

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) \_ MONDAY \_\_\_, THE \_ 26th \_\_\_  
 )  
MADAM JUSTICE AKBARALI ) DAY OF \_\_\_ JUNE \_\_\_\_\_, 2023

**YVETTE NOLEVAUX, RENE NOLEVAUX AND DEBRA ELAYNE WILLIAMS**

Plaintiffs

and

**KING AND JOHN FESTIVAL CORPORATION, THE DANIELS CORPORATION,  
KPMB DESIGN INC. KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS,  
KIRKOR ARCHITECTS AND PLANNERS,  
TORONTO INTERNATIONAL FILM FESTIVAL DEVELOPMENTS INC.  
TORO ALUMINUM RAILINGS INC., AND TORO GLASSWALL INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** made by the plaintiffs for an Order: approving a notice of proposed settlement to the class; and approving the method of dissemination of the notice of proposed settlement to the class, was heard in writing, at Toronto, Ontario.

**ON BEING ADVISED** of the defendants' consent, and that the parties have entered into a settlement agreement, as signified by the Settlement Agreement dated June 22, 2023, subject to court approval,

**AND ON READING** the materials filed, including the motion record of the plaintiffs and the affidavit of Caleb Edwards, made June 22, 2023,

1. **THIS COURT ORDERS** that this Order incorporates herein, and makes a part hereof, the Settlement Agreement attached hereto as Schedule “1” (the “Settlement Agreement”).

Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order.

### **Settlement Approval Hearing**

2. **THIS COURT ORDERS** that it will decide:

- (a) Whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members;
- (b) Whether to approve the fee request of the Class Counsel; and
- (c) Any other matters as the Court may deem appropriate

at a virtual hearing to be held on September 5, 2023, at 10:00 AM or as soon after that time as the motion can be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario;

### **Conditions of Certification**

3. **THIS COURT ORDERS** that if (i) the Settlement Agreement is terminated for any reason set out therein or (ii) any specified condition to the Settlement Agreement is not satisfied and any party seeks to terminate the Settlement Agreement:

- (a) this Order shall be set aside, be of no further force or effect, and be without prejudice to any party;
- (b) the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the rights of the plaintiffs and the defendants;

- (c) each party to the within action shall be restored to his, her, or its respective position as it existed immediately prior to the execution of the Settlement Agreement.

## **Notice**

4. **THIS COURT ORDERS** that the long form and short form notices of proposed settlement (the “**Notices**”) substantially in the form attached hereto as Schedule “2” and “3”, respectively are hereby approved.
5. **THIS COURT ORDERS** that Ricepoint Administration Inc. shall be appointed as claims administrator (“**Claims Administrator**”);
6. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be hand delivered to all units within Festival Towers prior to June 30, 2023.
7. **THIS COURT ORDERS** that the Claims Administrator shall cause the short form notice to be published in an English-language newspaper to be selected by Class Counsel, as an advertisement with a maximum size of a ¼ page.
8. **THIS COURT ORDERS** that the Claims Administrator shall undertake a social media campaign on Facebook, Reddit and in targeted online forums relating to urban issues, real estate and construction defects, designed to inform individuals who might be part of the class of the settlement and settlement approval hearing.
9. **THIS COURT ORDERS** that the long form notice shall be:
- (a) posted on the settlement website to be established by the Claims Administrator;
  - and
  - (b) posted on Class Counsel’s website.

10. **THIS COURT ORDERS** that the costs of preparing, printing, publishing, mailing and otherwise disseminating the short form and long form notices shall be paid by the Claims Administrator from the Settlement Amount.

11. **THIS COURT ORDERS** that Class Counsel will:

- (a) Post the Notices on their websites for the class proceeding;
- (b) Send the short form notice to each person who registered with Class Counsel and provided a valid email address; and
- (c) Send the Notices to the condominium corporation and request that it post the Notices on their website and publicly within their building.

12. **THIS COURT ORDERS** that the form and manner of notice as set out above and approved herein, are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under s. 19 of the *Class Proceedings Act*.

#### **The Claims Administrator**

13. **THIS COURT ORDERS** that the Claims Administrator be responsible for the following: (a) disseminating notice to the Settlement Class; (b) certifying by affidavit to the Court compliance with paragraphs 6 to 10 of this Order; (c) establishing a website for purposes of posting the Notice in English, the Settlement Agreement and related documents; d) accepting and maintaining objections to the settlement sent by Class Members; (e) providing the Court with all objections to the Settlement by way of affidavit no later than three days before the settlement approval hearing; and (f) all other responsibilities designated to the Claims Administrator in the Settlement Agreement.

14. THIS COURT ORDERS that the costs of the Claims Administrator in completing the responsibilities as set out in paragraph 13 shall be paid to the Claims Administrator from the Settlement Amount.

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The Honourable Madam Justice Akbarali

SCHEDULE 1

Court File No. CV-12-448294 00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

YVETTE NOLEVAUX, RENE NOLEVAUX AND DEBRA ELAYNE WILLIAMS

Plaintiffs

and

KING AND JOHN FESTIVAL CORPORATION, THE DANIELS CORPORATION,  
KPMB DESIGN INC. KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS,  
KIRKOR ARCHITECTS AND PLANNERS,  
TORONTO INTERNATIONAL FILM FESTIVAL DEVELOPMENTS INC.  
TORO ALUMINUM RAILINGS INC., AND TORO GLASSWALL INC.

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and among the Plaintiffs and the Defendants, by and through their respective counsel.

**BACKGROUND**

Whereas:

- A. About June 20, 2011, glass panelling installed on the balcony at Festival Tower fell onto the podium below the balcony.
  - B. About July 7 and August 3, 2011, at least two other similar incidents of spontaneous breakage of the balcony guardrail glass panels showered glass fragments on the street below.
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- C. On August 19, 2011, the City of Toronto declared that the balconies were unsafe and sealed access to the balconies.
- D. In due course, the City of Toronto rescinded the August 19, 2011 order and allowed use of the balconies.
- E. On March 12, 2012, the class action was commenced at Toronto.
- F. On October 3, 2013, Justice Belobaba issued the Certification Order, defined below.

#### **AGREED TERMS**

IT IS HEREBY AGREED, by and among the Parties that, subject to approval of the court, the Released Claims shall be fully and finally compromised, settled and released and the Action and all crossclaims will be dismissed with prejudice upon the terms and conditions described below.

#### **I. DEFINITIONS**

- 1.1 In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this Section:
  - (a) “Abatement” means an amount of money that an Owner of a Unit paid to a Tenant or credited to the Tenant during the Class Period.
  - (b) “Action” means Action CV-12-448294-00CP.
  - (c) “Administrative Expenses” means all of the expenses incurred in the administration of this Settlement. For greater certainty, Administration Expenses do not include Legal Fees.
  - (d) “Agreement” means this Settlement Agreement.

- (e) “Approval Hearing” means the date scheduled to decide whether to approve the Agreement, fixing Legal Fees, approving the method of distribution to the Class Members and any other matters as the court deems appropriate.
- (f) “Approval Order” means the order of the court as a result of the Approval Hearing.
- (g) “Balcony” means an outdoor common element exclusively used by person(s) in a Unit.
- (h) “Certification Order” means Justice Belobaba’s certification order dated October 3, 2013.
- (i) “Charney” means Charney Lawyers PC.
- (j) “Claims Administrator” means a person appointed by the court at the Approval Hearing to administer the Settlement Agreement.
- (k) “Claims Commencement Date” means the date the Approval Order becomes final.
- (l) “Claim Form” means the form available on the Settlement Website authorized by the court.
- (m) “Claims Period” means the period of time that Class Members may submit claims to the Claims Administrator commencing on the date the Approval Order becomes final and ends four (4) months thereafter.
- (n) “Class” and “Class Members” means: those persons, excluding the defendants and their senior officers and directors, who owned, rented and/or ordinarily resided in a Unit during the period commencing on May 1, 2011 to and including November 30, 2012, excluding the Owner(s) of a Unit who signed a Release and a Tenant(s) who signed a Release.



- (o) “Class Counsel” means SSS and Charney.
- (p) “Class Period” means the period from May 1, 2011 to and including November 30, 2012.
- (q) “Condominium Corporation” means 80 John Street, Toronto Standard Condominium Corporation Plan No. 2155.
- (r) “Daniels” means The Daniels Corporation.
- (s) “Defendants” mean King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toro Aluminum Railings Inc. and Toro Glasswall Inc.
- (t) “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- (u) “Escrow Account” means the balance from Charney’s trust account transferred to the control of the Claims Administrator within ten (10) days after the Approval Order becomes final.
- (v) “Falling Glass” means Glass Paneling which was installed in balcony guards on Balconies at Festival Tower that shattered during the Class Period.
- (w) “Festival Tower” means the condominium located at 80 John Street, Toronto.
- (x) “Glass Paneling” means the tempered glass installed in the balcony guards for each Balcony at Festival Tower.
- (y) “Kirkor” means Kirkor Architects and Planners.
- (z) “KJFC” means King and John Festival Corporation.

- (aa) “KPMB Architects” means KPMB Design Inc.
- (bb) “Kuwabara” means Kuwabara, Payne, McKenna, Blumberg Architects.
- (cc) “Legal Fees” means Class Counsel fees, disbursements, and any applicable taxes thereon, as approved by the court.
- (dd) “Net Settlement Fund” means the balance of the \$800,000 remaining after the court approves Legal Fees and any other expenses authorized by the Certification Order and the Approval Order.
- (ee) “Notice” means notice of the Approval Order authorized by the court.
- (ff) “Notice Date” means the first date on which Notice is disseminated to Settlement Class Members.
- (gg) “Notice of Information” means a notice of the Agreement, Class Counsel’s request for Legal Fees, date, time and place of the Approval Hearing and the deadline for any objection to the Agreement.
- (hh) “Notice Plan” means the settlement notice program in accordance with the terms of section 5 herein and as approved by the court.
- (ii) “Owner” means each registered owner of a Unit during the Class Period.
- (jj) “Parties” means the Plaintiffs and the Defendants.
- (kk) “Plaintiffs” mean Yvette Nolevaux, Rene Nolevaux and Debra Elayne Williams.
- (ll) “Released Claims” means any and all claims, demands, actions, causes of action, and suits made or which could have been made in the Action.
- (mm) “Released Parties” means the Defendants and their current and former affiliates, parents, related entities, successors and subsidiaries, insurers, directors, officers, agents, and employees.

- (nn) “Release” means any Owner(s) of Units and any Tenant(s) who signed a release releasing any Defendant(s) and/or any other person from damages because of falling glass panels.
- (oo) “Settlement Amount” means Eight Hundred Thousand dollars (\$800,000).
- (pp) “Settlement Trust” means Eight Hundred Thousand dollars (\$800,000) less Legal Fees, less any other expenses and amounts authorized by the court in the Approval Order or by this Agreement.
- (qq) “Settlement Website” means the website to be created by the Claims Administrator for purposes of communicating with Class Members and for otherwise facilitating the administration of this Settlement, including allowing Class Members to register and/or submit a Claim.
- (rr) “SSS” means Strosberg Sasso Sutts LLP.
- (ss) “Tenant” means a person that rented a Unit during the Class Period.
- (tt) “Toro” means Toro Aluminum Railings Inc. and Toro Glasswall Inc.
- (uu) “Unit” means each of the approximately 380 condominium residential units of the Condominium Corporation.
- (vv) “Websites” mean SSS’ website at <https://www.strosbergco.com/class-actions/fallingglass/> and Charney’s website at <https://www.charneylawyers.com/festival-tower-class-action>.

## **II. SETTLEMENT CONSIDERATION**

- 2.1 The Defendants shall pay the Settlement Amount into Charney’s trust account no less than thirty (30) days before the Approval Hearing.
- 2.2 The Defendants will not be required to pay more than the Settlement Amount, all in, under this Agreement and the Settlement Amount is the sole monetary payment that the Defendants will make under this Agreement.

- 2.3 Within ten (10) days after the Approval Order becomes final, Charney shall transfer to the Claims Administrator the Net Settlement Fund.
- 2.4 The Settlement Amount shall be the sole source of monetary funds under this Agreement.
- 2.5 The Settlement Amount shall not be released from Charney's trust account until the Approval Order becomes final.
- 2.6 The Claims Administrator, subject to supervision and direction of the court, shall administer and/or oversee distribution of the Settlement Trust pursuant to this Agreement and the Approval Order.
- 2.7 The Claims Administrator is responsible for communicating with the Class Members regarding the distribution of the Settlement Trust.
- 2.8 All funds held in Charney's trust account shall be deemed to be in the custody of the court until such time as the funds are distributed pursuant to the Approval Order or further order of the court.
- 2.9 Each Class Member shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Order.
- 2.10 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design, or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. Defendants also shall have no

obligation to communicate with Class Members other than set out in this Agreement.

- 2.11 The Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.
- 2.12 No action shall lie against the Claims Administrator for any decision made in the administration of this Agreement without an order from the court authorizing such an action.

### **III. INFORMATION SUPPLIED OR TO BE SUPPLIED BY THE DEFENDANTS**

- 3.1 The Defendants have provided evidence that in Festival Tower there are about 380 Units.

### **IV. SETTLEMENT TERMS – OWNER(S) AND TENANTS OF A UNIT DURING THE CLASS PERIOD**

- 4.1 The Agreement is based upon:
- (a) payment per Unit over the Class Period without consideration of the number of persons living in each Unit or the size of a Balcony or any Balcony.
  - (b) the Owner(s) of about 80 Units signed Releases; and
  - (c) a damage award of about \$1,200 per Unit whose Owner(s) did not sign a Release.
- 4.2 Only one Class Member associated with the Unit need apply for payment. If more than one Class Member applies for payment for the same Unit, each Class Member will share equally in the payment per Unit.

- 4.3 If an Owner(s) and/or a Tenant(s) was in possession of the Unit for all or part of the Class Period, the Owner(s) and/or the Tenant(s) will share the payment based upon the month(s) each occupied the Unit during the Class Period.
- 4.4 If during the Class Period, the Owner(s) of the Unit gave the Tenant(s) an Abatement, the Owner(s) will be reimbursed for the Abatement in priority to the Tenant(s).
- 4.5 The Owner(s) and/or Tenant(s) may request a payment by submitting a Claim Form obtained from the Settlement Website during the Claim Period. Class Members who are making a claim must prove she/he/it or the Tenant was the Owner or occupier of the Unit during the Class Period and/or claimed an Abatement. This Claim must be to the satisfaction of the Claims Administrator. She or he must provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him.
- 4.6 The Claims Administrator shall, within fifteen (15) days of receipt of each Claim Form, verify that each person who submits a Claim Form is a Class Member.
- 4.7 If the Claims Administrator determines a Claim Form is defective, the Claims Administrator shall, within fifteen (15) days of receipt, notify the person of the defect and give the person thirty (30) days to cure the defect. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect.
- 4.8 The Administrator's decision is final and there is no appeal from the Administrator's decision.

## **V NOTICE OF APPROVAL HEARING AND OBJECTIONS**

- 5.1 Class Members will be given Notice of Information by:
  - (a) Class Counsel posting the Notice of Information on the websites.

- (b) Class Counsel sending Notice of Information to each person who registered with Class Counsel and provided a valid e-mail address.
  - (c) Claims Administrator distributing the Notice of Information to each Unit.
  - (d) Class Counsel sending Notice of Information to the Condominium Corporation and requesting that it post the Notice Information on its website.
  - (e) Claims Administrator will conduct a social media campaign.
  - (f) Class Counsel will make a press release.
- 5.2 Any Class Member who objects to the Agreement must send his, her or its objection to:

Ricepoint Administration Inc.  
Email: [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com)

- 5.3 Ricepoint will report to the court by affidavit before the Approval Hearing.

## **VI. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM**

- 6.1 The court will appoint the Claims Administrator, approve the Claims Administrator's fees and disbursements and approve any other payment(s) out of the Settlement Amount.
- 6.2 After the Approval Order becomes final, the Claims Administrator is responsible for distributing the Notice of the Approval Order.
- 6.3 The claims program shall only be administered through the Settlement Website that the Claims Administrator will establish. The Claims Administrator may pay Class Members by cheque sent by mail or in a method approved by the court.
- 6.4 Class Counsel shall provide the Claims Administrator with Class Counsel's registration data including names and last known email addresses of Class Members within ten (10) business days after the Approval Order.

- 6.5 The Claims Administrator shall perform the functions specified in this Agreement including, but not limited to: overseeing administration of the Net Settlement Fund; establishing and operating the settlement website; administering the Claims Program; and distributing compensation.
- 6.6 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:
- (a) establishing and maintaining the Settlement Website that, among other things, allows Class Members to submit Claims forms electronically;
  - (b) responding to all valid inquiries;
  - (c) reviewing, processing and determining the validity of all Claim Forms;
  - (d) at the close of the Claims Period, paying to the Class Members, either electronically or by mailing a cheque, in the amounts, due in accordance with the Approved Judgment; and
  - (e) provide a final report to the court, Class Counsel and Defendants' Counsel.

## **VII. LEGAL FEES**

- 7.1 Class Counsel will seek approval of Legal Fees in the amount of 30% of the Settlement Amount, plus disbursements plus HST.
- 7.2 The Defendants acknowledge that they take no position on the motion for approval of the Legal Fees. They will have no involvement in the approval process to determine the amount of Legal Fees. They will not make any submissions to the court concerning Legal Fees.
- 7.3 The amounts owing to Class Counsel will be paid from the Settlement Amount, after the Approval Order becomes final.



## **VIII. SETTLEMENT APPROVAL PROCESS**

### *Approval Hearing*

- 8.1 The Plaintiffs will seek an Approval Order from the court. The Defendants will consent to the Approval Order.

### *Class Members' Claims*

- 8.2 Because of the Approval Order, the Plaintiffs and each Class Member shall be deemed to have, and by operation of the Approval Order shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims.

### *Total Satisfaction of Released Claims*

- 8.3 All benefits offered or obtained pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who did not opt-out of the Action.
- 8.4 The Release shall be effective with respect to all Class Members regardless of whether those Class Members ultimately filed a Claim Form or receive compensation under this Agreement or under the Approval Order.

### *Class Counsel Acted Independently*

- 8.5 Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement.

**IX. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

- 9.1 Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement. The persons signing this Agreement on behalf of each Party warrants that he/she is authorized to sign this Agreement on behalf of that Party.
- 9.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of this Agreement and the Approval Order. Class Counsel will seek the Approval Order. The Defendants will assist Class Counsel in preparing court materials for the hearing of the Approval Order.

**X. EFFECTIVE DATE AND TERMINATION**

- 10.1 In the event that the court refuses to approve the Agreement or refuses to issue the Approval Order, the Defendants may, at their sole discretion, terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.
- 10.2 In the event this Agreement is terminated, the Settlement Amount, together with any interest or other income earned thereon, if any, less any advertising fees paid or due and/or less any fees owing to the Administrator and/or to Ricepoint and/or less disbursements incurred by Class Counsel notifying the Class and/or other amounts authorized by the Court shall be returned to counsel for Toro, Blaney McMurtry LLP.
- 10.3 Except as otherwise provided herein, in the event the Agreement is terminated or the Approval Order does not become final, the Parties to this Agreement, including all Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement and the execution of any term sheet between the Parties and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement,

any term sheet, and any related orders had not been entered into. In addition, the Parties agree that in the event the Settlement is terminated:

- (a) Any orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition; and
- (b) this Agreement shall become null and void, and the fact of this Agreement shall not be used or cited by any person or entity, including in any contested proceeding.

## **XI. MODIFICATION OF THE AGREEMENT**

- 11.1 The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the court.

## **XII. MISCELLANEOUS PROVISIONS**

### ***NO ADMISSION***

- 12.1 This Agreement is for settlement purposes only. If the Agreement is terminated, neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendants or any admissions by the Defendants of any claim or allegation made in any action or proceeding against the Defendants. If this Agreement is terminated and becomes null and void, any portion of this settlement shall have no further force and effect and shall not be offered in evidence or used in the Action or any other proceeding. This Agreement shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce the terms of the Agreement. Information provided by the Defendants to the Plaintiffs and Class Counsel in connection with settlement negotiations is for settlement

purposes only and shall not be used or disclosed for any other purpose whatsoever.

***GOVERNING LAW***

- 12.2 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- 12.3 This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Agreement is sought.

***COUNTERPARTS***

- 12.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

***ARM'S-LENGTH NEGOTIATIONS***

- 12.5 The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. All Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

***CONTINUING JURISDICTION***

- 12.6 The court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Agreement.
- 12.7 This Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement are to be kept confidential and not disclosed until the Agreement is filed with the Court.

***BINDING EFFECT OF SETTLEMENT AGREEMENT***

- 12.8 This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

***NULLIFICATION***

- 12.9 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

***EXTENSION OF TIME***

- 12.10 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to court approval as to court dates).

***SERVICE OF NOTICE***

- 12.11 Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or


notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing.

***AUTHORITY TO EXECUTE SETTLEMENT AGREEMENT***

12.12 Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of June , 2023.

ON BEHALF OF KING AND JOHN FESTIVAL CORPORATION AND THE DANIELS CORPORATION

  
\_\_\_\_\_  
Michael Tamblyn  
Torkin Manes LLP  
#1500-151 Yonge St.  
Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA PAYNE MCKENNA BLUMBERG ARCHITECTS AND KIRKOR ARCHITECTS AND PLANNERS

\_\_\_\_\_  
Bernie McGarva  
Aird & Berlis LLP  
1800-181 Bay Street  
Toronto, ON M5J 2T9

ON BEHALF OF TORO ALUMINUM RAILINGS INC. and TORO GLASSWALL INC.

\_\_\_\_\_  
Tim Alexander  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5

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ON BEHALF OF KING AND JOHN FESTIVAL  
CORPORATION AND THE DANIELS CORPORATION

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Michael Tamblyn  
Torkin Manes LLP  
#1500-151 Yonge St.  
Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA  
PAYNE MCKENNA BLUMBERG ARCHITECTS AND  
KIRKOR ARCHITECTS AND PLANNERS



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Bernie McGarva  
Aird & Berlis LLP  
1800-181 Bay Street  
Toronto, ON M5J 2T9

ON BEHALF OF TORO ALUMINUM RAILINGS INC.  
and TORO GLASSWALL INC.

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Tim Alexander  
Blaney McMurtry LLP  
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12.12 Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of June , 2023.

ON BEHALF OF KING AND JOHN FESTIVAL  
CORPORATION AND THE DANIELS CORPORATION

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Michael Tamblyn  
Torkin Manes LLP  
#1500-151 Yonge St.  
Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA  
PAYNE MCKENNA BLUMBERG ARCHITECTS AND  
KIRKOR ARCHITECTS AND PLANNERS

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Bernie McGarva  
Aird & Berlis LLP  
1800-181 Bay Street  
Toronto, ON M5J 2T9

ON BEHALF OF TORO ALUMINUM RAILINGS INC.  
and TORO GLASSWALL INC.



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Tim Alexander  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5



ON BEHALF OF THE PLAINTIFFS

*Harvey T. Strosberg*

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Harvey T. Strosberg KC  
Strosberg Sasso Suits LLP  
1561 Ouellette Avenue  
Windsor, ON N8X 1K15

*Theodore Charney*

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Theodore Charney  
Charney Lawyers PC  
151 Bloor Street West, Suite 602  
Toronto, ON M5S 1S4

## SCHEDULE 2

### NOTICE OF FESTIVAL TOWER CLASS ACTION AND PROPOSED SETTLEMENT

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

#### WHAT IS THIS NOTICE ABOUT?

This notice is directed to all persons (the “**Class**” or “**Class Members**”) who owned, rented and/or ordinarily resided in one of the 381 condominium residential units in the condominium known as the King and John Festival Condominium located at the intersection of King Street and John Street, more specifically 326-358 King Street West (alternatively referred to as 80 John Street) between May 1, 2011, to November 30, 2012, (“**Class Period**”) and who have not already opted out of the class proceeding or signed a full and final release in favour of the defendants: King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toronto International Film Festival Developments Inc., Toro Aluminum Railings Inc., and Toro Glasswall Inc.

This notice concerns the proposed settlement (the “**Settlement**”) of a class action lawsuit against King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toro Aluminum Railings Inc., and Toro Glasswall Inc. (the “**Defendants**”). The lawsuit alleges in June 2011 glass paneling installed on the balcony guardrail system fell into the street, necessitating the closure of the balconies and a lengthy repair process (the “**Falling Glass Incidents**”) which lasted for a period between 10 months to 16 months. The Defendants deny that they have violated any laws and deny that they have engaged in any wrongdoing.

#### THE PROPOSED SETTLEMENT

The parties have entered into a settlement agreement (the “**Settlement Agreement**”). In order for the Settlement to become effective, it must be approved by the Ontario Superior Court of Justice (the “**Court**”). If the Court approves the Settlement Agreement, the Defendants will pay \$800,000.00 (eight hundred thousand) (the “**Settlement Fund**”), inclusive of prejudgment interest to settle the claims of the Class Members, including the Legal Fees and Disbursements and the costs of administering the settlement, in return for a release and a dismissal of the class action. If you would like a copy of the Settlement Agreement, it is available at:

1. [www.festivalsettlement.ca](http://www.festivalsettlement.ca);
2. <https://www.strosbergco.com/class-actions/fallingglass/>, and
3. <https://www.charneylawyers.com/festival-tower-class-action>

or a copy can be obtained by contacting Class Counsel as listed below.

The Defendants do not admit wrongdoing or liability. This Settlement is a compromise of disputed claims.

#### COMPENSATION FOR CLASS MEMBERS

Eligible Class Members will receive an award calculated on the amount of the Settlement Fund remaining after payment of legal fees, payments of honoraria, disbursements, and taxes thereon, and administrative expenses for the settlement administration (the “**Net Settlement Fund**”). The Claims Administrator will calculate awards on a per unit basis. The award for units will be calculated at about \$1,200 per unit (the “**Awards**”).

These amounts are based on an award per unit over the Class Period without consideration of (a) the number of people living in the unit, or (b) the size of the balcony in the unit. If after all eligible claims are calculated there remains a surplus

in the net settlement fund, then the balance is to be allocated to the claimants who submitted an eligible claim and distributed proportionally. If the net settlement fund is insufficient to pay the Awards then the fund shall be shared proportionally amongst all eligible claims.

If unit owner(s) and/or a tenant(s) was in possession of the unit for all or part of the class period, the owner(s) and/or the tenant(s) will share the payment based upon the month(s) each occupied the unit during the Class Period. If, during the Class Period, a unit owner gave a rent abatement to a tenant, the owner will be reimbursed for that abatement in priority to the tenant.

You cannot make a Claim until after the Settlement is approved. If the Settlement is approved, further notice of the Settlement will NOT be given. You should monitor the Claims Administrator's Website and check it regularly at [www.festivalsettlement.ca](http://www.festivalsettlement.ca) for the latest information on the status of the Settlement and the details and deadline for making a Claim.

## **SETTLEMENT APPROVAL HEARING**

The Ontario Superior Court of Justice will hold a virtual settlement approval hearing at the courthouse at Osgoode Hall, 130 Queen Street West, Toronto, Ontario on September 5, 2023 at 10:00 AM to consider whether the proposed settlement is fair, reasonable and in the best interests of the Class (the "**Approval Hearing**"). Class Members and members of the public may attend the virtual Approval Hearing but are not required to do so. The details on how to attend remotely will be posted to [www.festivalsettlement.ca](http://www.festivalsettlement.ca).

As a Class Member, you are entitled, but not obligated, to express your opinions about the proposed settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send your submissions in writing by email to the Claims Administrator, at [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com), and ensure they are received no later than August 30, 2023. The Claims Administrator will provide all submissions to the Court and the Defendants in advance of the Approval Hearing. Your written submissions should include:

- your name, address and telephone number;
- a brief statement of the reasons that you support or object to the proposed settlement terms; and
- whether you plan to attend at the Approval Hearing.

## **ADMINISTRATION COSTS AND LEGAL FEES**

The Plaintiffs entered into contingency fee agreements with Class Counsel, providing that Class Counsel are to be paid only in the event of a successful settlement or judgment. Class Counsel will be asking that the Court approve legal fees of 30% of the Settlement Fund, plus disbursements and applicable taxes, in accordance with the contingency fee agreements. Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to each of the Plaintiffs in recognition of their role in this litigation (the “**Honorariums**”).

## **FOR FURTHER INFORMATION**

For questions regarding this Notice or the proposed settlement, please contact Class Counsel as follows:

### **Kateryna Galts**

#### **Charney Lawyers PC**

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Tel: (416) 964-7950

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

### **Marietta Underwood**

#### **Strosberg Sasso Sutts LLP**

1561 Ouellette Avenue

Windsor, ON N8X 1K5

Tel: 519.561.6294

Email: [munderwood@strosbergco.com](mailto:munderwood@strosbergco.com)

**Please do not call the defendants or the courts about this action.**

## **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

## SCHEDULE 3

### NOTICE OF FESTIVAL TOWERS CLASS ACTION AND PROPOSED SETTLEMENT

#### PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

This notice is directed to all persons (the “**Class**” or “**Class Members**”) who owned, rented and/or ordinarily resided in one of the 381 condominium residential units in the condominium located at the intersection of King Street and John Street, more specifically 326-358 King Street West (alternatively referred to as 80 John Street) between May 1, 2011, to November 30, 2012, (“**Class Period**”) and who have not already opted out of the class proceeding or signed a full and final release in favour of the defendants: King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toronto International Film Festival Developments Inc., Toro Aluminum Railings Inc., and Toro Glasswall Inc.

This notice concerns the proposed settlement (the “**Settlement**”) of a class action lawsuit against King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc. Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toro Aluminum Railings Inc., and Toro Glasswall Inc. (the “**Defendants**”). The lawsuit alleges in June 2011 glass paneling installed on the balcony guardrail system fell into the street, necessitating the closure of the balconies and a lengthy repair process (the “**Falling Glass Incidents**”) which lasted for a period between 10 months to 16 months. The Defendants deny that they have violated any laws and deny that they have engaged in any wrongdoing.

The parties have entered into a settlement agreement (the “**Settlement Agreement**”). In order for the Settlement to become effective, it must be approved by the Ontario Superior Court of Justice (the “**Court**”). If the Court approves the Settlement Agreement, the Defendants will pay \$800,000.00 (eight hundred thousand) (the “**Settlement Fund**”), inclusive of prejudgment interest to settle the claims of the Class Members, including the Legal Fees and Disbursements and the costs of administering the settlement, in return for a release and a dismissal of the class action. If you would like a copy of the Settlement Agreement, it is available at:

1. [www.festivalsettlement.ca](http://www.festivalsettlement.ca);
2. <https://www.strosbergco.com/class-actions/fallingglass/>, and
3. <https://www.charneylawyers.com/festival-tower-class-action>

or a copy can be obtained by contacting Class Counsel as listed below.

If you owned, rented and/or ordinarily resided in one of the condominium residential units in Festival Tower during the Class Period, and have not previously opted-out of the class or released.... you are a “**Class Member**”.

If the Court approves the proposed Settlement, you will be entitled to the benefits described below. However, you will give up any right you may have, now or in the future, to sue the Defendants for claims related to the Falling Glass Incidents. If you decide to object, the court will consider your objections when making its decision on the proposed settlement. Please read this Notice carefully before you make your decision. If you have any questions, please contact Class Counsel, identified below, or visit [www.festivalsettlement.ca](http://www.festivalsettlement.ca).

#### SUMMARY OF SETTLEMENT BENEFITS

If the Court approves the settlement the Defendants will pay the Settlement Fund to settle the claims of the Class Members, including the Legal Fees and Disbursements and the costs of administering the settlement, in return for a release and a dismissal of the class action.

Class Members shall submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims.

Eligible Class Members will receive an award calculated on the amount of the settlement fund remaining after payment of legal fees, payments of honoraria, disbursements, and taxes thereon and administrative expenses for the settlement administration (the “**Net Settlement Fund**”). The claims administrator will calculate awards on a per unit basis. The award for units will be calculated at about \$1,200 per unit (the “**Awards**”).

These amounts are based on an award per unit over the Class Period without consideration of (a) the number of people living in the unit, or (b) the size of the balcony in the unit. If after all eligible claims are calculated there remains a residue/surplus in the net settlement fund, then the balance is to be allocated to the claimants who submitted an eligible claim for a unit with a balcony and distributed proportionally. If the net settlement fund is insufficient to pay the awards, then the fund shall be shared proportionally amongst all eligible claims.

If a unit owner(s) and/or a tenant(s) were both in possession of the unit for all or part of the class period, the owner(s) and/or the tenant(s) will share the payment based upon the month(s) each occupied the unit during the Class Period. If, during the Class Period, a unit owner gave a rent abatement to a tenant, the owner will be reimbursed for that abatement in priority to the tenant.

If the Settlement is approved, further notice of the Settlement will NOT be given. You should monitor the Claims Administrator’s Website and check it regularly at [www.festivalsettlement.ca](http://www.festivalsettlement.ca) for the latest information on the status of the Settlement and the details and deadline for making a Claim.

Other limitations and qualifications may apply. Please consult the “Understanding the Settlement” section below, a lawyer, or contact Class Counsel if you have questions.

**WHAT MUST YOU DO NOW**

You must decide now if you wish to file objections to the proposed Settlement. Your options, and how to exercise them, are described below.

| <b>YOUR OPTIONS IN THIS SETTLEMENT AND HOW TO EXERCISE THEM</b> |   |                          |
|---|---|--------------------------|
| I want to be part of the proposed Settlement                    | You do not need to do anything. If the Court approves the Settlement, you will be able to claim your benefits by following the procedures described below. However, you will give up your individual right to sue the Defendants for claims related to the Falling Glass Incidents.   | No deadline              |
| I want to object or comment on the Settlement                   | You may object to the proposed Settlement by writing to the Court explaining why you object. The process you must follow for filing and serving objections is described below in the “Understanding the Settlement” section. You may also ask to speak in Court at the settlement approval hearing about the proposed Settlement if you file a timely objection and submit a timely notice of your intent to appear | Deadline: August 30,2023 |

|  |   |  |
|--|---|--|
|  | at the settlement approval hearing. Instructions are below in the “Understanding the Settlement” section. |  |
|--|---|--|

## UNDERSTANDING THE SETTLEMENT

### I. Basic Questions

#### 1. Why am I getting this Notice?

The Court in charge of this litigation authorized this Notice because you may be a member of the Class. The Notice explains the proposed Settlement and helps you understand all of your options before the Court decides whether or not to approve the Settlement.

Your receipt of Settlement benefits, including cash payments, depends on the Court’s final approval of the Settlement and the resolution of any appeals in favor of approval of the Settlement.

Please be patient and check the Settlement Website at [www.festivalsettlement.ca](http://www.festivalsettlement.ca) regularly. Do not contact the Defendants regarding the details of this Settlement because they will not have any information that is not on the Settlement Website. Do not contact the courts about this action.

#### 2. What is this lawsuit about?

This Settlement resolves litigation against the Defendants alleging that the Defendants’ negligence caused the Falling Glass Incidents and the resulting repair process. The Plaintiffs claim that they suffered damages from being denied access to their balconies and to some amenities during that repair process.

You can read the Statement of Claim by visiting [www.festivalsettlement.ca](http://www.festivalsettlement.ca). The Defendants deny that they have violated any law or engaged in any wrongdoing. The parties agreed to resolve these matters before these issues were decided by the Court.

#### 3. Why is there a Settlement?

A settlement is an agreement between a plaintiff (or multiple plaintiffs) and a defendant (or multiple defendants) to resolve a lawsuit. Settlements end all or part of a lawsuit without a trial and without the court or a jury ruling in favor of either side. All parties in the lawsuit agree to a settlement to avoid the cost and risk of further litigation, including a potential trial, and to afford Class Members benefits in exchange for releasing the defendant from liability. This proposed Settlement does not necessarily mean that the Defendants broke any laws or did anything wrong, and the Court did not decide which side was right.

This Notice summarizes the Settlement’s key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible on the Settlement Website, the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.

#### 4. How was this Settlement reached?

The Plaintiffs and the Defendants reached this Settlement through negotiations between the parties

following the settlement of two related matters at a mediation. Using the prior settlement as a benchmark, both sides then negotiated the final terms of the Settlement Agreement, which will be submitted to the Court for approval.

#### **5. What options do I have now?**

You may write to object to the Settlement, or you may do nothing.

Please consult the chart on page 2 on how to exercise each option, as well as the time by which you must do so.

#### **6. Why is this a class action?**

A class action is a representative action or lawsuit in which one or more plaintiffs (also called “representative plaintiffs”) sue a defendant(s) on behalf of other, unnamed people with similar claims. All of these people together are the “Class” or “Class Members,” if the Court approves this procedural form. Once approved, the Court resolves the issues for all Class Members, except for those who opt out of the Class. This matter was certified in 2013.

#### **7. What am I giving up in exchange for receiving the Settlement’s benefits?**

If the Settlement becomes final, you will be eligible for the benefits described in this Notice. In exchange for having those benefits available to you, you will give up your right to sue the Defendants for claims related to the Falling Glass Incidents.

### **II. Who is in the Settlement?**

#### **8. How do I know if I am part of the Settlement?**

If you owned, rented and/or ordinarily resided in one of the 381 condominium residential units in the condominium located at the intersection of King Street and John Street, more specifically 326-358 King Street West (alternatively referred to as 80 John Street) between May 1, 2011, to November 30, 2012, and have not already opted out of the class proceeding or signed a release in favour of the defendants: King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toronto International Film Festival Developments Inc., Toro Aluminum Railings Inc., and Toro Glasswall Inc. you are a class member.

### **III. Understanding the Class Action Process**

#### **9. When will the Settlement get finally approved?**

The Court has set a date of September 5, 2023, at 10:00 AM for the virtual Settlement Approval Hearing. The virtual hearing will take place at Osgoode Hall, 130 Queen Street West, Toronto, Ontario. At the virtual hearing, the Court will consider arguments and evidence as to whether the Settlement is fair, reasonable, and in the best interest of the Class Members and whether class counsel’s fees, disbursements and taxes should be approved and whether the plaintiffs’ honoraria should be approved. We anticipate that the Court will decide whether to approve the Settlement either during or soon after the hearing. You should monitor the Settlement website for the latest information on the status of the settlement.

#### **10. If I am part of the Settlement, can I sue the Defendants for the same claims later?**



No. If the Settlement is approved, you give up the right to sue the Defendants for the claims that this Settlement resolves.

#### **11. Do I have a lawyer in this case?**

Yes. The Court appointed as Class Counsel Charney Lawyers PC and Strossberg, Sasso, Sutts LLP to represent you and the other Class Members.

Charney Lawyers PC  
150 Bloor Street West, Suite 602  
Toronto, ON M5S 1S4  
Phone: (416) 964-7950  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

Strossberg, Sasso, Sutts LLP  
1561 Ouellette Ave  
Windsor, Ontario N8X 1K5  
Phone: (416) 362-7272  
e-mail: [munderwood@strossbergco.com](mailto:munderwood@strossbergco.com)

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

#### **12. Who will pay the lawyers?**

Class Counsel will be asking that the Court approve legal fees of 30% of \$800,000.00 which is \$240,000.00 plus disbursements and applicable taxes, in accordance with the contingency fee agreements.

Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to each of the Named Plaintiffs in recognition of the role they played as representative plaintiffs in this litigation.

Class Counsel will also be asking that the Court approve these payments, as well as payments for the costs of the settlement administration, out of the settlement fund.

#### **13. Can I tell the Court if I object to the settlement?**

You (or your lawyer) may object in writing to the Court. The Court will consider your views. If you wish to make a submission to the Court commenting on or objecting to the proposed settlement, you must send your submissions in writing by email to the Claim Administrator at [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com), and ensure they are received no later than August 30, 2023. The Claims Administrator will provide all submissions to the Court and the Defendants in advance of the Approval Hearing. Your written submissions should include:

- your name, address, and telephone number;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the settlement approval hearing

#### **14. Do I have to attend the Settlement Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. You are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also have

your own lawyer attend at your expense, but it is not required

#### 15. How do I get more information?

This Long Form Class Notice summarizes the proposed Settlement. More details, including the actual Settlement Agreement, are available at [www.festivalsettlement.ca](http://www.festivalsettlement.ca).

You may also contact Class Counsel at:

**Kateryna Galts**  
**Charney Lawyers PC**  
150 Bloor Street West, Suite 602  
Toronto, ON M5S 1S4  
Phone: (416) 964-7950  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

**Marietta Underwood**  
**Strosberg Sasso Sutts LLP**  
1561 Ouellette Avenue  
Windsor, ON N8X 1K5  
Tel: 519.561.6294  
Email: [munderwood@strosbergco.com](mailto:munderwood@strosbergco.com)

You may also contact the Claims Administrator.

#### 16. How do I submit a Claim?

If the settlement is approved, then you must submit a claim in accordance with the deadlines to be set out on the Settlement Website. You may submit a Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator. Class Members who are making a claim must prove they were the Owner or occupier of the Unit during the Class Period and/or claimed an Abatement. This Claim must be to the satisfaction of the Claims Administrator. They must provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes an identifying photo.

The Claims Administrator will verify that each person who submits a Claim Form is a Class Member. The Claims Administrator will have the sole discretion and authority to determine whether and to what extent Claim Form is valid. To the extent the Claims Administrator determines a claim invalid, the Claims Administrator will, within 15 days of making the determination, notify the Class Member of the deficiencies and give the Class Member 30 days to cure the deficiencies. The Claims Administrator will have the sole discretion and authority to determine whether the Class Member has cured the deficient claim such that it is valid.

#### How will I receive the benefits I claim from the Settlement?

Checks for valid claims will be mailed by the Claims Administrator to the mailing address that you provide, or deposited by direct deposit to the bank account information that you provide on your claim form(s).

#### 17. What happens if my contact information changes after I submit a Claim?

If, after you submit a claim form, you change your mailing address, email address, or banking

information (if applicable), it is your responsibility to inform the Claims Administrator of your updated information. You may do so by contacting the Claims Administrator at [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com).

## **CLAIMING YOUR BENEFITS**

Claims for benefits cannot be submitted until on or after the date on which the Court issues the Approval Order (the “**Approval Date**”).

Once they are known, the Approval Date will be posted on [www.festivalsettlement.ca](http://www.festivalsettlement.ca) or can be obtained by emailing [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com).

## **PROCEDURE**

### **TIMELINE FOR RECEIVING BENEFITS**

Please check the Settlement Website regularly at [www.festivalsettlement.ca](http://www.festivalsettlement.ca) for updates and news about when your Claims can be filed and processed.

### **CONTACT INFORMATION**

For copies of Settlement documents or further information on how to submit Claims for cash payments to the Claims Administrator, please visit [www.festivalsettlement.ca](http://www.festivalsettlement.ca) or emailing [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com).

For all other questions please contact Class Counsel:

#### **Kateryna Galts**

#### **Charney Lawyers PC**

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Tel: (416) 964-7950

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

#### **Marietta Underwood**

#### **Strosberg, Sasso, Sutts LLP**

1561 Ouellette Avenue

Windsor, ON N8X 1K5

Tel: 519.561.6294

Email: [munderwood@strosbergco.com](mailto:munderwood@strosbergco.com)

**Please do not call the defendants or the courts about this action.**

### **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE.

YVETTE NOLEVAUX et al  
Plaintiffs

-and- KING AND JOHN FESTIVAL CORPORATION et al.  
Defendants

Court File No. CV-12-448294 00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**STROSBERG SASSO SUTTS LLP**

1561 Ouellette Avenue  
Windsor, ON N8X 1K5

**HARVEY T. STROSBERG, KC** (LSO# 126400)

[harvey@strosbergco.com](mailto:harvey@strosbergco.com)

Tel: 519.561.6228

**CHARNEY LAWYERS PC**

151 Bloor St. W., Suite 602  
Toronto, ON M5S 1S4

**Theodore P. Charney** (LSO #26853E)

[Tcharney@charneylawyers.com](mailto:Tcharney@charneylawyers.com)

Tel: 416.964.7950

Lawyers for the Plaintiffs