

MALKIN ANTHONY E
Form 4
December 06, 2017

FORM 4 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
MALKIN ANTHONY E

2. Issuer Name and Ticker or Trading Symbol
Empire State Realty Trust, Inc. [ESRT]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

3. Date of Earliest Transaction (Month/Day/Year)
12/04/2017

Director 10% Owner
 Officer (give title below) Other (specify below)
Chairman and CEO

C/O EMPIRE STATE REALTY TRUST, INC., 111 WEST 33RD STREET, 12TH FLOOR

(Street)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

NEW YORK, NY 10120

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

| 1. Title of Security (Instr. 3) | 2. Transaction Date (Month/Day/Year) | 2A. Deemed Execution Date, if any (Month/Day/Year) | 3. Transaction Code (Instr. 8) | 4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5) | 5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4) | 6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4) | 7. Nature of Ownership (Instr. 4) | | | |
|---------------------------------|--------------------------------------|--|--------------------------------|---|---|--|-----------------------------------|---------|---|----------------------|
| | | | Code | V | Amount | (A) or (D) | Price | | | |
| Class A Common Stock | 12/04/2017 ⁽¹⁾ | | C | | 156,416 | A | \$ 0 ⁽²⁾ | 156,416 | D | Beneficial Ownership |
| Class A Common Stock | 12/04/2017 | | C | | 577,692 | A | \$ 0 ⁽³⁾ | 734,108 | D | Beneficial Ownership |
| Class A Common Stock | 12/04/2017 | | C | | 11,790 | A | \$ 0 ⁽⁴⁾ | 745,898 | D | Beneficial Ownership |

| | | | | | | | | | |
|----------------------------|------------|--|------------------|---------|---|-----------------------------------|---------|---|--|
| Class A Common Stock | 12/04/2017 | | C | 79 | A | \$ 0 ⁽⁴⁾ <u>(5)</u> | 9,485 | I | By Spouse and family trusts and entities controlled by the Reporting Person. ⁽⁶⁾ |
| Class A Common Stock | 12/04/2017 | | C | 487,320 | A | \$ 0 ⁽³⁾ | 496,805 | I | By Spouse and family trusts and entities controlled by the Reporting Person. ⁽⁶⁾ |
| Class A Common Stock | 12/04/2017 | | C | 9,945 | A | \$ 0 ⁽⁴⁾ | 506,750 | I | By Spouse and family trusts and entities controlled by the Reporting Person. ⁽⁶⁾ |
| Class A Common Stock | 12/04/2017 | | S ⁽¹⁾ | 745,898 | D | \$ 20.45 | 0 | D | |
| Class A Common Stock | 12/04/2017 | | S ⁽¹⁾ | 497,265 | D | \$ 20.45 | 9,485 | I | By Spouse family trusts and entities controlled by the Reporting Person. ⁽⁶⁾ |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security (Instr. 3) | 2. Conversion or Exercise Price of | 3. Transaction Date (Month/Day/Year) | 3A. Deemed Execution Date, if any (Month/Day/Year) | 4. Transaction Code (Instr. 8) | 5. Number of Derivative Securities Acquired (A) or | 6. Date Exercisable and Expiration Date (Month/Day/Year) | 7. Title and Amount of Underlying Securities (Instr. 3 and 4) |
|--|------------------------------------|--------------------------------------|--|--------------------------------|--|--|---|
|--|------------------------------------|--------------------------------------|--|--------------------------------|--|--|---|

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| Derivative Security | | | Disposed of (D) (Instr. 3, 4, and 5) | | Date Exercisable | Expiration Date | Title | Amount or Number of Shares |
|-----------------------------|------------|------------|---|-----------|------------------|-----------------|----------------------|----------------------------|
| | | | Code | V (A) (D) | | | | |
| LTIP Units <u>(7)</u> | <u>(7)</u> | 12/04/2017 | C | 119,875 | <u>(7)(8)</u> | <u>(7)</u> | Class A Common Stock | 119,875 |
| LTIP Units <u>(7)</u> | <u>(7)</u> | 12/04/2017 | C | 36,541 | <u>(7)(9)</u> | <u>(7)</u> | Class A Common Stock | 36,541 |
| Operating Partnership Units | <u>(3)</u> | 12/04/2017 | C | 577,692 | <u>(3)</u> | <u>(3)</u> | Class A Common Stock | 577,692 |
| Operating Partnership Units | <u>(3)</u> | 12/04/2017 | C | 487,320 | <u>(3)</u> | <u>(3)</u> | Class A Common Stock | 487,320 |
| Class B Common Stock | <u>(4)</u> | 12/04/2017 | C | 11,790 | <u>(4)</u> | <u>(4)</u> | Class A Common Stock | 11,790 |
| Class B Common Stock | <u>(4)</u> | 12/04/2017 | C | 79 | <u>(4)(5)</u> | <u>(4)</u> | Class A Common Stock | 79 |
| Class B Common Stock | <u>(4)</u> | 12/04/2017 | C | 9,945 | <u>(4)</u> | <u>(4)</u> | Class A Common Stock | 9,945 |

Reporting Owners

Reporting Owner Name / Address

Relationships

Director 10% Owner Officer Other

MALKIN ANTHONY E
 C/O EMPIRE STATE REALTY TRUST, INC. X Chairman and CEO
 111 WEST 33RD STREET, 12TH FLOOR
 NEW YORK, NY 10120

Signatures

/s/ Debra E. Levin, 12/06/2017
 Attorney-in-Fact

__Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- The transactions reported above in this Form 4 are being reported in conjunction with the sale by the Reporting Person, on December 4, 2017, of 1,243,163 shares of Class A Common Stock during an open window period through a secondary market block trade pursuant to
- (1) Rule 144 under the Securities Act of 1933, as amended. The sale was made for family and tax planning purposes for the family of the Reporting Person (i.e., the Reporting Person, his siblings and entities owned for their benefit) and represents less than 3% of the Malkin family's beneficial ownership of equity in the Issuer on a fully diluted basis.
- A total of 156,416 of vested LTIP Units were converted by the Reporting Person on a one-for-one basis into Operating Partnership Units, which were then redeemed for an equal number of shares of the Issuer's Class A Common Stock. See Note 7 below for a
- (2) description of the conversion and exchange rights of the LTIP Units and Operating Partnership Units. All capitalized terms used herein are defined in Note 7 below.
- (3) See note 7 below for a description of the exchange rights of the Operating Partnership Units.
- Represents the mandatory conversion of shares of Class B common stock of the Issuer, par value \$0.01 ("Class B Common Stock"), upon the transfer of Operating Partnership Units. Under the operating documents of the Issuer, a holder of 49 Operating Partnership
- (4) Units is entitled to hold one share of Class B Common Stock. The Class B Common Stock is mandatorily convertible into Class A Common Stock, on a one-for-one basis, when the holder of a share of Class B Common Stock no longer holds the requisite number of Operating Partnership Units appurtenant to that share. The conversion right does not expire.
- As previously reported, in connection with the Issuer's acquisition of the ground and operating leases at 112 West 34th St. in 2014, a portion of the consideration payable to the seller by the Issuer, including Operating Partnership Units, was deposited into a liquidating trust as a contingency reserve for the holders of interests in the seller. Payment of interim expenses by the liquidating trust resulted in the
- (5) involuntary liquidation of Operating Partnership Units owned by such holders, including the Reporting Person and entities for which the Reporting Person serves as sole manager. This resulted in the mandatory conversion of a number of shares of Class B Common Stock to shares of Class A Common Stock, one a one-for-one basis, pursuant to the operating documents of the Issuer.
- Includes Class A Common Stock held by (i) the Reporting Person's spouse and (ii) family trusts and entities for which the Reporting Person has sole voting and investment power as sole manager or sole trustee, as applicable, or the Reporting Person and his spouse have
- (6) shared voting and investment power as managers or trustees, as applicable, all for the benefit of the Reporting Person, his spouse, and certain other members of their extended family. The Reporting Person disclaims beneficial ownership of such Class A Common Stock except to the extent of his pecuniary interest therein.
- Represents long term incentive plan units ("LTIP Units"), a class of units of Empire State Realty OP, L.P. (the "Operating Partnership") in which Empire State Realty Trust, Inc. (the "Issuer") is the sole general partner. Conditioned upon minimum allocations to the capital accounts of the LTIP Units for federal income tax purposes, vested LTIP Units are convertible by the Reporting Person, upon vesting,
- (7) into an equivalent number of units of limited partnership interest ("Operating Partnership Units") of the Operating Partnership, which are redeemable by the holder for shares of Class A common stock, par value \$0.01 ("Class A Common Stock") of the Issuer on a one-for-one basis or the cash value of such shares, at the Issuer's option. The rights to convert LTIP units into Operating Partnership Units and redeem Operating Partnership Units do not have expiration dates.
- (8) These LTIP Units have vested based upon the passage of time since their issuance on January 1, 2014 or January 1, 2015, as applicable.
- (9) These LTIP Units have vested based upon the achievement of certain performance criteria during a three-year performance period ended December 31, 2016.
- (10) Includes Operating Partnership Units held by (i) family trusts and entities for which the Reporting Person has sole voting and investment power as sole manager or sole trustee, as applicable, or the Reporting Person and his spouse have shared voting and investment power as

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managers or trustees, as applicable, all for the benefit of the Reporting Person, his spouse, and certain other members of their extended family and (ii) family trusts for the benefit of the Reporting Person's children. The Reporting Person disclaims beneficial ownership of such Operating Partnership Units, except to the extent of his pecuniary interest therein.

Includes Class B Common Stock held by (i) family trusts and entities for which the Reporting Person has sole voting and investment power as sole manager or sole trustee, as applicable, or the Reporting Person and his spouse have shared voting and investment power as

- (11) managers or trustees, as applicable, all for the benefit of the Reporting Person, his spouse, and certain other members of their extended family and (ii) family trusts for the benefit of the Reporting Person's children. The Reporting Person disclaims beneficial ownership of such Class B Common Stock, except to the extent of his pecuniary interest therein.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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