

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CHRISTOPHER R. LONNER, individually and	:	
on behalf of all others similarly situated,	:	Index No. 04-2246
	:	(Scheinkman, J.)
Plaintiff,	:	
	:	
vs.	:	
	:	
SIMON PROPERTY GROUP, INC.	:	
	:	
Defendant.	:	
-----X		
ALIZA GOLDMAN, individually and	:	
on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
SIMON PROPERTY GROUP, INC.	:	
	:	
Defendant.	:	
-----X		

SETTLEMENT AGREEMENT

This Settlement Agreement along with the annexed exhibits ("Settlement Agreement") is made and entered into as of this 9th day of July, 2010, by, between and among Plaintiffs Christopher R. Lonner ("Lonner") and Aliza Goldman ("Goldman") (hereinafter collectively "Plaintiffs"), individually and on behalf of the class defined herein (the "Class"), and Defendant Simon Property Group, Inc. ("Simon") (hereinafter, collectively with Plaintiffs, the "Parties"), having reached a Settlement of the disputes between them in the above-captioned action (the "Action"), by their respective attorneys, subject to Court approval.

WHEREAS:

A. On February 18, 2004, Lonner filed a Class Action Complaint (“Lonner(’s) Complaint) in the Supreme Court for the State of New York, Westchester County, asserting claims for breach of contract, violations of General Business Law § 349 and unjust enrichment against Simon in connection with its sale of Simon Visa Gift Cards (“Card(s)”) and the imposition by Simon of the \$2.50 monthly administrative fee automatically deducted by Simon from any Card balance remaining more than six months after Card issuance (the “Administrative Fee(s)”).

B. By Decision and Order dated September 23, 2004 and entered September 24, 2004, Justice Rudolph granted Simon’s April 30, 2004 motion to dismiss, finding that Lonner’s claims were preempted by federal law. Lonner filed a timely notice of appeal.

C. On February 7, 2005, Goldman filed a Class Action Complaint in the Supreme Court for the State of New York, Nassau County, asserting claims, *inter alia*, for breach of contract, violations of General Business Law § 349 and unjust enrichment (“Goldman(’s) Complaint”).

D. By Order dated September 8, 2005 and entered September 12, 2005, Justice McCarty of the Supreme Court, Nassau County, granted Simon’s motion to dismiss on federal preemption grounds. Goldman timely appealed Justice McCarty’s decision to the Second Department.

E. By decisions in the two appeals issued the same day, July 5, 2006, the Second Department reversed the orders of the lower courts, and remanded the cases for further proceedings.

F. After remand, Lonner filed an Amended Class Action Complaint on August 18, 2006 (“Lonner(’s) Amended Complaint”), and Goldman filed an Amended Class Action

Complaint on August 21, 2006 (“Goldman(’s) Amended Complaint”) (collectively hereafter the “Amended Complaints”), asserting claims, *inter alia*, for breach of contract, violations of GBL § 349 and unjust enrichment. The Complaints included amended class definitions and class periods. Simon filed a CPLR 3211 motion in each action seeking the dismissal of the Amended Complaints in their entirety.

G. On February 27, 2007, Justice Rudolph issued a Decision and Order denying Simon’s motion to dismiss Lonner’s claims for breach of contract and violations of GBL § 349, and granting Simon’s motion to dismiss Lonner’s claim for unjust enrichment. Simon timely appealed.

H. On March 23, 2007, Simon answered Lonner’s Amended Complaint denying claims and asserting affirmative defenses.

I. On June 20, 2007, Justice Parga denied Simon’s motion to dismiss Goldman’s claims for breach of contract, unjust enrichment and money had and received, and granted Simon’s motion to dismiss Goldman’s GBL §§ 349 and 396-i claims and claims for declaratory and injunctive relief. Both Simon and Goldman timely appealed Justice Parga’s order.

J. On or about August 9, 2007, Simon answered Goldman’s Amended Complaint denying the claims and asserting affirmative defenses.

K. On August 20, 2007, Goldman moved for an order that sought, among other things, to consolidate her action with Lonner’s action in Westchester County, which was granted by Order issued on November 27, 2007.

L. On October 14, 2008, the Second Department affirmed Justice Rudolph’s February 27, 2007 Decision and Order denying Simon’s motion to dismiss Lonner’s breach of contract and GBL § 349 claims.

M. On November 25, 2008, the Second Department affirmed those parts of Justice Parga's June 20, 2007 Order denying Simon's motion to dismiss Goldman's breach of contract, unjust enrichment, and money had and received claims, affirmed the dismissal of the § 396-i claim, and reversed the part of the court's order dismissing Goldman's § 349 claim and for declaratory and injunctive relief.

N. By Decision and Order dated June 25, 2009, Justice Rudolph granted Plaintiffs' motion for class certification, including certifying Plaintiffs as class representatives and their counsel as counsel on behalf of the class. The class identified in Plaintiffs' motion was as follows:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively "Simon")) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 ("Card(s)") that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance ("Dormancy Fees"); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Dormancy Fees.

Simon timely appealed Justice Rudolph's decision to the Second Department.

O. Effective June 30, 2009, the case was transferred to Justice Alan D. Scheinkman of the Commercial Part, Supreme Court for Westchester County.

P. By order dated October 30, 2009, Justice Scheinkman directed that notice of the pendency of the class action be disseminated to the class identified therein in accordance with the schedule set forth in the order. Notice was disseminated in accordance with that order beginning in January, 2010, and potential class members were given the right to request exclusion from the class.

Q. On April 15, 2010, Justice Scheinkman scheduled the trial of the matter to take place the week of June 14-18, 2010.

R. The parties conducted arm's length settlement negotiations and reached a settlement, subject to satisfactory settlement papers on May 26, 2010, and reported that settlement to the Court on May 28, 2010.

S. Although Plaintiffs believe, based on the thorough investigation they have conducted, that their claims have substantial merit, they recognize that the claims are disputed and that the ultimate outcome of the Action is uncertain. Plaintiffs and their counsel have also taken into account factors including the length and expense of continued proceedings necessary to prosecute the Action against Simon through trial and appeals. Plaintiffs and their counsel therefore desire to settle the Action on the terms and conditions hereinafter set forth, and believe such Settlement to be fair, reasonable and adequate and in the best interests of Plaintiffs and the other members of the Class defined herein.

T. Simon has denied, and continues to deny, each and every allegation of wrongdoing made against it and that could have been made against it in the Amended Complaints, and asserts that it has meritorious defenses to those claims, that its conduct has been lawful and proper in all respects, that no person or entity has suffered any harm or damages as a result of any matter that is the subject or underlies any of the claims against it in the Action, and that judgment should be entered dismissing all claims against it with prejudice. Simon has entered into this Settlement Agreement for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing or liability whatsoever. By so doing, Simon desires to settle, compromise and terminate the Action with prejudice, and put to rest forever all claims alleged in the Amended Complaints.

Plaintiffs and Simon agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Simon or a concession by Plaintiffs that the claims lack merit.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned Parties, through their respective counsel and subject to all of the terms and conditions set forth herein and the approval of the Court pursuant to CPLR Article 9, that this Action, as well as the claims alleged in the Amended Complaints hereby are compromised and settled on the terms and conditions hereinafter set forth:

1. Promptly after the execution of the Settlement Agreement, the Parties shall apply to the Court for the entry of an Order Preliminarily Approving Class Action Settlement, Scheduling Fairness Hearing and Authorizing Dissemination of Notice of Settlement (the “Preliminary Approval Order”) substantially in the form annexed as Exhibit A:

(a) Certifying the following class for purposes of this Settlement:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively “Simon”)) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 (“Card(s)”) that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance (“Administrative Fees”); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the “Class”).

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the “Notice Order”). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors.

(b) Scheduling a hearing (the “Fairness Hearing”) to determine whether the proposed Settlement should be approved as fair, reasonable and adequate to the members of the

Class, and the amount of fees and expenses to be awarded to Plaintiffs' counsel and incentive fees to Plaintiffs;

(c) Approving as to form the content of the Notice of Proposed Settlement of Class Action and Fairness Hearing, and Claim Form/Release (the "Settlement Notice"), attached hereto as Exhibit B, and the Summary Notice of Proposed Settlement of Class Action and Fairness Hearing ("Summary Settlement Notice"), attached as Exhibit D hereto;

(d) Directing (i) the Settlement Administrator to email the Settlement Notice if email addresses are available, or to mail the Settlement Notice by first-class mail, to potential members of the Class who have not previously requested exclusion and to whom notice of pendency of the action previously was disseminated pursuant to the Notice Order, (ii) the Settlement Administrator to publish the Summary Settlement Notice in the manner agreed to by the Parties; (iii) Simon and Settlement Class Counsel and the Settlement Administrator to post the agreed-upon Settlement Notices or documents as set forth herein to their respective websites, and (iv) Simon to post placards with the Summary Settlement Notice in the designated Simon Malls;

(e) Finding that the emailing and mailing of the Settlement Notice, the publication of the Summary Settlement Notice, and the websites and placard postings pursuant to paragraph 1(d) hereof constitutes the best notice practicable under the circumstances and is due and sufficient notice of the matters set forth in the Settlement Notice and Summary Settlement Notice to all members of the Class, pursuant to CPLR 904, 907 and 908, and that the Settlement Notice and Summary Settlement Notice and their dissemination prescribed herein fully satisfy the requirements of due process and the CPLR;

(f) Appointing RG2 as designated Settlement Administrator selected by the Parties for approval by the Court in the Preliminary Approval Order (and subject to further court order and this Settlement Agreement), to administer the notice procedures of the Settlement, as well as the administration of the claims process and disbursement of the Cy Pres Fund (as further described in Paragraphs 2-3 below); and

(g) Pending the final determination of the fairness, reasonableness and adequacy of the proposed Settlement, enjoining any member of the Class either directly, representatively, or in any other capacity from prosecuting, instituting or commencing, on behalf of that Class member or the Class, any claim alleged in the Amended Complaints.

2. (a) Simon has agreed to make the following payments on the conditions set forth in this Settlement Agreement:

(1) (a) Simon will pay the claims of Class members through a claims process that will refund Administrative Fees (the \$2.50 per month charge imposed on any card balances after 6 months of card issuance) for the Cards of all Class members who properly complete the Claims Form/Release in accordance with the procedures set forth in Paragraph 2(a)(1) (the “Refund(s)”). Simon will pay a Refund to a Class member equal to 100% of the Administrative Fees incurred after 6 months from the Card purchase up to the Card expiration date. If a Gift Card was renewed through the purchase of a replacement Card and the payment of an expired Card fee, if applicable, and additional Administrative Fees were deducted from the Card balance after the expiration date and before the issuance of the new Card, the Refund paid by Simon will also include 100% of these additional Administrative Fees (but not the expired card replacement fee). Simon will only pay a Refund to one Class member for each Card number.

(b) Under the claims process for the determination of Refunds, the Class member will provide the Card number in question to the Settlement Administrator by filing the Claim Form with the required certification under penalties of perjury that the Class member is the Cardholder entitled to the Refund for the Card number described in the Claim Form. Simon will then run the transaction history for that Card to determine whether Administrative Fees were incurred and provide the transaction history to the Settlement Administrator. Simon will refund to a Class member the amount determined by the Settlement Administrator in accordance with this Agreement, and set forth on the list of approved claims prepared by the Settlement Administrator and agreed to by the Parties or, if a dispute arises, as determined by the Court.

(2) Simon will make a cy pres payment of \$350,000 as further prescribed herein (“Cy Pres Payment”) for distribution to charities agreed to by Parties (the “Cy Pres Fund”), and this Cy Pres Fund will be divided so that 25% will be paid to the following four charities and be restricted so that the funds are used solely in New York: the Greater New York City Affiliate of Susan G. Komen for the Cure; National MS Society with three New York Chapter designations; Junior Achievement with New York Chapter designations; and designated Feeding America New York Food Banks.

(3) Simon will pay Plaintiffs’ total combined attorneys’ fees and expenses as determined in the JAMS proceeding by high-low arbitration before the Honorable John C. Lifland, retired judge of the United States District Court and JAMS mediator, subject to Court approval. The Parties had agreed that the total combined attorneys’ fees and expenses to be paid by Simon, and subject to the mediation and high-low arbitration, shall be no less than

\$750,000 and no more than \$1,000,000. The mediation and arbitration costs will be paid 50% by Simon and 50% by Plaintiffs.

(4) Simon will pay an incentive award of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their efforts in connection with the prosecution of the Action, subject to Court approval.

(5) Simon will pay 100% of the reasonable fees and costs of the Settlement Administrator in connection with notifying Class members of the proposed Settlement, responding to inquiries from all potential Class members regarding their claims and claim forms, processing submitted claim forms, and administering the Settlement prior to and after final approval, including the preparation of the approved claims list, and final distribution of the Cy Pres Payment and, if required, the preparation of all forms and reports necessary for tax and other regulatory compliance in connection with the Settlement. The Parties hereby agree that the Settlement Administrator shall be RG2, the administrator previously agreed to by the Parties and approved by Court in the Notice Order in connection with the dissemination of the Notice of Pendency of Class Action.

(b) Within fourteen (14) calendar days of the Effective Date of the Settlement as set forth in paragraph 7 herein, Simon shall cause the Cy Pres Payment to be paid to the Settlement Administrator to be placed by the Administrator into a non-interest bearing Settlement escrow account named the "Simon Gift Cards Litigation Settlement Fund" to be maintained by the Settlement Administrator in a banking institution acceptable to the Parties.

(c) If the Preliminary Approval Order is entered, the reasonable fees and costs necessary to give Settlement Notice and Summary Settlement Notice of the proposed Settlement to members of the Class and for preliminarily administering the Settlement and processing

claims prior to final approval shall be payable by Simon to RG2 regardless of the final approval of the Settlement. Such fees and costs, which shall be agreed to by Simon and RG2 prior to the Fairness Hearing, include, but are not limited to: (i) the costs of printing and mailing the Settlement Notice and publication of the Summary Notice to all potential Class members; and (ii) the fees for the services of the Settlement Administrator for providing notice of the Settlement to potential members of the Class and preliminarily administering the Settlement and processing claims prior to final approval of the Settlement. Such fees and costs shall be paid by Simon to RG2 within fourteen (14) calendar days after the Fairness Hearing. Simon also agrees to pay the Settlement Administrator's other fees and costs incurred after the Fairness Hearing through and including completion of the administration of the Settlement in accordance with Paragraph 3(e) below.

(d) The Cy Pres Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the Court.

3. If the Settlement is approved, the Settlement benefits and other payment obligations of Simon shall be paid and disbursed as follows:

(a) Simon shall pay to Class members the Refunds in the amounts prescribed and determined in accordance with Paragraph 2(a)(1) above, as to undisputed amounts within thirty (30) calendar days after the later of the Effective Date as set forth in Paragraph 7 hereof or the final determination of the undisputed amounts to be paid in accordance with Paragraph 2(a)(1) by agreement of the Parties, or as to disputed amounts, within thirty (30) calendar days

after the later of the Effective Date as set forth in Paragraph 7 hereof or after the dispute is resolved by agreement or by the Court.

(b) The Settlement Administrator shall cause the Cy Pres Fund to be distributed to the charities prescribed in Paragraph 2(a)(2) above within thirty (30) calendar days after the Effective Date.

(c) Simon shall pay to Settlement Class Counsel the amount of fees and disbursements determined in accordance with this Settlement Agreement and approved by the Court, divided to each Settlement Class Counsel as directed by them, within fourteen (14) calendar days after the Effective Date as set forth in Paragraph 7 hereof. If there is any appeal filed or pending by any Class member on the amount of attorneys' fees and disbursements to be paid to Settlement Class Counsel, Settlement Class Counsel undertake and agree to return to Simon the amounts reflecting any reduced amounts of the attorneys' fees and disbursements paid to them consistent with the reversal or modification no later than fourteen (14) calendar days after such reversal or modification.

(d) Simon shall pay to each Plaintiff for their efforts in connection with the prosecution of the Action such incentive fees as may be awarded by the Court in an amount up to and including \$5,000, with such incentive fees paid by Simon to each Plaintiff within fourteen (14) calendar days after the Effective Date as set forth in Paragraph 7 hereof.

(e) Simon shall pay to RG2 all reasonable fees and costs incurred after the Fairness Hearing through and including completion of the administration of the Settlement not otherwise required to be paid under Paragraph 2(c) above, within thirty calendar (30) days after the later of the Effective Date and the submission of proper documentation in support of those fees and costs and the joint review and approval by the Parties.

4. (a) The Cy Pres Fund shall, upon the Effective Date (defined in Paragraph 7 hereof), constitute a “qualified settlement fund” with the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). The Parties and the Settlement Administrator shall treat the Cy Pres Fund as a qualified settlement fund for all reporting purposes under the federal tax laws.

(b) The Settlement Administrator shall pay any taxes (and any other tax-related fees and expenses) required under applicable law without prior approval of the Court. Neither Plaintiffs, Simon nor their counsel shall have any responsibility for the payment of taxes described in this paragraph.

(c) The Settlement Administrator shall serve as the administrator of the Cy Pres Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3) (1992). The Settlement Administrator will comply with all applicable reporting, withholding, and filing requirements for a qualified settlement fund, including as provided for in Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). Neither Plaintiffs, Simon, nor their counsel shall have any responsibility for the payment or withholding of taxes assessed on the Cy Pres Fund. The Parties to this Settlement agree to cooperate with the Settlement Administrator, each other and any tax attorneys or accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 4.

(d) The Settlement Administrator shall be responsible for the administration of the Settlement, including but not limited to emailing and mailing the Settlement Notice to potential members of the Class and publication of the Summary Settlement Notice, processing and approving claim forms submitted by Class members, and making the Cy Pres distributions to

the designated charities from the Cy Pres Fund. At the completion of the claims process, the Settlement Administrator shall provide a list of all allowed Class member claims to Settlement Class Counsel and counsel for Simon for review prior to Simon making the required Refund payment to those Class members in accordance with Paragraph 3(a). The Settlement Administrator shall also have the responsibility for filing any tax forms with the appropriate authorities and issuing any tax forms to Class members that may be required under tax laws.

(e) Simon shall have the responsibility for providing the Settlement Administrator with the Card history information for each Card for which a Claim Form is submitted in the form required under this Settlement Agreement setting forth a card number. Additionally, Simon shall be responsible for making the payment of all Refunds to the persons at the addresses identified on the Claim Forms approved by the Settlement Administrator after the required list of allowed claims with supporting card history information is reviewed and agreed to by counsel for the Parties, or as determined by the Court.

(f) Settlement Class Counsel shall respond to inquiries from Class members and potential Class members regarding the Settlement, other than inquiries regarding claims and potential Refund amounts, which shall be handled by the Settlement Administrator, and jointly with Simon, shall review the list of approved claims prior to the payment of the Refunds by Simon.

5. Releases:

(a) Upon the Effective Date of the Settlement, as defined in Paragraph 7 hereto, the named Plaintiffs in this Action on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (“Releasing Plaintiff Parties”), for good and sufficient

consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Simon, Simon Property Group, LP, a Delaware limited liability partnership, SPGGC, LLC, a Virginia limited liability company, and any person, firm, trust, corporation, partnership and partner, limited liability company, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney, insurer or agent for such entities (collectively, the “Released Defendant Parties”) from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted or that could have been asserted by each named Plaintiff against the Released Defendant Parties, including but not limited to, all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints of any kind, nature and/or description, matured or unmatured, liquidated, or unliquidated, accrued or unaccrued, known or unknown, contingent or non-contingent, whether or not asserted, threatened, alleged or litigated, at law, equity, or otherwise, that now exist as of the date of the Settlement Agreement or heretofore existed, that have been or could have been asserted, whether directly, indirectly, representatively, derivatively or in any other capacity, in this Action or any other forum (judicial, administrative, arbitral or other) by any of the Releasing Plaintiff Parties (the “Released Plaintiff Claims”).

(b) Upon the Effective Date of the Settlement, as defined in Paragraph 7 hereto, all Class members who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any

person(s) they represent in any and every capacity whatsoever (collectively the “Releasing Class Parties”), for good and sufficient consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged the Released Defendant Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff or Class member against the Released Defendant Parties arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints (the “Released Claims”).

6. Upon the approval by the Court of the Settlement, a Final Judgment shall be entered in the Action, substantially in the form annexed hereto as Exhibit C:

(a) Approving the Settlement and adjudging the terms to be fair, reasonable and adequate; directing consummation of its terms and provisions; awarding Plaintiffs’ counsel such attorneys’ fees and expenses and Plaintiffs such incentive fees as the Court deems appropriate; and retaining jurisdiction to effectuate the foregoing;

(b) Dismissing the Amended Complaints against Simon in the Action on the merits and with prejudice, permanently barring Plaintiffs from prosecuting against the Released Defendant Parties any Released Plaintiff Claim, and permanently barring the members of the Class except those persons who excluded themselves therefrom from prosecuting against any Released Defendant Party any of the Released Claims; and

(c) Containing such other and further provisions consistent with the terms and provisions of this Settlement Agreement as the Court may deem advisable.

7. The Settlement embodied in this Settlement Agreement shall not become effective (the “Effective Date”) until all of the following conditions have been satisfied, unless one or more such conditions is expressly waived by Plaintiffs and Simon in writing:

(a) The entry by the Court of a Preliminary Approval Order, substantially in the form annexed as Exhibit A hereto;

(b) The entry by the Court of the Final Judgment substantially in the form annexed as Exhibit C hereto approving the Settlement and dismissing the Amended Complaints against Simon in the Action on the merits and with prejudice; and

(c) The expiration of any time for appeal or review of the Final Judgment referred to in Paragraph 6 and 7(b), or if any appeal is filed and not dismissed, such Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or by writ of certiorari. For the purposes of this Paragraph 7(c), an appeal by or on behalf of any Class member or by any person or entity pertaining solely to the Court’s determination regarding the application by Settlement Class Counsel for an award of attorneys’ fees, expenses and incentive fees to Plaintiffs or the distribution of the amounts awarded as attorneys’ fees or expenses will not in any way delay the Effective Date of the Settlement Agreement and Settlement, but will delay the payment obligation of the incentive fees until any appeal of the incentive fees is finally resolved.

8. Upon the Effective Date, as defined in Paragraph 7 hereof, each of the Released Defendant Parties shall be deemed to have, and by operation of law and the Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged the named Plaintiffs, Class members, Settlement Class Counsel and all other counsel representing Plaintiffs and the Class members in the Action from all claims arising out of, relating to, or in connection

with the institution, prosecution, assertion or resolution of the Action and the Released Claims, and as to Plaintiffs, the Released Plaintiff Claims; provided, however, that nothing in this Settlement Agreement or the Final Judgment shall bar any action or release any claim to enforce the terms of this Settlement Agreement or the Final Judgment.

9. Consistent with and to the fullest extent provided for under CPLR § 4547 and any other relevant law, neither this Settlement Agreement nor any proceedings taken in accordance with the terms set forth herein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of the Simon, of any violation of any statute or regulation or principle of common law or of any liability or wrongdoing, or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and Simon. Neither this Settlement Agreement, nor the fact of its execution, nor any of its provisions, shall be offered or received in evidence in any action or proceeding of any nature or otherwise referred to or used in any manner in any court of other tribunal, except as evidence of the fact of the making of this Settlement Agreement in an action or proceeding seeking to enforce its terms.

10. In the event the proposed Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Judgment as described in Paragraph 6 above or the Settlement fails to become effective as described in Paragraph 7 hereof, then, in any such event, the Settlement Agreement shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement and all negotiations shall become null and void, and all proceedings relating thereto

shall be withdrawn without prejudice as to the rights of any and all Parties thereto who shall be restored to their respective positions existing as of the date of the Settlement Agreement.

11. The Parties to this Settlement Agreement and the Settlement embodied herein agree to cooperate in the prompt submission of this Settlement Agreement to the Court, and to take all steps that may be required by the Court and otherwise to use their best efforts to consummate the Settlement and to obtain entry of the Preliminary Approval Order and a Final Judgment.

12. No Party or their counsel shall initiate, directly or indirectly, any releases, announcements, or any communication with the public, other than Class members, or the press about the Settlement other than the website disclosures expressly agreed to in the Settlement or factual updates to existing references on Settlement Class Counsels' websites, and in the event of any communication or inquiry from the public or the press, will limit their responses to directing the public or the press to the Court files, and to the papers publicly available regarding the case on the websites of Settlement Class Counsel, Simon and the Settlement Administrator.

13. This Settlement Agreement shall be binding and shall inure to the benefit of the Parties hereto and their respective successors, assigns, executors, administrators, heirs and legal representatives, as the case may be; provided, however, that no assignment by any Party hereto shall operate to relieve such Party hereto of his, her, or its obligations hereunder.

14. This Settlement Agreement constitutes the sole and entire agreement among the Parties hereto with respect to the subject matter hereof, and no representations, warranties, inducements, promises or agreements (oral or otherwise) not embodied or incorporated herein, can override the terms of this Settlement Agreement. Any and all prior discussions, negotiations, agreements and understandings relating thereto are superseded hereby and merged herein. The

provisions of this Settlement Agreement (including any time periods specified herein) may be modified by written agreement of all Parties with the consent of the Court without further notice to the Class, unless the Court requires such notice. The terms or provisions of this Settlement Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by all Parties hereto or their counsel. Any failure by any Party to this Settlement Agreement to insist on strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement by such other Party.

15. This Settlement Agreement, including but not limited to the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles. This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be performed, wholly within the State of New York. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto and members of the Class submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

16. This Settlement Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties hereto, all Parties hereto have contributed substantially and materially to the preparation of this Settlement Agreement.

17. The undersigned each represent that they have the full authority necessary to execute this Settlement Agreement.

18. This Settlement Agreement may be executed in separate counterparts, and a facsimile or “PDF” signature shall be deemed to constitute an original signature for the purposes hereof.

Dated: New York, New York
July 9, 2010

LAW OFFICES OF WILLIAM R. WEINSTEIN

SILLS CUMMIS & GROSS P.C.

BY: _____



William R. Weinstein
500 Fifth Avenue, Suite 1610
New York, NY 10110
(212) 575-2205

ATTORNEYS FOR PLAINTIFF
CHRISTOPHER R. LONNER AND
SETTLEMENT CLASS

BY: _____

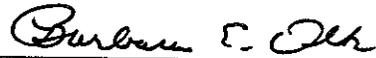


Jeffrey J. Greenbaum
One Rockefeller Plaza
New York, New York 10022
(212) 643-7000

ATTORNEYS FOR DEFENDANT
SIMON PROPERTY GROUP, INC.

TRIEF & OLK

By: _____



Barbara E. Olk, Of Counsel
150 East 58th Street, 34th Floor
New York, New York 10155
(212) 486-6060

ATTORNEYS FOR PLAINTIFF
ALIZA GOLDMAN AND
SETTLEMENT CLASS

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
 : (Scheinkman, J.)
 :
Plaintiff, :
 :
vs. :
 :
SIMON PROPERTY GROUP, INC. :
 :
 :
Defendant. :
-----X
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
 :
 :
Plaintiff, :
 :
vs. :
 :
 :
SIMON PROPERTY GROUP, INC. :
 :
 :
Defendant. :
-----X

**ORDER PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENT, SCHEDULING FAIRNESS HEARING
AND AUTHORIZING DISSEMINATION OF NOTICE OF SETTLEMENT**

Plaintiffs Christopher R. Lonner (“Lonner”) and Aliza Goldman (“Goldman”) (hereinafter collectively “Plaintiffs”), individually and on behalf of the Class defined herein, and Defendant Simon Property Group, Inc. (“Simon”) (hereinafter, collectively with Plaintiffs, the “Parties”), having reached a Settlement of the disputes between them in the above-captioned Action, subject to the Court’s approval, which is embodied in the Settlement Agreement presented to the Court;

The Parties having applied to this Court for approval of the Settlement and for dismissal of Plaintiffs' Amended Complaints with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

The Court having read and considered the Settlement Agreement and accompanying exhibits, and the Parties to the Settlement Agreement having consented to the form and entry of this Preliminary Approval Order, and all capitalized terms used herein having the same meaning defined in the Settlement Agreement;

IT IS HEREBY ORDERED THAT:

1. The requirements for class certification under Article 9 of the New York Civil Practice Law and Rules ("CPLR"), having previously been held to be satisfied by Order dated June 25, 2009 granting Plaintiffs' July 15, 2008 Motion for Class Certification (the "Class Order"), the following is the Class certified for the purpose of considering and approving the Settlement only:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively "Simon")) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 ("Card(s)") that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance ("Administrative Fees"); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the "Class").

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the "Notice Order"). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors.

2. In accordance with the Class Order, the Court has previously certified Plaintiffs Lonner and Goldman as representatives of the Class and their counsel, William R. Weinstein of

Law Offices of William R. Weinstein and Trief & Olk, as co-counsel for the Class (“Settlement Class Counsel”), and they are hereby certified as Class representatives and Settlement Class Counsel, respectively, for purposes of this Settlement as well. The Court also preliminarily finds and concludes that in negotiating and entering into the Settlement Agreement, Plaintiffs and Settlement Class Counsel have fairly and adequately represented and protected the interests of all Class members, as required under CPLR Article 9.

3. The Court preliminarily approves the Settlement Agreement as fair, just and reasonable to the Class, subject to the Fairness Hearing as described in the Notice of Proposed Settlement of Class Action and Fairness Hearing, and Claim Form/Release (“Settlement Notice”), Exhibit B to the Settlement Agreement, and the Summary Notice of Proposed Class Action Settlement and Fairness Hearing (“Summary Settlement Notice”), Exhibit D to the Settlement Agreement, to be disseminated to the Class pursuant to CPLR Article 9.

4. The Court approves, as to form and content, the Settlement Notice, Exhibit B to the Settlement Agreement, and the Summary Settlement Notice, Exhibit D to the Settlement Agreement, and finds that the emailing and distribution of the Settlement Notice substantially in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, the publication of the Summary Settlement Notice substantially in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, the website postings in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, and the Simon Mall placard postings in the manner and form set forth in Paragraph 5 of this Preliminary Approval Order, meet the requirements of CPLR Article 9 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice for all purposes to all persons entitled thereto.

5. (a) Within thirty (30) days after the entry of this Preliminary Approval Order, RG2 Claims Administration LLC (“RG2”), the Settlement Administrator agreed to by the Parties in the Settlement Agreement and the same Settlement Administrator previously approved by the Court in the Notice Order and again approved herein, shall cause a copy of the Settlement Notice, substantially in the form annexed as Exhibit B to the Settlement Agreement, to be distributed to the same persons to whom the Notice of Pendency of Class Action (“Notice of Pendency”) previously was disseminated in this Action (i) by email to those persons for whom Simon previously provided email addresses; (ii) by mail to those persons for whom Simon previously provided a mailing address but not an email address (provided however with respect to (i) and (ii) that notice need not be sent to addresses or email addresses previously returned as undeliverable or improper email addresses); and (iii) by mail to those persons whose email or mail delivery of the Settlement Notice or the previously disseminated Notice of Pendency is or was returned as undeliverable, to such more current or updated address as is or has been obtained by the approved Settlement Administrator. No Settlement Notice shall be distributed to those persons who requested exclusion from the Class, as identified in Exhibit I to the April 19, 2010 Affidavit of John R. Davis of RG2 previously filed with the Court by Plaintiffs in accordance with the Notice Order.

(b) Within thirty (30) days after the entry of this Preliminary Approval Order, Settlement Class Counsel, by RG2, shall cause a copy of the Summary Settlement Notice, substantially in the form annexed as Exhibit D to the Settlement Agreement, to be published on one weekday in a size no smaller than 1/12 of a page in the same newspapers identified in the Notice Order in which the Summary Notice of Pendency of Class Action previously was published.

(c) Within thirty (30) days after the entry of this Preliminary Approval Order, Simon shall place a table top placard of the Summary Settlement Notice in one location at the desk or counter where the Gift Cards can be purchased in each of the eight Simon New York locations where the Gift Cards were sold prior to April 29, 2005 (Chautauqua, Jefferson Valley, The Mall at the Source, Nanuet, Roosevelt Field, Smithhaven, The Westchester, and Walt Whitman) for a period of thirty (30) days. In addition, the Settlement Notice shall be posted on the website for Simon's gift cards with a conspicuous link stating "For information concerning a proposed settlement of the court action in New York regarding a previous Simon Gift Card program involving Cards issued to or used by Cardholders in New York, click here." This posting shall be for a period of thirty (30) days.

(d) Within thirty (30) days after the entry of this Preliminary Approval Order, a copy of the Settlement Agreement and its exhibits, and Plaintiffs' Amended Class Action Complaints, shall be posted to the websites of Settlement Class Counsel, www.wwensteinlaw.com (follow the link for Cases), and www.triefandolk.com (follow the link) and also on the Settlement Administrator's website.

6. RG2 shall disseminate notice to the Class, process all Claim Forms and all other tasks necessary to effect and complete the administration of the Settlement in accordance with the Settlement Agreement and such Orders as may be issued by the Court. The reasonable fees and costs of the Settlement Administrator in connection with the administration of the Settlement shall be paid by Simon in accordance with the terms of the Settlement Agreement.

7. A Fairness Hearing will be held before this Court at __ .m. on the _____ day of _____ 2010, in the Commercial Part, Courtroom 105, New York State Supreme Court, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, on the

fairness of the proposed Settlement, including: (1) whether to finally approve the Settlement as fair, reasonable, and adequate; (2) whether a Final Judgment in the form of Exhibit C to the Settlement Agreement should be entered; and (3) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs, should be granted. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

8. At or before the Fairness Hearing, Settlement Class Counsel, Simon and the Settlement Administrator, as appropriate, shall file proof, by affidavit or affirmation, of the dissemination of notice in accordance with this Preliminary Approval Order.

9. Any person who previously requested exclusion from the Class, as identified in Exhibit I of the April 19, 2010 Affidavit of John R. Davis of RG2 previously filed with the Court by Plaintiffs in accordance with the Notice Order, is excluded from the Class, shall not be entitled to apply for or receive any of the benefits of the Settlement, shall not be bound by the release of any claim identified in the Settlement Agreement, and shall not be entitled to object to the proposed Settlement or appear at the Fairness Hearing. All persons within the Class who did not previously exercise the option to be excluded from the Class shall be bound by the Settlement Agreement, the release contained therein and the Final Judgment as may be entered, and shall have no further opportunity to be excluded from the Class.

10. Any Class member who did not previously request exclusion shall have the right to object to the Settlement of the Action, to Settlement Class Counsel's application for an award attorneys' fees and expenses, to an award of incentive fees to Plaintiffs, or to the proposed Final Judgment, and shall have the right to appear and be heard at the Fairness Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such

objections to the Settlement shall be considered by the Court at the Fairness Hearing only if the objecting Class member files with the Court and serves a notice of his, her or its intention to appear and supporting papers, with information sufficient to identify the Card number for a Card purchased in New York or sold to or given to a New York resident on or before April 29, 2005, and a certification under penalties of perjury that the Class member is the Cardholder entitled to the Refund for the Card number described, along with a detailed statement of the reason(s) for the objection, by first-class mail postmarked no less than 15 days before the Fairness Hearing, on each Settlement Class Counsel and on Simon's Counsel at the addresses prescribed in the Settlement Notice and Summary Settlement Notice, as follows:

SETTLEMENT CLASS COUNSEL

William R. Weinstein, Esq.
LAW OFFICES OF WILLIAM R. WEINSTEIN
500 Fifth Avenue, Suite 1610
New York, NY 10110
(212) 575-2205

TRIEF & OLK
Attn: Barbara E. Olk, Esq.
150 East 58th Street, 34th Floor
New York, NY 10022
(212) 486-6060

-and-

COUNSEL FOR SIMON

Jeffrey J. Greenbaum, Esq.
SILLS CUMMIS & GROSS
One Rockefeller Plaza
New York, New York 10020

Any Class member who does not make his, her or its objection in the manner provided in this paragraph shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the proposed Settlement or the application of Settlement Class Counsel for the award of attorneys' fees and expenses, and the award of incentive fees to Plaintiffs.

11. Upon the Effective Date of the Settlement as defined in paragraph 7 of the Settlement Agreement, all Class members shall be barred forever from asserting any Released Claim against any Released Defendant Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Claims.

12. Upon the Effective Date of the Settlement as defined in paragraph 7 of the Settlement Agreement, Plaintiffs shall be barred forever from asserting any Released Plaintiff Claim against any Released Defendant Party, and by operation of the Final Judgment shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Plaintiff Claims.

13. All Class members are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Claims, and Plaintiffs are preliminarily enjoined from commencing or prosecuting any actions asserting any of the Released Plaintiff Claims, either directly, representatively, derivatively or in any other capacity, against any Released Defendant Party, pending the final determination of whether the Settlement Agreement should be finally approved by the Court. Pending final determination of whether the Settlement will be approved, all other proceedings in this Court relating to the Action shall be stayed.

14. It shall be the responsibility of the Settlement Administrator to respond to all inquiries from persons potentially within the Class regarding their claims or the claim form or the amount of potential settlement benefits, with such participation and assistance from Settlement Class Counsel and Simon as is reasonably necessary and appropriate under the circumstances.

15. This Court has jurisdiction over all Class members with respect to all claims asserted in this Action and the Settlement.

16. In the event the Settlement Agreement shall terminate, or not become effective for any reason, this Preliminary Approval Order shall be vacated and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of the Parties hereto, who shall be restored to their respective positions as of the date of the Settlement Agreement.

17. The Court may, for good cause shown, extend any of the deadlines set forth in this Preliminary Approval Order without further notice to the Class. The Fairness Hearing may, from time to time and without further notice to the Class, be adjourned or continued without further order of the Court.

Dated: New York, New York

_____, 2010

HON. ALAN D. SCHEINKMAN, J.S.C.

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
Plaintiff, : (Scheinkman, J.)
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
Plaintiff, :
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND FAIRNESS HEARING, AND CLAIM FORM/RELEASE**

TO: (A) ALL PERSONS RESIDING WITHIN THE STATE OF NEW YORK WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD ON OR BEFORE APRIL 29, 2005 (“GIFT CARD(S)”) THAT ARE OR WERE SUBJECT TO A DECREASE IN VALUE RESULTING FROM THE IMPOSITION BY SIMON PROPERTY GROUP, INC. (“SIMON”) OF \$2.50 MONTHLY CHARGES AUTOMATICALLY DEDUCTED BY SIMON FROM ANY GIFT CARD BALANCE REMAINING MORE THAN SIX MONTHS AFTER CARD ISSUANCE (“ADMINISTRATIVE FEES”); AND (B) ALL OTHER PERSONS WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD WITHIN THE STATE OF NEW YORK ON OR BEFORE APRIL 29, 2005 THAT ARE OR WERE SUBJECT TO THE ADMINISTRATIVE FEES DESCRIBED ABOVE (THE “CLASS”).

EXCLUDED FROM THE CLASS ARE ALL PERSONS WHO REQUESTED EXCLUSION IN RESPONSE TO THE NOTICE OF PENDENCY OF CLASS ACTION PREVIOUSLY DISSEMINATED PURSUANT TO THE OCTOBER 30, 2009 ORDER OF THE COURT. ADDITIONALLY EXCLUDED FROM THE CLASS ARE SIMON, ITS

OFFICERS, DIRECTORS, AFFILIATES, SUBSIDIARIES AND SUCCESSORS.

IMPORTANT: PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU ARE A MEMBER OF THE CLASS, YOU MAY BE ENTITLED TO RECEIVE MONEY PURSUANT TO THE PROPOSED SETTLEMENT DESCRIBED HEREIN.

This Notice is given pursuant to an order of the Supreme Court of the State of New York for Westchester County to inform you of the proposed settlement (the “Settlement”) of the above-captioned class action (the “Action”). The Settlement is between Plaintiffs Christopher R. Lonner (“Lonner”) and Aliza Goldman (“Goldman”) (hereinafter collectively “Plaintiffs”) and the Class described above, and Defendant Simon Property Group, Inc. (“Simon”) (hereinafter, collectively with Plaintiffs, the “Parties”). Records indicate that you may be included within the above-described Class. If you do not fall within the definition of the Class set forth above, you may ignore this notice.

NOTE: If you requested exclusion from the Class in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court, then you will not be entitled to participate in the benefits of the Settlement and you will not be bound by any Final Judgment entered in the Action approving the Settlement and releasing the claims of Class Members.

There will be a hearing (the “Fairness Hearing”) on _____, 2010 at _____m. in the Commercial Part, Courtroom 105, New York State Supreme Court, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601 on the fairness of the proposed Settlement, including: (1) whether to finally approve the proposed Settlement as set forth in the Parties’ Settlement Agreement dated _____, 2010 as fair, reasonable,

and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Simon with prejudice; and (3) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs, should be granted. If the Settlement is approved, eligible Class Members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to the members of the Class.

The purpose of this Notice is to explain to you:

1. What the Lawsuit Is About, and the Certified Class.
2. Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, the *Cy Pres* Payment, and the Judgment and Releases.
3. Application of Settlement Class Counsel for an Award of Attorneys' Fees and Expenses, and an Award of Incentive Fees to Plaintiffs.
4. The Fairness Hearing.
5. Your Options If You Are Included in the Class, including Your Right to File a Claim for Settlement Benefits, and Your Right to Object to the Settlement.
6. How to Get More Information.

1. What the Lawsuit Is About.

Plaintiffs Christopher R. Lonner and Aliza Goldman have asserted claims against Simon in connection with Simon's prior practice of automatically deducting monthly Administrative Fees of \$2.50 from any Gift Card balance remaining more than six months after the Gift Card was issued. Plaintiffs allege that, under New York law, Simon's practice of deducting the Administrative Fees was deceptive, caused Simon to be unjustly enriched, and breached the Gift Card contract and the duty of good faith and fair dealing. The lawsuit also alleges that the term regarding the Administrative Fees in the Cardholder Agreement and on the Gift Card was not legally enforceable. Among other things, Plaintiffs specifically allege that the Administrative Fee term in the Cardholder Agreement and on the Gift Card

was in a print size too small to be enforceable under New York law, and that the placement of the Administrative Fee term and the general description of the Administrative Fees in a print size of less than 8 points and not clear and legible on the cardboard sleeve that accompanied the Gift Card and on the back of the Gift Card was a violation of New York law.

Simon has denied and continues to deny the allegations made by Plaintiffs, and has asserted affirmative defenses. Simon alleges that each Gift Card contained a disclosure that a \$2.50 monthly fee would be charged beginning with the seventh month from the month of purchase on the back of the Gift Card and on the cardboard sleeve included with each Gift Card sold. In addition, Simon alleges that the Administrative Fees were disclosed in numerous other ways. Furthermore, Simon contends that neither of the Plaintiffs was deceived or sustained any damage as a result of the Administrative Fees charged under the Gift Card program.

The claims in the Action and this Settlement do not apply to Simon's current gift card programs.

The Court has made no final ruling on the validity of Plaintiffs' claims. The Settlement does not constitute an admission of any wrongdoing whatsoever by Simon, and Simon is entering into the Settlement solely for the purpose of avoiding the continuing additional expense, inconvenience, distraction and risk of this litigation, without admitting any wrongdoing whatsoever.

The Certified Class. By Preliminary Approval Order entered _____, 2010, the Court has preliminarily certified the following class for the purpose of considering and approving the Settlement:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively "Simon")) residing

within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 (“Card(s)”) that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance (“Administrative Fees”); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the “Class”).

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the “Notice Order”). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors.

In its Preliminary Approval Order, the New York Supreme Court, Westchester County, also certified Plaintiffs Christopher R. Lonner and Aliza Goldman as Class Representatives, and certified the following Settlement Class Counsel for Plaintiffs and the Class:

William R. Weinstein, Esq.
LAW OFFICES OF WILLIAM R. WEINSTEIN
500 Fifth Avenue, Suite 1610
New York, NY 10110
(212) 575-2205

TRIEF & OLK
Attn: Barbara E. Olk, Esq.
150 East 58th Street, 34th Floor
New York, NY 10022
(212) 486-6060

2. Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, the *Cy Pres* Payment, and the Judgment and Releases.

Summary of the Settlement, the Settlement Benefits Potentially Distributable to Class Members, and the *Cy Pres* Payment. Under the terms of the Settlement, Simon will pay the claims of Class members through a claims process that will refund Administrative Fees for the Gift Cards of all Class Members who properly complete the Claim Form/Release included with this Settlement Notice.

The claims procedure first requires a Class Member to provide the Gift Card number in question to the Settlement Administrator by filing the Claim Form with the required

certification under penalties of perjury that the Card Number supplied by the Cardholder is the Class Member's Card Number and that the Class member is the Cardholder entitled to the Refund for the Card number described in the Claim Form. Simon will then run the transaction history for that Gift Card to determine whether Administrative Fees were incurred, and provide the transaction history to the Settlement Administrator. Simon will refund to a Class Member 100% of the \$2.50 Administrative Fees incurred after 6 months from the Gift Card purchase up to the Card expiration date. If a Gift Card was renewed through the purchase of a replacement Gift Card and the payment of an expired Card fee, if applicable, and additional \$2.50 Administrative Fees were deducted from the Gift Card balance after the expiration date and before the issuance of the new Gift Card, Simon will also refund 100% of these additional \$2.50 Administrative Fees (but not the expired card replacement fee). Simon will only pay one Class Member for each Gift Card number.

In addition, Simon has agreed to make a *cy pres* payment of \$350,000 for distribution to charities agreed to by the Parties, and the *cy pres* payment will be divided so that 25% will be paid to the following four charities and be restricted so that the funds are used solely in New York: the Greater New York City Affiliate of Susan G. Komen for the Cure; National MS Society with three New York Chapter designations; Junior Achievement with New York Chapter designations; and designated Feeding America New York Food Banks.

Simon also has agreed to pay Plaintiffs' attorneys' fees and expenses, as further described below, and an incentive payment of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their participation in the lawsuit (subject to Court approval). Simon will also pay 100% of the costs of the administration of the Settlement. None of those amounts will affect or reduce the amounts refunded to Class Members.

The Judgment and Release. If the Court approves the Settlement provided for in the Settlement Agreement, a final judgment or judgments will be entered (1) approving the proposed Settlement; (2) dismissing the Amended Complaints against Simon with prejudice; and (3) approving an award to counsel for Plaintiffs and the Class of such attorneys' fees and expenses, and an award of the incentive fees to Plaintiffs, as the Court deems appropriate.

Additionally, generally under the release prescribed in the Settlement Agreement, all Class Members who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever ("Releasing Class Parties"), shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Simon, Simon Property Group, LP, a Delaware limited liability partnership, SPGGC, LLC, a Virginia limited liability company, and any person, firm, trust, corporation, partnership and partner, limited liability company, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney, insurer or agent for such entities (collectively, the "Released Defendant Parties") from all claims alleged in the Amended Complaints (the "Released Claims"). Furthermore, the named Plaintiffs will provide a general release. Please refer to the Settlement Agreement and its exhibits for the exact language and scope of the releases.

3. Application of Settlement Class Counsel for an Award of Attorneys' Fees and Expenses, and an Award of Incentive Fees to Plaintiffs.

Settlement Class Counsel, on behalf of all counsel for Plaintiffs and the Class, intend to apply to the Court for an award of attorneys' fees and reimbursement of expenses (including, without limitation, the fees and expenses of Plaintiffs' expert) in an amount equal

to \$_____. Settlement Class Counsel also will seek Court approval for the award of incentive fees of \$5,000 each to Plaintiff Lonner and Plaintiff Goldman on account of their efforts in connection with the prosecution of the Action.

As noted above, Simon has agreed to pay the awarded attorneys' fees and expenses, Plaintiffs' incentive fees and the administration costs of the Settlement, in addition to the other Settlement benefits described herein, and none of these amounts will affect or reduce the amounts refunded to Class Members.

4. The Fairness Hearing.

The Fairness Hearing will be held on _____, 2010 at _____ .m. in the Commercial Part, Courtroom 105, New York State Supreme Court, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601 to determine: (1) whether to finally approve the proposed Settlement as set forth in the Parties' Settlement Agreement dated _____, 2010 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Simon with prejudice; and (3) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs, should be granted. If the Settlement is approved, eligible Class Members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims.

The Fairness Hearing may be rescheduled or continued to a later time without further notice. You are not required to attend the hearing, but you may do so on your own or through an attorney retained by you at your own expense.

5. Your Options If You Are Included Within the Class, Including Your Right to File a Claim for Settlement Benefits, and Your Right to Object to the Settlement.

You may exercise any of the following options on your own or through an attorney retained by you at your own expense:

Submit Your Claim Form/Release to Receive the Settlement Benefits if the Settlement is Approved. If you are a Class Member and wish to receive the Settlement benefits if the Settlement is approved, you must execute and mail your Claim Form/Release with the required proof of the Gift Card for which you are submitting your claim, **postmarked no later than _____, 2010**, to the Settlement Administrator as follows:

RG2 Claims Administration LLC
Simon Gift Card Settlement
30 South 17th Street
Philadelphia, PA 19103
(800) XXX-XXXX

Object to the Settlement: If you are a Class Member, you also may object in writing to the Settlement. Objecting to the proposed Settlement does not affect your right to participate in the Settlement benefits if you have filed a proper claim and the Settlement is approved by the Court. To object, **no later than fifteen days prior to the date of the Fairness Hearing set forth above, _____**, you must file your written objection with the Clerk of the New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, and additionally mail copies by first-class mail **postmarked no later than fifteen days prior to the date of the Fairness Hearing set forth above, _____**, to each Settlement Class Counsel and to Simon's Counsel at the following addresses:

SETTLEMENT CLASS COUNSEL

William R. Weinstein, Esq.
LAW OFFICES OF WILLIAM R. WEINSTEIN
500 Fifth Avenue, Suite 1610
New York, NY 10110
(212) 575-2205

TRIEF & OLK
Attn: Barbara E. Olk, Esq.
150 East 58th Street, 34th Floor
New York, NY 10022
(212) 486-6060

-and-

COUNSEL FOR SIMON

Jeffrey J. Greenbaum, Esq.
SILLS CUMMIS & GROSS
One Rockefeller Plaza
New York, New York 10020

Your written objection should include your name, current address and telephone number, and Card number, along with a detailed explanation of the reasons for your objection, and any documents on which you base your objection. **If you wish to attend the Fairness Hearing and voice your objection either personally or through counsel retained by you, you must timely submit a written objection that also includes a statement that it is your intention to appear at the Fairness Hearing.**

6. How to Get More Information.

For more information regarding the Action and the Settlement, please refer to the Settlement Agreement and the pleadings and other papers filed in this action, which may be inspected at the Office of the Clerk, New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York 10601, during regular business hours each day.

Additional information concerning the Action and the Settlement, including a copy of the Settlement Agreement and its exhibits, and Plaintiffs' Amended Class Action Complaints,

are available for your review at the websites of Settlement Class Counsel, www.wweinsteinlaw.com (follow the link for Cases), and www.triefandolk.com (follow the link). Additional information is also available on the Settlement Administrator's website, www._____.

Any questions you may have concerning your claim or the claim form or the amount of potential settlement benefits should be directed first to the Settlement Administrator, either in writing to the address above or by phone at (800), XXX-XXXX.

Any other questions you may have about the Action or the Settlement and the other matters described in this Notice (other than questions concerning your claim or the claim form or the amount of potential settlement benefits) should be directed to Settlement Class Counsel by asking for William R. Weinstein at Law Offices of William R. Weinstein, or Barbara Olk at Trief & Olk, at the addresses and phone numbers described above.

DO NOT CALL THE COURT OR SIMON.

Dated: White Plains, New York
_____, 2010

BY ORDER OF THE NEW YORK
SUPREME COURT, WESTCHESTER
COUNTY

HONORABLE ALAN D.
SCHEINKMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
Plaintiff, : (Scheinkman, J.)
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X **CLAIM FORM/RELEASE**
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
Plaintiff, :
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X

This Claim Form/Release must be completed and mailed to the Settlement Administrator by _____, 2010 in order for you to be entitled to receive a refund of Administrative Fees under the Settlement. The amount of the refund will be equal to 100% of the Administrative Fees you incurred after 6 months from the Gift Card purchase up to the Gift Card expiration date. Additionally, if you renewed a Gift Card through the purchase of a replacement Gift Card and the payment of an expired Card fee, if applicable, and additional Administrative Fees were deducted from the Card balance after the expiration date and before the issuance of the new Gift Card, Simon will also refund 100% these additional Administrative Fees (but not the expired card replacement fee). Simon will only pay one Class Member for each Gift Card number.

IN ORDER TO BE ENTITLED TO RECEIVE YOUR REFUND, YOU MUST EXECUTE THE CERTIFICATION UNDER PENALTIES OF PERJURY THAT YOU ARE A CLASS MEMBER AS DEFINED IN THE ACCOMPANYING NOTICE, THAT THE CARD NUMBER BELOW IS YOUR CARD NUMBER AND THAT YOU ARE

THE CARDHOLDER ENTITLED TO CLAIM AND BE PAID THE REFUND OF THE ADMINISTRATIVE FEES PURSUANT TO THE SETTLEMENT FOR THE CARD NUMBER YOU HAVE IDENTIFIED BELOW.

In addition, please provide the following information where and to whom the refund check should be mailed, and sign and date the certification and release below.

CARD NUMBER: _____

Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Telephone: _____

I hereby certify under penalties of perjury that I am a member of the Class as defined in the accompanying Notice, that the Card Number above is my Card Number and that I am the Cardholder entitled to claim and be paid the Refund of the Administrative Fees pursuant to the Settlement for the Card Number identified above.

I also hereby agree to the terms of the Settlement Agreement Release described in the Notice of Settlement and stated in full in the Settlement Agreement.

_____ Dated: _____, 2010

[Print Name] _____

ALL QUESTIONS REGARDING THIS CLAIM FORM OR ANY POTENTIAL SETTLEMENT BENEFITS YOU MAY BE ENTITLED TO RECEIVE UNDER THE SETTLEMENT SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR:

**SIMON GIFT CARD SETTLEMENT
RG2 CLAIMS ADMINISTRATION
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103
(800) XXX-XXXX**

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
 : (Scheinkman, J.)
 :
Plaintiff, :
 :
vs. :
 :
SIMON PROPERTY GROUP, INC. :
 :
 :
Defendant. :
-----X
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
 :
 :
Plaintiff, :
 :
vs. :
 :
 :
SIMON PROPERTY GROUP, INC. :
 :
 :
Defendant. :
-----X

**ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT AND AWARDING
ATTORNEYS' FEES AND EXPENSES AND INCENTIVE FEES**

WHEREAS:

A. On _____, 2010, the Parties applied to the Court pursuant to Civil Practice Law and Rules (“CPLR”) Article 9 for an order implementing the settlement of this litigation (the “Action”) in accordance with the settlement agreement dated July _____, 2010 that, together with the exhibits annexed thereto (“Settlement Agreement”), sets forth the terms and conditions for a proposed settlement of this Action (the “Settlement”) and for a judgment dismissing this Action with prejudice upon the terms and conditions set forth in the Settlement Agreement.

B. In the Order Preliminarily Approving Class Action Settlement, Scheduling Fairness Hearing and Authorizing Dissemination of Notice of Settlement, dated _____, 2010 (the “Preliminary Approval Order”), this Court, among other things: (i) certified the Class for purposes of the Settlement as follows:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively “Simon”)) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 (“Card(s)”) that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance (“Administrative Fees”); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the “Class”).

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the “Notice Order”). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors;

(ii) preliminarily approved the Settlement; (iii) scheduled a hearing for _____, 2010 to consider whether to approve the Settlement as being fair, reasonable and adequate, to enter final judgment thereon and to consider any application by Settlement Class Counsel for an award of attorneys’ fees and expenses, and an award of incentive fees to Plaintiffs (the “Fairness Hearing”); and (iv) directed that the Notice of Proposed Class Action Settlement and Fairness Hearing and Claim Form/Release (“Settlement Notice”), substantially in the form annexed as Exhibit B to the Settlement Agreement, be disseminated to all potential Class members who could be identified with reasonable effort and who had not previously requested exclusion, along with publication of the Summary Notice of Proposed Class Action Settlement and Fairness Hearing (“Summary Settlement Notice”) and posting of the Summary Settlement Notice as a table top placard in prescribed Simon Malls, substantially in the form annexed as Exhibit D to

the Settlement Agreement, and also along with the posting of the Settlement Notice and Settlement Agreement and other papers to the websites of Settlement Class Counsel and the Settlement Administrator, and the posting of the Settlement Notice on Simon's giftcard website for a period of thirty (30) days.

C. RG2, the Settlement Administrator appointed in the Preliminary Approval Order, Settlement Class Counsel and Simon have submitted affidavits or affirmations attesting that the Settlement Notice and Summary Settlement Notice were disseminated in accordance with the Court's Preliminary Approval Order.

D. Settlement Class Counsel previously filed with the Court the April 19, 2010 Affidavit of John R. Davis of RG2 with annexed Exhibit I identifying all potential Class members who requested exclusion from the Class in response to the Notice of Pendency of Class Action disseminated pursuant to the October 30, 2009 Order of this Court (the "Notice Order"), which list of persons requesting exclusion is attached as Exhibit 1 hereto.

E. The Court held a Fairness Hearing on _____, 2010 and has considered all prior proceedings in the Action, the Settlement Agreement and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Fairness Hearing. Members of the Class were (1) notified of their right to appear at the Fairness hearing in support of or in opposition to the proposed Settlement and/or the award of fees and reimbursement of costs and expenses; and (2) given the opportunity to submit an Objection to the Settlement.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment (the "Final Judgment") incorporates by reference the definitions in the Settlement Agreement, and all terms

not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court hereby determines that the Settlement Notice and Summary Settlement Notice and their dissemination in accordance with the Preliminary Approval Order complied with the requirements of CPLR 904, 907 and 908 and due process and were the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all potential Class members who could be located through reasonable effort. The Settlement Notice and Summary Settlement Notice provided due and adequate notice of these proceedings, the Settlement, the application of Settlement Class Counsel for an award of attorneys' fees and expenses and an award of incentive fees to Plaintiffs, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to potential Class members, and a full opportunity having been offered to Class members to object to the proposed Settlement, to participate in the Fairness Hearing thereon, or to request exclusion from the Class, it is hereby determined that all Class members who have not requested exclusion are bound by this Final Judgment (whether or not any Class member has objected to the Settlement).

4. Those persons identified in Exhibit 1 hereto shall be excluded from the Class and any benefits under the Settlement.

5. Pursuant to CPLR 907 and 908, the Court finds that the Settlement is in all respects fair, reasonable and adequate to each of the releasing parties and each Class member, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages, and the value of Settlement now in

comparison to the likely probable duration, complexity and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Settlement Agreement.

(a) In determining that the Settlement is in all respects fair, reasonable and adequate to each of the releasing parties and each member of the Class, and in approving the Settlement, the Court has considered that no [alternatively : only X] objections have been raised by Class members to the Settlement.

6. The Amended Complaints against Simon in this Action are dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the attorneys' fees and reimbursement of expenses and the award of incentive fees to Plaintiffs as otherwise provided for in Paragraph 12 below and in Paragraphs 2(a)(3) and 2(a)(4) of the Settlement Agreement.

7. Releases:

(a) Upon the Effective Date of the Settlement, as defined in the Settlement Agreement, the named Plaintiffs in this Action on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever ("Releasing Plaintiff Parties), for good and sufficient consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged Simon, Simon Property Group, LP, a Delaware limited liability partnership, SPGGC, LLC, a Virginia limited liability company, and any person, firm, trust, corporation, partnership and partner, limited liability

company, or other entity related to, affiliated with, employed by, or acting as an officer, director, manager, attorney, insurer or agent for such entities (collectively, the “Released Defendant Parties”) from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted or that could have been asserted by each named Plaintiff against the Released Defendant Parties, including but not limited to, all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints of any kind, nature and/or description, matured or unmatured, liquidated, or unliquidated, accrued or unaccrued, known or unknown, contingent or non-contingent, whether or not asserted, threatened, alleged or litigated, at law, equity, or otherwise, that existed as of the date of the Settlement Agreement or theretofore existed, that have been or could have been asserted, whether directly, indirectly, representatively, derivatively or in any other capacity, in this Action or any other forum (judicial, administrative, arbitral or other) by any of the Releasing Plaintiff Parties (the “Released Plaintiff Claims”).

(b) Upon the Effective Date of the Settlement, as defined in the Settlement Agreement, all Class members who have not been excluded therefrom, on behalf of themselves, their respective heirs, executors, attorneys and administrators, successors and/or assigns of any person(s) they represent in any and every capacity whatsoever (collectively the “Releasing Class Parties”), for good and sufficient consideration, the receipt of which is hereby acknowledged, shall be deemed to have fully, finally, and irrevocably released, relinquished and forever discharged the Released Defendant Parties from all claims, demands, rights, liabilities and causes

of action of every nature and description whatsoever, asserted, including, without limitation, claims for breach of contract, quasi-contract, violations of New York General Business Law § 349, and violations of any other state or federal statutes, regulations or principles of common law, by any Plaintiff or Class member against the Released Defendant Parties arising out of, relating to, in connection with or concerning the claims alleged in the Amended Complaints (the “Released Claims”).

8. Upon the Effective Date of the Settlement, each of the Released Defendant Parties shall be deemed to have, and by operation of law and this Final Judgment shall have, fully, finally and irrevocably released, relinquished and forever discharged the named Plaintiffs, Class members, Settlement Class Counsel and their agents, and all other counsel representing Plaintiffs and the Class members in the Action from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion or resolution of the Action and the Released Claims, and as to Plaintiffs, the Released Plaintiff Claims; provided, however, that nothing in this Final Judgment shall bar any action or release any claim to enforce the terms of the Settlement Agreement or this Final Judgment.

9. Without any further action by anyone, on and after the Effective Date of the Settlement, all Class members shall be barred forever and are permanently enjoined from asserting any Released Claim against any Released Defendant Party, and shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Claims.

10. Without any further action by anyone, on and after the Effective Date of the Settlement, Plaintiffs shall be barred forever and permanently enjoined from asserting any Released Plaintiff Claim against any Released Defendant Party, and by operation of the Final

Judgment shall be conclusively deemed to have fully and finally released the Released Defendant Parties from all Released Plaintiff Claims.

11. Pursuant to CPLR Article 9 and this Court's Preliminary Approval Order entered on _____, 2010, for the purpose of settling the Released Claims in accordance with the Settlement Agreement, the following persons are members of the Class:

(A) All persons (excluding defendant Simon Property Group, Inc., its officers, directors, affiliates, subsidiaries and successors (collectively "Simon")) residing within the State of New York who hold or held Simon Gift Cards sold on or before April 29, 2005 ("Card(s)") that are or were subject to a decrease in value resulting from the imposition by Simon of \$2.50 monthly charges automatically deducted by Simon from any Card balance remaining more than six months after Card issuance ("Administrative Fees"); and (B) All other persons (excluding Simon) who hold or held Cards sold within the State of New York on or before April 29, 2005 that are or were subject to the Administrative Fees (the "Class").

Excluded from the Class are all persons who requested exclusion in response to the Notice of Pendency of Class Action previously disseminated pursuant to the October 30, 2009 Order of the Court (the "Notice Order"). Additionally excluded from the Class are Simon, its officers, directors, affiliates, subsidiaries and successors.

12. (a) The application by Settlement Class Counsel on behalf of all counsel representing Plaintiffs and Class members in this Action for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded total legal fees and expenses of \$_____. Simon shall pay to Settlement Class Counsel the portions of the foregoing amount of attorneys fees and disbursements as directed by them within fourteen (14) calendar days after the Effective Date as defined in the Settlement Agreement. If there is any appeal filed or pending by any Class member on the amount of attorneys' fees and disbursements to be paid to Settlement Class Counsel, Settlement Class Counsel undertake and agree to return to Simon the amounts reflecting any reduced amounts of the attorneys' fees and disbursements

paid to them consistent with the reversal or modification no later than fourteen (14) calendar days after such reversal or modification.

(b) The application by Settlement Class Counsel for an award of incentive fees to Plaintiffs for their efforts in connection with the prosecution of the Action is granted, and Plaintiffs Lonner and Goldman each are awarded an incentive fee of \$5,000 on account of their efforts in connection with the prosecution of the Action, to be paid by Simon in accordance with the terms of the Settlement Agreement.

(c) The fees and costs for the administration of the Settlement shall be paid by Simon to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

[(d) The Court has considered any objection to the application for the award of attorneys' fees and expenses, and the award of incentive fees to Plaintiffs, and any such objection is overruled.]

13. Neither the Settlement Agreement nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of Simon, of any violation of any statute or regulation or principle of common law or of any liability or wrongdoing or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and Simon.

14. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Settlement Agreement and

the Class in order to enter any further orders as may be necessary to effectuate the Settlement Agreement, the Settlement provided for therein, and the provisions of this Final Judgment.

Dated: New York, New York

_____, 2010

HON. ALAN D. SCHEINKMAN, J.S.C.

EXHIBIT 1

Persons requesting exclusion from the Settlement in the Action captioned *Lonner v. Simon Property Group, Inc.* and *Goldman v. Simon Property Group, Inc.*:

Exhibit D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CHRISTOPHER R. LONNER, individually and :
on behalf of all others similarly situated, : Index No. 04-2246
Plaintiff, : (Scheinkman, J.)
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X
ALIZA GOLDMAN, individually and :
on behalf of all others similarly situated, :
Plaintiff, :
vs. :
SIMON PROPERTY GROUP, INC. :
Defendant. :
-----X

**SUMMARY NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND FAIRNESS HEARING**

TO: (A) ALL PERSONS RESIDING WITHIN THE STATE OF NEW YORK WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD ON OR BEFORE APRIL 29, 2005 (“GIFT CARD(S)”) THAT ARE OR WERE SUBJECT TO A DECREASE IN VALUE RESULTING FROM THE IMPOSITION BY SIMON PROPERTY GROUP, INC. (“SIMON”) OF \$2.50 MONTHLY CHARGES AUTOMATICALLY DEDUCTED BY SIMON FROM ANY GIFT CARD BALANCE REMAINING MORE THAN SIX MONTHS AFTER CARD ISSUANCE (“ADMINISTRATIVE FEES”); AND (B) ALL OTHER PERSONS WHO HOLD OR HELD **SIMON GIFT CARDS** SOLD WITHIN THE STATE OF NEW YORK ON OR BEFORE APRIL 29, 2005 THAT ARE OR WERE SUBJECT TO THE ADMINISTRATIVE FEES DESCRIBED ABOVE (THE “CLASS”).

EXCLUDED FROM THE CLASS ARE ALL PERSONS WHO REQUESTED EXCLUSION IN RESPONSE TO THE NOTICE OF PENDENCY OF CLASS ACTION PREVIOUSLY DISSEMINATED PURSUANT TO THE OCTOBER 30, 2009 ORDER OF THE COURT. ADDITIONALLY EXCLUDED FROM THE CLASS ARE SIMON, ITS

OFFICERS, DIRECTORS, AFFILIATES, SUBSIDIARIES AND SUCCESSORS.

This Summary Settlement Notice is given pursuant to an order of the Supreme Court of the State of New York for Westchester County, to inform you of the proposed settlement (the "Settlement") of the above-captioned class action (the "Action"). The Settlement is between Plaintiffs Christopher R. Lonner ("Lonner") and Aliza Goldman ("Goldman") (hereinafter collectively "Plaintiffs"), individually and on behalf of the Class described above, and Defendant Simon Property Group, Inc. ("Simon") (hereinafter, collectively with Plaintiffs, the "Parties").

There will be a hearing (the "Fairness Hearing") on _____, 2010 at _____m. in the Commercial Part, Courtroom 105, New York State Supreme Court, County of Westchester, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601 on the fairness of the proposed Settlement, including: (1) whether to finally approve the proposed Settlement as set forth in the Parties' Settlement Agreement dated _____, 2010 as fair, reasonable, and adequate; (2) whether a Final Judgment should be entered dismissing the Action against Simon with prejudice; and (3) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses, and an award of incentive fees to Plaintiffs (which will be paid by Simon in addition to the claims paid to the Class), should be granted. If the Settlement is approved, eligible Class members who have not previously requested to be excluded from the Class will be entitled to claim Settlement benefits and will be barred from asserting certain legal claims. The Court may adjourn or continue the Fairness Hearing without further notice to Class members.

By Preliminary Approval Order entered _____, 2010, the Court certified the action as a class action for settlement purposes. The Court additionally appointed Plaintiffs Christopher R. Lonner and Aliza Goldman as Class Representatives, and William R. Weinstein, Law Offices of William R. Weinstein, 500 Fifth Avenue, Suite 1610, New York, NY 10110, (212) 575-2205, and Trief & Olk, 150 East 58th Street, 34th Floor, New York, NY 10022, (212) 486-6060, as Settlement Class Counsel.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE AND DID NOT PREVIOUSLY REQUEST EXCLUSION, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO FILE A CLAIM FORM FOR SETTLEMENT BENEFITS. If you have not yet received the full printed Notice of Proposed Settlement of Class Action and Fairness Hearing and Claim Form/Release, you may obtain a copy of by contacting the Settlement Administrator: RG2 Claims Administration LLC, Simon Gift Card Settlement, 30 South 17th Street, Philadelphia, PA 19103, (800) XXX-XXXX.

If you are a Class Member, to be eligible to receive your Settlement benefits you must submit a completed Claim Form/Release to the Settlement Administrator at the above address postmarked **no later than _____, 2010** establishing that you are entitled to recovery. Generally, Simon will refund to a Class Member 100% of the \$2.50 Administrative Fees

incurred after 6 months from the Gift Card purchase up to the Card expiration date. You will be bound by the Final Judgment issued by the Court whether or not you make a claim.

If you are a Class Member, you also may object in writing to the Settlement. Your written objection should include your name, current address and telephone number, and Card number, along with a detailed explanation of the reasons for your objection, and any documents on which you base your objection. Objecting to the Settlement does not prevent your right to Settlement Benefits if the Settlement is approved by the Court. To object, **no later than fifteen days prior to the date of the Fairness Hearing set forth above, _____**, you must file your written objection with the Clerk of the New York Supreme Court, Westchester County, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, and additionally mail copies by first-class mail **postmarked no later than fifteen days prior to the date of the Fairness Hearing set forth above, _____**, to each of the Settlement Class Counsel and to Simon's Counsel at the following addresses:

SETTLEMENT CLASS COUNSEL

William R. Weinstein, Esq.
LAW OFFICES OF WILLIAM R. WEINSTEIN
500 Fifth Avenue, Suite 1610
New York, New York 10110

TRIEF & OLK
Attn: Barbara E. Olk, Esq.
150 East 58th Street, 34th Floor
New York, New York 10022

-and-

COUNSEL FOR SIMON

Jeffrey J. Greenbaum, Esq.
SILLS CUMMIS & GROSS
One Rockefeller Plaza
New York, New York 10020

If you wish to attend the Fairness Hearing and voice your objection either personally or through counsel retained by you, you must timely submit a written objection that also includes a statement that it is your intention to appear at the Fairness Hearing.

Additional information concerning the Action and the Settlement, including a copy of the Settlement Agreement and its exhibits, and Plaintiffs' Amended Class Action Complaints, are available for your review at the websites of Settlement Class Counsel, www.wweinsteinlaw.com (follow the link for Cases), and www.triefandolk.com (follow the link). Additional information is also available on the Settlement Administrator's website, www._____.

PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE; THE CLERK'S OFFICE IS NOT PERMITTED TO GIVE LEGAL ADVICE.

Dated: _____, 2010

By Order of the Honorable Alan D. Scheinkman,

New York Supreme Court, Westchester County