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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

IN RE GATEWAY PLAZA RESIDENTS LITIGATION

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

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION**

If you reside at Gateway Plaza, or you resided at Gateway Plaza for any period of time since April 1, 2008, you could get a payment from the Settlement described below.<sup>1</sup>

*A New York State Court authorized this Notice. This is not a solicitation from a lawyer.*

This Notice explains important rights you may have, including your possible receipt of cash or other benefits from the Settlement. Your legal rights are affected whether you do or do not act. Also enclosed is a Proof of Claim form that you must complete and mail, postmarked on or before April 16, 2020, to participate in the Settlement. **Please read this notice carefully.**

1. **Statement of Class Members' Recovery:** This Notice has been sent to you pursuant to an Order of the Supreme Court of the State of New York (the "Court") in the class action titled *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014 (the "Class Action"). The purpose of this Notice is to inform you of the proposed Settlement of the Class Action for \$10,000,000 in cash and in rent abatement, a cap on rent increases for leases entered into between July 1, 2020, and June 30, 2022, and certain additional non-monetary consideration. This Notice describes the rights you may have in connection with the Settlement and what steps you may take in relation to the Settlement. The Notice also provides information about the Fairness Hearing that will be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement.

2. **Reasons for the Settlement:** The Settlement resolves purported Claims against defendant Marina Towers Associates, L.P. ("Marina Towers") in the Class Action. Marina Towers denies all allegations of wrongdoing. In light of the amount of the Settlement and the immediacy of recovery to Class Members, the Representative Plaintiffs believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. The Settlement provides a substantial benefit, namely \$10,000,000 in cash and rent abatement and certain additional non-monetary consideration, less the various deductions described in this Notice. In the absence of any settlement, it is possible that a similar or smaller recovery, or no recovery, would be achieved after a trial and appeals, possibly years in the future. During any trial and on any appeals, Marina Towers would have the opportunity to assert substantial defenses to the Claims asserted against it.

3. **Identification of Plaintiff's Representatives:** For further information regarding this Settlement, you may contact Class Counsel, whose contact information is on page 11 of this Notice. **DO NOT CONTACT THE COURT.**

**[END OF COVER PAGE]**

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<sup>1</sup> All capitalized terms not defined herein are defined in the Stipulation of Settlement, dated October 30, 2019.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

	DATE	
<b>SUBMIT A PROOF OF CLAIM</b>	April 16, 2020	The only way to get a payment.
<b>EXCLUDE YOURSELF FROM THE CLASS</b>	January 31, 2020	Get no payment. This is the only option that allows you to bring or be part of any other lawsuit against Marina Towers with respect to the Claims in this case.
<b>OBJECT</b>	January 31, 2020	Write to the Court and explain why you do not like the Settlement.
<b>REQUEST NOTICE OF CHANGE TO PLAN OF ALLOCATION</b>	No deadline	You will be notified if the Plan of Allocation of the Settlement is modified in any manner, including by Court order.
<b>GO TO THE FAIRNESS HEARING</b>	March 2, 2020	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	n/a	Get no payment and give up your rights. Alternatively, submit a Claim.

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## WHY DID I GET THIS NOTICE?

4. You may reside at Gateway Plaza, or may have resided at Gateway Plaza for any period of time since April 1, 2008. The Court ordered that you be sent this Notice because, as a potential Class Member, you have a right to know about the proposed Settlement of this Class Action lawsuit and your options before the Court decides whether to approve the Settlement. A class action is a lawsuit in which one or more Persons sue on behalf of all other Persons who have similar claims.

5. If the Court approves the Settlement, and after any objections and appeals are resolved, a claims administrator approved by the Court will make payments from the Settlement Fund to eligible claimants pursuant to the Settlement.

6. The Court in charge of this case is the Supreme Court of the State of New York (the “Court”), and the case is known as *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014 (the “Class Action”). The current plaintiffs in this lawsuit are the Representative Plaintiffs, Kathy Fernando and Kelley Crosson. The entity that has been sued is the defendant, Marina Towers. Your interests have been represented in this lawsuit by Class Counsel: Newman Ferrara LLP, Safirstein Metcalf LLP, and Sanford Heisler Sharp, LLP.

7. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of the terms of the proposed Settlement and to inform you of the Fairness Hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement and to consider the application for an Award of Attorneys’ Fees and Expenses.

8. The Fairness Hearing will be held on March 2, 2020, at 11:00 a.m., before the Honorable Melissa A. Crane, Justice of the Supreme Court of the State of New York, at the Supreme Court, New York County, Courtroom 303, 71 Thomas Street, New York, NY 10013 (the “Fairness Hearing”). The purpose of the Fairness Hearing will be to determine:

- a. whether the Settlement terms should be approved as fair, just, reasonable, and adequate to each of the Settling Parties;
- b. whether the proposed plan to distribute the Settlement proceeds (the “Plan of Allocation”) is fair, just, reasonable, and adequate;
- c. whether the application by Class Counsel for an Award of Attorneys’ Fees and Expenses should be approved;
- d. whether the Representative Plaintiffs should be granted a Compensatory Award; and
- e. whether the Class Action should be dismissed with prejudice against Marina Towers.

9. The Court may adjourn or continue the Fairness Hearing without further notice to the Class. The issuance of this Notice is not an expression of the Court’s opinion on the merits of any Claim in the lawsuit, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments will be made after any appeals are resolved and after the completion of all claims processing. Please be patient.

## HOW DO I KNOW IF I AM PART OF THIS SETTLEMENT?

10. By order of the Court, dated November 13, 2019, all Persons that reside at Gateway Plaza as of the date on which the Settlement becomes final, or do not reside at Gateway Plaza as of the date on which the Settlement becomes final but resided at Gateway Plaza for any period of time between April 1, 2008, and the date on which the Settlement becomes final, are eligible to participate in the Settlement, with the exception of any Person who files a request for exclusion in accordance with the requirements set forth in this Notice (see “What if I do not want to participate in the Settlement? How do I exclude myself?” below). Persons who are or were employees, members, partners, principals, officers or directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants or auditors, insurers, or agents of (i) Marina Towers, Gateway Residential Management, the LeFrak Organization, or the Battery Park City Authority, or (ii) any present or former parent, subsidiary, division, or affiliate of Marina Towers, Gateway Residential Management, the LeFrak Organization, or the Battery Park City Authority, and the Family Members of each of the foregoing, are also excluded from the Settlement. This is a summary of the Class Definition. For a complete version, see Section I.F.1(j) in the Stipulation of Settlement.

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MUST MAIL THE ACCOMPANYING PROOF OF CLAIM FORM, POSTMARKED ON OR BEFORE APRIL 16, 2020.**

### **WHAT RECOVERY DOES THIS SETTLEMENT PROVIDE?**

11. The total monetary value of the Settlement is \$10,000,000 (“Settlement Amount”). Attorneys’ Fees and Expenses and any Compensatory Award to the Representative Plaintiffs will be deducted from the Settlement Amount. The Settlement Amount minus these fees, costs, expenses, and awards shall be distributed to the Class (the “Distribution Amount”).

12. The average expected recovery will depend on a number of factors, including the total number of Settlement Class Members (“Authorized Claimants”) who submit timely and valid Proofs of Claim.

13. For Class Members who no longer reside at Gateway Plaza (“Former Tenants”), benefits will be allocated as a cash payment from the Distribution Amount.

14. For Class Members who are current tenants of Gateway Plaza (“Current Tenants”), benefits will be allocated as a rent abatement, factoring in the value of other benefits such as rent increase caps and capital improvements.

### **WHY IS THERE A SETTLEMENT?**

15. Under the proposed Settlement, the Court will not decide in favor of either the Representative Plaintiffs or Marina Towers. By agreeing to a settlement, both the Representative Plaintiffs and Marina Towers avoid the costs and risk of a trial and the Class Members are compensated for the settled Claims.

16. In light of the amount of the Settlement and the immediacy of recovery to the Class, Representative Plaintiffs believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of Class Members. The Settlement provides substantial monetary and non-monetary benefits, less the various deductions described in this Notice. In the absence of any settlement, it is possible that a similar or smaller recovery, or no recovery, would be achieved after a trial and appeals, possibly years in the future. During any trial and on any appeals, Marina Towers would have the opportunity to assert substantial defenses to the Claims asserted against it.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

17. If there were no settlement and Representative Plaintiffs failed to establish any essential legal or factual element of its Claims, neither Representative Plaintiffs nor the Class would recover anything from Marina Towers. Also, if Marina Towers were successful in proving any of its defenses, the Class would likely recover substantially less than the amount provided in this Settlement, or nothing at all.

### **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

18. 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.

19. Marina Towers is the landlord for the residential tenants who lease apartments in the buildings located at Gateway Plaza.

20. 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.

21. These actions were consolidated on April 23, 2014, under the caption *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014.

22. 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.

23. 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.

24. 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.

25. The Complaint alleges, among other things, 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.

26. The Complaint alleges, among other things, 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.

27. 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, 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. Disclosure in the Action included the 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 Class Counsel for the Representative Plaintiffs or their predecessors, and has concluded.

33. Marina Towers has made significant capital improvements at Gateway Plaza during the pendency of this Action, which were estimated to cost between \$18 million and \$20 million. These capital improvements included PTAC replacements, submetering upgrades, window replacements, make-up air systems, and insulation. These expenditures significantly improved the habitability of the Gateway units. Marina Tower acknowledges that this Action was a contributing factor as to both the timing and scope of the capital improvements undertaken.

34. Following arms-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 and in rent abatements, (ii) a two-year limitation on rent increases for tenants at Gateway Plaza, and (iii) the capital improvements already undertaken, and Marina Towers wishes to enter into such a Settlement.

## WHAT ARE THE REPRESENTATIVE PLAINTIFFS' REASONS FOR THIS SETTLEMENT?

35. Based upon their evaluation of the facts and law, the Representative Plaintiffs and Class Counsel have agreed to settle the Action and release the Releasees pursuant to the terms of this Settlement Agreement after considering, among other things:

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

36. In light of the foregoing, the Representative Plaintiffs believe that the Settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, the Representative Plaintiffs have determined that the Settlement set forth in the Stipulation is in the best interests of the Class.

## WHY HAS MARINA TOWERS AGREED TO THIS SETTLEMENT?

37. Marina Towers has denied and continues to deny each and all of the Claims and contentions alleged by the Representative Plaintiffs on behalf of the Class. Marina Towers has also denied and continues to deny, among other things, the allegations that it violated the implied warranty of habitability established by Section 235-b of the New York Real Property Law, that it breached the lease agreements applicable to residential tenants at Gateway Plaza, and that the Representative Plaintiffs or Class Members were harmed by the conduct alleged in the Class Action.

38. Nonetheless, Marina Towers has concluded that further conduct of the Class Action would be protracted and expensive. In Marina Towers' view, it is desirable that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation of Settlement. Marina Towers has agreed to the Settlement in order to limit further expense, inconvenience, and distraction, to dispose of the burden of protracted litigation, and to permit the operation of Marina Towers' business without further distraction and diversion caused by continuation of the Class Action. Marina Towers also has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this litigation.

39. Marina Towers has therefore determined that it is desirable and beneficial to it that the Class Action be settled in the manner and upon the terms and conditions set forth in the Stipulation. Marina Towers entered into the Stipulation and Settlement without in any way acknowledging any fault, liability, or wrongdoing of any kind. There has been no adverse determination by any court against Marina Towers on the merits of the Claims asserted by the Representative Plaintiffs. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Marina Towers of the merit or truth of any of the allegations or wrongdoing of any kind on the part of Marina Towers. Marina Towers entered into the Stipulation and Settlement based upon, among other things, the parties' agreement that, to the fullest extent permitted by law, neither the Stipulation nor any of the terms or provisions, nor any of the negotiations or proceedings connected therewith, shall be offered as evidence in the Class Action or in any pending or future civil, criminal, or administrative action or other proceeding to establish any liability or admission by Marina Towers or any of its respective related entities, or any other matter adverse to Marina Towers or any of its respective related entities, except as expressly set forth therein.

## HOW MUCH WILL MY PAYMENT BE? WHAT IS THE PLAN OF ALLOCATION?

40. Your share of the recovery (if any) will depend on whether you are a Current Tenant or a Former Tenant of Gateway Plaza, the number of valid Proofs of Claim that Settlement Class Members send in, and the period of time you resided or have resided at Gateway Plaza.

41. As part of the Settlement consideration, Marina Towers has agreed to pay \$10,000,000 (“Settlement Amount”) in cash and rent abatements. Attorneys’ Fees and Expenses and any Compensatory Award to the Representative Plaintiffs will be deducted from the Settlement Amount. The Settlement Amount minus these fees, expenses, and awards shall be distributed to the Class (the “Distribution Amount”) pursuant to the Plan of Allocation (described below).

42. Class Members must complete a Proof of Claim form and mail it and all required documentation to the Claims Administrator postmarked on or before April 16, 2020. Class Members who do not submit acceptable Proofs of Claim will not share in the Settlement proceeds. Class Members who do not submit either a request for exclusion or an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Judgment of the Court dismissing the Claims against Marina Towers.

### Allocation to Class Members

43. The Claims Administrator shall determine each Authorized Claimant’s share of the Distribution Amount based upon the following Plan of Allocation.

44. The Plan of Allocation is intended to quantify and allocate the benefits achieved on behalf of the Class through the Settlement of this Action, including the Settlement Amount, various capital improvements, and a Contractual Rent Increase Limitation. However, only the Settlement Amount will result in direct payment to members of the Class, either through cash or a rent abatement to Class Members who are Current Tenants.

45. Class Counsel has quantified the total value of the benefits achieved through the Settlement as follows:

a.	Capital Improvements .....	\$18-20 mil
b.	Settlement Amount.....	\$10 mil
c.	Contractual Rent Increase Limitation.....	\$13 mil
	Estimated Total Benefits Achieved .....	\$42 mil

46. The capital improvements acknowledged by this Settlement Agreement accrued to the entire Class, as they were ongoing over a three-year period and were largely completed by August 1, 2017. The capital improvement costs are estimated to be between \$18 million and \$20 million. These expenditures included PTAC replacements, submetering upgrades, window replacements, make-up air systems, and insulation. These expenditures significantly improved the habitability of the units at Gateway Plaza. However, because these benefits have already been conveyed to the Class, no allocation formula is necessary.

47. The Settlement Amount portion of the Settlement consists of \$10 million in cash and rent abatements to be distributed amongst members of the Class. It is intended to compensate tenants who inhabited the units under subpar conditions during the Class Period.

48. The final part of the Settlement includes the Contractual Rent Increase Limitation, which will be initiated for Current Tenants. The Contractual Rent Increase Limitation is expected to be in place for a period of two years, beginning July 1, 2020, and will allow for a maximum rent increase of no more than 5% per year, on average. Based on an analysis of historical data provided by Marina Towers for the Class Period showing average rent increases between 4% and 7%, Class Counsel estimates that the Contractual Rent Increase Limitation has a potential value of up to \$13 million.

49. Class Counsel calculated the value of the Contractual Rent Increase Limitation by using Marina Towers’ historical data on unit counts, rents, average rent growth rates, square footage, and turnover, differentiated by whether the tenant is at market rates or subject to QRS rental growth rates. The total value represented was arrived at by Class Counsel by projecting future benefits for Class Members who are Current Tenants and discounting that figure to present value, using an appropriate discount rate.

50. The Contractual Rent Increase Limitation will automatically convey to Current Tenants who are members of the Class and who will participate equitably according to the amount of rent each currently pays. For example:



- a. If a Current Tenant pays \$34,000 per annum and the rental growth rate going forward is capped at 5.0%, as compared to a market rental growth rate of 6.0%, the year-one benefit will be \$340, as follows:  $(\$34,000 \times .06 = \$2040) - (\$34,000 \times .05 = \$1700) = \$340$ .
- b. If a Current Tenant pays \$25,000 per annum and the same QRS growth rates apply, the year-one benefit will be \$250, as follows:  $(\$25,000 \times .06 = \$1500) - (\$25,000 \times .05 = \$1250) = \$250$ .

Thus, both of these hypothetical Class members will benefit by the same percentage of their current rental rate.

51. The Contractual Rent Increase Limitation will benefit every Class member that is a Current Tenant. In fact, without a new QRS deal obtained before July 1, 2020 (the date the QRS program expires), Current Tenants would be subject to an immediate increase in rent to market rates as well as rent growth subject to market rates. As a result of the Settlement Agreement, Class Members that are Current Tenants will benefit substantially from a two-year reprieve from an increase to an equivalent rent-per-square-foot market rate unit. While participation in the Contractual Rent Increase Limitation factors into the equitable formula at the base of the Plan of Allocation, no distribution plan is necessary because it will apply automatically.

52. Distribution of the Settlement Amount will be done according to the Recognized Claim for each Class Member. The Recognized Claim for Class Members will be based on the total amount of gross rent paid by each member during the Class Period. Class Counsel estimates that the total amount of gross rent paid during the Class Period is \$512 million. Thus, the Settlement Amount portion of the Settlement reflects approximately 1.95% of the total gross rent paid  $(\$10,000,000 \div \$512,000,000 = 1.95\%)$ .

53. The Recognized Claim percentage of 1.95% of gross rent paid will be adjusted depending upon whether Class Members are Current Tenants or Former Tenants, as follows:

- a. Current Tenants' Recognized Claim percentage will be reduced by 15%  $(1.95\% \times 85\% = 1.66\%)$ . Class Counsel estimates that these Class Members paid approximately \$307 million in total gross rent and their distribution, in total, will be approximately \$5.1 million  $(\$307,000,000 \times 0.0166 = \$5,100,000)$ .

For example, if you are a Current Tenant who paid \$30,000 in gross rent during the Class Period, your Recognized Claim will be calculated as follows:

$$\$30,000 \times 0.0166 = \$498.00$$

- b. Former Tenants' Recognized Claim percentage will be increased by a commensurate amount to 2.39%. Class Counsel estimates that these Class Members paid approximately \$205 million in total gross rent and their distribution, in total, is estimated at \$4.9 million  $(\$205,000,000 \times 0.0239 = \$4,900,000)$ .

For example, if you are a Former Tenant who paid \$30,000 in gross rent during the Class Period, your Recognized Claim will be calculated as follows:

$$\$30,000 \times .0239 = \$717.00$$

54. The above Recognized Claim percentage adjustments are necessary to achieve relative parity across the Class, as some will participate in non-cash benefits derived from the Settlement Agreement and some will not. The table below illustrates the relative benefits derived from the cash component of the Settlement. (The figures below do not take into account (1) the Attorneys' Fees and Expenses Award or (2) the Representative Plaintiffs' Compensatory Award, both of which shall be deducted pro rata from the recoveries of both Former Tenants and Current Tenants.)

	<b>Former Tenants</b>	<b>Current Tenants</b>
Rent Paid During Class Period	\$205,000,000	\$307,000,000
Settlement Amount Allocated to Each Class	\$4,900,000	\$5,100,000
Future Rent Benefit	\$0	\$13,000,000
Total Recovery Per Class	\$4,900,000	\$18,100,000
Recovery as a Percentage of Rent Paid	2.4%	5.9%

55. The distribution of the Net Cash Settlement Amount will be made on a pro rata basis according to the Class Members' Recognized Claim in proportion to the total amount of all Authorized Claims submitted. Depending on how many Authorized Claims are submitted, members of the Class may receive less or more than their allocation percentage as set forth in the table above.

56. If the Settlement and Plan of Allocation are approved by the Court and become final, no part of the Settlement Amount shall revert to Marina Towers under any circumstances.

#### **General Provisions for Plan of Allocation**

57. Class Members who do not file acceptable Proofs of Claim will not share in the Settlement proceeds, but will nevertheless be bound by the Court's Judgment and the Settlement.

58. Payments pursuant to the Plan of Allocation, as approved by the Court, will be conclusive against all Authorized Claimants. No Person shall have any claim against Representative Plaintiffs, Class Counsel, the Claims Administrator, or any other agent designated by Class Counsel based on a distribution made substantially in accordance with the Stipulation and the Plan of Allocation or further orders of the Court. Except as to any portion of the Settlement paid to Current Tenants in the form of a rent abatement, Marina Towers, and its counsel, shall have no responsibility for, interest in, or liability whatsoever with respect to any allocation, management, disposition, computation, or distribution from the Settlement Fund.

59. The Court has reserved jurisdiction to allow, disallow, or adjust the Claim of any Settlement Class Member on equitable grounds.

#### **Alteration of the Plan of Allocation**

60. Representative Plaintiffs may alter the Plan of Allocation (subject to Court approval) without any further notice to Class Members, unless such Class Members expressly request notice of alteration of the Plan from the Claims Administrator at the address set forth in paragraph 70 below.

61. The Court may also modify the Plan of Allocation without further notice to the Class.

### **HOW DO I PARTICIPATE IN THIS SETTLEMENT? WHAT DO I NEED TO DO?**

62. If you fall within the definition of the Class as defined above, you will remain a Class Member unless you elect to be excluded from the Class. If you do not request to be excluded from the Class, you will be bound by any Judgment entered in the Class Action whether or not you file a Proof of Claim, including the dismissal with prejudice of any Released Claims against Marina Towers you may possess under New York law, the law of any other state, or federal law.

63. If you wish to remain a Class Member, you need do nothing (other than timely file a Proof of Claim if you wish to participate in the distribution of funds from the Settlement). Your interests will be represented by Class Counsel. If you choose, you may enter an appearance at the Fairness Hearing individually or through your own counsel at your own expense.

64. TO PARTICIPATE IN THE DISTRIBUTION OF FUNDS FROM THE SETTLEMENT, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM FORM THAT ACCOMPANIES THIS NOTICE. The Proof of Claim must be postmarked on or before APRIL 16, 2020, and be mailed to the Claims Administrator at the address in paragraph 70 below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim, you will be barred from receiving any payments from the Settlement, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

65. Extra copies of the Proof of Claim form can be requested from the Claims Administrator by mail, phone, or website, as noted below, or downloaded from Class Counsel's website at [www.nflfp.com](http://www.nflfp.com).

### **WHAT RIGHTS AM I GIVING UP BY AGREEING TO THIS SETTLEMENT?**

66. If the Settlement is approved, the Court will enter a Judgment and Order of Dismissal (the "Judgment"). The Judgment will dismiss the Claims against Marina Towers with prejudice and provide that the Representative Plaintiffs and all other Class Members, except those who validly and timely request to be excluded from the Class, shall upon the entry of the Judgment be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Marina Towers Releasees and Related Party Releasees from 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, whether known or unknown, arising any time 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, any claims relating to heating, air conditioning, electricity, electricity charges, insulation, PTAC Units, fungal growth, and condensation on windows and window sills.

67. The definitions relevant to this Release are set forth in the Stipulation of Settlement in Section I.F.1.

68. **If the Settlement is approved, Class Members who have not requested exclusion from the Class will release all Released Claims, even if they bring, or have brought, a lawsuit, arbitration, or other proceeding against the Releasees relating to the Released Claims. If you have such proceedings, you must exclude yourself from this Settlement pursuant to the procedures set forth in paragraph 70 below in order to preserve your rights.**

### **WHAT IF I DO NOT WANT TO PARTICIPATE IN THIS SETTLEMENT? HOW DO I EXCLUDE MYSELF?**

69. **As stated above, if the Settlement is approved, Class Members who have not requested exclusion from the Class will release all Released Claims, even if they bring, or have a pending, litigation, arbitration, or other proceeding against the Releasees relating to the Released Claims.**

70. You may request to be excluded from the Settlement Class. To do so, you must email or mail a written request to the Claims Administrator:

claims@GatewayPlazaSettlement.com

or

Gateway Plaza Settlement  
c/o Epiq  
P.O. Box 4098  
Portland, OR 97208-4098

The request for exclusion must include: (i) your name; (ii) your current address; (iii) your telephone number; (iv) the dates you resided at Gateway Plaza; and (v) the building and apartment number of the apartment at Gateway Plaza in which you resided or reside. You must state in your request that you wish to be excluded from the Settlement Class. **TO BE VALID, A REQUEST FOR EXCLUSION MUST STATE ALL OF THE FOREGOING INFORMATION. YOUR EXCLUSION REQUEST MUST BE RECEIVED ON OR BEFORE JANUARY 31, 2020.**

71. If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement, shall not share in the distribution of funds from the Settlement, and shall not be bound by the Stipulation or the Judgment.

72. **If you do exclude yourself from the Class, your ability to subsequently initiate a litigation, arbitration, or other proceeding against Marina Towers concerning the Released Claims may be impacted by the relevant Statute of Limitations. You should consult your own legal counsel concerning this issue.**

### **WHAT PAYMENTS ARE THE ATTORNEYS FOR THE CLASS AND THE REPRESENTATIVE PLAINTIFFS SEEKING FOR THEIR WORK IN THIS CASE?**

73. Class Counsel has not yet received any payment for their services in pursuing this lawsuit on behalf of the Class, nor have they been reimbursed for their considerable out-of-pocket expenses. Class Counsel intends to apply to the Court for an award of attorney fees on behalf of all Class Counsel in an amount not to exceed \$3,500,000, in addition to reimbursement of litigation expenses advanced in connection with the Class Action.

74. The Representative Plaintiffs have not yet received any compensation for their services in managing and directing this lawsuit on behalf of the Class, nor have they been reimbursed for their out-of-pocket expenses. As a result, Class Counsel intends to apply to the Court for a \$5,000.00 Representative Plaintiffs' Compensatory Award.

**ARE THERE OTHER CONDITIONS THAT MAY AFFECT THE SETTLEMENT OR AN AWARD FROM THE SETTLEMENT?**

75. The Settlement is conditioned upon the occurrence of certain events. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from the Judgment, or if an appeal is taken, a final resolution of the appeal in favor of the Judgment. In addition, pursuant to the terms of the Stipulation of Settlement, Marina Towers has the right to terminate the Settlement should requests for exclusion exceed a certain threshold. If, for any reason, any one of the conditions described in the Stipulation of Settlement is not met, that Stipulation might be terminated and, if terminated, will become null and void, and the parties to that Stipulation will be restored to their respective positions as of October 31, 2019.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THIS SETTLEMENT AND RELATED MATTERS? DO I HAVE TO COME TO THE FAIRNESS HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THIS SETTLEMENT OR OTHER MATTERS REFERENCED IN THIS NOTICE?**

76. If you do not wish to object to the proposed Settlement, the Plan of Allocation, the application for an Award of Attorneys' Fees and Expenses, or the proposed Representative Plaintiffs' Compensatory Award, you need not attend the Fairness Hearing scheduled for March 2, 2020.

77. Any Class Member who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the Settlement, the Plan of Allocation, the application for an Award of Attorneys' Fees and Expenses, or the request for a Compensatory Award to Representative Plaintiffs, may appear and be heard at the Fairness Hearing. Any such Person must submit a written notice of objection, which must be **received on or before January 31, 2020**, to each of the following:

The Honorable Melissa A. Crane  
NEW YORK SUPREME COURT, NEW YORK COUNTY  
71 Thomas Street, Room 303  
New York, New York 10013

- and -

Jeffrey M. Norton, Esq.  
NEWMAN FERRARA LLP  
1250 Broadway, 27th Floor  
New York, New York 10001  
(Class Counsel for Plaintiffs)

- and -

Peter Safirstein, Esq.  
SAFIRSTEIN METCALF LLP  
350 5th Avenue, 59th Floor  
New York, New York 10118  
(Class Counsel for Plaintiffs)

- and -

Allan J. Arffa, Esq.  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019  
(Counsel for Marina Towers)

78. The notice of objection must state: (i) whether the Person 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.

79. Class Counsel and Counsel for Marina Towers will have until ten (10) days before the Fairness Hearing to respond to any such objections.

80. The Fairness Hearing may be delayed by the Court at any time without further written notice to the Class. If you intend to attend the Fairness Hearing, you should confirm the date and time with Class Counsel.

81. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described herein will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the application for an Award of Attorneys' Fees and Expenses, the proposed Plan of Allocation, and/or the Compensatory Award to Representative Plaintiffs. Class Members do not need to appear at the Hearing or take any other action to indicate their approval.

### **CAN I SEE THE COURT FILE? WHO SHOULD I CONTACT IF I HAVE QUESTIONS?**

82. This Notice is a summary and does not describe all of the details of the Stipulation of Settlement. For full details of the matters discussed in this Notice, you may desire to review the Stipulation of Settlement filed with the Court, which may be examined in the NYSCEF system at [www.nycourts.gov/efile](http://www.nycourts.gov/efile).

83. As they become available, starting on or before December 19, 2019, you will be able to review the Stipulation of Settlement, all other papers filed in support of the Settlement, the Notice, the Proof of Claim form, the Preliminary Order of Approval, the applications for an Award of Attorneys' Fees and Expenses for Class Counsel, and the application for a Compensatory Award for Representative Plaintiffs at [www.GatewayPlazaSettlement.com](http://www.GatewayPlazaSettlement.com).

84. If you have any questions about the Settlement of the Class Action, you may contact Class Counsel by writing to:

Jeffrey M. Norton, Esq.  
NEWMAN FERRARA LLP  
1250 Broadway, 27th Floor  
New York, New York 10001

- or -

Peter Safirstein, Esq.  
SAFIRSTEIN METCALF LLP  
350 5th Avenue, 59th Floor  
New York, New York 10118

85. If you need additional copies of the Notice and Proof of Claim form, or if you have a question about filing a Claim, you may contact the Claims Administrator, as set forth in paragraph 70 above.

**DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

Dated: November 27, 2019

**BY ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK,  
COUNTY OF NEW YORK**