

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

IN RE GATEWAY PLAZA RESIDENTS LITIGATION

Index No. 651023/2014
Hon. Melissa A. Crane

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Settlement Agreement”) constitutes an agreement between (i) the Representative Plaintiffs and the other members of the Class, and (ii) defendant Marina Towers Associates, L.P. (“Marina Towers”), each by and through his, her, their, or its undersigned attorneys. Capitalized terms used in this Settlement Agreement shall have the meaning ascribed to them in Section I.F of this Agreement or, if not defined therein, elsewhere in this Agreement.

WHEREAS, Gateway Plaza is a residential apartment complex that contains six buildings located at 345, 355, 365, 376, 385, and 395 South End Avenue, New York, New York; and

WHEREAS, Marina Towers is the landlord for the residential tenants who lease apartments in the buildings located at Gateway Plaza; and

WHEREAS, on April 1, 2008, two putative class actions were filed in the Supreme Court of the State of New York, County of New York, alleging claims against Marina Towers and other defendants based on alleged conditions in the apartments and buildings at Gateway Plaza; and

WHEREAS, these actions were consolidated on April 23, 2014, under the caption *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014; and

WHEREAS, the current complaint in the action, the Complaint, was filed on April 6, 2018, and purports to assert claims on behalf of classes of: (i) all residential tenants who currently reside at Gateway Plaza; and (ii) all residential tenants who resided at Gateway Plaza at any time on or after April 1, 2008, but no longer reside at Gateway Plaza; and

WHEREAS, the Complaint alleges, among other things, that throughout the Class Period, Marina Towers failed to comply with its obligations to tenants at Gateway Plaza under the implied warranty of habitability established by Section 235-b of New York’s Real Property Law and under the lease agreements between Marina Towers and those tenants; and

WHEREAS, the Complaint alleges, among other things, that throughout the Class Period, tenants at Gateway Plaza could not adequately heat their apartments during the winter months using the PTAC Units in each apartment provided by Marina

Towers for that purpose; that throughout the Class Period, tenants at Gateway Plaza could not adequately cool their apartments during the summer months using the PTAC Units in each apartment provided by Marina Towers for that purpose; and that throughout the Class Period, tenants at Gateway Plaza were required to use excessive amounts of electricity, and to pay excessive charges for electricity, in order to operate the PTAC Units in their apartments; and

WHEREAS, the Complaint alleges, among other things, that structural and other defects at Gateway Plaza relating to, among other elements of the buildings and apartments at Gateway Plaza, windows, doors, insulation, the existence of negative pressure in apartments at Gateway Plaza, and the operation and installation of PTAC Units, contributed to the alleged inability of tenants at Gateway Plaza to heat and cool their apartments adequately using the PTAC Units in their apartments; and

WHEREAS, the Complaint alleges, among other things, that structural and other defects at Gateway Plaza have caused, among other conditions, structural deterioration, fungal growth, and excessive condensation on windows and window sills; and

WHEREAS, the Complaint alleges, among other things, that Marina Towers improperly profits from the allegedly excessive charges for electricity paid by tenants at Gateway Plaza through an electrical submetering system at Gateway Plaza; and

WHEREAS, Marina Towers denies that it has breached the implied warranty of habitability established by Section 235-b of New York's Real Property Law or the lease agreements between Marina Towers and tenants at any time during the Class Period in any of the respects alleged by the Complaint; denies that it is otherwise liable to members of the Class in any respect; asserts that, in the absence of a settlement, this Action could not properly be maintained as a class action under New York law; and states it is entering this Settlement Agreement solely to eliminate the uncertainties, burden, and expense of further litigation; and

WHEREAS, on August 10, 2018, Marina Towers moved for summary judgment dismissing the claims in the Complaint, and the Court has deferred the completion of briefing on that motion; and

WHEREAS, disclosure in the Action, which included production of over 130,000 pages of documents by Marina Towers, the taking of six depositions, and the inspection of approximately 27 apartments, over four visits, by experts retained by counsel for the Representative Plaintiffs or their predecessors, has concluded; and

WHEREAS, Marina Towers has made significant capital improvements at Gateway Plaza during the pendency of this Action; and

WHEREAS, following arm's-length negotiations, the Representative Plaintiffs, through this Settlement Agreement, wish to settle the Action in exchange for: (i) payment by Marina Towers of \$10,000,000 in cash or in rent abatement; and (ii) the

Contractual Rent Increase Limitation set forth below, and Marina Towers wishes to enter into this Settlement of the Action.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Representative Plaintiffs, individually and in their representative capacities, and Marina Towers, each by and through her or its undersigned and duly authorized attorneys, that the Action and the matters raised by it are hereby settled and compromised, and that the Action will be dismissed on the merits and with prejudice, and that the Released Claims will be released based upon the terms and conditions set forth in this Settlement Agreement and the Releases set forth herein, subject to: (i) the approval of the Court; (ii) such approval becoming Final; and (iii) the payments required by Section II being made into the Cash Settlement Notice and Administrative Expenses Account and the Cash Settlement Account.

I. Introduction and Definitions

A. Procedural History

1. Barbara Stoebel, individually and as putative representative plaintiff, commenced the Stoebel Action in the Supreme Court of the State of New York, County of New York, through filing and service of a summons and complaint dated April 1, 2014. The complaint in that action purported to allege claims against Marina Towers for breach of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; claims against Marina Towers and Gateway Residential Management for unjust enrichment; claims against Marina Towers and Gateway Residential Management for injunctive relief; and claims against Marina Towers and Gateway Residential Management for attorneys' fees, costs and disbursements.

2. Maureen Koetz, individually and as putative representative plaintiff, commenced the Koetz Action in the Supreme Court of the State of New York, County of New York, through filing and service of a summons and complaint dated April 1, 2014. The complaint in that action purported to allege claims against Marina Towers, Gateway Residential Management, the BPCA, and the LeFrak Organization for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; claims against Marina Towers for unjust enrichment; claims against Marina Towers, Gateway Residential Management, the BPCA, and the LeFrak Organization for violations of Section 349 of the New York General Business Law; claims against Marina Towers, Gateway Residential Management, the BPCA, and the LeFrak Organization for breach of the lease agreements applicable to residential tenants at Gateway Plaza; claims against Marina Towers, Gateway Residential Management, the BPCA, and the LeFrak Organization for injunctive relief; and claims against Marina Towers and the LeFrak Organization for attorneys' fees, costs and disbursements.

3. By stipulation and order entered by the Court on April 23, 2014, the Stoebel Action and the Koetz Action were consolidated under the title and caption of *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014. That stipulation and

order appointed the law firms of Newman Ferrara LLP and Morgan & Morgan, P.C. (for which Safirstein Metcalf LLP is hereby substituted) as Co-Lead Counsel and the law firm of Sanford Heisler LLP (now Sanford Heisler Sharp, LLP) as Co-Counsel in that action.

4. Barbara Stoebel and David Spencer, individually and as putative representative plaintiffs, filed a Consolidated Class Action Complaint on June 13, 2014, in *In re Gateway Plaza Residents Litigation*. Their Consolidated Class Action Complaint purported to allege claims against Marina Towers for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; claims against Marina Towers and Gateway Residential Management for unjust enrichment; claims against Marina Towers for breach of the lease agreements applicable to residential tenants at Gateway Plaza; claims against Marina Towers and Gateway Residential Management for injunctive relief; and claims against Marina Towers for attorneys' fees, costs and disbursements.

5. On July 28, 2014, defendants Marina Towers and Gateway Residential Management moved for an order: (i) dismissing with prejudice the purported claims in the Consolidated Class Action Complaint for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law, unjust enrichment, and injunctive relief; (ii) dismissing with prejudice the purported claims in the Consolidated Class Action Complaint for unjust enrichment; and (iii) dismissing Gateway Residential Management from the Action. In their papers on that motion, Barbara Stoebel and David Spencer withdrew their claim against Marina Towers for unjust enrichment. At a hearing on the motion held on December 3, 2015, the Court orally approved withdrawal of the claim against Marina Towers for unjust enrichment. At that hearing, the Court also orally granted Barbara Stoebel and David Spencer leave to amend the complaint in order to replead their claim against Gateway Residential Management for unjust enrichment. By written order entered on December 3, 2015, the Court denied the motion to dismiss filed by Marina Towers and Gateway Residential Management.

6. Marina Towers and Gateway Residential Management answered the Consolidated Class Action Complaint on December 17, 2015, and alleged counterclaims for attorneys' fees, costs and disbursements.

7. By notice of appeal filed on January 5, 2016, Marina Towers and Gateway Residential Management appealed from the order entered by the Court on December 3, 2015. That order, as described above in paragraph 5, had denied the motion to dismiss filed by defendants Marina Towers and Gateway Residential Management. By stipulation and order entered by the Appellate Division of the Supreme Court of New York on November 22, 2016, Marina Towers and Gateway Residential Management withdrew their appeal.

8. Barbara Stoebel and David Spencer, individually and as putative representative plaintiffs, filed a Consolidated Amended Class Action Complaint on January 5, 2016, against Marina Towers and Gateway Residential Management. Their Consolidated Amended Class Action Complaint purported to allege claims against

Marina Towers for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; claims against Gateway Residential Management for unjust enrichment; claims against Marina Towers for breach of the lease agreements applicable to residential tenants at Gateway Plaza; and claims against Marina Towers for attorneys' fees, costs and disbursements.

9. On February 4, 2016, defendant Gateway Residential Management moved for an order dismissing with prejudice the purported claims against Gateway Residential Management for unjust enrichment in the Consolidated Amended Class Action Complaint. By order entered December 9, 2016, the Court dismissed the purported claims against Gateway Residential Management for unjust enrichment and directed the Clerk of the Court to enter judgment dismissing the action as against Gateway Residential Management. The Clerk of the Court entered judgment on January 30, 2017, dismissing the action as against Gateway Residential Management without costs or disbursements. No appeal was taken from that judgment or from the underlying order entered by the Court on December 9, 2016.

10. On August 15, 2016, Barbara Stoebel and David Spencer moved for an order withdrawing as individual and putative representative plaintiffs in the Action, and permitting the intervention and substitution of Ninfa Segarra and Pauline Wolf as individual and putative representative plaintiffs in the Action. On August 18, 2016, counsel for Stoebel and Spencer informed the Court that Pauline Wolf no longer wished to act as a class representative, and requested that the motion be modified to request the intervention and substitution only of Ninfa Segarra. By order entered on December 9, 2016, the Court ruled that Ninfa Segarra should become putative representative plaintiff. In that order, the Court also granted the motion of Stoebel and Spencer to withdraw as individual and putative representative plaintiffs.

11. In their papers in support of the motion described in the paragraph above, Barbara Stoebel and David Spencer included a Proposed Consolidated Second Amended Class Complaint to be filed by the new putative representative plaintiffs. The Proposed Consolidated Second Amended Complaint purported to allege claims against Marina Towers for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; claims against Gateway Residential Management for unjust enrichment; claims against Marina Towers for breach of the lease agreements applicable to residential tenants at Gateway Plaza; and claims against Marina Towers for attorneys' fees, costs and disbursements. As noted above in Paragraph 9, the Court subsequently dismissed the purported claims against Gateway Residential Management for unjust enrichment, and the Clerk of the Court entered judgment dismissing the action as against Gateway Residential Management.

12. On January 23, 2017, Ninfa Segarra moved for an order certifying a class in the Action and granting other relief. By Stipulation and Order entered by the Court on July 13, 2017, Segarra withdrew as putative representative plaintiff from the Action and withdrew this motion.

13. The Stipulation and Order entered by the Court on July 13, 2017, some provisions of which are described in the paragraph above, authorized Maureen Koetz to file an amended complaint in the Action, subject to certain rights reserved by Marina Towers. Maureen Koetz, individually and as putative representative plaintiff, filed a Consolidated Third Amended Class Action Complaint on July 17, 2017. The complaint purported to allege claims against Marina Towers for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; breach of the lease agreements applicable to residential tenants at Gateway Plaza; and attorneys' fees, costs and disbursements.

14. On July 20, 2017, Maureen Koetz moved for an order certifying a class in the Action and granting certain other relief. By order entered December 11, 2017, the Court denied that motion without prejudice based on the Court's dismissal of Maureen Koetz as putative representative plaintiff, as described in the paragraph below.

15. On August 3, 2017, Marina Towers moved for an order dismissing the requests for injunctive relief in the Consolidated Third Amended Complaint. Marina Towers subsequently moved on August 28, 2017, for an order granting Marina Towers leave to file an amended motion to dismiss in full the Consolidated Third Amended Complaint, on the ground that Maureen Koetz had executed a written release barring her from asserting the purported claims. By order entered December 11, 2017, the Court dismissed Maureen Koetz as putative representative plaintiff and otherwise denied the request of Marina Towers for dismissal of the Consolidated Third Amended Complaint. Also by order entered December 11, 2017, the Court authorized an application by new putative representative plaintiffs to appear in the Action.

16. The Representative Plaintiffs, individually and as putative representative plaintiffs, filed the Complaint on April 6, 2018. Their Complaint purported to allege claims against Marina Towers for violations of the implied warranty of habitability established by Section 235-b of the New York Real Property Law; breach of the lease agreements applicable to residential tenants at Gateway Plaza; and attorneys' fees, costs and disbursements.

17. Marina Towers answered the Complaint on April 26, 2018, and alleged counterclaims against the Representative Plaintiffs and members of the putative class for attorneys' fees, costs and disbursements.

18. On August 10, 2018, Marina Towers moved for summary judgment. By that motion, Marina Towers sought judgment dismissing the claims of the Representative Plaintiffs with prejudice and dismissing the Complaint with prejudice. If the Court permitted the Action to be maintained as a class action, Marina Towers' motion sought judgment dismissing the claims of the Representative Plaintiffs and all members of the class or classes with prejudice and dismissing the Complaint with prejudice. Briefing on that motion has not been completed, and the Court has not decided the motion.

B. Capital Improvements at Gateway Plaza

1. Since the filing of this Action, Marina Towers and Gateway Residential Management have undertaken significant measures to maintain and improve the buildings, apartments, and other facilities at Gateway Plaza.

2. In June 2014, Gateway Residential Management began to replace the PTAC Units in apartments at Gateway Plaza with upgraded units. Gateway Residential Management purchased approximately 3,780 new PTAC Units, and completed the installation of those new PTAC Units in the apartments at Gateway Plaza by early 2015.

3. In late 2014 and early 2015, Gateway Residential Management upgraded the electrical sub-meters in each apartment at Gateway Plaza. Those electrical sub-meters measure and record the electricity usage by tenants in each apartment.

4. In 2015, Gateway Residential Management replaced the rooftop air units on three buildings at Gateway Plaza. The rooftop air units pump outside air into the buildings at Gateway Plaza, and thereby function as part of the system for regulating the flow and temperature of air within those buildings.

5. In July 2016, Gateway Residential Management began to replace the windows in all apartments at Gateway Plaza. Gateway Residential Management completed this project in August 2017.

6. The total cost of the capital improvements identified above is estimated to be approximately \$20 million.

7. Marina Towers acknowledges that the initiation and prosecution of this Action by the Representative Plaintiffs and their predecessors was a contributing factor as to both the timing and scope of the above capital improvements undertaken at Gateway Plaza.

C. Settlement Discussions

1. The Representative Plaintiffs and Marina Towers first engaged in settlement discussions in the summer of 2015.

2. Thereafter, counsel for the parties periodically engaged in numerous telephone calls and face-to-face meetings, including throughout the second half of 2015, the first half of 2016, and March 2017. During these preliminary meetings, documents were exchanged, proposals and counter-proposals were made, and the strengths and weaknesses of the claims were discussed and debated.

3. Settlement negotiations between counsel for the parties restarted in late 2018 and continued through to the Execution Date as the parties negotiated the terms of the Settlement Agreement. The negotiations included numerous telephone calls and several in-person meetings.

4. Settlement negotiations between the parties invariably included discussions about capital improvements and the appropriate level of rent abatements. At certain points, the parties also contemplated an extension of QRS benefits, as discussed below.

5. Throughout the settlement negotiations, the Representative Plaintiffs were advised by various consultants and experts, including those with expertise in estimating potential damages in cases involving landlord-tenant disputes.

D. Pre-Litigation Investigation of the Claims and Information Obtained in the Action Concerning the Claims by Counsel for the Representative Plaintiffs and Their Predecessors

1. Before filing the Complaint, Class Counsel engaged in an extensive and exhaustive pre-suit investigation, which included, but was not limited to, research and review of public and non-public information and records, interviews with witnesses, work with consultants and experts, property inspections, legal research on potential claims and defenses, and drafting the Complaint.

2. In response to multiple discovery requests and supplemental discovery requests over the course of the litigation, Class Counsel obtained substantial disclosure from Marina Towers in the Action. Marina Towers produced over 130,000 pages of documents in the Action, and Class Counsel reviewed those documents, in addition to other evidence and documents obtained through other publicly available and non-public sources.

3. Class Counsel worked regularly with consultants and engineering experts and engaged in joint property inspections and testing with counsel for Marina Tower and its engineering experts. In all, approximately 27 apartments at Gateway Plaza were inspected over four visits, including inspections of the apartments of the Representative Plaintiffs and some of the Representative Plaintiffs' predecessors.

4. In addition, Class Counsel took the deposition of the General Manager of Gateway Residential Management and the general contractor who oversaw the construction of Gateway Plaza. Counsel for Marina Towers took the depositions of the Representative Plaintiffs, as well as former putative class representatives Maureen Koetz and Ninfa Segarra.

5. Class Counsel have reviewed and considered the expert and factual affidavits submitted by Marina Towers in support of its motion for summary judgment. Class Counsel have also reviewed the memorandum of law submitted by Marina Towers in support of its motion for summary judgment and have considered the legal arguments made in that memorandum.

6. Class Counsel have extensive experience in class action litigation and in landlord-tenant litigation. In the considered judgment of Class Counsel, and the Representative Plaintiffs, the information they have obtained through the investigation, disclosure, and court papers described above supports their conclusion that the settlement

terms set forth herein are fair, reasonable, and adequate, and in the best interests of Class Members.

E. Settlement Considerations

1. Representative Plaintiffs and Class Counsel stand by the claims asserted in this Action, including their claims that Marina Towers breached the implied warranty of habitability codified at Section 235-b of New York's Real Property Law and the lease agreements between Marina Towers and tenants during the Class Period in all the respects alleged in the Complaint. Notwithstanding that position, without conceding any defect or lack of merit in those claims, and based upon their evaluation of the facts and law, the Representative Plaintiffs and Class Counsel have agreed to settle the Action and release the Marina Towers Releasees and Related Party Releasees pursuant to the terms of this Settlement Agreement after considering, among other things, that:

(a) Class Members have already received substantial benefits during the pendency of this lawsuit, and would receive substantial additional benefits under the terms of this Settlement Agreement, if approved. These benefits, in the aggregate, may be greater than the benefits that may have been obtained had the matter continued through trial;

(b) Litigation of complex actions such as this Action involves inherent risks, including risks of delay;

(c) Prior rulings in cases asserting claims similar to those asserted in the Action support the reasonableness of the Settlement Agreement;

(d) The outcome of any dispositive motion is uncertain;

(e) The outcome of a motion for class certification is uncertain;

(f) Consummating this Settlement Agreement promptly would provide effective and significant relief to Class Members; and

(g) Based on, among other things, the investigation, disclosure, and legal proceedings described above in Section I.D, the Representative Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable, and adequate, and in the best interests of all Class Members; and

(h) The Contractual Rent Increase Limitation, defined below, is intended to protect Current Tenants, both those subject to QRS and those subject to market rate increases, by placing an outer limit on rent increases for a period of two years. This protection will serve as a two-year backstop for QRS tenants in the event the QRS program expires on June 30, 2020, without a replacement program in place. It will also

protect non-QRS tenants for a period of two years, as described in Section II.E.1 below. In the absence of this Settlement Agreement, Marina Towers would not undertake this contractual obligation.

2. Marina Towers denies that it has breached the implied warranty of habitability codified at Section 235-b of New York's Real Property Law or the lease agreements between Marina Towers and tenants at any time during the Class Period in any of the respects alleged by the Complaint; denies that it is otherwise liable to members of the Class in any respect; asserts that, in the absence of a settlement, this Action could not properly be maintained as a class action under New York law; and states it is entering this Settlement Agreement solely to eliminate the uncertainties, burden, and expense of further litigation.

3. Except as provided below, neither this Settlement Agreement, nor the Settlement, nor any of their terms, nor any press release or other statement or report by the Parties or by others concerning this Settlement Agreement, the Settlement, or their terms, shall constitute an admission or finding of wrongful conduct, acts, or omissions on the part of any Releasee shall be admissible in any proceeding (other than a proceeding to enforce the terms of the Settlement Agreement) for any purpose whatsoever.

F. Definitions

1. As used in this Settlement Agreement, the following terms have the following meanings, unless a section or subsection of this Settlement Agreement otherwise provides:

(a) "Action" means the consolidated putative class action pending in this Court under the caption *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014, including, without limitation, all cases consolidated with the foregoing as of the Final Settlement Date.

(b) "Administrator" means, subject to Court approval, Epiq Class Actions & Claims Solutions, which shall be appointed by the Court in the Preliminary Approval Order to implement the Notice, claims process, toll-free telephone number, and administration and distribution of the Net Cash Settlement Amount in accordance with the terms of this Settlement Agreement.

(c) "Attorneys' Fees and Expenses Application" means the application for fees and expenses to be made by Class Counsel pursuant to Section IX below.

(d) "Attorneys' Fees and Expenses Award" means the amounts awarded to Class Counsel to compensate them for their fees and expenses in connection with investigating, prosecuting, and settling the Action as provided for in Section IX below. The Attorneys' Fees and Expenses Award shall be paid exclusively from the Settlement Amount, as described in Section II.B.2.

(e) “Authorized Claimant” means a Class Member (or the representative of such Class Member including, without limitation, agents, administrators, executors, heirs, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b) and assigns) who submits a timely and valid Proof of Claim.

(f) “BPCA” means the Battery Park City Authority.

(g) “Cash Settlement Account” means an interest-bearing Escrow Account, established by Class Counsel, maintained by the Escrow Agent under the control of Class Counsel, into which the Net Cash Settlement Amount shall be paid. The Cash Settlement Account shall be maintained as a Qualified Settlement Fund, as defined below. All monies in the Cash Settlement Account, including all interest accruing thereon, shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed to Authorized Claimants.

(h) “Cash Settlement Notice and Administrative Expenses Account” means an interest-bearing Escrow Account, established by Class Counsel, maintained by the Escrow Agent under the control of Class Counsel, into which the Initial Payment shall be deposited by Marina Towers; *provided* that additional monies may be deposited into the Cash Settlement Notice and Administrative Expenses Account. The Cash Settlement Notice and Administrative Expenses Account shall be maintained as a Qualified Settlement Fund, as defined below.

(i) “Claim” means any and all actions, causes of action, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees and losses whatsoever, whether in law, in admiralty or in equity and whether based on any federal law, state law, foreign law or common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future.

(j) “Class” or “Class Members” means, subject to the exclusions set out in this Section, all persons who (i) reside at Gateway Plaza as of the Final Settlement Date (the “Current Tenants”); or (ii) do not reside at Gateway Plaza as of the Final Settlement Date but resided at Gateway Plaza for any period of time between April 1, 2008, and the Final Settlement Date (the “Former Tenants”). The terms “Current Tenants,” “Former Tenants,” “Class,” and “Class Members” do not include:

(i) Persons who submit valid and timely requests for exclusion from the Class; or

(ii) Persons who are or were: Marina Towers Releasees and Related Party Releasees, and each of their employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; and the Family Members of each of the foregoing.

(k) “Class Counsel” means the firms of Newman Ferrara LLP, Safirstein Metcalf LLP, and Sanford Heisler Sharp, LLP, collectively.

(l) “Class Period” means the period of time from April 1, 2008, through the Final Settlement Date, inclusive.

(m) “Co-Lead Counsel” means the firms of Newman Ferrara LLP, and Safirstein Metcalf LLP.

(n) “Complaint” means the Consolidated Fourth Amended Class Action Complaint filed in the Action on April 6, 2018.

(o) “Contractual Rent Increase Limitation” means that, pursuant to Section II.E., below: (a) for a one-year lease agreement, the annual increase in rent may not exceed five percent; and (b) for a two-year lease agreement, the average annual increase in rent over the two-year period may not exceed five percent per annum. For the avoidance of doubt, if a tenant’s rent is set at a single rate for the entire two-year period, the rent increase in the first year may exceed five percent so long as the cumulative amount of the tenant’s rent during the two-year period does not exceed the amount of rent that the tenant would have paid had he or she entered into two successive one-year leases with five-percent increases in each year.

(p) “Controlling Interest” means a beneficial ownership interest, directly or indirectly, in more than 50% of the total outstanding voting power of any class or classes of capital stock that entitle the holders thereof to vote in the election of the Board of Directors of such entity; *provided* that any disputes as to whether any Person has a Controlling Interest in an entity shall, for purposes of determining whether a Controlling Interest exists under this Settlement Agreement and for that purpose only, be submitted to the Court for resolution. The Person with an alleged controlling interest shall, as the case may be, bear the burden of proof as to whether its interest in an entity is or was a Controlling Interest for purposes of this Settlement Agreement.

(q) “Court” means the Supreme Court of the State of New York, County of New York, which is the court in which the Action is pending.

(r) “Counsel for Marina Towers” means the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

(s) “Distribution Amount” means the Net Cash Settlement Amount less: (i) the Attorneys’ Fees and Expenses Award; (ii) the Representative Plaintiffs’ Compensatory Award; (iii) all Tax Expenses (if any); and (iv) any other payment necessary to effectuate the Settlement or otherwise authorized by the Court.

(t) “Early Lease Termination Agreement” means an agreement between Marina Towers and a tenant at Gateway Plaza in which the tenant’s lease is terminated prior to its scheduled expiration, in exchange for, among other things, a release by the tenant of all claims against Marina Towers.

(u) “Escrow Account” means the bank accounts maintained by the Escrow Agent into which the Cash Settlement Account and the Cash Settlement Notice and Administrative Expenses Account shall be deposited.

(v) “Escrow Agent” means Co-Lead Counsel.

(w) “Execution Date” means the date by which this Settlement Agreement has been executed by the Settling Parties.

(x) “Fairness Hearing” means the hearing at which the Court considers whether this Settlement Agreement is fair, reasonable, and adequate and, therefore, should be approved by the Court.

(y) “Family Members” means an individual’s father, mother, grandfather, grandmother, sister, brother, spouse, domestic partner, son, and/or daughter.

(z) “Final,” when used in connection with any court order or judgment, means that the relevant order or judgment will be final: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any potential extension of time) has expired; and (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the Judgment. For purposes of this Section, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, petitions for rehearing or reargument, petitions for

rehearing *en banc*, proceedings involving petitions for writs of certiorari, mandamus, or prohibition, and any other proceedings of like kind.

(aa) “Final Settlement Date” means the date on which the Judgment becomes Final.

(bb) “Gateway Residential Management” means Gateway Residential Management LLC.

(cc) “Gateway Plaza” means the residential apartment complex that contains six buildings located at 345, 355, 365, 376, 385, and 395 South End Avenue, New York, New York.

(dd) “Initial Payment” means the amount of sixty thousand dollars (\$60,000.00), which amount shall be paid pursuant to Section II.A.1 below, which payment shall be used by Class Counsel: (i) to pay the Notice and Administrative Expenses that will be incurred in preparing and mailing the Notice and in publishing the Summary Notice, and (ii) to compensate the Administrator for services that will be rendered pursuant to the Preliminary Approval Order; *provided however*, that if approval of this Settlement Agreement does not become Final or this Settlement Agreement is otherwise terminated, any portion of the Initial Payment (plus any accrued interest) that has not been used, or with respect to which no expenses have been incurred for such purposes as set out in this Section, shall be returned promptly to Marina Towers consistent with the terms of this Settlement Agreement; *provided further* that if approval of this Settlement Agreement becomes Final and the Initial Payment is not sufficient to reimburse all Notice and Administrative Expenses, any expenses in excess of the Initial Payment and any Supplemental Notice and Administrative Payments shall be paid from the Net Cash Settlement Amount.

(ee) “Judgment” means the judgment entered by the Court pursuant to the Court’s order finally approving the Settlement and this Settlement Agreement, as contemplated in Section XI of this Settlement Agreement.

(ff) “Koetz Action” means the action entitled *Maureen Koetz, individually and on behalf of all others similarly situated v. Marina Towers Associates, Gateway Plaza Management Corp., The Battery Park City Authority, and The LeFrak Organization*, Index No. 651023/2014, which was filed in the Supreme Court of the State of New York, County of New York.

(gg) “The LeFrak Organization” means LeFrak Organization Inc. and LeFrak Organization LLC, collectively.

(hh) “Legal Proceedings” means any action pending as of the date of execution of the Stipulation of Settlement against Marina Towers in any federal court, state court, or forum for arbitration.

(ii) “Marina Towers” means Marina Towers Associates, L.P.

(jj) “Net Cash Settlement Amount” means the Settlement Amount, less the Rent Abatement Portion, the Attorneys’ Fees and Expense Award, and the Representative Plaintiffs’ Compensatory Award, which shall be paid (after such deductions) by Marina Towers into the Cash Settlement Account pursuant to the terms of this Settlement Agreement.

(kk) “Notice” means the notice, as approved by the Court, which will be made available to members of the Class informing them of the Settlement contemplated by this Settlement Agreement.

(ll) “Notice and Administrative Expenses” means all expenses associated with the administration of the Settlement contemplated by this Settlement Agreement, which shall be paid by Marina Towers in addition to the Settlement Amount up to a maximum amount set forth below, including, but not limited to, the expenses associated with: printing and mailing the Notice to Class Members; publishing the Summary Notice; assisting Class Members with filing Proofs of Claim; processing Proofs of Claim; and setting up and maintaining the toll-free telephone number.

(mm) “Person” means any individual, corporation (including all divisions and subsidiaries), general or limited partnership, association, joint-stock company, joint venture, limited-liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity, as well as each of their spouses, domestic partners, heirs, predecessors, successors, representatives, agents, trustees, estates, administrators, executors, or assigns.

(nn) “Plan of Allocation” means the terms and procedures for allocating the Distribution Amount among, and distributing the Distribution Amount to, Authorized Claimants as set forth in the Notice, or such other Plan of Allocation as the Court shall approve.

(oo) “Preliminary Approval Date” means the date on which the Preliminary Approval Order is entered by the Court.

(pp) “Preliminary Approval Hearing” means the hearing at which the Court will consider preliminarily approving this Settlement Agreement.

(qq) “Preliminary Approval Order” means the order to be entered by the Court concerning notice, administration and the Fairness Hearing regarding the Settlement, as contemplated in Section X of this Settlement Agreement.

(rr) “Proof of Claim” means the form, as approved by the Court, that will be mailed and/or provided to Class Members with the Notice, pursuant to which such Class Members will submit a claim under the procedures set out in this Settlement Agreement.

(ss) “PTAC Units” means packaged-terminal air conditioning units.

(tt) “QRS” means quasi-rent stabilization, as more specifically described in the QRS Agreement.

(uu) “QRS Agreement” means the agreement dated October 29, 1993, among Hudson Towers Housing Co., Inc., Marina Towers, and the BPCA, as amended by the agreement dated April 27, 2005, between Marina Towers and the BPCA, and as further amended by the agreement dated July 1, 2009, between Marina Towers and the BPCA.

(vv) “QRS Extension” means any potential extension of QRS benefits. Currently, the QRS Agreement is scheduled to expire on June 30, 2020.

(ww) “Qualified Settlement Fund” means a fund within the meaning of Treasury Regulations § 1.468B-1.

(xx) “Releases” means the releases and waivers set forth in Section VIII of this Settlement Agreement.

(yy) “Released Claims” means:

(i) with respect to the release by each Plaintiff Releasor, all Claims arising out of, in any way related to, or in connection with the claims or allegations that were asserted or could have been asserted in this Action by or on behalf of the Class or such Plaintiff Releasor against any Marina Towers Releasee or Related Party Releasee (both of which terms are defined below), whether known or unknown, arising from the beginning of the world until the Final Settlement Date, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the Complaint, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere,

including, for example, Claims relating to heating, air conditioning, electricity, electricity charges, insulation, PTAC units, fungal growth, and condensation on windows and window sills; and

(ii) with respect to the release by each Marina Towers Releasee, all claims, known or unknown, arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, including any counterclaims asserted, except a claim to enforce the Releases or other terms and conditions contained in this Settlement Agreement or any Court order (including but not limited to the Judgment) entered pursuant thereto.

(zz) “Releasee” means:

(i) with respect to Marina Towers, each and every one of the following: Marina Towers, its present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), employees, members, general and limited partners, principals, officers, and directors; its present and former attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; its predecessors, estates, heirs, executors, trusts, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Marina Towers Releasees”);

(ii) with respect to Gateway Residential Management, the LeFrak Organization, and the BPCA: Gateway Residential Management, the LeFrak Organization, and the BPCA, and each of their present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), employees, members, general and limited partners, principals, officers, and directors; their present and former attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; their predecessors, estates, heirs, executors, trusts,

trustees, administrators, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Related Party Releasees”); and

(iii) with respect to the Plaintiffs, each and every one of the following: Kelley Crosson, Kathy Fernando, all other Class Members who do not exclude themselves from the Class, and each of their Family Members, agents, representatives, assigns, heirs, estates, executors, administrators, beneficiaries, trusts, and trustees (together, the “Plaintiff Releasees”).

(aaa) “Releasers” means:

(i) with respect to the Plaintiffs, each and every one of the following: Kelley Crosson, Kathy Fernando, all other Class Members who do not exclude themselves from the Class, and each of their Family Members, agents, representatives, assigns, heirs, estates, executors, administrators, beneficiaries, trusts, and trustees (together, the “Plaintiff Releasers”); and

(ii) with respect to Marina Towers, each and every one of the following: Marina Towers, its present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), employees, members, general and limited partners, principals, officers, and directors; its present and former attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; its predecessors, estates, heirs, executors, trusts, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Marina Towers Releasers”);

(bbb) “Rent Abatement Portion” means such portion of the Settlement Amount that, as set forth in the Plan of Allocation, shall be provided by Marina Towers to Current Tenants in the form of an abatement against the Current Tenant’s rent obligations.

(ccc) “Representative Plaintiffs” means Kelley Crosson and Kathy Fernando, each in both her individual capacity and in her capacity as a representative of the Class.

(ddd) “Representative Plaintiffs’ Compensatory Application” means the application for a Representative Plaintiffs’ Compensatory Award to be made by Class Counsel pursuant to Section IX below.

(eee) “Representative Plaintiffs’ Compensatory Award” means a cash award to the Representative Plaintiffs in this Action designed to compensate such Representative Plaintiff for the time and expense involved in overseeing this litigation. The Representative Plaintiff Compensatory Award shall be paid exclusively out of the Settlement Amount, as described in Section II.B.2.

(fff) “Settlement” means the entire agreement between the Settling Parties set forth in the Settlement Agreement.

(ggg) “Settlement Agreement” means this Stipulation of Settlement and any accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

(hhh) “Settlement Amount” means ten million dollars (\$10,000,000.00) which Marina Towers has agreed to pay in cash or in rent abatement in order to resolve this Action. This amount shall be the sole source of the Net Cash Settlement Amount, the Rent Abatement Portion, the Attorneys’ Fees and Expenses Award, and the Representative Plaintiffs’ Compensatory Award, all of which shall not, under any circumstance, total more than ten million dollars (\$10,000,000.00), as described in Section II.B.2.

(iii) “Settling Parties” means (i) the Representative Plaintiffs on behalf of the Class and (ii) Marina Towers.

(jjj) “Stoebel Action” means the action entitled *Barbara Stoebel, individually and on behalf of all others similarly situated v. Marina Towers Associates, L.P. and Gateway Plaza, Management, LLC*, Index No. 6510301/2014, which was filed in the Supreme Court of the State of New York, County of New York.

(kkk) “Summary Notice” means the notice described in Section III.C .

(lll) “Supplemental Notice and Administrative Expense Payments” means payments made by Marina Towers pursuant to Section II.A.2 of this Settlement Agreement, which are necessary to cover Notice and Administrative Expenses in excess of the Initial Payment.

(mmm) “Tax Expenses” means (i) all taxes on the income of the Net Cash Settlement Amount and (ii) expenses and costs incurred in connection with the taxation of the Net Cash Settlement Amount (including, without limitation, expenses of tax attorneys and accountants).

II. Terms and Conditions of the Settlement

A. Payments Following the Preliminary Approval Date

1. Within ten (10) days following the Preliminary Approval Date, Marina Towers shall wire transfer the Initial Payment into the Cash Settlement Notice and Administrative Expenses Account.

2. Thereafter, until the Court issues the Judgment, in the event the Initial Payment is insufficient to pay all Notice and Administrative Expenses, Class Counsel shall notify Counsel for Marina Towers of this fact and provide supporting documentation. Within ten (10) days of such notification, provided that such requests are reasonable, Marina Towers shall wire transfer Supplemental Notice and Administrative Expense Payments into the Cash Settlement Notice and Administrative Expense Account as are necessary to cover such expenses, except that, notwithstanding anything to the contrary contained in this Stipulation of Settlement, the maximum aggregate amount of the Initial Payment plus the Supplemental Notice and Administrative Expense Payments shall be one hundred thousand dollars (\$100,000.00).

B. Payments Following the Judgment

1. Within ten (10) days after the Judgment becomes Final, Marina Towers shall wire transfer into the Cash Settlement Account the Net Cash Settlement Amount, which, as described in the following paragraph, will consist of the Settlement Amount less the Rent Abatement Portion, the amount paid for the Attorneys’ Fees and Expenses Award, and the amount paid for the Representative Plaintiffs’ Compensatory Award.

2. Under no circumstance will the total amount of the Net Cash Settlement Amount, the Attorneys’ Fees and Expenses Award, the Rent Abatement Portion, and the Representative Plaintiffs’ Compensatory Award be more than \$10 million. For the avoidance of doubt, Marina Towers’ sole payment obligations under this Settlement are (1) the Settlement Amount, (2) the Initial Payment, and (3) the Supplemental Notice and Administrative Expense Payments, if any.

3. Within sixty (60) days after the Judgment becomes Final, Marina Towers shall commence applying the Rent Abatement Portion against the rent obligations of Current Tenants, totaling the Rent Abatement Portion, pursuant to the Plan of Allocation.

4. All necessary steps to enable the Cash Settlement Account to be a Qualified Settlement Fund shall be taken, including the timely filing by Class Counsel, the Administrator and/or their agents of all elections and statements, and federal, state and local tax returns required pursuant to Treas. Reg. §§ 1.468B-0 through 1.468B-5, or any other relevant statutes, regulations or published rulings now or hereafter enacted or promulgated, for all taxable years of the Cash Settlement Account, beginning with the date of its establishment. In no event shall Marina Towers have any responsibility whatsoever for filing election or other required statements, or tax returns, or for paying the costs associated therewith, the payment of any taxes due, or the expenses of notice or administration of the Cash Settlement Account. Class Counsel and Counsel for Marina Towers shall cooperate to the extent necessary to comply with this Section.

5. The Marina Towers Releasees, Related Party Releasees, and/or their respective counsel shall have no responsibility for any further payments beyond the payment of the Net Cash Settlement Amount into the Cash Settlement Account, the Initial Payment and the Supplemental Notice and Administrative Expense Payments (if any). Nor, to be clear, shall any such Persons have any responsibility for Tax Expenses (if any).

C. Distribution of the Net Cash Settlement Amount

1. The Distribution Amount shall be distributed pursuant to the Plan of Allocation as set forth in the Notice.

2. No person or entity shall have any claim against the Representative Plaintiffs, Class Counsel, the Administrator or any of their agents, or against Marina Towers, Counsel for Marina Towers, any Releasee, or any Plaintiff Releasor with respect to or arising out of any distributions or lack thereof made under the Plan of Allocation, this Settlement Agreement or orders of the Court.

3. It is understood and agreed to by the Representative Plaintiffs, on behalf of the Class, and Marina Towers that, notwithstanding any other provision of this Settlement Agreement, Marina Towers has not been, and will not be, responsible for developing or implementing the proposed Plan of Allocation, and no order or proceedings relating to the Plan of Allocation shall operate to modify, terminate, or cancel this Settlement Agreement or affect the finality of the Judgment or any other orders entered by the Court giving effect or pursuant to this Settlement Agreement. Nor shall any order or proceedings relating to the Attorneys' Fee and Expense Award or the Representative Plaintiffs' Compensatory Award operate to modify, terminate, or cancel this Settlement Agreement or affect the finality of the Judgment or any other orders entered by the Court giving effect or pursuant to this Settlement Agreement.

4. The Marina Towers Releasees, Related Party Releasees and/or their respective counsel, including, but not limited to Counsel for Marina Towers, shall have no role in, responsibility for, or liability with respect to the Plan of Allocation, the form, substance, method or manner of allocation, administration, or distribution of the Distribution Amount, any tax liability that a Class Member may incur as a result of this Settlement Agreement, or as a result of any action taken pursuant to this Settlement Agreement, the administration or processing of claims, including, without limitation, determinations as to the validity of Proof of Claim, the amounts of claims or distribution of the Distribution Amount, or the maintenance of the Cash Settlement Account as a Qualified Settlement Fund.

5. Unless otherwise ordered by the Court, Class Members shall look solely to the Distribution Amount and related ancillary relief as specifically provided for herein for settlement and satisfaction of all Released Claims. Except as expressly provided by this Settlement Agreement, the Plan of Allocation or order of the Court, no Class Member shall have any interest in the Net Cash Settlement Amount and/or Rent Abatement Portion, or any portion of the Net Cash Settlement Amount and/or Rent Abatement Portion.

6. Once the Court has entered the Judgment and Marina Towers has paid the Net Cash Settlement Amount into the Cash Settlement Account, no distribution of funds other than: (i) Notice and Administrative Expenses not covered by the Initial Payment (if any); and (ii) Tax Expenses (if any) shall be made from the Net Cash Settlement Amount until all appeals from the Plan of Allocation have been fully adjudicated.

D. Plan of Allocation

1. The Representative Plaintiffs shall propose to the Court a Plan of Allocation and shall seek approval of the Court for such Plan of Allocation at the Fairness Hearing. The Plan of Allocation shall allocate the benefits of the Settlement among the Class Members in a manner that is fair and reasonable, and shall provide that any payments to Current Tenants will be in the form of rent abatements. After the Final Settlement Date, no part of the Settlement Amount shall revert to Marina Towers under any circumstances.

2. The Plan of Allocation shall be set forth in the Notice. Subject to the Court's approval, the Plan of Allocation may be modified by Class Counsel without further notice to Class Members. Any Class Member requesting notice of Court-approved modifications shall be provided with the same.

3. All cash distributions to Authorized Claimants shall be from the Distribution Amount pursuant to the Plan of Allocation.

4. To receive a distribution from the Distribution Amount, or a rent abatement from the Rent Abatement Portion, pursuant to the Plan of Allocation, a Class

Member must be an Authorized Claimant pursuant to the procedures set out in this Settlement Agreement or by order of the Court, and must submit a Proof of Claim.

5. Each Authorized Claimant who wishes to receive a distribution from the Distribution Amount, or a rent abatement from the Rent Abatement Portion, must complete and submit a Proof of Claim: (i) by email or first-class mail, such that it is emailed or postmarked no later than forty-five (45) days after the Fairness Hearing; or (ii) so that it is actually received at the address on the Proof of Claim form by the date stated in the Notice, unless that date is extended by order of the Court. The address to which the Proof of Claim must be mailed shall be stated in the Proof of Claim form itself and shall also be printed in the Notice.

6. The Proof of Claim must be sworn on oath or affirmation pursuant to Section 2309 of the New York Civil Practice Law and Rules, and be supported by such documents and other information as called for in the Proof of Claim.

7. The Proof of Claim shall provide that the Class Member expressly:

(a) agrees to the terms of the Releases that are contained in this Settlement Agreement and that are included in the Notice;

(b) consents to the jurisdiction of the Court for purposes of making a claim;

(c) agrees to provide documentation sufficient to establish the accuracy of any provided information if so requested;

(d) consents to summary disposition by the Court, without any right of appeal or review, with respect to the validity and/or amount of, or any other dispute regarding, his, her or its claim; and

(e) waives trial by jury (to the extent any such right may exist) in connection with the Court's summary disposition of the validity or amount of his, her or its claim.

8. The validity of each Proof of Claim filed will be initially determined by the Administrator, acting under the supervision of Class Counsel, in accordance with the Plan of Allocation approved by the Court. The Administrator shall promptly advise the Class Member in writing if it determines to reject the claim. Neither Class Counsel, their designees or agents, the Representative Plaintiffs, Counsel for Marina Towers, or Marina Towers Releasee or Related Party Releasee shall have any liability arising out of such determination. If an Authorized Claimant disagrees with such determination and the parties are unable to resolve the dispute, the Authorized Claimant shall, within twenty (20) days of the dispute's having first been raised, submit the dispute to the Court for summary resolution, without any right of appeal or review. Any such Class Member shall be responsible for his or her own costs, incurred in pursuing any dispute.

9. All initial determinations as to the validity of a Proof of Claim, the amount of any claims and the calculation of the extent to which each Authorized Claimant will participate in the Distribution Amount and/or the Rent Abatement Portion, the preparation and mailing of distributions to Authorized Claimants, and the distribution of the Net Cash Settlement Amount and Rent Abatement Portion shall be made by Class Counsel, their designees or agents, the Administrator, or such other persons or entities as Class Counsel may, in their sole discretion, deem necessary or advisable to assist them in the administration of this Settlement Agreement, except that Marina Towers reserves the right to discuss, renegotiate or challenge any resulting rent abatement, and any dispute over such abatement shall be resolved by the Court. The administration of the Net Cash Settlement Amount, and decisions on all disputed questions of law and fact with respect to the validity of any Proof of Claim or regarding the rejection or amount of any claim, shall remain under the jurisdiction of the Court. All Class Members and Settling Parties expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

10. Unless otherwise ordered by the Court, any Class Member who fails to submit a valid and timely Proof of Claim shall be barred from receiving a distribution from the Distribution Amount and/or a rent abatement from the Rent Abatement Portion, but shall nevertheless be bound by the Releases and all proceedings, orders, and judgments in the Action even if he or she has pending, or subsequently initiates, any litigation, arbitration, or other proceeding, or has any Claim, against any or all Persons released hereunder that is, or relates in any way to, any Released Claim.

E. Contractual Rent Increase Limitation

1. Subject to Section XIII.16, after the Judgment becomes Final, for the duration of the period commencing on July 1, 2020, and ending on June 30, 2022, Marina Towers shall not enter into, with any current tenant at Gateway Plaza, a lease agreement that does not conform to the Contractual Rent Increase Limitation, *provided however* that if the Judgment is not Final on July 1, 2020, then this period shall commence ten (10) days after the date on which the Judgment becomes Final and shall end two years after such date. For the avoidance of doubt, nothing in this provision, nor in this Settlement Agreement, shall prevent Marina Towers from entering into a lease agreement with a tenant that requires a tenant to pay, over the lease term, less than the maximum amount that Marina Towers may, under the Contractual Rent Increase Limitation, seek as the maximum rent for the tenant.

III. Notice to the Class

A. Identification of Class Members

1. Representative Plaintiffs and Class Counsel acknowledge that Marina Towers has provided Class Counsel with the name and mailing address of each Current Tenant, and, to the extent reasonably available to Marina Towers, the name, last known mailing address, and email address of each Former Tenant.

B. Mailing or Delivery of the Notice

1. Subject to the requirements of the Preliminary Approval Order and not later than seventy-five (75) days before the Fairness Hearing, the Administrator shall cause a copy of the Notice and Proof of Claim to be transmitted to each person or entity in the Class who can be identified by reasonable effort. Such transmittal shall be by first-class mail or, as to Class Members who currently reside at Gateway Plaza, and at the election of Class Counsel, by delivery to apartments at Gateway Plaza or to mailboxes maintained for tenants at Gateway Plaza. Upon request, Marina Towers will assist Class Counsel in this effort as it pertains to Class Members who currently reside at Gateway Plaza.

2. No later than seventy-five (75) days before the Fairness Hearing, Class Counsel and the Administrator shall cause the Notice to be published on their respective websites. Marina Towers shall cause Notice to be published prominently on the Gateway Plaza website (www.gatewayny.com).

3. To the extent email addresses can be obtained and used to supplement the Notice procedures identified herein, the Administrator shall cause a copy of the Notice and Proof of Claim to be transmitted in such fashion.

4. The Notice shall, among other things,

(a) contain a short, plain statement of the background of the Action;

(b) explain that the Court has certified the Class for settlement purposes and identify the Class Members;

(c) describe the Plan of Allocation and state that the Plan of Allocation may be modified in connection with, among other things, a ruling by the Court, an objection filed by a Class Member or a settlement with a person or entity requesting exclusion from the Class;

(d) provide that the Plan of Allocation may be modified by the Representative Plaintiffs without further notice to the Class (but subject to Court approval) unless such Class Member requests notification of such modification in a timely fashion;

(e) state that any receipt of a distribution or other relief by a Class Member is contingent on Court approval of this Settlement Agreement and such approval becoming Final;

(f) explain how and when a Proof of Claim is to be submitted;

(g) state that a Class Member may exclude himself or herself from the Class;

(h) explain how a Class Member may request exclusion from the Class, alert Class Members to potential statute of limitations issues that might impact the claims of a Class Member who sought exclusion and then attempted to bring his or her own action against the Releasees, and state in bold that exclusion is necessary even if the Class Member has pending, or subsequently initiates, any litigation, arbitration or any other proceeding, or has any Claim, against any or all of the Releasees relating to any of the Released Claims;

(i) describe the Attorneys' Fees and Expenses and Representative Plaintiffs' Compensation Award Applications that will be submitted to the Court for approval by Class Counsel;

(j) explain how a Class Member may object to any term or aspect of this Settlement Agreement;

(k) identify the date, time and location of the Fairness Hearing, and explain that the date and time may change without further notice;

(l) set forth in an appendix or otherwise the complete language of the Release as well as the relevant definitions for terms in the Release; and

(m) direct Class Members who have questions about the tax consequences of participating in the settlement to consult their own tax advisors regarding such consequences.

5. The Notice shall conform to all applicable requirements of the New York Civil Practice Law and Rules, the United States Constitution (including the Due Process Clause), the Constitution of the State of New York, the Rules of the Court, and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Settling Parties and approved by the Court.

6. No later than ten (10) days prior to the Fairness Hearing, Class Counsel shall submit to the Court affidavits demonstrating the adequacy of its efforts to provide notice to the Class.

C. Summary Notice

1. No later than sixty (60) days before the Fairness Hearing, the Administrator shall cause the Summary Notice to be published on at least one occasion in the Downtown Express.

IV. Retention of Administrator

1. The Administrator shall help implement the Settlement contemplated by this Settlement Agreement.

2. The Administrator may assist with various tasks, including, without limitation: (i) mailing or arranging for the mailing of the Notice to Class Members; (ii) arranging for publication of the Summary Notice; (iii) publication of the Notice on the Administrator's website; (iv) answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel or their designee(s); (v) providing additional copies of the Notice, upon request, to Class Members, with respect to which the Administrator shall separately record the number of Notices sent to Class Members; (vi) receiving and maintaining on behalf of the Court any requests for exclusion from the Settlement received from potential Class Members; (vii) receiving and processing Proofs of Claim from Class Members; (viii) mailing or causing to be mailed to Authorized Claimants their distributions under the Plan of Allocation; and (ix) preparing tax returns for the Cash Settlement Account; and (x) otherwise assisting Class Counsel with administration and implementation of this Settlement Agreement.

3. As ordered by the Court in the Preliminary Approval Order, the Administrator shall establish and staff with representatives knowledgeable about this Settlement Agreement and the Plan of Allocation a toll-free telephone number for responding to inquiries from Class Members about this Settlement Agreement and any issues relating to the Action. Class Counsel and Counsel for Marina Towers shall agree to a protocol for operating the telephone number consistent with industry standards, and Class Counsel shall require the Administrator to operate the toll-free telephone number consistent with such agreed-upon standards.

V. Right to Communication with Class Members

1. The Representative Plaintiffs and Class Counsel acknowledge and agree that Marina Towers has the right to communicate orally and in writing with, and to respond to inquiries from, Class Members, including, without limitation, communications as may be necessary to implement the terms of this Settlement Agreement with the express understanding that any Class Member must be informed that they have the right to have Class Counsel participate in the communication with Defendant to the extent said communication relates to the Settlement Agreement.

2. The Representative Plaintiffs, Class Counsel, and Counsel for Marina Towers agree to cooperate in good faith to ensure that any comments about or descriptions of the Settlement contemplated by this Settlement Agreement are balanced, fair and accurate.

VI. Requests for Exclusion

1. Any potential Class Member who wishes to be excluded from the Class must mail by first-class mail or otherwise deliver a written request for exclusion to the Administrator, care of the address provided in the Notice, such that it is received no later than thirty days (30) days before the Fairness Hearing, or as the Court may otherwise direct. A list of the persons and entities who have validly and timely requested exclusion from the Class shall be provided by the Settling Parties to the Court at or before the Fairness Hearing.

2. A potential Class Member's request for exclusion shall include the following information: (i) name; (ii) address; (iii) telephone number; (iv) the dates the Class Member resided at Gateway Plaza; and (v) the building and apartment number of the apartment at Gateway Plaza in which the Class Member resided or resides. The failure to provide such information shall be grounds for voiding the exclusion. Any Class Member who files a deficient exclusion shall be immediately notified by the Administrator and given five (5) business days to cure such deficiency, including providing documentation sufficient to establish the accuracy of the information deemed deficient if so requested.

3. Unless otherwise ordered by the Court, any potential Class Member who does not file a timely written request for exclusion as provided by this Section shall be bound by the Release and by all proceedings, orders and judgments in the Action, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding, or has any Claim, against any or all of the Releasees relating to any of the Released Claims.

4. The schedule reflected in the Preliminary Approval Order and proposed Notice submitted to the Court shall provide that within three (3) days of receipt by Class Counsel or the Administrator of any request for exclusion, copies of all such requests shall be provided to Counsel for Marina Towers.

VII. Objections to Settlement

1. Any Class Member who wishes to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to the Plan of Allocation, to any term(s) of this Settlement Agreement, or the Representative Plaintiffs Compensatory Award, or to the proposed Attorneys' Fees and Expenses Award must effect service on both Class Counsel, on the one hand, and Counsel for Marina Towers, on the other, and file with the Court by no later than thirty (30) days before the Fairness Hearing, or as the Court may otherwise direct, a statement of his or her objection(s); *provided however*, that a potential Class Member who requests exclusion from the Class shall not be able to submit an objection. If a Class Member timely and properly serves and files written objections, as set forth in this paragraph, Class Counsel and Counsel for Marina Towers may, as they deem appropriate, submit reply papers in support of the Settlement Agreement, the Plan of Allocation, any term(s) of this Settlement Agreement, the Representative Plaintiffs' Compensatory Award, or to the proposed Attorneys' Fees and Expenses Award at least ten (10) days before the Fairness Hearing.

2. The statement of objection of the Class Member shall state: (i) whether the Class Member is a Class Member; (ii) if a Class Member, the dates he or she resided at Gateway Plaza and the building and apartment number of the apartment at Gateway Plaza in which the Class Member resided or resides; (iii) which part of this Settlement Agreement the Class Member objects to; and (iv) the specific reason(s), if any, for each such objection made by the Class Member, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of such objection. Failure to provide such

information and documentation shall be grounds to void the objection. Any person who files a deficient objection shall be immediately notified by the Administrator and given five (5) business days to cure the deficiency, including providing documentation sufficient to establish the accuracy of the information deemed deficient if so requested.

3. Any Class Member may file an objection on his or her own, or through an attorney hired at his or her own expense. Any Class Member who files and serves a written objection pursuant to this Section – and only such Class Members – may appear at the Fairness Hearing, either in person or through counsel hired at the Class Member’s expense, to object to the fairness, reasonableness or adequacy of this Settlement Agreement, to the Plan of Allocation, to any term(s) of this Settlement Agreement, to the proposed Attorneys’ Fees and Expenses Award, or to the Representative Plaintiffs’ Compensatory Award. Class Members or their attorneys intending to make an appearance at the Fairness Hearing must effect service on Class Counsel, on the one hand, and Counsel for Marina Towers, on the other, and file with the Court a notice of intention to appear by no later than thirty (30) before the Fairness Hearing, or as the Court otherwise may direct.

4. Any Class Member who fails to comply with any of the provisions of this Section shall waive and forfeit any and all rights he or she may otherwise have to appear separately at the Fairness Hearing and/or to object to this Settlement Agreement, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in the Action.

VIII. Release and Waiver, and Order of Dismissal

A. Release and Waiver

1. Without further action by anyone, and subject to Section VIII.A.5 below, on and after the date on which the Judgment is entered, the Plaintiff Releasors shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

(a) all Released Claims against each and every one of the Marina Towers Releasees and Related Party Releasees, whether or not a Proof of Claim has been executed and/or delivered by, or on behalf of, any such Plaintiff Releasor; and

(b) all claims, damages, and liabilities, known or unknown, against Class Counsel, any or all of the Representative Plaintiffs, Counsel for Marina Towers, Marina Towers, any other Plaintiff Releasor, and each and every one of the Marina Towers Releasees and Related Party Releasees, that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or oral or written statements or representations in connection with or directly or indirectly relating to the prosecution, defense, or settlement of the Action or to this Settlement Agreement, and any and all claims for

attorneys' fees, costs or disbursements incurred by Class Counsel or other counsel representing the Representative Plaintiffs or the Class Members in the Action, or any of them, in connection with or related in any manner to the Action, the settlement of the Action, or the administration of the Action and/or the settlement of the Action, except to the extent otherwise specified in this Settlement Agreement.

2. Without further action by anyone, and subject to Section VIII.A.5 below, on and after the date on which the Judgment is entered, the Marina Towers Releasors shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged Plaintiff Releasees from any and all claims, known or unknown, that relate in any way to any or all acts directly or indirectly relating to the prosecution, defense, or settlement of the Action or to this Settlement Agreement.

3. Without further action by anyone, and subject to Section VIII.A.5 below, on and after the date on which the Judgment is entered, Plaintiff Releasors shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged Marina Towers Releasees and Related Party Releasees from any and all Claims, known or unknown, that relate in any way to any or all acts directly or indirectly relating to the prosecution, defense, or settlement of the Action or to this Settlement Agreement.

4. To the extent any Class Member has previously entered into an agreement with any Marina Towers Releasee or Related Party Releasee in which such Class Member released Claims against such Marina Towers Releasee or Related Party Releasee, this Settlement Agreement, the offer of this Settlement Agreement, compliance with this Settlement Agreement, any of the Settlement Agreement's provisions, and any negotiations, statements or court proceedings relating to its provisions in any way, shall not constitute or be construed as a waiver of such Marina Towers Releasee's or Related Party Releasee's right to enforce any such release with respect to any Claim except a Claim to enforce this Settlement Agreement. For the avoidance of doubt, Class Members who previously signed an Early Lease Termination Agreement will be eligible for an award of Settlement benefits, as set forth in the Plan of Allocation, notwithstanding general release language contained in the Early Lease Termination Agreement.

5. Notwithstanding Sections VIII.A.1, VIII.A.2 and VIII.A.3, above, nothing in this Settlement Agreement or the Judgment shall bar any action or claim by the Settling Parties to enforce the terms of this Settlement Agreement or the Judgment.

6. The Released Claims against each and all of the Marina Towers Releasees, Related Party Releasees and the Plaintiff Releasees shall be released and dismissed with prejudice and on the merits, without costs to any party, upon entry of the Judgment.

7. As set forth above, the Releases (that otherwise fall within the applicable release provisions and definitions) contemplated by this Settlement Agreement

shall extend to unknown claims and each of the Persons providing any such Release shall be deemed to have waived, and by operation of the Judgment shall have waived, the provisions, rights, and benefits of California Civil Code Section 1542 (to the extent it applies to the Action), and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

8. If, notwithstanding this Settlement Agreement, the Judgment, and the Releases contained therein, a Class Member who did not seek exclusion from the Class nor file a Proof of Claim on a timely basis pursues litigation and obtains a judgment against Marina Towers on any claim that is based upon any Released Claim, including, but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences referred to in the Complaint (regardless of efforts to interpose the preclusionary effect of the Judgment), then such judgment shall be deemed fully satisfied by deducting from any remaining undistributed amount, if any, of the Net Cash Settlement Amount (after deduction of all attorneys' fees and expenses, and the Representative Plaintiffs' Compensatory Award) the amount that such Class Member would have received had it filed a timely Proof of Claim. The provision set forth in this paragraph is not applicable to those individuals who had Legal Proceedings pending at the time this Stipulation of Settlement was executed.

9. The releases and waivers contained in this Section were separately bargained for and are essential elements of this Settlement Agreement.

B. Order of Dismissal

1. The Settling Parties will seek and obtain from the Court a Judgment as further described in Section XI below. The Judgment shall, among other things, (i) approve this Settlement Agreement as fair, reasonable and adequate, (ii) dismiss the Action as to Marina Towers with prejudice and on the merits, and (iii) incorporate the Release.

IX. The Representative Plaintiffs' Compensatory Award and Attorneys' Fees and Expenses

1. Class Counsel will make an Attorneys' Fees and Expenses Application no later than fifty (50) days prior to the Fairness Hearing. The apportionment and distribution among Class Counsel of Attorneys' Fees and Expenses shall be governed by separate agreement by and between those counsel.

2. Class Counsel shall also make an application for a Representative Plaintiffs' Compensatory Award no later than fifty (50) days prior to the Fairness Hearing. The purpose of such award shall be to compensate Representative Plaintiffs for the time and expense involved in overseeing this litigation. Such award, together with the Attorneys' Fees and Expenses Award, shall be paid by Marina Towers and shall be funded exclusively from the Settlement Amount, as described in Section II.B.2, and shall not impair or preclude Representative Plaintiffs from filing Proofs of Claim based upon their rights as a Class Members.

3. Subject to Sections IX.4, and IX.5 below, the Attorneys' Fees and Expenses Award and Representative Plaintiffs' Compensatory Award shall be paid into an escrow account established by Co-Lead Counsel, pursuant to the separate agreement referenced in Section IX.1 above, no later than eleven (11) days following the issuance of an Order by the Court setting out the Attorneys' Fees and Expenses Award.

4. If this Settlement Agreement is properly and timely terminated in accordance with the terms of this Settlement Agreement and the Attorneys' Fees and Expenses Award has been paid, then Class Counsel shall within three (3) business days following such termination return to Marina Towers the Attorneys' Fees and Expenses Award, plus any interest accrued on the Attorneys' Fees and Expenses Award. Class Counsel shall each be jointly and severally liable for the return of the Attorneys' Fees and Expenses Award as contemplated by this Paragraph and expressly submit to the personal jurisdiction of the Court for the purposes of the enforcement of their obligations under this Paragraph.

5. If, after entry of the Judgment, the Attorneys' Fees and Expenses Award and/or the Representative Plaintiffs' Compensatory Award is reduced, then Class Counsel shall within five (5) business days distribute to the Cash Settlement Account the difference between such Award and the reduced amount, plus any interest accrued on such difference. No Marina Towers Releasee shall be liable or obligated to pay any fees, expenses, costs or disbursements to, or incur any expense on behalf of, any person or entity (including, without limitation, the Representative Plaintiffs), directly or indirectly, in connection with the Action or this Settlement Agreement, except as expressly provided for in this Settlement Agreement.

X. Preliminary Approval Hearing and Preliminary Approval Order

1. Promptly after the execution of this Settlement Agreement, the Settling Parties shall apply to the Court for entry of a Preliminary Approval Order substantially in the form and content of Exhibit A attached hereto:

(a) preliminarily approving the Settlement;

(b) scheduling the Fairness Hearing to consider whether the Settlement should be approved as fair, reasonable, and adequate to the Class Members, and whether the Judgment should be entered dismissing

the claims of Representative Plaintiffs and all Class Members on the merits and with prejudice;

(c) certifying the Class and any subclasses, solely for the purpose of the Settlement, and finding that each element for certification of the Class pursuant to Section 901 and 902 of the New York Civil Practice Law and Rules is met;

(d) establishing the method for giving notice of the Settlement and the Settlement Hearing to the Class Members;

(e) approving the forms of Notice, Summary Notice, and Proof of Claim substantially in the form of Exhibits B, C, and D hereto, respectively;

(f) setting a period of time during which Class Members may submit a Request for Exclusion or may serve written objections to the Settlement or written objections to the Attorneys' Fees and Expenses Application; and

(g) enjoining prosecution of any action or claims that are subject to the release and dismissal contemplated by this Settlement by any Class Member who does not opt out of the Class.

XI. Final Approval and Judgment

1. No later than fifty (50) days prior to the Fairness Hearing, the Settling Parties shall jointly apply to the Court for a Judgment, substantially in the form attached hereto as Exhibit E, which shall, among other things:

(a) Find that the Court has personal jurisdiction over all Class Members and that the Court has subject matter jurisdiction to approve the terms of the Settlement that are set out in this Settlement Agreement, including its exhibits, and including all documents submitted to the Court in connection with the implementation of this Settlement Agreement;

(b) Approve the Settlement embodied in this Settlement Agreement as fair, reasonable and adequate, consistent and in compliance with all applicable requirements of the New York Civil Practice Law and Rules, the United States Constitution (including the Due Process Clause), the Constitution of the State of New York, the Rules of the Court, and any other applicable law, and as in the best interests of each of the Settling Parties and the Class Members;

(c) Direct the Settling Parties and their counsel to implement and consummate this Settlement Agreement according to its terms and

provisions and approve the documents submitted to the Court in connection with implementation of this Settlement Agreement;

(d) Declare this Settlement Agreement, as to all claims that have or could have been raised in the Action, including Released Claims, to be binding on the Representative Plaintiffs and all other Class Members, as well as all Releasees and Releasers;

(e) Find that the Notice, the Summary Notice and the notice methodology implemented pursuant to this Settlement Agreement (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of this Settlement Agreement, including the Release, of their right to object to the proposed Settlement, of the right of Class Members to exclude themselves from the Class, and of the right of Class Members to appear at the Fairness Hearing, (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice and (iv) met all applicable requirements of the New York Civil Practice Law and Rules, the United States Constitution (including the Due Process Clause), the Constitution of the State of New York, the Rules of the Court, and any other applicable law;

(f) Find that Class Counsel and the Representative Plaintiffs adequately represented the Class for purposes of entering into and implementing the Settlement;

(g) Declare any and all tolling agreements executed in connection with the Action to be null and void *ab initio*, and of no effect whatsoever;

(h) Dismiss the Action (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any Settling Party except as provided in this Settlement Agreement;

(i) Incorporate the Releases set forth above in Section VIII, make the Releases effective as of the entry of the Judgment, and forever discharge all of the Releasees from any and all Released Claims;

(j) Permanently bar and enjoin (i) all Plaintiff Releasers from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon any Released Claims, including, but not limited to, any claim that is based upon, arises out of or relates to the Action or the transactions and occurrences referred to in the Complaint

and (ii) all persons or entities from organizing any Plaintiff Releasors for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit that is based upon any Released Claims, including, but not limited to, any claim that is based upon, arises out of, or relates to the Action or the transactions and occurrences referred to in the Complaint;

(k) Permanently bar and enjoin Marina Towers Releasors from filing, commencing, prosecuting, intervening in, participating in, or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction against the Plaintiff Releasees that is based upon any Released Claims;

(l) Authorize the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Settlement Agreement and all exhibits attached to this Settlement Agreement as (i) are not materially inconsistent with the Judgment and (ii) do not materially limit the rights of Class Members under this Settlement Agreement; *provided* that any modification in the Plan of Allocation that involves an amount equal to or less than ten percent (10%) of the total distribution amount involved in the Plan of Allocation shall be deemed to be materially consistent with the Judgment and shall be deemed not to materially limit the rights of Class Members under this Settlement Agreement;

(m) Make findings of fact and conclusions of law in support of the Court's Judgment;

(n) Incorporate any other provisions that the Court deems necessary and just; and

(o) Reserve jurisdiction over the Action, including all future proceedings concerning the administration, consummation, and enforcement of this Settlement Agreement.

2. Class Counsel and the Representative Plaintiffs shall, at the same time that the Settling Parties jointly apply to the Court for a Judgment as set forth above in Section XI.1 above, submit papers in support of their conclusion that the Settlement is fair, reasonable, and adequate, and in the best interests of Class Members.

3. The Settling Parties hereby stipulate to entry of an order determining that the Action shall proceed as a class action pursuant to Section 902 of the New York Civil Practice Law and Rules, solely for purposes of this Settlement Agreement and the Settlement. Any such stipulation or order shall be binding only with respect to the Settlement and only if the Judgment becomes Final.

4. If, for any reason, this Settlement Agreement is terminated, the certification of the Class shall automatically be vacated, *nunc pro tunc*. In such case, neither this Settlement Agreement nor any order of this Court certifying the Class will be binding on any of the Settling Parties, the Action shall proceed as though the Class had never been certified for settlement purposes, and Marina Towers (or any other defendant) may oppose and assert all objections to certification of any class or subclass sought by any party to the Action.

5. Nothing in this Settlement Agreement shall operate to preclude any Marina Towers Releasee or any Related Party Releasee from asserting any Claims against its own insurer.

XII. Modification or Termination of this Settlement Agreement

1. The terms and provisions of this Settlement Agreement may be amended, modified or expanded by agreement of the Settling Parties, with approval of the Court; *provided however*, that, after entry of the Judgment, without further approval from the Court, the Settling Parties may agree to and adopt amendments, modifications, and expansions of this Settlement Agreement and all exhibits attached to this Settlement Agreement that (i) are not materially inconsistent with the Judgment and (ii) do not materially limit the rights of Class Members under this Settlement Agreement; provided that any modification in the Plan of Allocation that involves an amount equal to or less than ten percent (10%) of the total distribution amount involved in the Plan of Allocation shall be deemed to be materially consistent with the Judgment and shall be deemed not to materially limit the rights of Class Members under this Settlement Agreement.

2. This Settlement Agreement may terminate at the sole option and discretion of Counsel for Marina Towers (on behalf of Marina Towers), on the one hand, or Class Counsel (on behalf of the Representative Plaintiffs), on the other hand, if: (i) the Court, or any appellate court(s), rejects, modifies or denies approval of any material portion of this Settlement Agreement (excluding the Plan of Allocation, the Representative Plaintiffs' Compensatory Award, and the Attorneys' Fees and Expenses Award), including, without limitation, the terms of relief, the findings of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (ii) the Court, or any appellate court(s), does not enter or completely affirm in all material respects, or materially alters or expands, any portion of the Preliminary Approval Order, or the Judgment, or any of the Court's findings of fact or conclusions of law as proposed by Counsel for Marina Towers and Class Counsel that is material. The terminating Settling Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this Section, no later than ten (10) days after receiving actual notice of the event prompting the termination.

3. Notwithstanding the preceding paragraph, neither the Representative Plaintiffs nor Class Counsel may terminate this Settlement Agreement on the basis of: (i) the Attorneys' Fees and Expenses Award; or (ii) the Representative

Plaintiffs' Compensatory Award; or (iii) the Plan of Allocation ordered, or as modified, by the Court or any appellate court(s).

4. Without limiting any other rights under this Settlement Agreement, by no later than two (2) days before the Fairness Hearing, Counsel for Marina Towers (on behalf of Marina Towers) may unilaterally withdraw from and terminate this Settlement Agreement if requests for exclusion are received from ten percent (10%) or more of potential Class Members.

5. In addition, if the Court, for any reason, upon review of objections to the Plan of Allocation, affords Class Members another opportunity to file requests for exclusion after the deadline set forth in Section VI, then notwithstanding any other terms or provisions of this Settlement Agreement, following the close of such renewed period to file requests for exclusion:

(a) At Marina Towers' option, if the subsequently received Requests for Exclusion, along with those previously received, are filed by ten percent (10%) or more of potential Class Members, then Counsel for Marina Towers (on behalf of Marina Towers) may unilaterally withdraw from and terminate this Settlement Agreement as provided for by Section XII.4. Upon such withdrawal and termination, the Settlement Amount shall be returned to Marina Towers in accordance with Section XII.6; and

(b) if Class Members are given another opportunity to file requests for exclusion after the deadline set forth in Section VI, no distribution of funds shall be made to Class Members until it is determined whether Marina Towers has the right pursuant to this Section either: (i) to adjust the Settlement Amount; or (ii) to withdraw from and terminate this Settlement Agreement, and until Marina Towers has had a reasonable opportunity to exercise such rights.

6. If the Settlement outlined in this Settlement Agreement is not approved by the Court or is terminated: (i) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable; and (ii) the Parties shall revert to their litigation positions immediately prior to the execution of this Settlement Agreement. Neither this Settlement Agreement, nor the Settlement, nor the fact of the existence of this Settlement Agreement or the Settlement, nor any of the terms of this Settlement Agreement or the Settlement, nor any press release or other statement or report by the Parties or by others concerning this Settlement Agreement, the Settlement, their existence or their terms, nor any negotiations or proceedings hereunder, shall be offered or received in evidence in any trial of this Action or any other action or proceedings, nor shall they be deemed to constitute any evidence or admission of liability or wrongdoing on the part of Marina Towers or any of the Marina Towers Releasees, which is expressly and unequivocally denied. Representative Plaintiffs shall return (or cause to be returned) to Marina Towers any monies remaining in the Cash Settlement Account (including any interest) except for any Notice and Administrative Expenses and Taxes incurred but not yet paid.

XIII. General Matters and Reservations

1. The obligation, although not the ability, of the Settling Parties to implement all of the terms of this Settlement Agreement is and will be contingent upon any conditions upon which this Settlement Agreement is expressly contingent, and any of the Settling Parties may terminate this Settlement Agreement if any such condition is not fully satisfied.

2. Except as provided in this Section or as may otherwise be required by law, the Settling Parties and their counsel agree to keep the contents of this Settlement Agreement and all related negotiations confidential and that they shall not make any statement to the press and shall refuse any request for comment; *provided however*, that this Section shall not prevent disclosure of such information by Counsel for Marina Towers and Class Counsel to any person or entity (such as experts, courts, regulatory entities and/or Administrators) to whom the Settling Parties agree disclosure must be made to effectuate the terms and conditions of this Settlement Agreement.

3. Except for attorney notes, publicly available documents and information, pleadings, court submissions and transcripts of depositions, Class Counsel agree to return to Marina Towers, at Marina Towers' option, all discovery obtained from Marina Towers (or any other defendant) within thirty (30) days after the Final Settlement Date or certify destruction of such discovery.

4. Class Counsel represent that they are authorized to enter into this Settlement Agreement on behalf of the Representative Plaintiffs, and, as authorized by the Court's Judgment, on behalf of Class Members, and any other attorneys who have represented or who now represent the Representative Plaintiffs or Class Members in the Action with respect to the claims in the Action and/or the Released Claims.

5. Each Representative Plaintiff, through a duly authorized representative, represents and certifies that she: (i) has agreed to serve as a representative of the Class proposed to be certified herein; (ii) is willing, able and ready to perform all of the duties and obligations as a representative of the Class, including, but not limited to, being available for, and involved in, discovery and fact finding; (iii) has read the pleadings in the Action, or has had the contents of such pleadings described to her; (iv) has been kept apprised of the progress of the Action and the settlement negotiations among the Settling Parties, and has either read this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of it from Class Counsel, and has agreed to its terms; (v) has consulted with Class Counsel about the Action, this Settlement Agreement and the obligations of a representative of the Class; (vi) has authorized Class Counsel to execute this Settlement Agreement on her behalf; and (vii) will remain in and not request exclusion from the Class and will serve as a representative of the Class until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that the Representative Plaintiff cannot represent the Class.

6. Allan J. Arffa represents that he is authorized to enter into this Settlement Agreement on behalf of Marina Towers, and any other attorneys who have represented or who now represent Marina Towers in the Action or any of the putative class actions that have been consolidated into the Action.

7. This Settlement Agreement sets forth the entire agreement among the Settling Parties with respect to its subject matter and may not be altered or modified except by a written instrument executed by Class Counsel and Counsel for Marina Towers. The Settling Parties expressly acknowledge that there are no agreements, arrangements or understandings other than those expressed or referred to in this Settlement Agreement among or between them. In entering into this Settlement Agreement, no Settling Party has relied upon any representation or warranty not set forth expressly herein.

8. This Settlement Agreement and any ancillary agreements shall be governed by and interpreted according to the laws of the State of New York, excluding New York's conflict of law provisions.

9. Any action arising under or to enforce this Settlement Agreement shall be commenced and maintained only in this Court.

10. Whenever this Settlement Agreement requires or contemplates that a Settling Party shall or may give notice to the other, notice shall be provided by facsimile and/or next-day (excluding Saturday and Sunday) express delivery service as follows and shall be deemed effective upon such facsimile transmission, or delivery, to the facsimile number or address, as the case may be, below:

(a) If to Marina Towers, then to each of the following:

Allan J. Arffa, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 373-3203
Facsimile: (212) 492-0203

-and-

Marina Towers Associates, L.P.
c/o The LeFrak Organization
Attn: Arnold S. Lehman, Esq.
General Counsel
40 West 57th Street
23rd Floor
New York, NY 10019
Telephone: (212) 708-6682
Facsimile: (212) 708-6681

(b) If to the Representative Plaintiffs, then to Co-Lead Counsel:

Jeffrey M. Norton, Esq.
Newman Ferrara LLP
1250 Broadway, 27th Floor
New York, NY 10001
Telephone: (212) 619-5400
Facsimile: (212) 619-3090

-and-

Peter Safirstein, Esq.
Safirstein Metcalf LLP
350 5th Avenue, 59th Floor
New York, NY 10118
Telephone: (212) 201-2845

11. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day on which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, “legal holiday” includes New Year’s Day, Dr. Martin Luther King Jr. Day, Lincoln’s Birthday, Washington’s Birthday, Presidents’ Day, Memorial Day, Flag Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day and any other day appointed as a federal or New York State holiday.

12. The Settling Parties reserve the right, subject to the Court’s approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

13. All Settling Parties agree that this Settlement Agreement was drafted by counsel for the Settling Parties at arm’s length, and that there shall be no presumption for or against any Settling Party that drafted all or any portion of this Settlement Agreement.

14. This Settlement Agreement, offer of this Settlement Agreement and compliance with this Settlement Agreement shall not constitute or be construed as an admission by any of the Releasees of any wrongdoing or liability. This Settlement Agreement is to be construed solely as a reflection of the Settling Parties’ desire to facilitate a resolution of the claims in the Complaint and of the Released Claims. The Settling Parties agree that no party was or is a “prevailing party” in this case. In no event

shall this Settlement Agreement, any of its provisions, or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in the Action, any other action, or any judicial, administrative, regulatory or other proceeding, except a proceeding to enforce this Settlement Agreement. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, Marina Towers, or as a waiver by Marina Towers of any applicable defense.

15. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Class Members is being given or will be given by Counsel for Marina Towers and/or Class Counsel; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. The Notice will direct Class Members to consult their own tax advisors regarding the tax consequences of the proposed Settlement and any tax reporting obligations they may have with respect thereto. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

16. In the event that Marina Towers negotiates a QRS Extension with the BPCA, this Settlement Agreement will not prevent the application of any benefits from such QRS Extension from being applied to any tenant to whom such benefits would apply, at the termination of their then existing lease agreement. For the avoidance of doubt, in the event such a QRS Extension is reached prior to June 30, 2022, the Contractual Rent Increase Limitation shall not prevent any tenant to whom the QRS Extension would apply from receiving the benefits of the QRS Extension, once their then existing lease agreement ends. It is understood and agreed that whether a QRS Extension occurs depends on, among other things, the outcome of future negotiations between the BPCA and Marina Towers. It is further understood and agreed that nothing in this Settlement Agreement shall limit Marina Tower's ability to conduct such negotiations, to not conduct such negotiations, or to terminate such negotiations at any point, as it deems appropriate.

17. The Settling Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Settlement Agreement in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

18. The Settling Parties, their successors and assigns, and their attorneys agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use all reasonable efforts to effect the prompt consummation of this Settlement Agreement and the proposed Settlement.

19. This Settlement Agreement may be signed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile shall be fully and legally binding on a Settling Party.

20. All Releasees who are not Settling Parties are intended third-party beneficiaries who are entitled as of the date on which all of the payments required by Sections II.A. and II.B above have been made to enforce the terms of the Release set forth in Section VIII above.

Agreed to as of the 30th day of October, 2019.

NEWMAN FERRARA LLP

By:  _____

Lucas A. Ferrara
Jeffrey M. Norton
1250 Broadway, 27th Floor
New York, New York 10001
Tel: (212) 619-5400

-and-

SAFIRSTEIN METCALF LLP

By: _____

Peter Safirstein
350 Fifth Avenue 59th Floor
New York, New York 10118
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SANFORD HEISLER SHARP, LLP

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Andrew Melzer
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*Attorneys for the Representative Plaintiffs
and Class Counsel*

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

By: _____

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*Attorneys for Defendant Marina
Towers Associates, L.P.*