

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

IN RE EMPIRE STATE REALTY TRUST, INC.
INVESTOR LITIGATION

Index No. 650607/2012
IAS Part 49
Sherwood, J.

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

TO: ALL PARTICIPANTS IN ANY OF THE FOLLOWING: EMPIRE STATE BUILDING ASSOCIATES LLC, 60 EAST 42ND STREET ASSOCIATES LLC, 250 WEST 57TH STREET ASSOCIATES LLC, (COLLECTIVELY THE “PUBLIC LLCs”) AND ALL PARTICIPANTS IN ANY OF THE FOLLOWING: MARLBORO BUILDING ASSOCIATES L.L.C., 1333 BROADWAY ASSOCIATES L.L.C., 1350 BROADWAY ASSOCIATES L.L.C., SEVENTH AND 37TH BUILDING ASSOCIATES L.L.C., 112 WEST 34TH STREET ASSOCIATES L.L.C., 1400 BROADWAY ASSOCIATES L.L.C., EMPIRE STATE BUILDING COMPANY L.L.C., LINCOLN BUILDING ASSOCIATES L.L.C., FISK BUILDING ASSOCIATES L.L.C., 501 SEVENTH AVENUE ASSOCIATES L.L.C., 1185 SWAP PORTFOLIO L.P., FAIRFIELD MERRITTVIEW LIMITED PARTNERSHIP, SOUNDVIEW PLAZA ASSOCIATES II L.L.C., EAST WEST MANHATTAN RETAIL PORTFOLIO L.P., BBSF LLC, ONE STATION PLACE, LIMITED PARTNERSHIP, NEW YORK UNION SQUARE RETAIL L.P., WESTPORT MAIN STREET RETAIL L.L.C., FIRST STAMFORD PLACE L.L.C., FAIRFAX MERRIFIELD ASSOCIATES L.L.C., MERRIFIELD APARTMENTS COMPANY L.L.C., 500 MAMARONECK AVENUE L.P., AND 112 WEST 34TH STREET COMPANY L.L.C. (COLLECTIVELY THE “PRIVATE ENTITIES”). PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOU MAY BE AFFECTED BY A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION.

This Notice of Pendency and Proposed Settlement of Class Action and Settlement Hearing (“Notice”) was authorized and approved by the Supreme Court of the State of New York, County of New York (the “Court”). This Notice, however, is not an expression of opinion by the Court as to the merits of any claim or defense asserted by any party in this class action litigation. This Notice is sent for the sole purpose of informing you of the proposed Settlement,¹ which is contingent on final approval by the Court. If approved, the Settlement will end litigation of the Actions. This is not a solicitation from a lawyer.

On February 21, 2013, the Court preliminarily approved the proposed Settlement between the Parties.

The Settlement provides, in part, for: (i) a settlement fund, to be established and funded by Defendants, in the amount of \$55,000,000.00 in cash and OP Units and/or Class A Common Stock (the “Settlement Fund”) to be distributed to the members of the Class in accordance with the Plan of Allocation; (ii) a tax deferral benefit to certain members of the Class, permitting Participants in the Public LLCs to have the choice of receiving Class A Common Stock, OP Units, or, as to a portion of their participation units, Class B Common Stock, the value of which benefit has been estimated at \$100,000,000.00; (iii) participant protections concerning the underwriting and changes in exchange value; (iv) additional disclosures or changes to the Registration Statement on Form S-4 that were identified by Plaintiffs, which disclosed further information regarding the the property appraisals, fairness opinions, valuation methodologies, including the 50/50 allocation, joint venture and discounted cash flow methodologies, and the derivation of exchange values used in connection with the proposed Consolidation; the Malkin family’s interests, including ownership interests in the Public and Private LLCs, override interests and interests in management and construction companies, and the valuation of those interests; the potential conflicts of interest between the members of the Class and Defendants; the Helmsley Estate’s impetus to sell its interests and the risks associated with sale alternatives to the

¹ Except as expressly provided herein, all capitalized terms shall have the same meanings and/or definitions as set forth in the Stipulation of Settlement dated September 28, 2012, as amended (the “Stipulation”).

proposed Consolidation; the exchange value allocated to Defendants; the definition and explanation of enterprise value; the payment to the Class of excess cash held by the Public LLCs and additional distributions accrued prior to the closing and Consolidation; the transaction expenses of the Consolidation and their potential reimbursement; the projected distributions by the REIT as compared to historical distributions to Participants; the proposed centralized management structure and makeup of the REIT; and the assets being contributed to the REIT and improvements made thereon, among other matters; (v) mutual release of claims; and (vi) the payment of attorneys' fees and reimbursement of expenses to Plaintiffs' Counsel.

Plaintiffs and Defendants vigorously disagree on both whether Plaintiffs could have prevailed at trial and the recovery, if any, that could have been achieved for the Settlement Class if Plaintiffs had prevailed at trial. Plaintiffs believe the claims alleged in the Actions have merit. Defendants deny all of Plaintiffs' allegations of wrongdoing and deny they have any liability whatsoever. Continued litigation of the Actions could have resulted in either dismissal or loss at trial. In reaching this Settlement, however, Plaintiffs and Defendants have avoided the costs, time, expense, distraction, and risks associated with continued litigation, including the danger of no recovery.

As a result of the matters set forth below, the named class representatives intend to support the transaction as modified.

Your rights and options are explained in this Notice. A summary of your rights is set forth below. Please note that the date of the Settlement Hearing is subject to change without further notice.

The Court in charge of this case must decide whether to approve the Settlement.

Subject to the Order of the Court, pending final determination of whether the Settlement should be approved, Plaintiffs and all members of the Settlement Class, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim against any Released Person.

On February 21, 2013, in addition to preliminarily approving the proposed Settlement, the Court denied a motion by several Empire State Building Associates LLC ("ESBA") Participants ("Applicants") (a) to intervene in this action and (b) to establish a sub-class consisting only of ESBA Participants. Pursuant to New York Civil Practice Law and Rules 907(2), the Court permitted the Applicants to join the case by separate counsel for the purpose of supporting their allegation that ESBA Participants who elect not to consent to the proposed transactions, where 80 percent of the ESBA Participants in their class do consent thereto, will be deprived of "fair value" in violation of the New York Limited Liability Company Law. Memoranda of law addressed to this issue will be submitted prior to the time the Court will consider the motion to approve the settlement and will be available for viewing on the Court website at <https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=IGzQImvWOovpRPkpEpzNUw==&display=all&courtType=New%20York%20County%20Supreme%20Court>.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

- | | |
|-----------------------------|---|
| OBJECT | You may file an objection in the manner set forth below if you do not like this Settlement. |
| GO TO THE SETTLEMENT | You may ask to speak to the Court about your concerns |

HEARING

relating to the Settlement at the Settlement Hearing.

OPT OUT OF THE SETTLEMENT

You may opt out of the Settlement Class by timely submitting a written Request for Exclusion to Class Counsel following the directions in this Notice. If you opt out of the Settlement Class, you will not receive any distribution from the Settlement Fund, but you will be free independently to pursue your individual claim(s) solely for money damages, if any, against the Defendants.

DO NOTHING

You may do nothing. If you do nothing and the Settlement is approved, you will automatically receive your share of the Settlement Fund, in accordance with the Plan of Allocation. You will give up any right that you otherwise had to sue Defendants and the other Released Persons relating to the legal claims in the case. You will remain a member of the Settlement Class and be bound by the Judgment of the Court.

You do not have to file a Claim Form to participate in the Settlement Fund. Upon approval, the Settlement Fund, less court-approved Attorneys Fees and Expenses, will be distributed pursuant to the Plan of Allocation attached hereto as Exhibit A.

DEADLINES

The Settlement Hearing will take place on May 2, 2013 at 10:00 A.M.

Objections must be served on Class Counsel and Defendants' Counsel and filed with the Court not later than fourteen days prior to the Settlement Hearing, April 18, 2013.

Requests to be excluded from (opt out of) the Settlement must be mailed to Class Counsel at the addresses listed later in this notice not later than fourteen days prior to the Settlement Hearing, April 18, 2013.

Requests to appear and be heard at the Settlement Hearing must be served on Class Counsel and Defendants' Counsel and filed with the Court not later than fourteen days prior to the Settlement Hearing, April 18, 2013.

If you believe that the accompanying Data Sheet does not accurately reflect your ownership interests in the Public LLCs or Private Entities you may submit corrective information and supporting documents to Class Counsel not later than April 18, 2013

MORE INFORMATION

More information concerning the Settlement, including the Stipulation of Settlement can be obtained at the Court's website noted herein, and at www.whafhclass.com. In addition, Class Counsel will file papers in support of the Settlement, Plan of Allocation, and Fee Request no later than twenty-one days prior to the Settlement Hearing, April 11, 2013, which will be posted on the same website. You may also write to Class Counsel as set forth below.

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I. BASIC INFORMATION

1. Why Did I Get this Notice Package?

You or someone in your family may be a Participant in one or more of the Public LLCs and/or the Private Entities. The Court directed that you be sent this Notice because, if you are a member of the Settlement Class, you have a right to know about the proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to approve the Settlement. This package describes the lawsuit, the Settlement, and your legal rights.

2. What Is this Notice About?

Beginning on or about March 1, 2012, five class action complaints were filed in the Supreme Court of the State of New York, County of New York (the “Court”) on behalf of the Participants in the Public LLCs and certain Private Entities: (1) *Leon Meyers, et al. v. Empire State Realty Trust, Inc., et al.*, Index No. 650607/2012; (2) *Laurence Reinlieb v. Empire State Realty Trust, Inc., et al.*, Index No. 650691/2012; (3) *Susan Bandler v. Empire State Realty Trust, Inc., et al.*, Index No. 650754/2012; (4) *Joseph Weiss v. Empire State Realty Trust, Inc., et al.*, Index No. 650798/2012; and (5) *Steven Keenholtz, M.D. v. Anthony E. Malkin, et al.*, Index No. 650851/2012 (collectively, the “Actions”). The Actions allege various claims for breach of fiduciary duty and seek, among other things, injunctive relief in connection with the proposed “Consolidation” of the Public LLCs and Private Entities into a new company known as Empire State Realty Trust, Inc. (the “REIT”).

The Actions are being settled in recognition of a Settlement Fund in the amount of \$55 million, the implementation of certain tax benefits, the value of which is estimated at more than \$100 million, additional disclosures in the prospectus/solicitation and other SEC filings, and other benefits as set forth in the Stipulation of Settlement.

The Settlement is the product of: (i) Plaintiffs’ Counsel’s independent investigation into the Consolidation; (ii) Plaintiffs’ Counsel’s review of certain discovery material voluntarily produced by Defendants at the request of Plaintiffs’ Counsel; (iii) Plaintiffs’ Counsel interviews of representatives of the Defendants and third-party witnesses regarding the proposed

Consolidation, at the request of Plaintiffs' Counsel and with Defendants' cooperation; (iv) Plaintiffs' counsel's consultation with accounting and real estate experts; and (v) Plaintiffs' Counsel's determination that the Settlement of the Actions is in the best interests of the Settlement Class, such that the named class representatives intend to support the transaction as modified.

If the Court approves the Settlement, all members of the Settlement Class who do not opt out will release claims, including any claim relating to the Consolidation or to matters alleged in the Actions, against the Defendants and certain others who are related to Defendants (the "Released Claims" and Released Persons" are set forth fully below). The complete and exact terms of the settlement are contained in the Stipulation of Settlement (the "Stipulation"), which may be inspected during business hours at the office of the Clerk of the Court, and are available on line on the Court's website at <https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=IGzQImvWOovpRPkpEpzNUw==&display=all&courtType=New%20York%20County%20Supreme%20Court>. The Settlement is also available at www.whafhclass.com.

3. Why Is this a Class Action?

In a class action, one or more persons sue on behalf of people who have similar claims. These people are collectively referred to herein as the Settlement Class. The Court has appointed Plaintiffs to act as representatives of the Settlement Class. The Court will resolve the issues for all the members of the Settlement Class.

4. What Is this Lawsuit About and Why Is There A Settlement?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT; IT IS BASED ON STATEMENTS OF THE PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

In November 2011, Defendants commenced the solicitation (the "Private Solicitation") of consents seeking approval from the Participants in the Private Entities to consolidate their assets

together with the assets of the Public LLCs, together with a number of other entities affiliated with various Defendants that owned properties or provided supervisory, management or other services to such entities into a real estate investment trust to be known as Empire State Realty Trust, Inc. (the “REIT”). Consent Solicitation Statements were sent to the Participants in the Private Entities that included a draft preliminary Registration Statement on Form S-4, to be filed with the United States Securities and Exchange Commission (“SEC”) and, once declared effective by the SEC, would be sent to the Public LLC Participants. The solicitation for consents by the Private Entities was completed in January 2012, and the proposed Consolidation was approved by the required consent of each of the Private Entities.

On or about February 13, 2012, Defendants caused to be filed with the SEC a preliminary S-4 Registration Statement on Form S-4 including the preliminary Prospectus/Consent Solicitation Statement, seeking the consent of the Participants in the Public LLCs for, among other things the proposed Consolidation, which is conditioned on an offering of shares of the REIT to the public (the “Underwritten Offering”) and the listing of the REIT’s shares on a national securities exchange (the “IPO”). As part of the Consolidation and IPO, as proposed in the February 13, 2012 preliminary Form S-4, each participation interest in the Public LLCs would be exchanged for shares of Class A Common Stock of the REIT or a combination of cash and shares of Class A Common Stock of the REIT in a ratio to be determined, without having the option to receive REIT Operating Partnership units (“OP Units”) and potentially Class B Common Stock instead of Class A Common Stock. Those receiving OP Units could defer taxation on the exchange between Participation interests and OP Units. In the Form S-4 the Participants were also being asked to consent to permit Malkin Holdings to elect to sell to a third party, as a portfolio, the properties in which the Public LLCs and the Private Entities own interests, in the event of a superior proposal by such third party (the “Third Party Transaction”).

Defendant Estate of Leona M. Helmsley (the “Helmsley Estate”) entered into separate contribution agreements with various Malkin entities to sell its interests in the properties and the

entities owning the leasehold interests in the properties in exchange for cash, and, if there was insufficient available cash, Class A Common Stock of the REIT.

On March 1, 2012, Leon Meyers, a Participant in 60 East 42nd St. Associates LLC, along with Leon Meyers as trustee under the will of Ben Meyers, dated 1/24/92, a Participant in Empire State Building Associates LLC and 60 East 42nd St. Associates LLC, and Leon Meyers as trustee under the trust dated 7/30/81 for the benefit of Abraham M. Sacharow, Elvira D. Sacharow, Eli M. Sacharow, and Roni C. Sacharow, a Participant in Marlboro Building Associates LLC, filed *Leon Meyers, et al. v. Empire State Realty Trust, Inc., et al.*, Index No. 650607/2012 (the “Meyers Action”) in Supreme Court of the State of New York, County of New York, (the “Court”) on behalf of certain Participants, challenging the Consolidation and naming as defendants Empire State Realty Trust, Inc. (the “REIT”), Empire State Realty OP, L.P., (collectively the “REIT Defendants”), Anthony E. Malkin, Peter L. Malkin, and Malkin Holdings L.L.C. (the “Supervisor”) (together with Anthony and Peter Malkin, the “Malkin Defendants”); Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., and Malkin Construction Corp. (the “Management Defendants”); and the Estate of Leona M. Helmsley (collectively, “Defendants”). The *Meyers* complaint made allegations against Defendants concerning the Consolidation and IPO, including claims concerning ESBC.

On March 7, 2012, Laurence Reinlieb, a Participant in 60 East 42nd St. Associates LLC and Empire State Building Associates LLC, filed *Reinlieb v. Empire State Realty Trust, Inc.*, Index No. 650691/2012, in the Court. On March 12, 2012, Susan Bandler, a Participant in Empire State Building Associates LLC, filed *Bandler v. Empire State Realty Trust, Inc.*, Index No. 650754/2012, in the Court. On March 14, 2012, Joseph Weiss, a Participant in Empire State Building Associates LLC, filed *Weiss v. Empire State Realty Trust, Inc.*, Index No. 650798/2012, in the Court. On March 19, 2012, Steven Keenholtz, M.D., a Participant in Empire State Building Associates LLC, filed *Keenholtz v. Malkin*, Index No. 650851/2012, in the Court. All five of the Actions challenge the Consolidation, name the same defendants and assert claims similar to those set forth in the Meyers Action.

On June 25, 2012, the Actions were consolidated into a consolidated class action before Justice O. Peter Sherwood, with the caption *In re Empire State Realty Trust, Inc. Investor Litigation*, under Index No. 650607/2012. As set forth in the Complaints and in subsequent discussions between the parties, the Actions asserted claims for breaches of fiduciary duty by Defendants concerning the Consolidation, tax implications of the transaction, disclosures in the Form S-4, appraisals and exchange rates of the properties that would be consolidated into the REIT, the contribution of the management companies to the REIT, the interests of Defendants in the Consolidation, and the interests of the Participants in the Public LLCs and the Private Entities in the Consolidation, which allegations and claims Defendants categorically deny.

Beginning in March 2012, the parties agreed to engage in an informal discovery process, by which Defendants agreed to produce, and did produce, documents requested by Class Counsel. Such documents were reviewed by Plaintiffs' Counsel and their forensic accountant and real estate consultants. Defendants also voluntarily agreed to produce for investigatory interviews principals and/or witnesses with knowledge of the key underlying analyses, facts and circumstances of the proposed Consolidation.

Beginning in March 2012, Defendants' Counsel and Class Counsel met on an ongoing basis to discuss the allegations set forth in the Actions. During the course of such meetings, Defendants' Counsel advised Class Counsel that Defendants would change the terms of the Consolidation to allow all Participants in the Public LLCs to elect to receive OP Units and potentially Class B Common Stock, rather than Class A Common Stock, to defer all or virtually all of any tax liability in connection with the transaction. Plaintiffs' Counsel's complaints and work were material factors in causing this change. The Consolidation was also changed to allow the OP Units to be issued under the Registration Statement on Form S-4 to be traded on a national stock exchange. On July 2, 2012, Defendants mailed to the Public LLC Participants a letter describing these changes to the structure of the Consolidation.

In addition, supplemental disclosures were made to investors in: (a) amended Registration Statements filed with the SEC on May 8, 2012, July 3, 2012, and August 13, 2012,

and (b) letters to investors in the three Public LLCs filed with the SEC pursuant to Rule 425 under the Securities Act of 1933 on May 31, 2012, July 23, 2012, August 7, 2012, August 24, 2012, and September 6, 2012. The work of Plaintiffs' Counsel was a material factor in Defendants making these supplemental disclosures, concerning, among other things: the property appraisals, fairness opinions, valuation methodologies, including the 50/50 allocation, joint venture and discounted cash flow methodologies, and the derivation of exchange values used in connection with the proposed Consolidation; the Malkin family's interests, including ownership interests in the Public and Private LLCs, override interests and interests in management and construction companies, and the valuation of those interests; the conflicts of interest between the members of the Class and Defendants; the Helmsley Estate's impetus to sell its interests and the risks associated with sale alternatives to the proposed Consolidation; the exchange value allocated to Defendants; the definition and explanation of enterprise value; the payment to the Class of excess cash held by the Public LLCs and additional distributions accrued prior to the closing and Consolidation; the transaction expenses of the Consolidation and their potential reimbursement; the projected distributions by the REIT as compared to historical distributions to Participants; the proposed centralized management structure and makeup of the REIT; and the assets being contributed to the REIT and improvements made thereon. Negotiations continued contemporaneously and thereafter regarding additional cash consideration to be provided to Class Members, as well as other measures and further disclosures to ensure that Class Members were able to make an informed judgment whether to consent to the Consolidation.

On September 28, 2012, following extensive negotiations, the parties agreed to a Stipulation of Settlement to settle the Actions.

The Settlement as set forth in the Stipulation was reached after arm's-length negotiations between the parties who were all represented by counsel with extensive experience and expertise in shareholder class action litigation. During the negotiations, all parties had a clear view of the strengths and weaknesses of their respective claims and defenses. Plaintiffs and their counsel

have concluded that the Settlement Fund will fairly compensate the Class members for the compromise of their claims, that the option for participants in the Public LLCs to receive OP Units should enable Class members to defer taxation, a benefit whose value would exceed \$100 million, and that additional disclosures have provided the Participants with information sufficient to make a fully-informed decision as to whether to vote in favor of the Consolidation. As a result, Plaintiffs and their counsel believe that the Settlement is in the best interest of the Settlement Class, and the named class representatives intend to support the transaction as modified.

The Plaintiffs and their Counsel recognize the expense and length of continued proceedings necessary to prosecute the Actions against Defendants through trial and appeals. Moreover, even if Plaintiffs were to prevail after years of litigation, such a victory would come too late to assist Participants.

The Plaintiffs and their Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Actions, as well as the difficulties and delays inherent in such litigation. The Plaintiffs and their Counsel are also mindful of the inherent problems of proof and possible defenses to the violations asserted in the Actions. The Plaintiffs and their Counsel believe that the settlement set forth in the Stipulation confers immediate, substantial benefits upon the Settlement Class members. Based on their evaluation, the Plaintiffs and their Counsel have determined that the settlement set forth in this Stipulation is in the best interests of the Settlement Class.

Defendants deny each and all of the claims and contentions alleged in the Actions. Defendants expressly deny any wrongdoing, fault or liability arising out of any of the events, transactions, conduct, statements, acts or omissions alleged, or that could have been alleged, in the Actions, deny that they or anyone else committed any violation of law, deny that they or anyone else breached, or aided and abetted any breach of, any fiduciary duty or other duty, deny that they or anyone else acted improperly in any way, deny that the Plaintiffs or the Settlement Class have suffered any damage and deny that the Plaintiffs or the Settlement Class were harmed

by the conduct alleged in the Actions or by any conduct of the Defendants or anyone else. Defendants believe that they and their advisors acted properly at all times and that the Actions have no merit. Accordingly, the Stipulation and any and all exhibits or documents referred to herein, or any term or representation herein or therein, or any action taken to carry out the Stipulation, are not, and shall in no event be construed or deemed to be, evidence or an admission or a concession by any person or entity.

Nonetheless, Defendants have concluded that further conduct of the Actions could be protracted and expensive. Defendants have taken into account the uncertainty and risks inherent in any litigation, especially in complex matters such as the Actions. Defendants have, therefore, determined that it is desirable and beneficial to them that the Actions be settled in the manner and upon the terms and conditions set forth in this Stipulation, in order to: (i) avoid the substantial expense, inconvenience and distraction of continued litigation, (ii) dispose of potentially burdensome and protracted litigation and (iii) put to rest and terminate the Released Claims.

5. How Do I Know if I Am Part of the Settlement?

For purposes of the Settlement, the Court has preliminarily certified a Settlement Class consisting of all participants in any of the Public LLCs and Private Entities other than (a) Defendants, (b) Thomas N. Keltner, Jr., (c) Peter L. Malkin, his lineal descendants, and their spouses, (d) Lester S. Morse, Jr., his lineal descendants, and their spouses, (the parties in items (a) through (d) being the “Excluded Parties”), (e) any successor or assign of the Excluded Parties, (f) any entity in which an Excluded Party is an ultimate economic beneficial owner (an “Excluded Entity”), and (g) any trust in which an Excluded Party is an ultimate remainder beneficiary (an “Excluded Trust”); provided, however, that the Class shall in any case include all persons not among the Excluded Parties, fully as if each such person were a direct Participant, to the extent such person is an ultimate economic beneficial owner in an Excluded Entity or an ultimate remainder beneficiary in an Excluded Trust.

6. What Benefits Were Obtained as Part of the Settlement?

In consideration for the agreement to dismiss the Released Claims with prejudice, and for entry of the Final Judgment, Defendants:

(i) will establish a cash Settlement Fund in the amount of \$55 million, a minimum of 80% of which will be cash and a maximum of 20% of which will be freely tradable REIT securities (OP Units and/or Class A Common Stock only) to be funded in accordance with the Stipulation and distributed to the members of the Class in accordance with the Plan of Allocation; and

(ii) have agreed that: (a) the IPO will be on the basis of a firm commitment underwriting; (b) if, during the solicitation period, any of the three Public LLC's percentage of total exchange value is lower than what is presented in the final Form S-4 by a factor of ten percent (10%) or more, such decrease will be promptly disclosed by Defendants to investors in any such Public LLC with the following language immediately following such disclosure: "YOU HAVE THE RIGHT TO CHANGE YOUR VOTE WHILE THIS CONSENT SOLICITATION REMAINS OPEN BY [INSERT INSTRUCTION]"; and (c) unless total gross cash proceeds of six hundred million dollars (\$600,000,000.00) is committed in the IPO, Defendants will not proceed with the IPO without first obtaining further approval from the Public LLCs; and

(iii) have agreed that the Action was a material factor in their establishing a tax deferral benefit to Class members who are participants in the Public LLCs, estimated to be worth in excess of \$100 million, by permitting them to have the choice of receiving Class A Common Stock or, as to a portion of their participation units, OP Units and Class B Common Stock; and

(iv) made additional disclosures in or changes to the Registration Statement, that were identified by Plaintiffs, regarding various matters, as described above.

These benefits are all in addition to the consideration you are receiving in exchange for your Participation interests as set forth in the Consent Solicitation that you have separately received. Furthermore, all of these benefits and consideration are contingent upon the (i) Public LLCs' approval of the Consolidation; (ii) the closing of either of the Consolidation plus the IPO

or the Third Party Transaction, as contemplated in each case by the Form S-4, no later than December 15, 2015; and (iii) final Court approval of the Settlement..

The Settlement Fund will be distributed to the Participants in the Public LLCs and Private Entities pursuant to the Plan of Allocation attached as Schedule A hereto and within a reasonable time after Final Approval of the Settlement. The Settlement Fund may be distributed in more than one distribution.

YOU DO NOT HAVE TO FILE A CLAIM FORM TO RECEIVE YOUR SHARE OF THE SETTLEMENT FUND. THE FUND WILL BE AUTOMATICALLY DISTRIBUTED TO CLASS MEMBERS. If you believe that the accompanying Data Sheet does not accurately reflect your ownership interests in the Public LLCs or Private Entities you may submit corrective information and supporting documents to Class Counsel not later than April 18, 2013.

7. What Claims Are Being Released?

The Settlement provides for the release of all “Released Claims” against the “Released Persons”.

“Released Claims” shall mean all claims, demands, causes of action, judgments and suits, of any kind or nature whatsoever, whether known or unknown, contingent or absolute, disclosed or undisclosed, hidden or concealed, matured or unmatured, and whether individual, class, derivative, representative, legal, equitable or any other type or in any other capacity, that have been, could have been or in the future can or might be asserted in the Action by Plaintiffs or the putative Class members, in their capacities as Participants in the Public LLCs and/or Private Entities, arising out of or relating directly or indirectly to any of the facts alleged in the Complaints or in any other court, tribunal or proceeding or relating to the acceptance, rejection, consummation, or failure to consummate the Consolidation or any Third Party Transaction (collectively, the “Proposals”) (including, but not limited to, any claim arising under federal or state statutory or common law relating to alleged fraud, breach of any duty, breach of contract, negligence, partnerships or limited liability companies or violations of federal securities laws or state laws or regulations, and violations of federal or state laws or regulations relating to

disclosure, or any violations of the rules and regulations of FINRA or the New York Stock Exchange) against any of the Released Persons in connection with the transactions, acts or occurrences described in the Complaints or relating to the Proposals; provided, however, this release shall not include the right of any person: to enforce the terms of the Settlement; to pursue any claim arising from the IPO; to pursue any claim arising from the purchase of Class A stock of the REIT in the sale of such stock to the public pursuant to the IPO; to pursue any claim arising from any alleged misconduct with respect to the proper recording or tabulation of any Class Member's vote pursuant to the Consent Solicitation of the Public LLCs; or to pursue any claim arising from or related to any supplement to the Form S-4 that is declared effective to which Class Counsel objects in writing, which objection will not be unreasonably made or delayed, so long as Class Counsel shall have adequate opportunity to review such supplement.

The Released Claims include, without limitation, all Unknown Claims. "Unknown Claims" shall mean any and all Released Claims that any plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons. Class Counsel acknowledge, and the Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the Released Claims was separately bargained for and was a key element of the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, the Class shall expressly waive, and each Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law pursuant to, or which is similar to, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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

“Released Persons” shall mean (a) Empire State Realty Trust, Inc., Empire State Realty OP, L.P., Malkin Holdings L.L.C., Malkin Properties, L.L.C., Malkin Properties of New York, L.L.C., Malkin Properties of Connecticut, Inc., Malkin Construction Corp., The Estate of Leona M. Helmsley, Duff & Phelps Corp., Helmsley Enterprises, Inc., The Leona M. Helmsley and Harry B. Helmsley Charitable Trust, the Public LLCs, and the Private Entities, (b) Peter L. Malkin, his lineal descendants, and their spouses, (c) Thomas N. Keltner, Jr., (d) Lester S. Morse, Jr., his lineal descendants, and their spouses, (e) any underwriter, (f) any present or former advisor of any of the foregoing, (g) any present or former associate, affiliate, parent, subsidiary, or (if any) controlling person of any of the foregoing, (h) any predecessor or successor of any of the foregoing, (i) any officer, director, employee, stockholder, equity owner, general or limited partner, trustee, executor, joint venturer, member, or manager of any of the foregoing, including the “agents” under the governing documents of any entity listed in clause (a) above, (j) any “immediate family member” (as defined in Rule 16a-1(e) under the Exchange Act) of (b) though (d) above, (j) any person who can make an indemnity or contribution claim relating to any Released Claim against any of the foregoing, (k) any Excluded Entity or Excluded Trust and (l) any heir, executor, personal or legal representative, estate, administrator, successor or assign of any of the foregoing.

II. THE LAWYERS REPRESENTING YOU

8. Do I Have a Lawyer in this Case?

The Court appointed the following law firms, from among Plaintiffs’ Counsel, as Class Counsel to represent the named Plaintiffs and all the Settlement Class:

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
270 Madison Avenue
New York, New York 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653

CHIMICLES & TIKELLIS LLP
361 West Lancaster Avenue

One Haverford Centre
Haverford, Pennsylvania 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633

LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

POMERANTZ GROSSMAN HUFFORD
DAHLSTROM & GROSS LLP
600 Third Avenue
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665.

If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will the Lawyers Be Paid?

Plaintiffs' Counsel have neither received any payment for their services in prosecuting the Actions on behalf of Plaintiffs and the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses incurred to date. Plaintiffs' Counsel will request the Court's approval of attorneys' fees in the amount of fifteen million dollars (\$15,000,000.00), and reimbursement of expenses not to exceed four hundred thousand dollars (\$400,000.00), to be paid from the Settlement Fund, in accordance with the provisions of the Stipulation. Neither you nor any other member of the Settlement Class will be personally liable for Plaintiffs' attorneys' fees and expenses. The award of attorneys' fees and expenses approved by the Court will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

III. THE SETTLEMENT HEARING

10. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement. The Settlement Hearing will be held before the Honorable O. Peter Sherwood at 10:00 A.M., on May 2, 2013, at the Supreme Court of the State of New York, County of New York, located at 60 Centre Street, New York, New York, 10007. At the Settlement Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. If the Settlement is approved, the Court will also consider whether to approve the payment of Plaintiffs' attorneys' fees and expenses. The Court may decide these issues at the Settlement Hearing or take them under advisement to issue a written opinion. We do not know how long these decisions will take. The Court may postpone the Settlement Hearing without further notice.

11. Do I Have to Come to the Hearing?

No. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you will have mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

12. May I Speak at the Hearing?

If you are member of the Settlement Class who has submitted a written objection, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must mail a letter called a "Notice of Intention to Appear at Settlement Hearing in *In re Empire State Realty Trust, Inc. Investor Litigation*, Index No. 650607/2012." Be sure to include your name, address, telephone number, your signature, and the entity/ies in which you are a Participant, and the grounds or reasons why you wish to appear and be heard. Your Notice of Intention to Appear must be received no later than fourteen days prior to the Settlement Hearing, April 18, 2013, by the Clerk of the Court and Class Counsel and Defendants' Counsel, at the addresses listed below.

IV. IF YOU DO NOTHING

13. What Happens if I Do Nothing at All?

If you do nothing, you will still be bound by the judgment of the Court. This means that you will still receive the benefits of the Settlement, including; (a) the enhanced disclosures made by Defendants in their SEC filings; (b) in the case of Participants in the Public LLCs, the option for tax deferral benefits valued at \$100,000,000 in the form of the option to elect to take OP Units and Class B stock instead of Class A stock; and (c) a distribution from the \$55,000,000 Settlement Fund to the extent provided for you in the Allocation Plan. You are NOT required to submit a claim form in order to participate in the Settlement. It also means that you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants about the same claims and issues in the Actions if the Settlement is approved by the Court.

V. OPTING OUT OF THE SETTLEMENT

14. How Do I Opt Out of the Settlement?

If you do not wish to be a Class Member in this litigation and wish to retain your right to pursue your own independent action for monetary damages only, you must submit to Class Counsel and Defendants' Counsel, at the addresses listed below, an election to opt out of this class action by no later than fourteen days prior to the Settlement Hearing, April 18, 2013. You may do this by mailing a written request for exclusion ("Request for Exclusion") which shall: (i) state the name, mailing address, e-mail address (if any) and telephone number (if any) of the person or entity requesting exclusion; (ii) contain a statement attesting to the fact that such person or entity is a member of the Class, and setting forth the identities of the Public LLCs and/or Private Entities in which such person or entity holds a participation stake and the amount of such stake; and (iii) state that the person or entity wishes to be excluded from the Class.

If you properly submit a timely election to opt out of this class action, you will not be eligible to receive any payment from the Settlement Fund. You will, however, retain whatever legal rights you may have for monetary relief against the Defendants and with regard to the claims that are the subject of this litigation.

VI. OBJECTING TO THE SETTLEMENT

15. How Do I Tell the Court that I Do Not Like the Settlement?

You may object to the Settlement, the Plan of Allocation, or to the fees requested by Class Counsel by telling the Court that you do not agree with the Settlement or some part of it. In order to object, you must be a member of the Settlement Class. You must give reasons why you think the Court should not approve it. The Court will consider your views. Any objection must be in writing, including the case caption (contained on the first page of this Notice), and must consist of: (i) written notice of objection, providing your name, address, and telephone number, (ii) a detailed statement of all your specific objections to any matter before the Court, (iii) all of the grounds therefor, as well as all documents and writings which you desire the Court to consider, and (iv) proof of participation in the Public LLCs and/or Private Entities. If you are represented by counsel, your objection must also include the name, address, and telephone number of your counsel. Any objection to the Settlement must be mailed or delivered no later than fourteen days prior to the Settlement Hearing, April 18, 2013, to Class Counsel, Defendants' Counsel, and the Court, at the addresses listed below. Any person who fails to object in this manner shall be deemed to have waived their objection and forever will be barred from raising the objection or otherwise contesting the Settlement, the class action determination, adequacy of representation by Plaintiffs and their counsel, the Final Order and Judgment to be entered in this Action and the Fee Amount in this or any other action or proceeding.

VII. ADDRESSES

The addresses referenced above for use in submitting objections, requests for exclusion, and/or requests to appear at the Settlement Hearing are as follows.

The Court:

Clerk of Part 49
Supreme Court of the State of New York
County of New York, Commercial Division, Part 49
60 Centre Street, Room 252
New York, New York 10007

Class Counsel:

WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
Attn: Lawrence P. Kolker and Lydia A. Keaney
270 Madison Avenue
New York, New York 10016
Telephone: (212) 545-4600
Facsimile: (212) 545-4653

CHIMICLES & TIKELLIS LLP
Attn: Nicholas Chimicles and Kimberly Donaldson Smith
361 West Lancaster Avenue
One Haverford Centre
Haverford, Pennsylvania 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633

LABATON SUCHAROW LLP
Attn: Lawrence Sucharow
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

POMERANTZ HAUDEK GROSSMAN HUFFORD DAHLSTROM & GROSS LLP
Attn: Marc Gross and Matthew Tuccillo
600 Third Avenue
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665

Defendants' Counsel:

DEWEY PEGNO & KRAMARSKY LLP

Attn: Thomas E.L. Dewey
777 Third Avenue
New York, NY 10017

Ronald S. Rolfe
Worldwide Plaza
825 Eighth Avenue,
New York, NY 10019

CRAVATH, SWAINE & MOORE LLP
Attn: Greg C. Cheyne
Worldwide Plaza
825 Eighth Avenue,
New York, NY 10019

VIII. GETTING MORE INFORMATION

16. Are There More Details About the Settlement?

This Notice summarizes the proposed Settlement. This summary is qualified by, and subject to, the detailed terms of the Stipulation dated September 28, 2012. The Stipulation of Settlement and other supporting papers will be posted on the Court's website, <https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=IGzQImvWOovpRPkpEpzNUw=&display=all&courtType=New%20York%20County%20Supreme%20Court>, and may be inspected during business hours at the office of the Clerk of the Court. The Stipulation is also available at www.whafhclass.com

For further information regarding this settlement you may contact Plaintiff's Counsel Wolf Haldenstein at (212) 545-4600.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

/707045v3

EXHIBIT A

IN RE EMPIRE STATE REALTY TRUST, INC.
INVESTOR LITIGATION

:
:
: **Index No. 650607/2012**
:
: **IAS Part 49**
:
: **Sherwood, J.**
:
:

PLAN OF ALLOCATION

1. Capitalized terms used herein shall have the same meaning as the term is defined in the Stipulation of Settlement (“Stipulation”), unless otherwise stated.

2. For purposes of allocation and distribution the "Net Settlement Fund" is defined as the gross Settlement Fund (\$55,000,000 plus any interest and dividends earned thereon) less any attorneys' fees and any other costs and expenses as awarded by the Court. All costs of Notice, claims administration and distribution of the Net Settlement Fund will be borne by Defendants, and, therefore, all such costs will not be subtracted from the gross Settlement Fund in determining the Net Settlement Fund.

3. For purposes of allocation and distribution of the Net Settlement Fund, and in accordance with the Stipulation, the Class consists of:

All Participants in the Public LLCs and Private Entities (as defined in the Stipulation), except as set forth in paragraph 4 herein.

4. In accordance with the Stipulation, the Class does not include:

- a) the “Excluded Parties” defined as: (i) Defendants, (ii) Thomas N. Keltner, Jr., (iii) Peter L. Malkin, his lineal descendants, and their spouses, (iv) Lester S. Morse, Jr., his lineal descendants, and their spouses;
- b) any successor or assign of the Excluded Parties;
- c) any entity in which an Excluded Party is an ultimate economic beneficial owner (an “Excluded Entity”);
- d) any trust in which an Excluded Party is an ultimate remainder beneficiary (an “Excluded Trust”); and,

- e) those persons and entities (if any) who timely and validly request exclusion from the Class (“Opt-Out Class Members”)¹

5. As part of the Notice, each Class Member will receive a Data Form that identifies that Class Member’s investment in the Public LLCs and Private Entities. Each Class Member will receive his/her/its distribution from the Net Settlement Fund based on the information provided to the Class Member in the Data Form. The information in the Data Form will be provided by Defendants and is being relied upon as accurate by Class Counsel. A Class Member will not be required to complete and submit a proof of claim.

6. A Class Member may provide information to correct or modify the Data Form by timely submitting credible, correcting information and any required supporting documentation, in accordance with the instructions provided in the Notice.

7. Based on the allegations in the Plaintiffs’ Complaints, the discovery taken and consultation with real estate industry and forensic accounting experts, the Class’s damages primarily relate to: (i) the valuation of four entities that owned properties subject to an operating lease held by a Malkin-affiliated entity; (ii) the voluntary and contractual capital transaction override payments (“override”); and (iii) the contribution by certain Defendants of their management and construction companies to the REIT. In creating this Plan of Allocation, Class Counsel and their experts assessed the relative strengths and risks of these claims, as well as the relative size of estimated damages associated with each of them.

8. Consistent with such assessment of the relative strengths and risks of the claims, the Net Settlement Fund will be distributed to the Class Members in accordance with the following principles:

- a) *Allocation of Net Settlement Fund among Public LLCs and Private Entities.* The Net Settlement Fund will first be allocated to each Public LLC and Private Entity based on their relative percentage of the overall weighted damages for the claims, as set forth in the Allocation Chart, below.
- b) *Allocation of Net Settlement Fund to each Class member in each Public LLC and Private Entity.*
 - i. The Net Settlement Fund allocable to each Public LLC and Private Entity will then be allocated to each Class Member based on each Class Member’s invested capital in that Public LLC or Private Entity.

¹ “Opt-Out Class Members” are excluded from the Class solely with respect to any right they may have to pursue potential claims for monetary damages related to the Consolidation, but are otherwise bound by the Final Order and Judgment in all other respects, including with respect to the release of all Released Claims against the Released Persons for any and all injunctive, declaratory, and other equitable relief.

- ii. Only Class Members who voluntarily agreed to a capital override payment, whether by contract or consent, incurred any alleged damages because of such override payment in the Consolidation. As such, Class Counsel allocated the portion of the Net Settlement Fund attributable to the Override claim only to such Class Members. The distributions made from the Net Settlement Fund to Class Members who are Participants in Empire State Building Associates LLC and 250 West 57th St. Associates LLC who did not consent to an override will not include any payment for such claim.
- iii. The Allocation Chart, below, sets forth in dollars the amount of the Net Settlement Fund allocated to the members of the Class based on an original \$10,000 investment.
- iv. Allocations to the Class Member investors in the Option Properties (112-122 West 34th Street and 1400 Broadway) will be distributed to such Class Members only upon the exercise of the option by the REIT to consolidate such property into the REIT. To the extent that the distributions to such Class Members have not been made by the time of the distribution of the residual Net Settlement Fund (§ 10 below) and the closing of the Settlement Fund, any remaining amount of Net Settlement Fund attributable to such Class Members will be held for distribution to such Class Members upon such election, if ever, which election must occur no later than seven years from the completion of the IPO. To the extent the election does not occur, the money in Escrow will be distributed *cy pres* to the same recipients of the residual amounts of the Net Settlement Fund per the Stipulation and § 10 below.
- v. Class Members shall receive distributions from the Net Settlement Fund based on the original issuance price of their investment in the Public LLC(s) and/or Private Entit(ies) and to the extent they continue to hold such investment as of the date of the Consolidation. To the extent a member of the Class made no investment in the Public LLC or Private Entity, or sells their investment prior to the Consolidation, that Class member's distribution will be \$0.

ALLOCATION CHART^[1]

**THESE AMOUNTS ARE APPROXIMATE AND
MAY BE ADJUSTED SUBJECT TO THE COURT'S ORDERS**

Public LLCs and Private Entities	Allocation of Damages	ALLOCATION OF NET SETTLEMENT FUND	Per \$10,000 Invested w/ override	Per \$10,000 Invested w/o override
Empire State Building Associates L.L.C.	74.607%	\$29,544,241.00	\$9,836	\$8,350
60 East 42nd St. Associates L.L.C.	10.478%	\$4,149,147.00	\$6,527	n/a
250 West 57th Street Associates L.L.C.	5.013%	\$1,985,038.00	\$6,370	\$4,700
Seventh & 37th Building Associates L.L.C.	2.037%	\$806,738.00	\$7,095	n/a
Empire State Building Co L.L.C.	1.856%	\$734,946.00	\$2,179	n/a
Lincoln Building Associates L.L.C.	1.111%	\$440,143.00	\$8,000	n/a
1333 Broadway Associates L.L.C.	.017%	\$4,527.00	\$137	n/a
1350 Broadway Associates L.L.C.	.554%	\$219,400.00	\$7,740	n/a
501 Seventh Avenue Associates L.L.C.	.013%	\$5,301.00	\$8,480	n/a
Marlboro Building Associates L.L.C.	.703%	\$278,325.00	\$1,619	n/a
Fisk Building Associates L.L.C.	.754%	\$298,723.00	\$1,527	n/a
500 Mamaroneck Avenue L.P.	.005%	\$2,132.00	\$1.60	n/a
Fairfield Merritview Limited Partnership	.026%	\$10,365.00	\$12.22	n/a
First Stamford Place L.L.C.	.002%	\$614.00	\$0.27	n/a
Fairfax Merrifield Associates L.L.C.	.035%	\$13,676.00	\$96.54	n/a
Merrifield Apartments Company L.L.C.	.041%	\$16,285.00	\$360	n/a
New York Union Square Retail L.P.	.019%	\$7,565.00	\$10.20	n/a
One Station Place, Limited Partnership	.002%	\$780.00	n/a ^[2]	n/a
Westport Main Street Retail L.L.C.	.003%	\$999.00	\$1.10	n/a
Soundview Plaza Associates II L.L.C	.004%	\$1,631.00	\$1.20	n/a
East West Manhattan Retail Portfolio L.P.	.012%	\$4,744.00	\$4.99	n/a
1185 Swap Portfolio L.P.	.003%	\$1,290.00	\$5.27	n/a
112 West 34th Street Company L.L.C.	.610%	\$241,387.00	\$26,970	n/a
112 West 34th Street Associates L.L.C.	1.264%	\$500,651.00	\$1,315	n/a
1400 Broadway Associates L.L.C.	.837%	\$331,352.00	\$4,420	n/a
Totals	100.01%	\$39,600,000.00		

[1] These allocation amounts of the Net Settlement Fund assume that the gross Settlement Fund is reduced by a court-approved payment to Class Counsel of \$15,000,000 in attorney's fees and \$400,000 in reimbursed expenses.

[2] Distribution of Net Settlement Fund Allocation to be paid to Station Place LLC.

9. The Net Settlement Fund may be distributed, at Class Counsel's discretion, in one or more installments, as provided for in the Stipulation.

10. Any residual amount remaining in the Net Settlement Fund after all distributions of the Net Settlement Fund to Class members have been made pursuant to this Plan of Allocation, including without limitation uncashed or returned distributions, shall be disbursed per Class Counsel's direction, as approved by the Court, in the form of an additional distribution to Class Members or pursuant to *cy pres* principles. Defendants retain no interest in or right to any residual amount remaining in the Settlement Fund.