

## 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 at the settlement approval hearing. Instructions are below in the “Understanding the Settlement” section.	Deadline: August 30,2023

## 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 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 [festivalsettlement@ricepoint.com](mailto:festivalsettlement@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 [festivalsettlement@ricepoint.com](mailto:festivalsettlement@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 [festivalsettlement@ricepoint.com](mailto:festivalsettlement@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 [festivalsettlement@ricepoint.com](mailto:festivalsettlement@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.