be qualifying income for purposes of both the 95% and 75% gross income tests.

Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test, as described above, to the extent that the obligation is secured by a mortgage on real property. If the company receives interest income with respect to a mortgage loan that is secured by both real property and other property, and the highest principal amount of the loan outstanding during a taxable year exceeds the fair market value of the real property on the date that the company acquired or originated the mortgage loan, the interest income will be apportioned between the real property and the other property, and the company's income from the loan will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. Although not currently anticipated, the company may, on a selective basis, opportunistically make real estate-related debt investments, provided that the underlying real estate meets the company's criteria for direct investment. Under recent IRS guidance, the company would be required to treat a portion of the gross income derived from a mortgage loan that is acquired at a time when the fair market value of the real property securing the loan is less than the loan's face amount and there are other assets securing the loan as non-qualifying income for the 75% gross income test even if the company's acquisition price for the loan (that is, the fair market value of the loan at the time that the company acquired it) is less than the value of the real property securing the loan. Even if a loan is not secured by real property or is undersecured, the income that it generates may nonetheless also qualify for purposes of the 95% gross income test.

In addition, although not currently anticipated, the company's opportunistic real estate-related debt investments may include mezzanine loans secured by equity interests in a pass-through entity that directly or indirectly owns retail real estate assets. The IRS issued Revenue Procedure 2003-65, or the Revenue Procedure, which provides a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests, and interest derived from it will be treated as qualifying mortgage interest for purposes of the 75% gross income test (described above). Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. Mezzanine loans that the company acquires may not meet all of the requirements for reliance on this safe harbor. Hence, there can be no assurance that the IRS will not challenge the qualification of such assets as real estate assets or the interest generated by these loans as qualifying income under the 75% gross income test (described above).



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To the extent that the terms of a loan provide for contingent interest that is based on the cash proceeds realized upon the sale of the property securing the loan, income attributable to the participation feature will be treated as gain from sale of the underlying property, which generally will be qualifying income for purposes of both the 75% and 95% gross income tests, provided that the property is not inventory or dealer property.

The company expects to earn fees from certain construction services the company will provide to the company's tenants and other third parties. Gross income from such services generally may only constitute qualifying income for purposes of the 75% and 95% gross income tests to the extent that it is attributable to construction services provided to the company's tenants in connection with the entering into or renewal of a lease. In addition, construction services provided to the company's tenants other than in such circumstances might constitute non-customary services. As a result, to the extent that the company provides construction services to third parties or to tenants other than in connection with the entering into or renewal of a lease, the company expects to provide such services through Holding TRS or another TRS, which will be subject to full corporate tax with respect to such income.

### ***Hedging Transactions***

The company may enter into hedging transactions with respect to one or more of the company's assets or liabilities. Hedging transactions could take a variety of forms, including interest rate swap agreements, interest rate cap agreements, options, futures contracts, forward rate agreements or similar financial instruments. Except to the extent provided by Treasury Regulations, any income from a hedging transaction the company enters into (1) in the normal course of the company's business primarily to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets, which the company clearly identifies as specified in Treasury Regulations before the close of the day on which it was acquired, originated, or entered into, including gain from the sale or disposition of such a transaction, or (2) primarily to manage risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% income tests which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into, will not constitute gross income for purposes of the 75% or 95% gross income test. To the extent that the company enters into other types of hedging transactions, the income from those transactions is likely to be treated as non-qualifying income for purposes of both of the 75% and 95% gross income tests. The company intends to structure any hedging transactions in a manner that does not jeopardize the company's qualification as a REIT.

### ***Failure to Satisfy the Gross Income Tests***

The company intends to monitor the company's sources of income, including any non-qualifying income received by the company, so as to ensure the company's compliance with the gross income tests. If the company fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, the company may still qualify as a REIT for the year if the company is entitled to relief under applicable provisions of the Code. These relief provisions will generally be available if the failure of the company to meet these tests was due to reasonable cause and not due to willful neglect and, following the identification of such failure, the company sets forth a description of each item of the company's gross income that satisfies the gross income tests in a schedule for the taxable year filed in accordance with the Treasury Regulations. It is not possible to state whether the company would be entitled to the benefit of these relief provisions in all circumstances. If these relief provisions are inapplicable to a particular set of circumstances involving the company, the company will not qualify as a REIT. As discussed above under

Taxation of the Company Taxation of REITs in General, even where these relief provisions apply, a tax would be imposed upon the profit attributable to the amount by which the company fails to satisfy the particular gross income test.

### ***Asset Tests***

At the close of each calendar quarter the company must also satisfy four tests relating to the nature of the company's assets. First, at least 75% of the value of the company's total assets must be represented by some combination of real estate assets, cash, cash items, U.S. government securities, and, under some circumstances,

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stock or debt instruments purchased with new capital. For this purpose, real estate assets include interests in real property, such as land, buildings, leasehold interests in real property, stock of other REITs, and certain kinds of mortgage-backed securities and mortgage loans. Assets that do not qualify for purposes of the 75% asset test are subject to the additional asset tests described below.

Second, the value of any one issuer's securities owned by the company may not exceed 5% of the value of the company's total assets. Third, the company may not own more than 10% of any one issuer's outstanding securities, as measured by either voting power or value. Fourth, the aggregate value of all securities of Observatory TRS, Holding TRS, and any other TRSs held by the company may not exceed 25% of the value of the company's total assets.

The 5% and 10% asset tests do not apply to securities of TRSs, qualified REIT subsidiaries or securities that are real estate assets for purposes of the 75% asset test described above. In addition, the 10% value test does not apply to certain straight debt and other excluded securities, as described in the Code including, but not limited to, any loan to an individual or estate, any obligation to pay rents from real property and any security issued by a REIT. For these purposes, (1) a REIT's interest as a partner in a partnership is not considered a security; (2) any debt instrument issued by a partnership (other than straight debt or another security that is excluded from the 10% value test) will not be considered a security issued by the partnership if at least 75% of the partnership's gross income is derived from sources that would qualify for the 75% gross income test; and (3) any debt instrument issued by a partnership (other than straight debt or another excluded security) will not be considered a security issued by the partnership to the extent of the REIT's interest as a partner in the partnership. For purposes of the 10% value test, straight debt means a written unconditional promise to pay on demand on a specified date a sum certain in money if (i) debt is not convertible, directly or indirectly, into stock, (ii) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors other than certain contingencies relating to the timing and amount of principal and interest payments, as described in the Code and (iii) in the case of an issuer that is a corporation or a partnership, securities that otherwise would be considered straight debt will not be so considered if the company, and any of the company's controlled taxable REIT subsidiaries, as defined in the Code, hold any securities of the corporate or partnership issuer which (a) are not straight debt or other excluded securities (prior to the application of this rule), and (b) have an aggregate value greater than 1% of the issuer's outstanding securities (including, for the purposes of a partnership issuer, its interest as a partner in the partners).

As mentioned above, although not currently contemplated, the company may, on a selective basis, opportunistically make real estate-related debt investments, provided the underlying real estate meets the company's criteria for direct investment. A real estate mortgage loan that the company owns generally will be treated as a real estate asset for purposes of the 75% asset test if, on the date that the company acquires or originates the mortgage loan, the value of the real property securing the loan is equal to or greater than the principal amount of the loan. Furthermore, under recent IRS guidance, unlike the rules described above that are applicable to the gross income tests, the company would not be required to treat any portion of a mortgage loan as non-qualifying for the 75% asset test if at the time that the company acquires the loan the company's acquisition price for the loan (that is, the fair market value of the loan at the time that the company acquired it) does not exceed the fair market value of the real property securing the loan. Furthermore, although modifications of a loan held by the company generally may be treated as an acquisition of a new loan for U.S. federal income tax purposes, a modification would not be treated as an acquisition of a new loan for this purpose provided that the modification is occasioned by a default or a significant risk of default.

After initially meeting the asset tests at the close of a quarter, the company will not lose the company's qualification as a REIT for failure to satisfy the asset tests at the end of a later quarter solely by reason of changes in asset values (including a failure caused solely by change in the foreign currency exchange rate used to value a foreign asset). If the company fails to satisfy the asset tests because the company acquires or increases the company's ownership interest in securities during a quarter, the company can cure this failure by disposing of the non-qualifying assets within 30 days after the close of that quarter. If the company fails the 5% asset test, the 10% vote test, or the 10% value test at the end of any quarter, and such failure is not cured within 30 days

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thereafter, the company may dispose of sufficient assets (generally, within six months after the last day of the quarter in which the company's identification of the failure to satisfy those asset tests occurred) to cure the violation, provided that the non-permitted assets do not exceed the lesser of 1% of the company's assets at the end of the relevant quarter or \$10,000,000. If the company fails any of the other asset tests, or the company's failure of the 5% and 10% asset tests is in excess of the *de minimis* amount described above, as long as the failure was due to reasonable cause and not willful neglect, the company is permitted to avoid disqualification as a REIT, after the 30-day cure period, by taking steps including the disposition of sufficient assets to meet the asset tests (generally within six months after the last day of the quarter in which the company's identification of the failure to satisfy the REIT asset test occurred), and paying a tax equal to the greater of \$50,000 or 35% of the net income generated by the non-qualifying assets during the period in which the company failed to satisfy the relevant asset test.

The company believes its holdings of securities and other assets will comply with the foregoing REIT asset requirements, and the company intends to monitor compliance with such tests on an ongoing basis. There can be no assurance, however, that the company will be successful in this effort. Moreover, the values of some of the company's assets, including the securities of Observatory TRS, Holding TRS, and any other TRSs or other non-publicly traded investments, may not be susceptible to a precise determination and are subject to change in the future. Furthermore, the proper classification of an instrument as debt or equity for U.S. federal income tax purposes may be uncertain in some circumstances, which could affect the application of the REIT asset tests. Accordingly, there can be no assurance that the IRS will not contend that the company's assets do not meet the requirements of the REIT asset tests.

***Annual Distribution Requirements***

In order to qualify as a REIT, the company is required to distribute dividends, other than capital gain dividends, to the company's stockholders in an amount at least equal to:

(1) the sum of:

90% of the company's REIT taxable income (computed without regard to the deduction for dividends paid and net capital gains), and

90% of the net income from foreclosure property (after tax), as described below, and recognized built-in gain, as discussed above, minus

(2) the sum of specified items of non-cash income that exceeds a percentage of the company's income.

These distributions must be paid in the taxable year to which they relate, or in the following taxable year if such distributions are declared in October, November or December of the taxable year, are payable to stockholders of record on a specified date in any such month, and are actually paid before the end of January of the following year. Such distributions are treated as both paid by the company and received by each stockholder on December 31 of the year in which they are declared. In addition, at the company's election, a distribution for a taxable year may be declared before the company timely files its tax return for the year, provided the company pays such distribution with or before the company's first regular dividend payment after such declaration, provided that such payment is made during the 12-month period following the close of such taxable year. These distributions are taxable to the company's stockholders in the year in which paid, even though the distributions relate to the company's prior taxable year for purposes of the 90% distribution requirement.

In order for distributions to be counted towards the company's distribution requirement, and to give rise to a tax deduction to the company, they must not be preferential dividends. A dividend is not a preferential dividend if it is *pro rata* among all outstanding shares of stock within a particular class, and is in accordance with the preferences among the company's different classes of stock as set forth in the company's organizational documents.

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To the extent that the company distributes at least 90%, but less than 100%, of the company's REIT taxable income, as adjusted, the company will be subject to tax at ordinary corporate tax rates on the retained portion. In addition, the company may elect to retain, rather than distribute, the company's net long-term capital gains and pay tax on such gains. In this case, the company would elect to have the company's stockholders include their proportionate share of such undistributed long-term capital gains in their income and receive a corresponding credit for their proportionate share of the tax paid by the company. The company's stockholders would then increase their adjusted basis in the company's stock by the difference between the designated amounts included in their long-term capital gains and the tax deemed paid with respect to their proportionate shares.

If the company fails to distribute on an annual basis at least the sum of (1) 85% of the company's REIT ordinary income for such year, (2) 95% of the company's REIT capital gain net income for such year and (3) any undistributed taxable income from prior periods, the company will be subject to a nondeductible 4% excise tax on the excess of such amount over the sum of (A) the amounts actually distributed (taking into account excess distributions from prior periods) and (B) the amounts of income retained on which the company has paid corporate income tax. The company intends to distribute the company's net income to the company's stockholders in a manner that satisfies the REIT 90% distribution requirement and that protects the company from being subject to U.S. federal income tax on the company's income and the 4% nondeductible excise tax.

It is possible that the company, from time to time, may not have sufficient cash to meet the REIT distribution requirements due to timing differences between (1) the actual receipt of cash, including the receipt of distributions from any partnership subsidiaries and (2) the inclusion of items in income by the company for U.S. federal income tax purposes. In the event that such timing differences occur, in order to meet the distribution requirements, it might be necessary to arrange for short-term, or possibly long-term, borrowings, or to pay dividends in the form of taxable in-kind distributions of property, including taxable stock dividends. In the case of a taxable stock dividend, stockholders would be required to include the dividend as income and would be required to satisfy the tax liability associated with the distribution with cash from other sources including sales of the Class A common stock. Both a taxable stock distribution and sale of Class A common stock resulting from such distribution could adversely affect the price of the Class A common stock.

The company may be able to rectify a failure to meet the distribution requirements for a year by paying deficiency dividends to stockholders in a later year, which may be included in the company's deduction for dividends paid for the earlier year. In this case, the company may be able to avoid losing the company's REIT qualification. However, the company will be required to pay interest and a penalty based on the amount of any deduction taken for deficiency dividends.

### ***Tax on Built-In Gains***

If the company acquires appreciated assets from a subchapter C corporation in a transaction in which the adjusted tax basis of the assets in the company's hands is determined by reference to the adjusted tax basis of the assets in the hands of the subchapter C corporation (a carry-over basis transaction), and if the company subsequently disposes of any such assets during the 10 year period following the acquisition of the assets from the subchapter C corporation, the company will be subject to tax at the highest corporate tax rates on any gain from such assets to the extent of the excess of the fair market value of the assets on the date that they were contributed to the company over the basis of such assets on such date, which is referred to as built-in gains. However, the built-in gains tax will not apply if the subchapter C corporation elects to be subject to an immediate tax when the asset is acquired by the company.

As discussed under *Certain Tax Considerations Related to the Consolidations*, the company intends that the merger of Malkin Properties CT and Malkin Construction with and into the company will be carry-over basis transactions for U.S. federal income tax purposes. Assuming that both Malkin Properties CT and Malkin Construction have at all times qualified as S Corporations and have not otherwise acquired assets of a subchapter C Corporation in a carry over basis transaction, the company will not be treated as acquiring assets from a

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subchapter C Corporation in a carry-over basis transaction as a result of the mergers. If, however, either Malkin Properties CT or Malkin Construction did not, at any time, qualify as an S Corporation, or otherwise acquired assets of a subchapter C Corporation in a carry-over transaction, and assuming that either or both of the mergers qualified as a reorganization for U.S. federal income tax purposes, the assets that the company acquires from such entities could be subject to the built-in gains tax.

***Recordkeeping Requirements***

The company is required to maintain records and request on an annual basis information from specified stockholders. These requirements are designed to assist the company in determining the actual ownership of the company's outstanding stock and maintaining the company's qualification as a REIT.

***Prohibited Transactions***

Net income the company derives from a prohibited transaction is subject to a 100% tax. The term "prohibited transaction" generally includes a sale or other disposition of property (other than foreclosure property) that is held as inventory or primarily for sale to customers in the ordinary course of a trade or business by a REIT, by a lower-tier partnership in which the REIT holds an equity interest or by a borrower that has issued a shared appreciation mortgage or similar debt instrument in the REIT. The company intends to conduct the company's operations so that no asset owned by the company or the company's pass-through subsidiaries will be held as inventory or primarily for sale to customers, and that a sale of any assets owned by the company directly or through a pass-through subsidiary will not be in the ordinary course of business. However, whether property is held as inventory or primarily for sale to customers in the ordinary course of a trade or business depends on the particular facts and circumstances. No assurance can be given that any particular property in which the company holds a direct or indirect interest will not be treated as property held as inventory or primarily for sale to customers, or that certain safe-harbor provisions of the Code discussed below that prevent such treatment will apply. The 100% tax will not apply to gains from the sale of property by Observatory TRS, Holding TRS, or any other TRS or other taxable corporation, although such income will be subject to tax in the hands of the corporation at regular corporate income tax rates.

The Code provides a safe harbor that, if met, allows the company to avoid being treated as engaged in a prohibited transaction. In order to meet the safe harbor, among other things, (i) the company must have held the property for at least two years for the production of rental income (and, in the case of property which consists of land or improvements not acquired through foreclosure, the company must have held the property for two years for the production of rental income), (ii) the company capitalized expenditures on the property in the two years preceding the sale that are less than 30% of the net selling price of the property, and (iii) the company (a) has seven or fewer sales of property (excluding certain property obtained through foreclosure) for the year of sale or (b) either (I) the aggregate tax basis of property sold during the year of sale is 10% or less of the aggregate tax basis of all of the company's assets as of the beginning of the taxable year, or (II) the aggregate fair market value of property sold during the year of sale is 10% or less of the aggregate fair market value of all of the company's assets as of the beginning of the taxable year, and (III) in the case of either (I) or (II), substantially all of the marketing and development expenditures with respect to the property sold are made through an independent contractor from whom the company derives no income. For these purposes, the sale of more than one property to one buyer as part of one transaction constitutes one sale.

***Foreclosure Property***

Foreclosure property is real property (including interests in real property) and any personal property incident to such real property (1) that is acquired by a REIT as a result of the REIT having bid on the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or a mortgage loan held by the REIT and secured by the property, (2) for which the related loan or lease was made, entered into or acquired by the REIT at a time when

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default was not imminent or anticipated and (3) for which such REIT makes a proper election to treat the property as foreclosure property. REITs generally are subject to tax at the maximum corporate rate (currently 35%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property in the hands of the selling REIT.

To the extent that the company acquires non-performing or distressed debt secured by retail real estate assets with a view to subsequently taking control of the collateral (*i.e.*, loan-to-own investments), any property that the company acquires through such a transaction will not qualify to be treated as foreclosure property because it will not satisfy condition (2) in the preceding paragraph. However, provided that the income generated by such property is qualifying income for purposes of the 75% gross income test, such income will not be subject to tax at the maximum corporate rate assuming that it is currently distributed to the company's stockholders. See Requirements for Qualification Annual Distribution Requirements.

**Failure to Qualify**

In the event that the company violates a provision of the Code that would result in the company's failure to qualify as a REIT, the company may nevertheless continue to qualify as a REIT. Specified relief provisions will be available to the company to avoid such disqualification if (1) the violation is due to reasonable cause and not due to willful neglect, (2) the company pays a penalty of \$50,000 for each failure to satisfy a requirement for qualification as a REIT and (3) the violation does not include a violation under the gross income or asset tests described above (for which other specified relief provisions are available). This cure provision reduces the instances that could lead to the company's disqualification as a REIT for violations due to reasonable cause. If the company fails to qualify for taxation as a REIT in any taxable year and none of the relief provisions of the Code apply, the company will be subject to tax, including any applicable alternative minimum tax, on the company's taxable income at regular corporate rates. Distributions to the company's stockholders in any year in which the company is not a REIT will not be deductible by the company, nor will they be required to be made. In this situation, to the extent of current and accumulated earnings and profits, and, subject to limitations of the Code, dividends in the hands of the company's corporate U.S. stockholders may be eligible for the dividends received deduction. Unless the company is entitled to relief under the specific statutory provisions, the company will also be disqualified from re-electing to be taxed as a REIT for the four taxable years following the year during which qualification was lost. It is not possible to state whether the company will be entitled to statutory relief in all circumstances.

**Tax Aspects of Investments in Partnerships**

***General***

The company will hold investments through entities that are classified as partnerships for U.S. federal income tax purposes, including the company's interest in the operating partnership and equity interests in lower-tier partnerships. In general, partnerships are pass-through entities that are not subject to U.S. federal income tax. Rather, partners are allocated their proportionate shares of the items of income, gain, loss, deduction and credit of a partnership, and are subject to tax on these items without regard to whether the partners receive a distribution from the partnership. The company will include in its income the company's proportionate share of these partnership items for purposes of the various REIT income tests, based on the company's capital interest in such partnerships. Moreover, for purposes of the REIT asset tests, the company will include the company's proportionate share of assets held by subsidiary partnerships, based on the company's capital interest in such partnerships (other than for purposes of the 10% value test, for which the determination of the company's interest in partnership assets will be based on the company's proportionate interest in any securities issued by the partnership excluding, for these purposes, certain excluded securities as described in the Code). Consequently, to the extent that the company holds

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an equity interest in a partnership, the partnership's assets and operations may affect the company's ability to qualify as a REIT, even though the company may have no control, or only limited influence, over the partnership.

***Entity Classification***

The investment by the company in partnerships involves special tax considerations, including the possibility of a challenge by the IRS of the status of any of the company's subsidiary partnerships as a partnership, as opposed to an association taxable as a corporation, for U.S. federal income tax purposes. If any of these entities were treated as an association for U.S. federal income tax purposes, it would be taxable as a corporation and, therefore, could be subject to an entity-level tax on its income.

Pursuant to Section 7704 of the Code, a partnership that does not elect to be treated as a corporation nevertheless will be treated as a corporation for U.S. federal income tax purposes if it is a publicly traded partnership and it does not receive at least 90% of its gross income from certain specified sources of qualifying income within the meaning of that section. A publicly traded partnership is any partnership (i) the interests in which are traded on an established securities market or (ii) the interests in which are readily tradable on a secondary market or the substantial equivalent thereof. The Series ES operating partnership units, Series 60 operating partnership units and Series 250 operating partnership units of the operating partnership will be traded on the NYSE and therefore the operating partnership will be a publicly traded partnership. Accordingly, the operating partnership will be taxed as a corporation unless at least 90% of its gross income consists of qualifying income under Section 7704 of the Code for each of its taxable years. Qualifying income for purpose of the qualifying income exception is generally real property rents and other types of passive income. The company believes the operating partnership will have and both the company and the operating partnership have represented to Clifford Chance US LLP in connection with its REIT qualification opinion that the operating partnership will have sufficient qualifying income so that it will be taxed as a partnership, even though it will be a publicly traded partnership. The income requirements applicable to the company to qualify as a REIT under the Code and the definition of qualifying income under the publicly traded partnership rules are very similar. Although differences exist between these two income tests, the company does not believe that these differences would cause the operating partnership not to satisfy the 90% gross income test applicable to publicly traded partnerships.

If at the end of any taxable year the operating partnership fails to meet the qualifying income exception, it may still qualify as a partnership if it is otherwise entitled to relief under the Code for an inadvertent termination of partnership status. This relief will be available if (i) the failure is cured within a reasonable time after discovery, (ii) the failure is determined by the IRS to be inadvertent, and (iii) the operating partnership agrees to make such adjustments (including adjustments with respect to its partners) or to pay such amounts as are required by the IRS. It is not possible to state whether the operating partnership would be entitled to this relief in any or all circumstances. It also is not clear under the Code whether this relief is available for the operating partnership's first taxable year as a publicly traded partnership. If this relief provision is inapplicable to a particular set of circumstances, the operating partnership will not qualify as a partnership for U.S. federal income tax purposes. Moreover, if this relief provision applies and the operating partnership retains its partnership status, it or the holders of operating partnership (during the failure period) will be required to pay such amounts as are determined by the IRS.

Moreover, if the operating partnership fails to meet the qualifying income exception, other than a failure that is determined by the IRS to be inadvertent and that is cured within a reasonable time after discovery as described above, and therefore was taxable as a corporation for U.S. federal income tax purposes, the character of the company's assets and items of the company's gross income would change and would preclude the company from satisfying the REIT asset tests (particularly the tests generally preventing a REIT from owning more than 10% of the voting securities, or more than 10% of the value of the securities, of a corporation) and the gross income tests as discussed in Requirements for Qualification Asset Tests and Requirements for Qualification Gross Income Tests above, and in turn would prevent the company from qualifying as a REIT. See Failure to Qualify, below, for a discussion of the effect of the company's failure to meet these tests for a taxable year. In

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addition, any change in the status of any of the company's subsidiary partnerships for tax purposes might be treated as a taxable event, in which case the company could have taxable income that is subject to the REIT distribution requirements without receiving any cash.

### ***Tax Allocations with Respect to Partnership Properties***

The operating partnership agreement generally provides that items of operating income and loss will be allocated to the holders of units in proportion to the number of units held by each holder. If an allocation of partnership income or loss does not comply with the requirements of Section 704(b) of the Code and the Treasury Regulations thereunder, the item subject to the allocation will be reallocated in accordance with the partners' interests in the partnership. This reallocation will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. The operating partnership's allocations of income and loss are intended to comply with the requirements of Section 704(b) of the Code of the Treasury Regulations promulgated under this section of the Code.

Under Section 704(c) of the Code, income, gain, loss and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated for tax purposes in a manner such that the contributing partner is charged with, or benefits from, the unrealized gain or unrealized loss associated with the property at the time of the contribution. The amount of the unrealized gain or unrealized loss is generally equal to the difference between the fair market value, or book value, of the contributed property and the adjusted tax basis of such property at the time of the contribution (a book-tax difference). Such allocations are solely for U.S. federal income tax purposes and do not affect partnership capital accounts or other economic or legal arrangements among the partners.

In connection with the consolidation, appreciated property will be acquired by the operating partnership in exchange for interests in the operating partnership. The operating partnership agreement requires that allocations with respect to such acquired property be made in a manner consistent with Section 704(c) of the Code. Treasury Regulations issued under Section 704(c) of the Code provide partnerships with a choice of several methods of allocating book-tax differences. Under the tax protection agreement, the operating partnership has agreed to use the traditional method for accounting for book-tax differences for the properties acquired by the operating partnership in the consolidation. Under the traditional method, which is the least favorable method from the company's perspective, the carryover basis of the acquired properties in the hands of the operating partnership (1) may cause the company to be allocated lower amounts of depreciation and other deductions for tax purposes than would be allocated to the company if all of the acquired properties were to have a tax basis equal to their fair market value at the time of acquisition and (2) in the event of a sale of such properties, could cause the company to be allocated gain in excess of the company's corresponding economic or book gain (or taxable loss that is less than the company's economic or book loss), with a corresponding benefit to the partners transferring such properties to the operating partnership for interests in the operating partnership. Therefore, the use of the traditional method could result in the company's having taxable income that is in excess of the company's economic or book income as well as the company's cash distributions from the operating partnership, which might adversely affect the company's ability to comply with the REIT distribution requirements or result in a greater portion of the company's distributions being treated as taxable dividend income.

### **Taxation of Stockholders**

#### ***Taxation of Taxable U.S. Stockholders***

This section summarizes the taxation of U.S. stockholders that are not tax-exempt organizations.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds the company's stock, the U.S. federal income tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding common stock should consult its tax advisor regarding the U.S. federal income tax consequences to the partner of the acquisition, ownership and disposition of the company's stock by the partnership.



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*Distributions.* Provided that the company qualifies as a REIT, distributions made to the company's taxable U.S. stockholders out of the company's current or accumulated earnings and profits, and not designated as capital gain dividends, will generally be taken into account by them as ordinary dividend income and will not be eligible for the dividends received deduction for corporations. In determining the extent to which a distribution with respect to common stock constitutes a dividend for U.S. federal income tax purposes, the company's earnings and profits will be allocated first to distributions with respect to the company's preferred stock, if any is outstanding, and then to the company's common stock.

In addition, distributions from the company that are designated as capital gain dividends will be taxed to U.S. stockholders as long-term capital gains, to the extent that they do not exceed the company's actual net capital gain for the taxable year, without regard to the period for which the U.S. stockholder has the stock. To the extent that the company elects under the applicable provisions of the Code to retain the company's net capital gains, U.S. stockholders will be treated as having received, for U.S. federal income tax purposes, the company's undistributed capital gains as well as a corresponding credit for taxes paid by the company on such retained capital gains.

U.S. stockholders will increase their adjusted tax basis in the company's common stock by the difference between their allocable share of such retained capital gain and their share of the tax paid by the company. Corporate U.S. stockholders may be required to treat up to 20% of some capital gain dividends as ordinary income. Long-term capital gains are generally taxable at maximum U.S. federal rates of 20% in the case of noncorporate U.S. stockholders for taxable years beginning after December 31, 2012, and 35% for corporations. Capital gains attributable to the sale of depreciable real property held for more than 12 months are subject to a 25% maximum U.S. federal income tax rate for noncorporate U.S. stockholders, to the extent of previously claimed depreciation deductions.

A portion of the company's distributions may be treated as a return of capital for U.S. federal income tax purposes. As a general matter, a portion of the company's distributions will be treated as a return of capital for U.S. federal income tax purposes if the aggregate amount of the company's distributions for a year exceeds the company's current and accumulated earnings and profits for that year. To the extent that a distribution is treated as a return of capital for U.S. federal income tax purposes, it will reduce a holder's adjusted tax basis in the holder's shares, and to the extent that it exceeds the holder's adjusted tax basis will be treated as gain resulting from a sale or exchange of such shares. As a general matter, any such gain will be long-term capital gain if the shares have been held for more than one year. In addition, any dividend declared by the company in October, November or December of any year and payable to a U.S. stockholder of record on a specified date in any such month will be treated as both paid by the company and received by the U.S. stockholder on December 31 of such year, provided that the dividend is actually paid by the company before the end of January of the following calendar year.

To the extent that the company has available net operating losses and capital losses carried forward from prior tax years, such losses may reduce the amount of distributions that must be made in order to comply with the REIT distribution requirements. See Requirements for Qualification Annual Distribution Requirements. Such losses, however, are not passed through to U.S. stockholders and do not offset income of U.S. stockholders from other sources, nor do they affect the character of any distributions that are actually made by the company, which are generally subject to tax in the hands of U.S. stockholders to the extent that the company has current or accumulated earnings and profits.

*Dispositions of Common Stock.* In general, a U.S. stockholder will realize gain or loss upon the sale, redemption or other taxable disposition of common stock in an amount equal to the difference between the sum of the fair market value of any property and the amount of cash received in such disposition and the U.S. stockholder's adjusted tax basis in the common stock at the time of the disposition. A U.S. stockholder's adjusted tax basis generally will equal the U.S. stockholder's acquisition cost, increased by the excess of net capital gains deemed distributed to the U.S. stockholder (as discussed above), less tax deemed paid on it and reduced by returns of capital. In general, capital gains recognized by individuals and other noncorporate U.S. stockholders upon the sale or

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disposition of shares of common stock will be subject to a maximum U.S. federal income tax rate of 20% for taxable years beginning after December 31, 2012, if common stock is held for more than 12 months, and will be taxed at ordinary income rates (of up to 39.6% with respect to taxable years beginning after December 31, 2012) if common stock is held for 12 months or less. In addition, for taxable years beginning after December 31, 2012, a maximum U.S. federal income tax rate of 18% generally applies to gain from dispositions of shares of common stock by individuals and other noncorporate U.S. stockholders if the common stock is held for more than five years. Gains recognized by U.S. stockholders that are corporations are subject to U.S. federal income tax at a maximum rate of 35%, whether or not classified as long-term capital gains. The IRS has the authority to prescribe, but has not yet prescribed, regulations that would apply a capital gain tax rate of 25% (which is generally higher than the long-term capital gain tax rates for noncorporate holders) to a portion of capital gain realized by a noncorporate holder on the sale of REIT stock or depositary shares that would correspond to the REIT's unrecaptured Section 1250 gain.

Prospective stockholders are advised to consult their tax advisors with respect to their capital gain tax liability. Capital losses recognized by a U.S. stockholder upon the disposition of common stock held for more than one year at the time of disposition will be considered long-term capital losses, and are generally available only to offset capital gain income of the U.S. stockholder but not ordinary income (except in the case of noncorporate taxpayers, who may offset up to \$3,000 of ordinary income each year). In addition, any loss upon a sale or exchange of shares of common stock by a U.S. stockholder who has held the shares for six months or less, after applying holding period rules, will be treated as a long-term capital loss to the extent of distributions received from the company that were required to be treated by the U.S. stockholder as long-term capital gain.

If a U.S. stockholder recognizes a loss upon a subsequent disposition of common stock in an amount that exceeds a prescribed threshold, it is possible that the provisions of recently adopted Treasury Regulations involving reportable transactions could apply, with a resulting requirement to separately disclose the loss generating transactions to the IRS. Although these regulations are directed towards tax shelters, they are written quite broadly, and apply to transactions that would not typically be considered tax shelters. Significant penalties apply for failure to comply with these requirements. You should consult your tax advisors concerning any possible disclosure obligation with respect to the receipt or disposition of common stock, or transactions that might be undertaken directly or indirectly by the company. Moreover, you should be aware that the company and other participants in transactions involving the company (including the company's advisors) might be subject to disclosure or other requirements pursuant to these regulations.

*Passive Activity Losses and Investment Interest Limitations.* Distributions made by the company and gain arising from the sale or exchange by a U.S. stockholder of common stock will not be treated as passive activity income. As a result, U.S. stockholders will not be able to apply any passive losses against income or gain relating to the common stock. Distributions made by the company, to the extent they do not constitute a return of capital, generally will be treated as investment income for purposes of computing the investment interest limitation. A U.S. stockholder that elects to treat capital gain dividends or capital gains from the disposition of stock as investment income for purposes of the investment interest limitation will be taxed at ordinary income rates on such amounts.

*Expansion of Medicare Tax.* Under recently enacted legislation, in certain circumstances, certain U.S. stockholders that are individuals, estates, and trusts pay a 3.8% tax on net investment income, which includes, among other things, dividends on and gains from the sale or other disposition of shares, effective for taxable years beginning after December 31, 2012. Prospective U.S. stockholders should consult their tax advisors regarding this new legislation.

***Taxation of Tax-Exempt U.S. Stockholders***

U.S. tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from U.S. federal income taxation. However, they are subject to taxation on their unrelated business taxable income, which is referred to in this registration statement as unrelated business taxable income, or UBTI. Although many investments in real estate may generate UBTI, the IRS has ruled that dividend distributions from a REIT to a tax-exempt entity do not constitute UBTI. Based on that ruling,

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and provided that (1) a tax-exempt U.S. stockholder has not held the common stock as debt financed property within the meaning of the Code (*i.e.*, where the acquisition or ownership of the property is financed through a borrowing by the tax-exempt stockholder), and (2) the common stock is not otherwise used in an unrelated trade or business, distributions from the company and income from the sale of the common stock generally should not give rise to UBTI to a tax-exempt U.S. stockholder.

Tax-exempt U.S. stockholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from U.S. federal income taxation under Sections 501(c)(7), (c)(9), (c)(17) and (c)(20) of the Code, respectively, are subject to different UBTI rules, which generally will require them to characterize distributions from the company as UBTI unless they are able to properly claim a deduction for amounts set aside or placed in reserve for specific purposes so as to offset the income generated by their investment in the common stock. These prospective investors should consult their tax advisors concerning these set aside and reserve requirements.

In certain circumstances, a pension trust (1) that is described in Section 401(a) of the Code, (2) is tax exempt under Section 501(a) of the Code, and (3) that owns more than 10% of the company's stock could be required to treat a percentage of the dividends from the company as UBTI if the company is a pension-held REIT. The company will not be a pension-held REIT unless (1) either (A) one pension trust owns more than 25% of the value of the company's stock, or (B) a group of pension trusts, each individually holding more than 10% of the value of the company's stock, collectively owns more than 50% of such stock and (2) the company would not have qualified as a REIT but for the fact that Section 856(h)(3) of the Code provides that stock owned by such trusts shall be treated, for purposes of the requirement that not more than 50% of the value of the outstanding stock of a REIT is owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities), as owned by the beneficiaries of such trusts.

Tax-exempt U.S. stockholders are urged to consult their tax advisors regarding the U.S. federal, state, local and foreign tax consequences of the acquisition, ownership and disposition of the company's stock.

### ***Taxation of Non-U.S. Stockholders***

The following is a summary of certain U.S. federal income tax consequences of the acquisition, ownership and disposition of the common stock applicable to non-U.S. stockholders. The discussion is based on current law and is for general information only. It addresses only selective and not all aspects of U.S. federal income taxation.

***Ordinary Dividends.*** The portion of dividends received by non-U.S. stockholders payable out of the company's earnings and profits that are not attributable to gains from sales or exchanges of U.S. real property interests and which are not effectively connected with a U.S. trade or business of the non-U.S. stockholder generally will be treated as ordinary income and will be subject to U.S. federal withholding tax at the rate of 30%, unless reduced or eliminated by an applicable income tax treaty. Under some treaties, however, lower rates generally applicable to dividends do not apply to dividends from REITs.

In general, non-U.S. stockholders will not be considered to be engaged in a U.S. trade or business solely as a result of their ownership of the company's stock. In cases where the dividend income from a non-U.S. stockholder's investment in the common stock is treated as effectively connected with the non-U.S. stockholder's conduct of a U.S. trade or business, the non-U.S. stockholder generally will be subject to U.S. federal income tax at graduated rates, in the same manner as U.S. stockholders are taxed with respect to such dividends, and may also be subject to the 30% branch profits tax (unless reduced or eliminated by an applicable income tax treaty) on the income after the application of the income tax in the case of a non-U.S. stockholder that is a corporation.

***Non-Dividend Distributions.*** Unless (1) the common stock constitutes a U.S. real property interest, or USRPI, or (2) either (A) the non-U.S. stockholder's investment in the common stock is effectively connected with a U.S. trade or business conducted by such non-U.S. stockholder (in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain) or (B) the non-U.S.

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stockholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a tax home in the United States (in which case the non-U.S. stockholder will be subject to a 30% tax on the individual's net capital gain for the year), distributions by the company which are not treated as dividends for U.S. federal income tax purposes (*i.e.*, not treated as being paid out of the company's current and accumulated earnings and profits) will not be subject to U.S. federal income tax. If it cannot be determined at the time at which a distribution is made whether or not the distribution will constitute a dividend for U.S. federal income tax purposes, the distribution will be subject to withholding at the rate applicable to dividends. However, the non-U.S. stockholder may seek a refund from the IRS of any amounts withheld if it is subsequently determined that the distribution was, in fact, in excess of the company's current and accumulated earnings and profits and, therefore, did not constitute a dividend for U.S. federal income tax purposes. In addition, if the company's common stock constitutes a USRPI, as described below, distributions by the company in excess of the sum of the company's earnings and profits plus the non-U.S. stockholder's adjusted tax basis in the common stock will be taxed under the Foreign Investment in Real Property Tax Act of 1980, or FIRPTA, at the rate of tax, including any applicable capital gains rates, that would apply to a U.S. stockholder of the same type (*e.g.*, an individual or a corporation, as the case may be), and the collection of the tax will be enforced by a withholding tax (at a rate of 10%) of the amount by which the distribution exceeds the stockholder's share of the company's earnings and profits plus the stockholder's adjusted basis in the company's stock. As discussed below, the company expects that the Class A common stock will not be treated as a USRPI in the hands of a non-U.S. stockholder who holds less than 5% of the Class A common stock.

Because it will not generally be possible for the company to determine the extent to which a distribution will be from the company's current or accumulated earnings and profits at the time the distribution is made, the company intends to withhold and remit to the IRS 30% of distributions to non-U.S. stockholders (other than distributions that are deemed to be attributable to USRPI capital gains, as described in greater detail below) unless (i) a lower treaty rate applies and the non-U.S. stockholder files an IRS Form W-8BEN evidencing eligibility for that reduced treaty rate with the company; or (ii) the non-U.S. stockholder files an IRS Form W-8ECI with the company claiming that the distribution is income effectively connected with the non-U.S. stockholder's trade or business. However, if the company determines that any of the company's stock held by a non-U.S. stockholder is likely to be treated as a USRPI, the company intends to withhold and remit to the IRS at least 10% of distributions on such stock even if a lower rate would apply under the preceding discussion.

*Capital Gain Dividends.* Under FIRPTA, a distribution made by the company to a non-U.S. stockholder, to the extent attributable to gains from dispositions of USRPIs held by the company directly or through pass-through subsidiaries, or USRPI capital gains, will be considered effectively connected with a U.S. trade or business of the non-U.S. stockholder and will be subject to U.S. federal income tax at the rates applicable to U.S. stockholders, without regard to whether the distribution is designated as a capital gain dividend. In addition, the company will be required to withhold tax equal to 35% of the amount of any distribution to the extent it is attributable to USRPI capital gains. Distributions subject to FIRPTA may also be subject to a 30% branch profits tax in the hands of a non-U.S. stockholder that is a corporation. However, this 35% withholding tax will not apply to any distribution with respect to any class of the company's stock which is regularly traded on an established securities market located in the United States (as defined by applicable Treasury Regulations) if the non-U.S. stockholder did not own more than 5% of such class of stock at any time during the one-year period ending on the date of such dividend. Instead, any such distribution will be treated as a distribution subject to the rules discussed above under Taxation of Stockholders Taxation of Non-U.S. Stockholders Ordinary Dividends. Also, the branch profits tax will not apply to such a distribution.

A distribution is not attributable to USRPI capital gain if the company held the underlying asset solely as a creditor, although the holding of a shared appreciation mortgage loan would not be solely as a creditor. Capital gain dividends received by a non-U.S. stockholder from a REIT that are not attributable to USRPI capital gains are generally not subject to U.S. federal income or withholding tax, unless either (1) the non-U.S. stockholder's investment in the common stock is effectively connected with a U.S. trade or business conducted by such non-U.S. stockholder (in which case the non-U.S. stockholder will be subject to the same treatment as U.S.

stockholders with respect to such gain) or (2) the non-U.S. stockholder is a nonresident alien individual who was

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present in the United States for 183 days or more during the taxable year and has a tax home in the United States (in which case the non-U.S. stockholder will be subject to a 30% tax on the individual's net capital gain for the year). The company intends to withhold and remit to the IRS 35% of a distribution to a non-U.S. stockholder only to the extent that such distribution is attributable to USRPI capital gains. The amount withheld is creditable against the non-U.S. stockholder's U.S. federal income tax liability or refundable when the non-U.S. stockholder properly and timely files a tax return with the IRS.

*Dispositions of the Common Stock.* Unless the common stock constitutes a USRPI, a sale of the stock by a non-U.S. stockholder generally will not be subject to U.S. federal income taxation under FIRPTA. The stock will not be treated as a USRPI if less than 50% of the company's assets throughout a prescribed testing period consist of interests in real property located within the United States, excluding, for this purpose, interests in real property solely in a capacity as a creditor. However, the company expects that more than 50% of the company's assets will consist of interests in real property located in the United States.

Still, the common stock nonetheless will not constitute a USRPI if the company is a domestically controlled qualified investment entity. A REIT is a domestically controlled qualified investment entity if, at all times during a specified testing period (generally the lesser of the five-year period ending on the date of disposition of its shares of common stock or the period of existence), less than 50% in value of its outstanding stock is held directly or indirectly by non-U.S. stockholders. The company expects to be a domestically controlled qualified investment entity and, therefore, the sale of the common stock should not be subject to taxation under FIRPTA. Because the company's stock will be publicly traded, however, no assurance can be given that the company will be, or that if the company is, that the company will remain, a domestically controlled qualified investment entity.

Specific wash sale rules applicable to sales of shares in a REIT could result in gain recognition, taxable under FIRPTA, upon the sale of the common stock. These rules would apply if a non-U.S. stockholder (1) disposes of the common stock within a 30-day period preceding the ex-dividend date of a distribution, any portion of which, but for the disposition, would have been taxable to such non-U.S. stockholder as gain from the sale or exchange of a USRPI, (2) is treated as acquiring, or as entering into a contract or option to acquire, other shares of the common stock during the 61-day period that begins 30 days prior to such ex-dividend date, and (3) if shares of the Class A common stock are regularly traded on an established securities market in the United States, such non-U.S. stockholder has owned more than 5% of the Class A common stock at any time during the one-year period ending on the date of such distribution.

In the event that the company does not constitute a domestically controlled qualified investment entity, a non-U.S. stockholder's sale of the Class A common stock nonetheless will generally not be subject to tax under FIRPTA as a sale of a USRPI, provided that (1) the Class A common stock is regularly traded on an established securities market located in the United States (as defined by applicable Treasury Regulations), and (2) the selling non-U.S. stockholder owned, actually or constructively, 5% or less of the company's outstanding Class A common stock at all times during the five-year period ending on the date of sale. Holders of Class B common stock should consult their tax advisor regarding the impact of their ownership of Class B common stock upon the FIRPTA consequences related to their ownership of Class A common stock and regarding the FIRPTA consequences of owning Class B common stock generally.

If gain on the sale of the common stock were subject to taxation under FIRPTA, the non-U.S. stockholder would be subject to the same treatment as a U.S. stockholder with respect to such gain, including applicable alternative minimum tax (and a special alternative minimum tax in the case of non-resident alien individuals), and the purchaser of the stock could be required to withhold 10% of the purchase price and remit such amount to the IRS.

Gain from the sale of the common stock that would not otherwise be subject to FIRPTA will nonetheless be taxable in the United States to a non-U.S. stockholder in two cases: (1) if the non-U.S. stockholder's investment in the common stock is effectively connected with a U.S. trade or business conducted by such non-U.S. stockholder, the non-U.S. stockholder will be subject to the same treatment as a U.S. stockholder with respect to

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such gain, or (2) if the non-U.S. stockholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a tax home in the United States, the nonresident alien individual will be subject to a 30% tax on the individual's capital gain.

### ***Backup Withholding and Information Reporting***

The company will report to the company's U.S. stockholders and the IRS the amount of dividends paid during each calendar year and the amount of any tax withheld. Under the backup withholding rules, a U.S. stockholder may be subject to backup withholding (at a rate of 31% for taxable years beginning after December 31, 2012) with respect to dividends paid, unless the holder (1) is a corporation or comes within other exempt categories and, when required, demonstrates this fact or (2) provides a taxpayer identification number or social security number, certifies under penalties of perjury that such number is correct and that such holder is not subject to backup withholding and otherwise complies with applicable requirements of the backup withholding rules. A U.S. stockholder that does not provide his or her correct taxpayer identification number or social security number may also be subject to penalties imposed by the IRS. In addition, the company may be required to withhold a portion of capital gain distribution to any U.S. stockholder who fails to certify its non-foreign status.

The company must report annually to the IRS and to each non-U.S. stockholder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. stockholder resides under the provisions of an applicable income tax treaty. A non-U.S. stockholder may be subject to backup withholding unless applicable certification requirements are met.

Payment of the proceeds of a sale of the common stock within the United States is subject to both backup withholding and information reporting requirements unless the beneficial owner certifies under penalties of perjury that it is a non-U.S. stockholder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a United States person) or the holder otherwise establishes an exemption. Payment of the proceeds of a sale of the common stock conducted through certain United States related financial intermediaries is subject to information reporting requirements (but not backup withholding) unless the financial intermediary has documentary evidence in its records that the beneficial owner is a non-U.S. stockholder and specified conditions are met or an exemption is otherwise established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against such holder's U.S. federal income tax liability, provided the required information is furnished to the IRS.

### ***Foreign Accounts***

Federal legislation (referred to as FATCA) may, pursuant to proposed Treasury Regulations and other guidance, impose withholding taxes on U.S. source payments made after December 31, 2013 to foreign financial institutions and certain other non-U.S. entities and disposition proceeds of U.S. securities realized after December 31, 2016. Under FATCA, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to U.S. stockholders who own shares of the common stock through foreign accounts or foreign intermediaries and to certain non-U.S. stockholders. FATCA imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, the common stock paid to a foreign financial institution or to a foreign entity other than a financial institution, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign entity that is not a financial institution either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. If the payee is a foreign financial institution, as a general matter, it must enter into an agreement with the U.S. Treasury requiring, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and

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withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. The proposed regulations and other guidance relating to FATCA will not be effective until reflected in final regulations. There can be no assurance either as to when these final regulations will be issued or as to the particular form that the final regulations might take. Prospective stockholders should consult their tax advisors regarding this legislation.

### ***State, Local and Foreign Taxes***

The company and its subsidiaries and stockholders may be subject to state, local and foreign taxation in various jurisdictions, including those in which they or the company transacts business, own property or reside. The company will likely own interests in properties located in a number of jurisdictions, and the company may be required to file tax returns and pay taxes in certain of those jurisdictions. The state, local or foreign tax treatment of the company and the company's stockholders may not conform to the U.S. federal income tax treatment discussed above. Any foreign taxes incurred by the company would not pass through to stockholders as a credit against their U.S. federal income tax liability. Prospective investors should consult their tax advisor regarding the application and effect of state, local and foreign income and other tax laws on an investment in the common stock.

### ***Proposed Legislation or Other Actions Affecting REITs***

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Treasury Department. No assurance can be given as to whether, when, or in what form, the U.S. federal income tax laws applicable to the company and its stockholders may be enacted. Changes to the U.S. federal income tax laws and interpretations of U.S. federal tax laws could adversely affect an investment in the common stock.

### **Consequences of Holding Operating Partnership Units**

#### ***General***

For purposes of this discussion, reference to operating partnership units means Series 60, Series 250, and Series ES operating partnership units, unless otherwise indicated. The general tax principles described below apply to all holders of operating partnership units unless otherwise indicated. However, the tax characteristics associated with each series may differ based on the unique and different tax attributes of the property contributed by each subject LLC. Such differences may affect the liquidity and market price of operating partnership units within each series. Participants who will receive operating partnership units in the consolidation are urged to consult with their tax advisor regarding the tax consequences of holding operating partnership units in their particular circumstances, and the potential impact of tax consequences on the liquidity and market price of the operating partnership units received by such participant.

#### ***Taxation of Holders of Operating Partnership Units on Profits and Losses of the Operating Partnership***

So long as it remains eligible to be taxed as a partnership for U.S. federal income tax purposes, the operating partnership generally will not be subject to U.S. federal income tax. Rather, each holder of operating partnership units in computing its U.S. federal income tax liability for a taxable year will be required to take into account its allocable share of items of the operating partnership's income, gain, loss, deduction and credit for the operating partnership's taxable year ending within or with the taxable year of such holder, regardless of whether the holder has received any distributions. It is possible that the U.S. federal income tax liability of a holder of operating partnership units with respect to its allocable share of the operating partnership's earnings in a particular taxable year could exceed the cash distributions to the holders for the year, thus requiring an out-of-pocket tax payment by the holder. The characterization of an item of income, gain, loss, deduction or credit will generally be determined at the partnership level (rather than at the holder level).

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As discussed under **Tax Aspects of Investments in Partnerships Entity Classification**, if the operating partnership were taxable as a corporation (because, for instance, it is a publicly traded partnership and does not satisfy the qualifying income exception described above), the character of the company's assets and items of gross income would change and would preclude the company from satisfying the REIT asset tests (particularly the tests generally preventing a REIT from owning more than 10% of the voting securities, or more than 10% of the value of the securities, of a corporation) and the gross income tests as discussed in **Taxation of the Company Requirements for Qualification Asset Tests and Taxation of the Company Requirements for Qualification Gross Income Tests**, and in turn would prevent the company from qualifying as a REIT. See **Failure to Qualify**, for a discussion of the effect of the company's failure to meet these tests for a taxable year. In addition, any change in the status of any subsidiary partnership for tax purposes might be treated as a taxable event, in which case the company could have taxable income that is subject to the REIT distribution requirements without receiving any cash.

Even if the operating partnership meets the 90% qualifying income test, certain other consequences will result from the operating partnership's publicly traded partnership classification which could be adverse to you to the extent you receive operating partnership units in exchange for your participation interests. In particular, under Section 469(k) of the Code, you would be required to apply the passive loss limitations of Section 469 separately to the income and loss from the operating partnership. See **Consequences of Holding Operating Partnership Units Limitations on Deductibility of Certain Losses**.

Treatment of the operating partnership as an association taxable as a corporation or a publicly traded partnership taxable as a corporation would have a material adverse impact on you if you receive operating partnership units in the consolidation. In particular, (i) the exchange of your participation interests for operating partnership units could be a taxable transaction; (ii) the operating partnership would have to pay U.S. federal income tax on its taxable income at regular corporate rates (the maximum effective corporate U.S. federal income tax rate currently is 35%) and cash available for distribution to its partners (including you and the company) would thereby be reduced; (iii) there would be no flow-through from the operating partnership to you of items of income, gain, deduction, loss or credit with the result that most, if not all, of the tax aspects discussed above would not apply to you; (iv) distributions to you from the operating partnership would be taxed as dividends or otherwise treated as distributions by a corporation to its stockholders; and (v) the value of your operating partnership units would be substantially impaired. Moreover, if, at any time after the consolidation, the operating partnership were to be treated as an association taxable as a corporation or a publicly traded partnership taxable as a corporation, among other things, you generally would recognize gain equal to a negative capital account that you have in your operating partnership units at that time (i.e., the amount by which your share of liabilities of the operating partnership exceeds your basis in your operating partnership units).

The following discussion assumes that the operating partnership is treated as a partnership and not a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes.

***Income and Deductions in General***

You will report on your U.S. federal income tax return your allocable share of the operating partnership's income, gains, losses, deductions and credits. Such items must be included on your U.S. federal income tax return without regard to whether the operating partnership makes a distribution of cash to you. Accordingly, it is possible that your U.S. federal income tax liability with respect to your allocable share of operating partnership income for a taxable year could exceed your cash distribution for such year.

***Basis of Units; Treatment of Deemed Distributions***

If (taking into account any shares of common stock deemed to be received in connection with the voluntary pro rata reimbursement program) you receive solely operating partnership units in the consolidation, your initial basis in your operating partnership units (your **Initial Basis**) should generally be equal to your basis in your participation interest immediately before the consolidation, reduced by any distribution to you of consolidation expenses for which the operating partnership reimburses your subject LLC. If (taking into account any shares of



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common stock deemed to be received in connection with the voluntary pro rata reimbursement program) you receive operating partnership units and shares of common stock in the consolidation, your Initial Basis should generally be determined as described above under Receipt of Operating Partnership Units Receipt of Reimbursement Shares of Common Stock. However, your basis in your operating partnership units will be reduced (but not below zero) by all or a portion of the amount of any deemed distribution resulting from a decrease in your allocable share of the operating partnership's liabilities. See Tax Consequences of the Consolidation Receipt of Operating Partnership Units Relief from Liabilities and Share of Liabilities. If you have such a reduction in basis, you can generally expect that distributions of cash by the operating partnership and any deemed distributions resulting from subsequent reductions in your share of the operating partnership liabilities may be taxable to you sooner than would be the case if such basis reduction had not occurred. Such basis reduction would also affect your ability to deduct your share of the operating partnership's tax losses.

Your Initial Basis in your operating partnership units will generally be increased by your share of any of the operating partnership income and gain and any increases in your share of liabilities of the operating partnership, and decreased (but not below zero) by your share of any the operating partnership losses and any non-deductible expenditures of the operating partnership which are not chargeable to capital, distributions and any decreases in your share of liabilities of the operating partnership.

***Treatment of Operating Partnership Distributions***

Subject to the discussion of the Disguised Sale Regulations above, distributions of money (including for such purposes decreases in your share of the operating partnership's liabilities) by the operating partnership to you following the consolidation generally should not be taxable for U.S. federal income tax purposes to the extent of your adjusted tax basis in your operating partnership units immediately before the distribution. Distributions of money and marketable securities in excess of such adjusted tax basis generally will be considered to be gains from the sale or exchange of the operating partnership units for U.S. federal income tax purposes, although a portion may be taxable as ordinary income. Your share of nonrecourse liabilities of the operating partnership may decrease (thereby resulting in a deemed cash distribution) as a result of repayments or other reductions of the operating partnership debt. See Tax Consequences of the Consolidation Receipt of Operating Partnership Units Relief from Liabilities and Share of Liabilities.

***Allocations of Income, Gain, Loss and Deduction***

Under Section 704(b) of the Code, a partnership's allocation of any item of income, gain, loss or deduction to a partner will be given effect for U.S. federal income tax purposes so long as it has substantial economic effect, or is otherwise allocated in accordance with the partners' interests in the partnership. If the allocation does not satisfy this standard, it will be reallocated among the partners according to their respective interests in the partnership, taking into account all facts and circumstances.

Section 706 of the Code provides that items of partnership income and deductions must be allocated between transferors and transferees of operating partnership units. The operating partnership will apply certain assumptions and conventions in an attempt to comply with applicable rules and to report income, gain, loss, deduction and credit to holders of Series 60, Series 250, and Series ES operating partnership units, but these assumptions and conventions may not be in compliance with all aspects of applicable tax requirements. As a result, if you transfer your operating partnership units, you may be allocated income, gain, loss and deductions realized by the operating partnership after the date of transfer. In addition, as a result of such allocation method, you may be allocated taxable income even if you do not receive any distributions.

If the conventions are not allowed by applicable Treasury Regulations (or only apply to transfers of less than all of a holder's operating partnership units) or if the IRS otherwise does not accept the conventions, the IRS may contend that the operating partnership's taxable income or losses must be reallocated among the holders of Series 60, Series 250, Series ES, and Series PR operating partnership units. If such a contention were sustained, certain holders of Series 60, Series 250, and Series ES operating partnership units respective tax liabilities would

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be adjusted to the possible detriment of such holders of operating partnership units. The Company is authorized to revise the operating partnership's method of allocation between transferors and transferees (as well as among holders of operating partnership units whose interests otherwise could vary during a taxable period).

Under Section 704(c) of the Code, items of income, gain, loss, and deduction with respect to appreciated or depreciated property that is contributed to a partnership in a tax-deferred transaction must be specially allocated, solely for U.S. federal income tax purposes, among the partners in such a manner so as to take into account such variation between tax basis and fair market value (sometimes referred to herein as the Book-Tax Difference). Under such allocations, the Book-Tax Difference will be eliminated by causing the contributing partner to bear the tax burden or benefit associated with the recognition of the unrealized gain or loss (as measured on the date of the contribution attributable to the contributed asset). In this manner, the contributing partner will realize over the life of the contributed asset the deferred tax burden or benefit attributable to such unrealized appreciation or depreciation in value relative to adjusted basis. The Treasury Regulations require the partnership to use a reasonable method for making Section 704(c) allocations. As a result of the consolidation and IPO, the assets of the operating partnership will be established at their fair market values for this purpose. It is anticipated that there will be a substantial positive Book-Tax Difference with respect to much of the operating partnership's assets. The operating partnership will use the traditional method (as described in Section 1.704-3(b) of the Treasury Regulations) for making Section 704(c) allocations with respect to the assets held by the operating partnership immediately after the consolidation. In the event the operating partnership disposes of an asset which was contributed (including property contributed by your subject LLC), income and gain attributable to the Book-Tax Difference of such contributed asset generally will be allocated to you and other participants that contributed such asset and the other holders of operating partnership units generally will be allocated only their share of income and gain attributable to appreciation, if any, occurring after the contribution of the contributed asset. These incremental allocations of income to participants holding Series 60, Series 250, and Series ES operating partnership units could be substantial with respect to the assets contributed by their subject LLC and will not result in additional cash distributions to such operating partnership unit holders, with the result that you may not necessarily receive cash sufficient to pay the taxes attributable to any such income allocated to you.

In addition, under the traditional method, you will be allocated relatively less depreciation (and possibly none) for U.S. federal income tax purposes with respect to any asset contributed by your subject LLC with a Book-Tax Difference. You may also be allocated relatively less depreciation or additional taxable income on sale for U.S. federal income tax purposes with respect to the other assets of the operating partnership with a positive Book-Tax Difference held by the operating partnership at the time of the consolidation. The operating partnership may use methods other than the traditional method with respect to assets with the book-tax difference of assets acquired after the consolidation.

As a result of the foregoing rules regarding allocations of income, gain, loss and deduction, the tax consequences to holders of Series PR, Series 60, Series 250, and Series ES operating partnership units will differ based on the unique and different tax attributes of the property contributed by the subject LLCs that a particular participant was a member of.

***Tax Treatment of Redemption of the Operating Partnership Units***

Your exercise of your right to require the redemption of all or a portion of your operating partnership units pursuant to the operating partnership's agreement of limited partnership will generally be treated as a taxable transaction for U.S. federal income tax purposes. It is possible that the amount of gain recognized (or even the U.S. federal income tax liability resulting from such gain) by you upon a redemption of such units could exceed the amount of cash received upon such exercise.

If the operating partnership redeems your operating partnership units for cash that the company contributes to the operating partnership to effect such redemption or the company exercises its right to acquire your operating partnership units for shares of Class A common stock, the transaction should generally be treated for

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U.S. federal income tax purposes as a taxable sale of such operating partnership units to the company. In that event, you would be treated as realizing an amount equal to the sum of the cash or fair market value of the shares of common stock received in the exchange plus the amount of the operating partnership liabilities allocable to your redeemed operating partnership units at the time of the redemption. The U.S. federal income tax treatment of a redeeming limited partner in the event of sale treatment is discussed more fully below. See Tax Treatment of Disposition of the Operating Partnership Units Generally.

If, instead, the operating partnership chooses to redeem your operating partnership units for cash that is not contributed by the company to effect the redemption, the U.S. federal income tax consequences would generally be the same as described in the previous paragraph, except that in the event the operating partnership redeems less than all of your units, you would not be permitted to recognize any loss occurring on the transaction and you would generally recognize taxable gain only to the extent that the cash, plus the share of the operating partnership liabilities allocable to your redeemed units, exceeded your adjusted basis in all of your operating partnership units immediately before the redemption.

***Tax Treatment of Disposition of the Operating Partnership Units Generally***

If any operating partnership unit is redeemed or otherwise transferred in a manner that is treated as a sale of such unit, the determination of your gain or loss from the sale will be based on the difference between your amount considered realized for U.S. federal income tax purposes and your adjusted tax basis in such operating partnership unit. Upon the sale of any operating partnership unit, your amount realized will be measured by the sum of the cash received plus the fair market value of any property received plus any reduction in your allocable share of the operating partnership's liabilities as a result of such sale. To the extent that the amount of cash received plus the fair market value of any property received plus the reduction in your allocable share of the operating partnership's liabilities exceeds your adjusted tax basis for the operating partnership unit sold, you will recognize gain. It is possible that the amount of gain recognized or even the U.S. federal income tax liability resulting from such gain could exceed the amount of cash received upon such sale.

Except as described below, any gain recognized upon a sale or other disposition of operating partnership units will be treated as gain attributable to the sale or disposition of a capital asset. To the extent, however, that the amount realized upon the sale of any operating partnership unit attributable to your share of, among others, unrealized receivables of the operating partnership (as defined above under Tax Consequences of the Consolidation Receipt of Stock Character of Gain Recognized ) exceeds your basis attributable to those assets, such excess will be treated as ordinary income. In addition, holders of operating partnership units that are individuals, estates or trusts are currently subject to a maximum U.S. federal income tax of 25% on a sale or other disposition of an operating partnership unit in respect of the recapture of real property depreciation deductions taken by the operating partnership, assuming the holder has held such operating partnership units for more than one year.

As further described herein, under certain circumstances, a transfer of operating partnership units by a holder that also holds shares of Class B common stock will result in all or a portion of such holder's shares of Class B common stock converting to Class A common stock. Such a conversion of Class B common stock for Class A common stock should not result in such holder recognizing gain or loss for U.S. federal income tax purposes.

***Limitations on Deductibility of Certain Losses***

In the case of holders of operating partnership units that are individuals, trusts, estates, or certain closely held corporations, the ability to utilize any tax losses generated by the operating partnership may be limited under the at risk limitation in Section 465 of the Code, the passive activity loss limitation in Section 469 of the Code, the basis limitation of Section 704(d) of the Code, and/or other provisions of the Code. Furthermore, in the case of holders of operating partnership units that are individuals or trusts, the ability to utilize certain specific items

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of deduction may be limited under certain provisions of the Code. The application of these limitations depends on the exact nature of the operating partnership's future operations and the individual tax positions of the holders of operating partnership units. Participants who will receive operating partnership units in the consolidation are urged to consult with their tax advisor regarding the potential application of these provisions.

### ***Effect of the Consolidation on Depreciation***

Under Section 708(b)(1)(B) of the Code, a partnership is technically terminated for U.S. federal income tax purposes if within a 12-month period there is a sale or exchange of 50% or more of the total interests in partnership capital and profits. The terminated old partnership is deemed to contribute its assets, subject to its liabilities, to a new partnership, and thereafter to distribute the interests in the new partnership to the partners in complete liquidation of the old partnership. The principal tax consequence of such a technical termination is that the new partnership is required to depreciate the carryover tax basis of its property as if it were newly placed in service on the date of termination, which results in the depreciation of the carryover tax basis being recovered over a longer period and less current depreciation. If participants holding participation interests representing 50% or more of the outstanding interests in the capital and profits of a subject LLC receive shares of common stock in a taxable exchange for their participation interests in the consolidation or such taxable exchanges together with other transfers during the prior 12 months equals 50% or more of the capital and profits interests in a subject LLC, such subject LLC should be technically terminated immediately prior to the consolidation. As a result, the operating partnership will be required to re-start the depreciation period for each of its depreciable assets following the consolidation, as described above. However, if a subject LLC is not technically terminated in connection with the consolidation, the properties held by such subject LLC generally will continue to be depreciated over the same remaining period as they would be in the hands of the such subject LLC.

Your allocable share of tax depreciation following the consolidation will also be affected by the special tax allocations required under Section 704(c) of the Code. See *Consequences of Holding Operating Partnership Units Allocations of Income, Gain, Loss and Deduction*.

### ***Withholding on Distributions***

If you fail to provide the operating partnership with a certificate of your non-foreign status which satisfies the requirements of Code and the Treasury Regulations promulgated thereunder or any other certificate that relieves the operating partnership of its withholding obligations under the Code and Treasury Regulations, the operating partnership will be required to withhold U.S. federal income tax on certain income or gain realized by the operating partnership, possibly including any gain arising from the disposition of a USRPI, to the extent of your share of such gain.

Amounts withheld from you do not constitute an additional tax, but rather are credited against your U.S. federal income tax liability. You should consult your tax advisor to ensure compliance with the procedures for exemption from withholding.

### ***Uniformity of Series 60, Series 250, and Series ES Operating Partnership Units***

The tax characteristics associated with each series of operating partnership units will differ based on the unique and different tax attributes of the property contributed by each subject LLC. Accordingly, the tax consequences of holding each series of operating partnership units will differ and may impact the liquidity and market price of each such series. Although within each class of Series 60, Series 250, and Series ES operating partnership units the tax consequences of holding such units are expected to be uniform, because the operating partnership cannot match the transferors and transferees of Series 60, Series 250, and Series ES operating partnership units, the operating partnership will adopt depreciation, amortization and other tax accounting positions with respect to each such series that may not conform with all aspects of existing Treasury Regulations. A successful IRS challenge to those positions could adversely affect the amount of tax benefits available to holders of a particular series. It also could affect the timing of these tax benefits or the amount of gain on the sale

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of such class of operating partnership units and could have a negative impact on the liquidity and market price of each such series of operating partnership units or result in audit of and adjustments to a holders' tax returns.

***Foreign Accounts***

The federal FATCA legislation may, pursuant to proposed Treasury Regulations and other guidance, impose withholding tax at a rate of 30% on U.S. source payments made after December 31, 2013 to foreign financial institutions in respect of accounts of holders of operating partnership units at such financial institutions. Holders of operating partnership units should consult their tax advisors regarding the effect, if any, of this recent legislation on their ownership and disposition of their operating partnership units.

*Expansion of Medicare Tax.* Under recently enacted legislation, in certain circumstances, certain holders of operating partnership units who are U.S. persons and who are individuals, estates, and trusts are subject to a 3.8% tax on net investment income, which includes, among other things, certain allocations of income from certain partnerships and gains from the sale or other disposition of interests in such partnerships, effective for taxable years beginning after December 31, 2012. Prospective holders of operating partnership units who are U.S. persons should consult their tax advisors regarding this new legislation.

***Administrative Matters***

*Tax Matters Partner.* The company will act as the operating partnership's tax matters partner. The company will have the authority to act on the operating partnership's behalf in connection with an administrative or judicial review of the operating partnership's items of income, gain, loss, deduction or credit. See Tax Audits below. In addition, the tax matters partner will be authorized to make tax elections on the operating partnership's behalf.

*Section 754 Election.* The operating partnership currently intends to make the election permitted by Section 754 of the Code. The election, if made, is irrevocable without the consent of the IRS, and would generally require the operating partnership to adjust the tax basis in its assets, or inside basis, attributable to a transferee of operating partnership units under Section 743(b) of the Code to reflect the purchase price of the operating partnership units paid by the transferee. For purposes of this discussion, a transferee holder of operating partnership units' inside basis in the operating partnership's assets will be considered to have two components: (1) such holder's share of the operating partnership's tax basis in its assets inherited from its transferor, or common basis, and (2) any Section 743(b) adjustment to that basis that such transferee holder of operating partnership units is entitled to. Any such Section 743(b) basis adjustment described in the preceding sentence will be solely for the benefit of such transferee and will not impact the tax basis of participants holding operating partnership units in the underlying basis of the operating partnership assets.

If no Section 754 election is made, there will be no adjustment for the transferee of operating partnership units, even if the purchase price of those operating partnership units is higher than such operating partnership units' share of the aggregate tax basis of the operating partnership's assets immediately prior to the transfer. In that case, on a sale of an asset, gain allocable to the transferee would include built-in gain allocable to the transferee at the time of the transfer, which built-in gain would otherwise generally be eliminated if a Section 754 election had been made. Accordingly, the failure of the operating partnership to make a Section 754 election could have a material adverse effect on the liquidity and market price of the Series 60, Series 250, and Series ES operating partnership units, and potentially compromise a participant's ability to sell such operating partnership units.

The calculations under Section 754 of the Code are complex, and there is little legal authority concerning the mechanics of the calculations, particularly in the context of publicly traded partnerships with multiple series of interests. To help reduce the complexity of those calculations and assist the operating partnership in applying the relevant rules in an efficient manner, if it makes the election, the operating partnership will apply certain conventions in determining and allocating basis adjustments relating to transfers of Series 60, Series 250, and Series ES operating partnership units. For example, if the election is made, the operating partnership may apply a

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convention in which it deems the price paid by a holder of such operating partnership units to be the lowest quoted trading price of such class of operating partnership units during the month in which the purchase occurred, irrespective of the actual price paid. Nevertheless, the use of such conventions may result in basis adjustments that do not exactly reflect a holder's purchase price for its operating partnership units, including less favorable basis adjustments to a holder who paid more than the lowest quoted trading price of the operating partnership units for the month in which the purchase occurred. It is possible that the IRS will successfully assert that any conventions the operating partnership uses do not satisfy the technical requirements of the Code or the Treasury Regulations and thus could require different basis adjustments to be made. If the IRS were to sustain such a position, a transferee of Series 60, Series 250 and Series ES operating partnership units may have adverse tax consequences. This risk could also have a material adverse effect on the liquidity and market value of such classes of publicly traded units and as a result may potentially compromise a participant's ability to sell such operating partnership units.

*Constructive Termination.* Subject to the electing large partnership rules described below, the operating partnership will be considered to have been terminated for U.S. federal income tax purposes if there is a sale or exchange of 50% or more of the total interests in the operating partnership's capital and profits within a 12-month period. A termination would result in the closing of the operating partnership's taxable year for all holders of operating partnership units. In the case of a holder reporting on a taxable year other than the calendar year, the closing of the operating partnership's taxable year may result in more than 12 months of the operating partnership's taxable income or loss being includable in the holder's taxable income for the year of termination. The operating partnership would be required to make new tax elections after a termination, including a new tax election under Section 754 of the Code. A termination could also result in penalties if the operating partnership were unable to determine that the termination had occurred. Moreover, a termination might either accelerate the application of, or subject the operating partnership to, any tax legislation enacted before the termination (including legislation that may be unfavorable to the operating partnership and/or its partners).

*Tax Return Filing Obligations.* Participants should consider potential state and local tax consequences of holding operating partnership units and are urged to consult their tax advisors in this regard. Each direct or indirect partner of a partnership generally is required to file income tax returns and pay tax both in the state or local jurisdiction where the partner resides and each state or local jurisdiction in which the partnership owns real property or does business. Participants holding operating partnership units will likely be required to file state and local tax returns in each of the jurisdictions where the operating partnership currently owns or subsequently acquires real property. In addition, the operating partnership may be required to withhold state or local income tax against distributions otherwise payable to you which are attributable to income derived from property owned or business conducted in a jurisdiction in which you are not a resident. To the extent that you pay income tax with respect to income derived by the operating partnership in a jurisdiction where you are not a resident (or the operating partnership is required to pay such tax on your behalf), you may be entitled to a deduction or credit against income tax that would otherwise be owed to your state or local jurisdiction of residence on that same income.

*Information Returns.* The operating partnership has agreed to use reasonable efforts to furnish to you tax information (including Schedule K-1) within 90 days of the close of each taxable year, which describes your allocable share of the operating partnership's income, gain, loss and deduction for its preceding taxable year. Delivery of this information by the operating partnership will be subject to delay in the event of, among other reasons, the late receipt of any necessary tax information from an investment in which the operating partnership holds an interest. In preparing this information, the operating partnership will use various accounting and reporting conventions to determine your allocable share of income, gain, loss and deduction. It is therefore likely that, in any taxable year, the holders of operating partnership units will need to apply for extensions of time to file their tax returns. The IRS may successfully contend that certain of these reporting conventions are impermissible, which could result in an adjustment to your income or loss. If you are not a U.S. person there can be no assurance that this information will meet your jurisdiction's compliance requirements.

*Tax Audits.* Under the Code, adjustments in tax liability with respect to operating partnership items generally will be made at the operating partnership level in a partnership proceeding rather than in separate proceedings with each operating partnership unit holder. The company will represent the operating partnership as

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the tax matters partner during any audit and in any dispute with the IRS. Each holder of operating partnership units will be informed of the commencement of an audit of the operating partnership. In general, the tax matters partner may enter into a settlement agreement with the IRS on behalf of, and that is binding upon, holders of operating partnership units.

Adjustments resulting from an IRS audit may require each holder of operating partnership units to adjust a prior year's liability, and possibly may result in an audit of its return. Any audit of a holder's return could result in adjustments not related to the operating partnership's returns as well as those related to the operating partnership's returns.

The tax matters partner can extend the statute of limitations for assessment of tax deficiencies against holders of operating partnership units for items in the operating partnership's return. The tax matters partner may bind a holder with less than a 1% profits interest in the operating partnership to a settlement with the IRS unless that holder elects, by filing a statement with the IRS, not to give that authority to the tax matters partner. The tax matters partner may seek judicial review, by which all operating partnership unit holders are bound, of a final partnership administrative adjustment and, if the tax matters partner fails to seek judicial review, judicial review may be sought by any holder having at least a 1% interest in profits or by any group of holders having in the aggregate at least a 5% interest in profits. However, only one action for judicial review will go forward, and each holder of operating partnership units with an interest in the outcome may participate.

*Nominee Reporting.* Persons who hold operating partnership units as nominees for another person are required to furnish to the operating partnership (i) the name, address and taxpayer identification number of the beneficial owner and the nominee; (ii) whether the beneficial owner is (1) a person that is not a U.S. person, (2) a foreign government, an international organization or any wholly-owned agency or instrumentality of either of the foregoing, or (3) a tax exempt entity; (iii) the amount and description of operating partnership units held, acquired or transferred for the beneficial owner; and (iv) specific information including the dates of acquisitions and transfers, means of acquisitions and transfers, and acquisition costs for purchases, as well as the amount of net proceeds from sales.

Brokers and financial institutions are required to furnish additional information, including whether they are U.S. persons and specific information on operating partnership units they acquire, hold or transfer for their own account. A penalty of \$50 per failure, up to a maximum of \$100,000 per calendar year, is imposed by the Code for failure to report that information to the operating partnership. The nominee is required to supply the beneficial owner of the operating partnership units with the information furnished to operating partnership.

*Taxable Year.* The operating partnership's tax year end will be on December 31, unless required to adopt an alternative year end as its tax year end. Accordingly, holders of operating partnership units with a tax year end other than December 31 may be required to include more than 12 months of the operating partnership's taxable income or loss in the holder's taxable income if there is a technical termination. See *Constructive Termination*.

*Elective Procedures for Large Partnerships.* The Code allows large partnerships to elect streamlined procedures for U.S. federal income tax reporting. This election, if made, would reduce the number of items that must be separately stated on the IRS Schedules K-1 that are issued to holders of operating partnership units, and such Schedules K-1 would have to be provided on or before the first March 15 following the close of each taxable year. You would be required to treat all items consistently with their treatment on the IRS Schedule K-1 issued to you by the operating partnership and would have limited rights in connection with audits and tax proceedings with respect to the operating partnership. In addition, this election would prevent the operating partnership from suffering a technical termination (which would close the operating partnership's taxable year) if within a 12 month period there is a sale or exchange of 50% or more of its total interests. If the operating partnership makes such an election, IRS audit adjustments will flow through to operating partnership unit holders for the year in which such adjustments take effect rather than the year to which the adjustments relates. In addition, the operating partnership, rather than the holders of the operating partnership units individually, generally will be liable for any interest and penalties (on a nondeductible basis) that result from such audit adjustment.

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*Treatment of Amounts Withheld.* If the operating partnership is required to withhold any U.S. tax on distributions made to any holder of operating partnership units, the operating partnership will pay such withheld amount to the IRS. That payment, if made, will be treated as a distribution of cash to the holder of operating partnership units with respect to whom the payment was made and will reduce the amount of cash to which such holder would otherwise be entitled.

*Backup Withholding.* For each calendar year, the operating partnership will report to you and to the IRS the amount of distributions that it pays, and the amount of tax (if any) that it withholds on these distributions. Under the backup withholding rules, you may be subject to backup withholding tax (at a rate of 31% for taxable years beginning after December 31, 2012) with respect to distributions paid unless (i) you are a corporation or fall within another exempt category and demonstrate this fact when required or (ii) you provide a taxpayer identification number, certify as to no loss of exemption from backup withholding tax and otherwise comply with the applicable requirements of the backup withholding tax rules. If you are an exempt holder, you should indicate your exempt status on a properly completed IRS Form W-8BEN. Backup withholding is not an additional tax; the amount of any backup withholding from a payment to you will be allowed as a credit against your U.S. federal income tax liability and may entitle you to a refund.

If you do not timely provide the operating partnership with IRS Form W-8 or W-9, as applicable, or such form is not properly completed, the operating partnership may become subject to U.S. backup withholding taxes in excess of what would have been imposed had the operating partnership received certifications from all holders. Such excess U.S. backup withholding taxes may be treated by the operating partnership as an expense that will be borne by all holders on a pro rata basis (where the operating partnership is or may be unable to cost efficiently allocate any such excess withholding tax cost specifically to the holders that failed to timely provide the proper U.S. tax certifications).

*Tax Shelter Regulations.* If the operating partnership were to engage in a reportable transaction, the operating partnership (and possibly you and others) would be required to make a detailed disclosure of the transaction to the IRS in accordance with regulations governing tax shelters and other potentially tax-motivated transactions. A transaction may be a reportable transaction based upon any of several factors, including the fact that it is a type of tax avoidance transaction publicly identified by the IRS as a listed transaction or that it produces certain kinds of losses in excess of \$2 million. An investment in the operating partnership may be considered a reportable transaction if, for example, the operating partnership recognizes certain significant losses in the future. In certain circumstances, a holder of operating partnership units who disposes of an interest in a transaction resulting in the recognition by such holder of significant losses in excess of certain threshold amounts may be obligated to disclose its participation in such transaction. The operating partnership's participation in a reportable transaction also could increase the likelihood that its U.S. federal income tax information return (and possibly your tax return) would be audited by the IRS. Certain of these rules are currently unclear, and it is possible that they may be applicable in situations other than significant loss transactions.

Moreover, if the operating partnership were to participate in a reportable transaction with a significant purpose to avoid or evade tax, or in any listed transaction, you may be subject to (i) significant accuracy-related penalties with a broad scope, (ii) for those persons otherwise entitled to deduct interest on federal tax deficiencies, nondeductibility of interest on any resulting tax liability, and (iii) in the case of a listed transaction, an extended statute of limitations.

***Potential legislative action affecting the sunset of reduced tax rate provisions***

Several of the tax considerations described herein reflect changes that are scheduled to take effect as a result of certain sunset provisions. The sunset provisions generally provide that, for taxable years beginning after December 31, 2012, certain provisions of the Internal Revenue Code will revert back to a prior version of those provisions. These provisions include those related to the reduced maximum income tax rate for capital gain of 15% (rather than 20%) for taxpayers taxed at individual rates, qualified dividend income, including the



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application of the 15% capital gain rate to qualified dividend income, and certain other tax rate provisions described herein that have been in effect for taxable years beginning prior to January 1, 2013. It is possible that future legislative action could alter or reverse the impact of the currently scheduled sunset provisions. Consequently, prospective stockholders and holders of operating partnership units should consult their tax advisors regarding the effect of such potential legislative changes on an investment in the company's common stock or the operating partnership units.

Holders of operating partnership units should consult their tax advisors concerning any possible disclosure obligation under the regulations governing tax shelters with respect to the holding or disposition of operating partnership units.

**THE FOREGOING TAX SECTION IS INCLUDED FOR GENERAL INFORMATION ONLY FOR U.S. HOLDERS OF PARTICIPATION INTERESTS, AND IS BASED UPON U.S. FEDERAL INCOME TAX LAW AS OF THE DATE OF THIS PROSPECTUS/CONSENT SOLICITATION STATEMENT. THE PARTICULAR CIRCUMSTANCES OF EACH PARTICIPANT MAY DIFFER, AND, CONSEQUENTLY, THIS DISCUSSION MAY NOT APPLY TO YOU. THIS SECTION DOES NOT DISCUSS TAX CONSEQUENCES OF THE CONSOLIDATION UNDER STATE, LOCAL OR FOREIGN LAW OR THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. PERSONS OR TAX-EXEMPT PERSONS. YOU SHOULD CONSULT YOUR TAX ADVISOR AS TO THE SPECIFIC TAX CONSEQUENCES TO YOU RESULTING FROM THE CONSOLIDATION AND THE RECEIPT OF OPERATING PARTNERSHIP UNITS AND/OR COMMON STOCK FOR YOUR PARTICIPATION INTEREST, INCLUDING THE APPLICATION AND EFFECT OF U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.**

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**EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited:

- (i) the consolidated balance sheet of Empire State Realty Trust, Inc. at December 31, 2011 as set forth in their report;
- (ii) the balance sheet of Empire State Realty OP, L.P. at March 31, 2012, as set forth in their report;
- (iii) the combined financial statements and financial statement schedules of Empire State Realty Trust, Inc., Predecessor at December 31, 2011 and 2010, and for each of the three years in the period ended December 31, 2011 which, as to the year 2009, is based in part on the reports of Margolin, Winer & Evens LLP, independent registered public accounting firm, as set forth in their reports on the financial statements for the year ended December 31, 2009 for 250 West 57th St. Associates L.L.C., Fisk Building Associates L.L.C., 60 East 42nd St. Associates L.L.C., Lincoln Building Associates L.L.C., and the consolidated financial statements of Empire State Building Associates L.L.C., and the consolidated financial statements of Empire State Building Company L.L.C. and Affiliates;
- (iv) the statements of revenues and certain expenses of 1333 Broadway Associates, L.L.C. for each of the three years in the period ended December 31, 2011 as set forth in their report;
- (v) the statements of revenues and certain expenses of 1350 Broadway Associates, L.L.C. for each of the three years in the period ended December 31, 2011 as set forth in their report;
- (vi) the statements of revenues and certain expenses of 501 Seventh Avenue Associates, L.L.C. for each of the three years in the period ended December 31, 2011 as set forth in their report;
- (vii) the consolidated financial statements of Empire State Building Company L.L.C. and Affiliates as of December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011 as set forth in their report;
- (viii) the consolidated financial statements and financial statement schedule of Empire State Building Associates L.L.C. at December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011 as set forth in their report;
- (ix) the financial statements and financial statement schedule of 60 East 42nd St. Associates L.L.C. at December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011 as set forth in their report;
- (x) the financial statements and financial statement schedule of 250 West 57th St. Associates L.L.C. at December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011 as set forth in their report;
- (xi) the financial statements of Lincoln Building Associates L.L.C. at December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011 as set forth in their report; and

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(xii) the financial statements of Fisk Building Associates L.L.C. at December 31, 2011 and 2010 and for each of the two years in the period ended December 31, 2011 as set forth in their report.

The company has included each of the aforementioned financial statements and schedules in this prospectus/consent solicitation statement and elsewhere in the registration statement in reliance on the reports of Ernst & Young LLP and to the extent indicated in (iii) above, the reports of Margolin, Winer & Evens LLP, given on their authority as experts in accounting and auditing.

Margolin, Winer & Evens LLP, independent registered public accounting firm, has audited the consolidated financial statements of Empire State Building Company L.L.C. and Affiliates for the year ended December 31, 2009 as set forth in their report. The company has included the financial statements referred to in this paragraph in this prospectus/consent solicitation and elsewhere in the registration statement in reliance on the report of Margolin, Winer & Evens LLP, given on their authority as experts in accounting and auditing.

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Unless otherwise indicated, the statistical and economic market data included in this prospectus/consent solicitation, including information relating to the economic conditions within the company's markets contained in Summary and Market Overview is derived from market information prepared for the company by RCG Consulting Group, or RCG, a nationally recognized real estate consulting firm, and is included in this prospectus/consent solicitation in reliance on RCG's authority as an expert in such matters. The company paid RCG a fee of \$30,000 for its services.

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**LEGAL MATTERS**

Certain legal matters for the company will be passed upon by Clifford Chance US LLP, New York, New York. Certain tax matters for the company will be passed upon by Clifford Chance US LLP, New York, New York.

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**WHERE YOU CAN FIND MORE INFORMATION**

Each subject LLC is subject to the reporting requirements of the Exchange Act, and is required to file reports and other information with the SEC. The company (including the operating partnership) has filed with the SEC a Registration Statement on Form S-4, including exhibits and schedules filed with the registration statement of which this prospectus/consent solicitation is a part, under the Securities Act, with respect to the shares of common stock and operating partnership units offered pursuant to this prospectus/consent solicitation. This prospectus/consent solicitation does not contain all of the information set forth in the registration statement and exhibits and schedules to the registration statement. For further information with respect to the company, the operating partnership and the shares of Class A common stock and operating partnership units, reference is made to the Registration Statement on Form S-4, including the exhibits and schedules to the registration statement. Copies of both registration statements, including the exhibits and schedules to the registration statements, may be examined without charge at the public reference room of the Securities and Exchange Commission, 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Information about the operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0300. Copies of all or a portion of the registration statements may be obtained from the public reference room of the SEC upon payment of prescribed fees. The company's SEC filings, including its registration statement, are also available to you, free of charge, on the SEC's website at [www.sec.gov](http://www.sec.gov).

As a result of the issuance of common stock and operating partnership units in connection with the consolidation, the company and the operating partnership will become subject to the information and reporting requirements of the Exchange Act and will file periodic reports, proxy statements and will make available to their stockholders, as applicable, and unitholders annual reports containing audited financial information for each year and quarterly reports for the first three quarters of each fiscal year containing unaudited interim financial information.

The accompanying supplement to this prospectus/consent solicitation has been prepared for your subject LLC and will be delivered to you and the other participants in your subject LLC. Upon receipt of a written request by you or your representative so designated in writing, the company will send a copy of any supplement without charge. All requests should be directed to MacKenzie Partners, Inc., 105 Madison Avenue, New York, NY 10016, or call toll free at (888) 410-7850.

Statements contained in this prospectus/consent solicitation or any supplements hereto as to the contents of any contract or other document which is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in its entirety by reference to the full text of such contract or document.

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**Empire State Realty Trust, Inc.**

**Unaudited Pro Forma Financial Information**

**(in thousands)**

*As used in these unaudited pro forma condensed consolidated financial statements, unless the context otherwise requires, we, us, and our company mean the Predecessor (as defined below) for the periods presented and Empire State Realty Trust, Inc. and its consolidated subsidiaries upon consummation of its initial public offering, or the IPO, and the formation transactions defined below.*

Empire State Realty Trust, Inc. (formerly known as Empire Realty Trust, Inc.) is a Maryland corporation formed on July 29, 2011 to acquire the assets of entities owning various controlling and non-controlling interests in real estate assets and the equity interests of certain management businesses controlled and managed by Mr. Peter L. Malkin and Mr. Anthony E. Malkin, or the Sponsors.

Prior to or concurrently with the completion of the IPO, we will engage in a series of formation transactions which we refer to as our formation transactions, pursuant to which we will acquire, through a series of contributions and merger transactions, these assets, interests and businesses. The formation transactions are intended to enable us to (i) combine the ownership of our property portfolio under our operating partnership subsidiary, Empire State Realty OP, L.P. (formerly known as Empire Realty Trust, L.P.), a Delaware limited partnership, or the Operating Partnership; (ii) succeed to the asset management, property management, leasing and construction businesses of the Predecessor; (iii) facilitate the IPO; and (iv) elect to be and qualify as a real estate investment trust, or REIT, for U.S. federal income tax purposes commencing with the taxable year ending December 31, 2013. We will not have any operating activity until the consummation of the IPO and the formation transactions.

Empire State Realty Trust, Inc., Predecessor, or the Predecessor, is not a legal entity but rather a combination of (i) controlling interests in (a) 16 office and retail properties, (b) one development parcel, and (c) certain management companies, which are owned by certain entities that the Sponsors own interests in and control, which we collectively refer to as the controlled entities, and (ii) non-controlling interests in four office properties (which include two of the 16 properties set forth in (i) above), held through entities we collectively refer to as the non-controlled entities, and are presented as equity method investments in our historical combined financial statements. Specifically, the term the Predecessor means (i) Malkin Holdings LLC, a New York limited liability company that acts as the supervisor of, and performs various asset management services and routine administration with respect to, certain of the existing entities (as described below), which we refer to as the supervisor; (ii) the limited liability companies or limited partnerships that currently (a) own, directly or indirectly and either through a fee interest or a long-term leasehold in the underlying land, and/or (b) operate, directly or indirectly and through a fee interest, an operating lease, an operating sublease or an operating sub-sublease, the 18 office and retail properties (which include non-controlling interests in four office properties for which Malkin Holdings LLC acts as the supervisor but that are not consolidated into our predecessor for accounting purposes) and entitled land that will support the development of an approximately 380,000 rentable square foot office building and garage that we will own after the formation transactions described in this prospectus, which we refer to as the existing entities; (iii) Malkin Properties, L.L.C., a New York limited liability company that serves as the manager and leasing agent for certain of the existing entities in Manhattan, which we refer to as Malkin Properties; (iv) Malkin Properties of New York, L.L.C., a New York limited liability company that serves as the manager and leasing agent for certain of the existing entities in Westchester County, New York, which we refer to as Malkin Properties NY; (v) Malkin Properties of Connecticut, Inc., a Connecticut corporation that serves as the manager and leasing agent for certain of the existing entities in the State of Connecticut, which we refer to as Malkin Properties CT; and (vi) Malkin Construction Corp., a Connecticut corporation that is a general contractor and provides services to certain of the existing entities and third parties (including certain tenants at the properties in our portfolio), which we refer to as Malkin Construction. The term the Predecessor's management companies refers to the supervisor, Malkin Properties, Malkin Properties NY, Malkin Properties CT and Malkin Construction, collectively. The Predecessor accounts for its investment in the non-controlled entities under the equity method of accounting.

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*Controlled Entities*

As of September 30, 2012, properties that the Sponsors own interests in and control and whose operations are 100% consolidated into the financial statements of the Predecessor include:

Office:

One Grand Central Place, New York, New York

250 West 57th Street, New York, New York

1359 Broadway, New York, New York

First Stamford Place, Stamford, Connecticut

Metro Center, Stamford, Connecticut

383 Main Avenue, Norwalk, Connecticut

500 Mamaroneck Avenue, Harrison, New York

10 Bank Street, White Plains, New York

Fee ownership position of 350 Fifth Avenue (Empire State Building), New York, New York

Fee ownership position of 501 Seventh Avenue, New York, New York

Retail:

10 Union Square, New York, New York

1010 Third Avenue, New York, New York

77 West 55th Street, New York, New York

1542 Third Avenue, New York, New York

69-97 Main Street, Westport, Connecticut

103-107 Main Street, Westport, Connecticut

Land Parcels:

We own entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties, that will support an approximately 380,000 rentable square feet office building and garage.

The acquisition of interests in the Predecessor will be recorded at historical cost at the time of the formation transactions.

*Non-Controlled Entities*

As of September 30, 2012, properties in which the Sponsors own and control non-controlling interests and whose operations are reflected in the Predecessor's combined financial statements as equity interests include:

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Office:

Master operating lease position of 350 Fifth Avenue, New York, New York - Empire State Building

Company L.L.C. Master operating lease position of 1350 Broadway, New York, New York - 1350 Broadway Associates L.L.C. (long term ground lease)

1333 Broadway, New York, New York - 1333 Broadway Associates L.L.C.

Master operating lease position of 501 Seventh Avenue, New York, New York - 501 Seventh Avenue

Associates L.L.C.

All of our business activities will be conducted through the Operating Partnership. We will be the sole general partner of the Operating Partnership. Pursuant to the formation transactions, our Operating Partnership will (i) acquire the assets of, or equity interests in, the controlled entities (including the Predecessor's management

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companies), and the non-controlled entities and (ii) assume related debt and other specified liabilities of such assets and businesses, in exchange for shares of our Class A common stock, par value \$0.01 per share, or the Class A common stock; shares of our Class B common stock, par value \$0.01 per share, or the Class B common stock; operating partnership units of the Operating Partnership, or operating partnership units; and/or cash.

We will be a self-administered and self-managed REIT. Additionally, we will form one or more taxable REIT subsidiaries, or TRSs, that will be owned by the Operating Partnership. The TRSs, through several wholly-owned limited liability companies, will conduct third-party services businesses, including the Empire State Building observatory operations, parking facilities, cleaning services, cafeteria and fitness center, property management and leasing, construction, and property maintenance.

The unaudited pro forma condensed consolidated financial statements assume the approval of the formation transactions by the requisite consent of the participants in Empire State Building Associates L.L.C., 250 West 57<sup>th</sup> Street Associates L.L.C. and 60 East 42<sup>nd</sup> Street Associates L.L.C., which we collectively refer to as the subject LLCs, the closing of the IPO and that prior to or concurrently with the closing of the IPO, we will engage in a series of formation transactions pursuant to which we will acquire, through a series of contributions and merger transactions, 100% of (i) the 18 properties in which the Predecessor owns a controlling or non-controlling interest, (ii) one development parcel in which the Predecessor owns a controlling interest and (iii) the business and assets of the Predecessor management businesses. In the aggregate, these interests, or the Interests, will comprise our ownership of our property portfolio. We will not acquire the Predecessor's affiliates' interests in the option properties, the excluded properties or the excluded businesses (each such term as defined in this prospectus/consent solicitation) (none of which are reflected in the Predecessor's financial statements).

For purposes of these unaudited pro forma condensed consolidated financial statements in this filing, we have assumed that we will acquire the Interests for an aggregate equity value of approximately \$4,182,309. This amount represents the aggregate exchange value as determined by an independent valuation firm, or the independent valuer, for the purpose of allocating equity interests in the 18 office and retail assets, one development parcel and the Predecessor's management companies that are being contributed to our company pursuant to the consolidation. The independent valuer's appraisal was prepared for the purpose of determining these allocations and not for the purpose of establishing the absolute enterprise value of our company in the IPO. However, we have used the independent valuer's appraisal as our preliminary estimate in order to complete the pro forma financial statements for purposes of this filing. The independent valuer's appraisal may be materially different from the market determination of the enterprise value of our company in the IPO. Simultaneously with the filing of the Registration Statement on Form S-4 of which this prospectus/consent solicitation is a part, we also filed a Registration Statement on Form S-11 relating to the IPO. The aggregate consideration for the acquisition of the Interests that will be shown in the pro forma condensed consolidated financial statements included in the prospectus relating to the IPO will reflect an aggregate enterprise value based on the mid-point of the range of initial public offering prices per share set forth in such preliminary prospectus and not the aggregate exchange value as determined by the independent valuer.

The owners of the controlled entities, the non-controlled entities and the Predecessor's management companies will receive shares of our Class A common stock, shares of our Class B common stock, operating partnership units, cash (all of which is expected to be provided from the net proceeds of the IPO) or a combination thereof as consideration for the Interests. The number of shares of common stock and operating partnership units to be issued in the formation transactions will be determined by dividing the enterprise value of our company (which for this purpose excludes indebtedness) as determined by market conditions at the time of, and immediately preceding, the IPO, or the enterprise value, by the actual IPO price per share, or the IPO price, reduced by the number of shares of common stock and operating partnership units which would have otherwise been issuable to investors in the controlled and non-controlled entities that receive cash.

For purposes of these unaudited pro forma condensed consolidated financial statements, we have assumed that (i) the enterprise value (which excludes indebtedness) is equal to the exchange value; and (ii) the gross proceeds of the IPO will be \$1,000,000 (assuming no exercise of the underwriters' option to purchase additional

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shares). We cannot make any guarantee as to (i) what the enterprise value of our company in the IPO will be; (ii) what the IPO price will be; or (iii) what the actual gross proceeds in the IPO will be. We are making these assumptions for illustrative purposes only and actual results may materially differ from these assumptions. The formation transactions will be consummated substantially concurrently with the closing 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.

We expect that the net proceeds from the IPO will be approximately \$855,000 after deducting estimated underwriting discounts and commissions and estimated offering expenses and assuming no exercise of the underwriters' option to purchase additional shares. We expect that the net proceeds from the IPO will be used to repay debt, for debt assumption fees, transfer taxes and as cash consideration to (i) non-accredited investors in the private existing entities; and (ii) tax-exempt investors in the private existing entities who elect cash consideration.

Following the completion of the IPO and the formation transactions, we will be the sole general partner of, and own 30.50% of the interests in, the Operating Partnership. We will have control over major decisions, including the decisions related to the sale or refinancing of our properties (subject to certain exceptions). Accordingly, we will consolidate the assets, liabilities and operations of the Operating Partnership. We will contribute the net proceeds of the IPO to the Operating Partnership in exchange for operating partnership units.

We have determined that one of the Predecessor entities, Malkin Holdings LLC, is the acquirer for accounting purposes, and therefore the contribution of, or acquisition by merger in, the controlled entities is considered a transaction between entities under common control since the Sponsors control a majority of the assets of, or equity interests in, each of the controlled entities comprising the Predecessor. As a result, the acquisition of the assets of, or equity interests in, each of the controlled entities will be recorded at the Predecessor's historical cost. The contribution of the assets of, or acquisition by merger in, the four non-controlled entities (including the Predecessor's non-controlling interest in these entities) will be accounted for as an acquisition under the acquisition method of accounting and recognized at the estimated fair value of acquired assets and assumed liabilities on the date of such contribution or acquisition. The fair value of these assets and liabilities has been allocated in accordance with Accounting Standards Codification, or ASC, Section 805-10, *Business Combinations*. Our methodology for allocating the cost of acquisitions to assets acquired and liabilities assumed is based on estimated fair values, replacement cost and appraised values. We

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estimate the fair value of acquired tangible assets (consisting of land, buildings and improvements), identified intangible assets and liabilities (consisting of acquired above-market leases, acquired in-place lease value, acquired below-market leases, in-place management agreements and goodwill) and assumed debt.

Based on these estimates, we allocate the purchase price to the applicable assets and liabilities. The value allocated to in-place lease costs (tenant improvements, leasing commissions and in-place lease costs) is amortized over the related lease term and reflected as a component of depreciation and amortization. The value of above- and below-market leases is amortized over the related lease term and reflected as either an increase (for below-market leases) or a decrease (for above-market leases) to rental income. No value has been allocated to in-place management agreements as the fair value of these contracts approximate market. Goodwill is not amortized, but it is evaluated at least annually for impairment. The fair value of the debt assumed is determined using current market interest rates for comparable debt financings and the resulting premium is amortized as a component of interest expense over the remaining loan term. The estimated purchase price of the non-controlled entities for pro forma purposes is based on the assumptions stated above and are solely utilized for illustrative purposes.

The unaudited pro forma condensed consolidated financial statements as of, and for the nine months ended September 30, 2012, and for the year ended December 31, 2011, are presented as if (i) the formation transactions, (ii) the IPO, and related use of proceeds; and (iii) certain other miscellaneous adjustments are effective concurrent with the IPO and had all occurred on September 30, 2012, for the unaudited pro forma condensed consolidated balance sheet and on January 1, 2011 for the unaudited pro forma condensed consolidated statements of income and unaudited pro forma condensed consolidated cash flows.

The unaudited pro forma adjustments included herein reflect: (i) combining the properties and the Predecessor's management companies as a result of the acquisition of the assets of the controlled entities (including the non-controlling interests) and the non-controlled entities through contributions and mergers by our company and the Operating Partnership and the issuance of operating partnership units, shares of our Class A common stock and shares of our Class B common stock and the payment of cash to the investors in the controlled and non-controlled entities as part of the formation transactions; (ii) the issuance of shares of our Class A common stock in the IPO; (iii) the costs of entering into, and borrowings under, the secured term loan and the refinancing of existing mortgages secured by the Empire State Building with proceeds from such secured term loan; and (iv) other pro forma adjustments.

Pro forma financial data has been provided under two separate assumptions: (1) all of the private entities, subject LLCs and management companies participate in the consolidation ( Maximum ) and (2) the private entities and the management companies, which have previously entered into agreements to participate in the consolidation and obtained required investor consents, and Empire State Building Associates L.L.C., the participation of which is required as a condition to the consolidation, participate in the consolidation ( Minimum ).

The unaudited pro forma condensed consolidated financial statements should be read in conjunction with the combined historical financial statements of the Predecessor and the non-controlled entities, including the notes thereto, and other financial information and analysis, including the section captioned Management's Discussion and Analysis of Financial Condition and Results of Operations presented elsewhere in this prospectus/consent solicitation. The unaudited pro forma condensed consolidated financial statements (i) are based on available information and assumptions that we deem reasonable; (ii) are presented for informational purposes only; (iii) do not purport to represent our financial position or results of operations or cash flows that would actually have occurred assuming completion of the formation transactions, the IPO and other adjustments described above all had occurred on September 30, 2012, for the pro forma condensed consolidated balance sheet or on January 1, 2011 for the pro forma condensed consolidated statements of income and unaudited pro forma condensed consolidated statement of cash flows; and (iv) do not purport to be indicative of our future results of operations or our financial position.



**Table of Contents****EMPIRE STATE REALTY TRUST, INC. AND SUBSIDIARIES****Maximum Pro Forma Condensed Consolidated Balance Sheet**

September 30, 2012

(unaudited and in thousands except for per share amounts)

	Empire State Realty Trust,		Acquisition of Non-Controlled	Other Pro Forma Adjustments	Consolidated Balance Sheet Prior to the IPO	Proceeds from Offering	Uses of Proceeds from Offering	Other Equity Adjustments	Company Pro Forma
	Inc. (A)	Predecessor (B)	Entities (C)					(Q)	(T)
<b>Assets</b>									
Commercial real estate properties, net	\$	\$ 675,139	\$ 579,557	\$ (15,600) <sup>(D)</sup>	\$ 1,239,096	\$	\$	\$	\$ 1,239,096
Cash and cash equivalents		93,235	16,505	(103,123) <sup>(E)</sup>	6,617	1,000,000 <sup>(K)</sup>			6,617
							(145,000) <sup>(L)</sup>		
							(757,200) <sup>(M)</sup>		
							(84,200) <sup>(N)</sup>		
							(3,600) <sup>(O)</sup>		
							(10,000) <sup>(P)</sup>		
Restricted cash		30,723	45,025		75,748				75,748
Tenant and other receivables, net		7,085	11,029		18,114				18,114
Deferred rent receivables, net		49,438			49,438				49,438
Investment in non-controlled entities		77,777		(77,777) <sup>(F)</sup>					
Deferred costs, net		87,641	272,537	(24,345) <sup>(G)</sup>	335,833				335,833
Due from affiliated companies		22,985		(21,038) <sup>(H)</sup>	1,947				1,947
Prepaid expenses and other assets		9,325	13,964		23,289				23,289
Below market ground lease			64,635		64,635				64,635
Goodwill			872,076		872,076				872,076
<b>Total Assets</b>	\$	\$ 1,053,348	\$ 1,875,328	\$ (241,883)	\$ 2,686,793	\$ 1,000,000	\$ (1,000,000)	\$	\$ 2,686,793
<b>Liabilities</b>									
Mortgage notes payable	\$	\$ 972,785	\$ 137,507	\$	\$ 1,110,292	\$	\$	\$	\$ 1,110,292
Unsecured loan and notes payable-related parties		18,490		(14,890) <sup>(D)</sup>	3,600		(3,600) <sup>(O)</sup>		
Accrued interest payable		3,100			3,100				3,100
Accounts payable and accrued expenses		21,378	16,505		37,883				37,883
Due to affiliated companies		34,521		(29,887) <sup>(I)</sup>	4,634				4,634
Deferred revenue and other liabilities		6,662	161,639		168,301				168,301
Tenants security deposits		16,149	10,997		27,146				27,146
<b>Total Liabilities</b>		1,073,085	326,648	(44,777)	1,354,956		(3,600)		1,351,356

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**Owners Equity**

**(Deficit)**

Common stock and additional paid in capital					1,000,000	(996,400)	403,643	407,243 <sup>(U)</sup>
Total predecessor equity	(19,737)	1,548,680	(197,106)	1,331,837			(1,331,837)	
Non-controlling interest							928,194	928,194
<b>Total Equity</b>	(19,737)	1,548,680	(197,106)	1,331,837	1,000,000	(996,400)		1,335,437

**Total Liabilities and**

**Owners Equity**

<b>(Deficit)</b>	\$	\$ 1,053,348	\$ 1,875,328	\$ (241,883)	\$ 2,686,793	\$ 1,000,000	\$ (1,000,000)	\$	\$ 2,686,793
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Pro Forma weighted average common shares outstanding basic and diluted									134,677
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Pro Forma weighted average operating partnership units outstanding basic and diluted									306,958
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Pro Forma basic book value per share									\$ 3.02 <sup>(R)</sup>
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Pro Forma diluted book value per share									\$ 3.02 <sup>(S)</sup>
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**Table of Contents****EMPIRE STATE REALTY TRUST, INC. AND SUBSIDIARIES****Minimum Pro Forma Condensed Consolidated Balance Sheet**

September 30, 2012

(unaudited and in thousands except for per share amounts)

	Empire State Realty Trust, Inc.	Predecessor (B)	Acquisition of Non-Controlled Entities (C)	Other Pro Forma Adjustments	Elimination of 60 East 42nd Street and 250 West 57th Street (J)	Consolidated Balance Sheet Prior to the IPO	Proceeds from Offering	Uses of Proceeds from Offering	Other Equity Adjustments (Q)	Company Pro Forma (U)
	(A)	(B)	(C)		(J)				(Q)	(U)
<b>Assets</b>										
Commercial real estate properties, net	\$	\$ 675,139	\$ 579,557	\$ (15,600) <sup>(D)</sup>	\$ (111,529)	\$ 1,127,567	\$	\$	\$	\$ 1,127,567
Cash and cash equivalents		93,235	16,505	(95,410) <sup>(T)</sup>	(4,570)	9,760	1,000,000 <sup>(K)</sup>			9,760
								(137,500) <sup>(L)</sup>		
								(779,670) <sup>(M)</sup>		
								(70,569) <sup>(N)</sup>		
								(3,600) <sup>(O)</sup>		
								(8,661) <sup>(P)</sup>		
Restricted cash		30,723	45,025			75,748				75,748
Tenant and other receivables, net		7,085	11,029		(92)	18,022				18,022
Deferred rent receivables, net		49,438				49,438				49,438
Investment in non-controlled entities		77,777		(77,777) <sup>(F)</sup>						
Deferred costs, net		87,641	272,537	(24,345) <sup>(G)</sup>	(4,435)	331,398				331,398
Due from affiliated companies		22,985		(21,038) <sup>(H)</sup>	13,928	15,875				15,875
Prepaid expenses and other assets		9,325	13,964		(6,189)	17,100				17,100
Below market ground lease			64,635			64,635				64,635
Goodwill			872,076			872,076				872,076
<b>Total Assets</b>	\$	\$ 1,053,348	\$ 1,875,328	\$ (234,170)	\$ (112,887)	\$ 2,581,619	\$ 1,000,000	\$ (1,000,000)	\$	\$ 2,581,619
<b>Liabilities</b>										
Mortgage notes payable	\$	\$ 972,785	\$ 137,507	\$	\$ (133,879)	\$ 976,413	\$	\$	\$	\$ 976,413
Unsecured loan and notes payable-related parties		18,490		(14,890) <sup>(D)</sup>		3,600		(3,600) <sup>(O)</sup>		
Accrued interest payable		3,100			(617)	2,483				2,483
Accounts payable and accrued expenses		21,378	16,505		(23)	37,860				37,860

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Due to affiliated companies	34,521		(29,887) <sup>(D)</sup>	9,412	14,046			14,046
Deferred revenue and other liabilities	6,662	161,639			168,301			168,301
Tenants security deposits	16,149	10,997			27,146			27,146
<b>Total Liabilities</b>	<b>1,073,085</b>	<b>326,648</b>	<b>(44,777)</b>	<b>(125,107)</b>	<b>1,229,849</b>	<b>(3,600)</b>		<b>1,226,249</b>

**Owners Equity (Deficit)**

Common stock and additional paid in capital					1,000,000	(996,400)	448,101	451,701 <sup>(V)</sup>
Total predecessor equity	(19,737)	1,548,680	(189,393)	12,220	1,351,770		(1,351,770)	
Non-controlling interest							903,669	903,669
<b>Total Equity</b>	<b>(19,737)</b>	<b>1,548,680</b>	<b>(189,393)</b>	<b>12,220</b>	<b>1,351,770</b>	<b>1,000,000</b>	<b>(996,400)</b>	<b>1,355,370</b>

**Total Liabilities and Owners Equity (Deficit)**

\$	\$ 1,053,348	\$ 1,875,328	\$ (234,170)	\$ (112,887)	\$ 2,581,619	\$ 1,000,000	\$ (1,000,000)	\$	\$ 2,581,619
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Pro Forma weighted average common shares outstanding basic and diluted									130,502
Pro Forma weighted average operating partnership units outstanding basic and diluted									261,080
Pro Forma basic book value per share									\$ 3.46 <sup>(R)</sup>

Pro Forma diluted book value per share									\$ 3.46 <sup>(S)</sup>
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**Table of Contents****EMPIRE STATE REALTY TRUST, INC. AND SUBSIDIARIES****Pro Forma Condensed Consolidated Statement of Income****For the Nine months Ended September 30, 2012****(unaudited and in thousands except for per share amounts)**

	Empire State Realty Trust, Inc. (AA)	Predecessor (BB)	Acquisition of Non-Controlled Entities (CC)	Adjustments	Maximum Company Pro Forma (QQ)	Elimination of 60 East 42nd Street and 250 West 57th Street (MM)	Minimum Company Pro Forma (QQ)
<b>Revenues</b>							
Rental revenue	\$	\$ 129,673	\$ 114,856	\$ (12,208) <sup>(DD)</sup>	\$ 232,321	\$	\$ 232,321
Tenant expense reimbursement		22,570	23,735		46,305		46,305
Third party management and other fees		3,909		(1,761) <sup>(EE)</sup>	2,148	477	2,625
Construction revenue		11,731			11,731		11,731
Observatory revenue			68,493		68,493		68,493
Other income and fees		8,778	15,944	(1,681) <sup>(EE)</sup>	23,041		23,041
<b>Total Revenues</b>		176,661	223,028	(15,650)			