

Algo Centre Collapse Class Action Settlement

Distribution Plan (the “Plan”)

1. The Net Settlement Fund shall be distributed in accordance with the plan set out below (the “Plan”). This Plan incorporates the defined terms as set out in the Settlement Agreement.
2. At the outset, it is important to note and understand that this Plan and the sections below are designed, worded and detailed so that the Plan is more than just a series of general concepts and instead will allow:
 - a. the Court and the Class Members to review and consider the proposed distribution principles and processes in a more comprehensive manner, and
 - b. if this Plan is approved by the Court, those persons who will be required to carry out this Plan (the Adjudicator, Appeal Officer and Administrator, etc.) will have some clear guidance and instruction on the principles and processes to follow and apply in the context of the evaluation of claims and the payout of compensation.
3. A general overview of this Plan is set out in the court-approved Notice of Settlement Approval Hearing, a copy of which can be found at <http://royoconnor.ca/cases/elliott-lake-algo-centre-mall-collapse-class-action/>. The terms of this Plan govern, however, in the case of any conflict or question arising with respect to the general overview in that Notice.
4. Many of the central principles and processes of this Plan are described in Part 1 below. Further details or greater explanation of those principles and process of the Plan are set out in Part 2 and following below.

PART 1 - PRINCIPLES AND PROCESS

Adjudicator and Claims

5. A lawyer, mediator, professional or experienced insurance adjuster, or such other individual with significant experience in reviewing, evaluating and determining damage or loss claims, will review, evaluate and determine a value of the claims for damages suffered as a result of the Collapse by each Class Member (the “**Adjudicator**”). The qualifications and background of any person who is proposed for this adjudication role will be reviewed by the Court, and the Court will ultimately have to formally approve the person to act as the Adjudicator.
6. For clarity, Class Counsel, the Defendants and the Settlement Administrator will have no role in valuing the claims made in accordance with this Plan.
7. It is intended that the Adjudicator will evaluate and determine a value for the claims in a summary, efficient and cost-effective manner. Such an efficient approach is important for various reasons, including the following reasons:
 - a. the claims will be evaluated, and compensation can be paid to the Class Members, sooner;
 - b. less money will be spent on the administration of this settlement (including spending less money on the time/fees and expenses of the Adjudicator) and, accordingly, more money will be available to be paid in compensation to the Class Members; and
 - c. Class Members will not have to deal with the more adversarial, complex, costly and time consuming procedures that would otherwise be involved if they individually had to prove their damages in contested individual proceedings with the Defendant.
8. The costs of the evaluation and distribution process outlined in this Plan will be deducted from the funds otherwise available to be distributed to the Class Members. A significant sum (potentially in the range of \$700,000 and better estimate will not be known until the Adjudicator, Appeal Officer (as discussed below) and Administrator are approved by the Court) will be reserved from the Settlement Funds in order to be available to pay all such Administrative Expenses, including the time, costs and expenses of the Adjudicator, the Appeal Officer and the Settlement Administrator. If and to the extent any amount reserved is not required in the end to pay such Administrative Expenses, the balance remaining will be paid out as part of the Residue as noted below in paragraph 23 below. The Administrative Expenses may be paid out of the Settlement Fund without further approval of the Court.

9. Subject to the specific provisions of this Plan as set out below, the intent of this Plan is that the Adjudicator evaluate and value the damages sustained by each Claimant in accordance with the damages principles that would be used by Judges in Ontario to fairly and reasonably evaluate and determine the amount of damages that would otherwise be recoverable in a negligence lawsuit in a court in Ontario. All claims will be valued based on the principal amount of damages, without regard to the precise date that any damages were sustained and, accordingly, without consideration of (or any value determined or attributed for) interest since the date the damages may have been incurred.

10. Each individual or business making a claim must establish on a balance of probabilities and based on the materials that are provided or that they provide to the Adjudicator (as discussed further below):
 - a. that he, she or it is a Class Member or party entitled to claim through or on behalf of the Class Member as a Subrogated Party,
 - b. that he, she or it is entitled to make a claim and receive compensation under the terms of this Plan, and
 - c. the basis for, and the value or extent of, the damages that he, she or it sustained as a result of the Collapse.

11. With respect to the materials to be provided by Class Members, it is recognized that some financial and other records for various businesses in the Mall may have been destroyed in the Collapse. For purposes of the onus or burden of proof as it relates to quantifying any business, property or employee/wage losses, the Adjudicator has a reasonable discretion to take into account the destruction of such records to the extent that Claimant's assert and reasonably explain (to the satisfaction of the Adjudicator) that the reasonably available copies of such records were stored in the Mall and destroyed as a result of the Collapse.

Three Types or Sources of Claims

12. The claims made under this Plan will relate to general categories of damage (personal injury (and related expenses), wage loss, and business or property damage), which correspond essentially with the three subsets of the Class definition: namely, the occupants, employees and tenants of the Mall. The claims under this Plan will relate to the following:
 - a. claims for damages sustained by the actual occupant, employee or tenant Class Members, for which those Class Members have not received any compensation from

any other person, company or entity to date (the “**Class Member Direct Unpaid Claim(s)**”);

- b. in the case of occupant Class Members who sustained a personal injury, claims by the parents, spouses, children or siblings of those occupant Class Members as addressed further below (which claims are referred to below as “**Family Member Claim(s)**”, and such family members making such claims are referred to below as “**Family Member(s)**”); and
- c. claims by other persons, companies or entities who provided compensation, financial assistance, reimbursement or any other financial benefit to Class Members as a result of damages or expenses they sustained as a result of the Collapse (including but not limited to insurance proceeds paid to the Class Member by an insurance company or other compensation paid to, or expenses paid on behalf of, the Class Member (with the exception of the Family Members) and who are advancing a right and claim of subrogation (or such other right to claim through or on behalf of the Class Member) for, the amounts that they have provided to, or expended on behalf of, the Class Members (which claims are referred to below as “**Subrogated Claim(s)**”, and such persons, companies and entities are referred to below as a “**Subrogated Party(ies)**”)”¹.

The estates, estate representatives, heirs and successors of any occupant, tenant or employee Class Members (the “**Estates**”) will be entitled to advance claims under this Plan to the extent that such claims would otherwise be permitted at law in Ontario. Those estate representatives, heirs, successors and assigns will be required to establish to the satisfaction of the Adjudicator their status, appointment or entitlement to so claim under this Plan. For ease of reference, Class Members advancing a Class Member Direct Unpaid Claim (that is, the occupants, tenants and employees), the Subrogated Parties, the Family Members and any Estates are referred to below at times collectively as “**Claimants**”.

13. The Adjudicator will try to arrive at a fixed dollar value for each Class Member Direct Claim, each Subrogated Claim and each Family Member Claim advanced. If and to the extent, however, that the Adjudicator is not able to determine one fixed dollar value for any such Claim, and instead is only able to determine that one or more of those claims falls within a range of values, the Adjudicator shall adopt the mid-point of any such range as the ultimate value attributable to any particular Class Member Direct Claim, Subrogated Claim and Family Member Claim at issue.
14. If the claims for damages sustained in relation to any occupant, tenant or employee Class Member includes a combination of a Class Member Direct Claim(s), a Subrogated Claim(s) and/or a Family Member Claim, the value determined for each such claim will be added together to arrive at the

¹ Please note that OHIP is not one of the Subrogated Parties. The subrogated claim by OHIP for medical expenses and benefits OHIP has paid or covered is being paid out of the Settlement Funds directly.

total value of the damages claimed on behalf of or relating to that occupant, tenant or employee Class Member (the “**Class Member’s Total Claim Value**”).

14. The Adjudicator will disclose the Class Member’s Total Claim Value as well as the value determined for any Class Member Direct Claim(s), a Subrogated Claim(s) and/or a Family Member Claim made in relation to that occupant, tenant or employee Class Member in writing to each of the Claimants (the Class Member (the occupant, tenant or employee), the Subrogated Party and/or the Family Member).

Adjudicator to Review for False or Fraudulent Claims

15. The Adjudicator shall take reasonable steps and precautions to test for or identify any fraudulent or unreasonably inflated or false claims. If and to the extent that such claims are identified, the Adjudicator will have a discretion to make further inquiries or require additional documentation or supporting records, or require further reasonable steps, before the Adjudicator will place a final value (if any) on the balance of any such claim or reject such a claim.
16. To the extent necessary, the Adjudicator can alert Class Counsel to any such issues and request that Class Counsel schedule a case conference or motion (*ex parte* if appropriate) where the Adjudicator can seek direction from the Court in respect of such claims or how to remedy or address same. On any such motion, Class Counsel may not be permitted to take a position against a Class Member but may, if the claim involved is not from a Class Member, take a position.

Appeal

17. As discussed further below in paragraphs 42-51, any occupant, tenant and/or employee Class Members and any Subrogated Party (but not a Family Member²) will have a limited ability to appeal the Adjudicator’s determination of the value (or rejection) or timeliness (if the claim was beyond the timelines noted herein) of their claim within 30 days after receiving the Adjudicator’s determination. Any such appeal will be decided by an individual to be approved by the Court (the “**Appeal Officer**”).
18. The Appeal Officer will decide if Adjudicator’s determination was reasonable based on the existing evidence that was before the Adjudicator (no new evidence will be permitted). If the Appeal Officer determines that the Adjudicator’s valuation was reasonable, the appeal will be

² Please see paragraph 50 below regarding how an appeal by an occupant Class Member whose personal injury claim was entirely rejected by the Adjudicator may affect a Family Member Claim.

dismissed. If the Appeal Officer determines that the Adjudicator's determination was unreasonable, the Appeal Officer will determine what is reasonable and appropriate. The determination of the appeal by the Appeal Officer will be final (there will be no further right of appeal or review). The determination of the Appeal Officer will be provided to the same parties who received written notice of the Adjudicator's valuations.

Calculating the Compensation and Notifying the Claimants

15. Once all the Claims (by all Class Members (including Family Members) and Subrogated Parties) are valued by the Adjudicator and once all appeals are complete, the Settlement Administrator will calculate the proportionate or *pro rata* compensation available and to be paid in respect of each Class Member's Total Claim Value. In particular, the Administrator will divide the Class Member's Total Claim Value by total value determined for all claims (the "**All Claims Value**"), and then will multiply that fraction by Net Settlement Fund to arrive the compensation payable in respect of that Class Member's Total Claim Value (the "Claimants' Compensation"). Expressed as a formula, that compensation calculation is as follows:

$$\frac{\textit{Class Member's Total Claim Value}}{\textit{All Claims Value}} \times \textit{Net Settlement Fund} = \textit{Claimants' Compensation}$$

16. Following the determination of the Claimants' Compensation, the Settlement Administrator shall send a letter to each Claimant (who made a claim in respect of a particular occupant, employee or tenant Class Member) notifying him, her, it or them of the Claimants' Compensation amount and reiterating the values determined for each Class Member Direct Unpaid Claim, Subrogated Claim and/or Family Member Claim.

Paying the Compensation to the Claimants

(a) *No Subrogated Claim or Subrogated Claim valued at \$0*

17. If there was no Subrogated Claim or if any such Subrogated Claim in relation to any particular Class Member was entirely rejected (valued at \$0), the Claimant's Compensation will be paid by cheque(s) forwarded under cover of the letter set out in paragraph 16 above to the occupant, employee or tenant Class Member and any Family Member based on the percentage that the value of the Class Member Direct Unpaid Claim and the value of the Family Member Claim represent of the Class Member's Total Claim Value.

(b) No Class Member Claim or such Claim valued at \$0

18. If there is no Class Member Direct Claim or if any Class Member Direct Claim was entirely rejected (valued at \$0), the Claimants' Compensation will be paid by cheque under cover of the letter set out in paragraph 16 above to the Subrogated Party if there is only one Subrogated Party. If there was more than one Subrogated Party whose Claim was valued at greater than \$0, then paragraphs 19-21 below apply.

(c) Class Member Claim and Subrogated Claim

19. If a Class Member's Total Claim Value includes a value (above \$0) for both a Class Member Direct Claim and a Subrogated Claim, or if there is more than one Subrogated Claim valued above \$0 in respect of any Class Member, the letter referred to in paragraph 16 above will set out that the Claimants' Compensation will be available for payment by the Settlement Administrator in accordance with a written direction as signed by all the Claimants entitled to share in that compensation (whose Claim was valued above \$0). That written direction as signed by all of the parties entitled to share in the Claimant's Compensation shall be good and sufficient authority for the Settlement Administrator to pay the Compensation to those parties.

Why is the payout of compensation with Subrogated Claims different?

20. The payout of compensation payable to a Class Member and a Subrogated Party (or between Subrogated Parties) requires a written direction – or, in other words, a confirmed agreement between those entitled to such compensation - because the rights and obligations as between any Class Member and any Subrogated Party may vary. More particularly, and without providing any legal advice or interpretation for any particular situation or arrangements between any particular Class Member and any Subrogated Party (or between two Subrogated Parties), it should be noted that, among other things:

- a. the right or entitlement of the Class Member and/or any Subrogated Party to receive or be paid any portion of the Claimants' Compensation (i.e. how the compensation should be split) may vary based on, among other things:
 - i. the nature of the Claim for which compensation is available under this Plan,
 - ii. the rights and obligations arising under any applicable insurance policy or statutory/regulatory requirements, or
 - iii. the terms, rights and obligations arising under any other agreements, undertakings, letters, obligations or arrangements as between the Class Member and any Subrogated Party;

- b. Class Members may have committed or otherwise have obligations to notify, advise or report to any Subrogated Party, or any other person or entity that provided benefits, supplements or financial assistance of any sort to the Class Member (including, without limitation, any private or government benefits provider) (“**Benefits Provider(s)**”), about the existence or availability of this settlement and this Plan and the potential to make a claim hereunder as well as any claims made by the Class Member under this Plan an/or any compensation paid or potentially available to the Class Member under this Plan; and
- c. Class Members may also have obligations to assist any Subrogated Party in respect of advancing any Subrogated Claim(s).

It is recommended that Class Members in such situations consider their circumstances and seek any necessary advice with respect to the issues noted above (or other issues as may arise relating to Subrogated Parties and Benefits Providers).

21. Class Counsel, the Adjudicator, the Appeal Officer and the Settlement Administrator are not aware of all of the facts and details that may be relevant to addressing the issues noted in paragraph 20 above. For various reasons, Class Counsel, the Adjudicator, the Appeal Officer and the Settlement Administrator are not able or responsible to offer or provide, and otherwise will not as part of the administration of this Plan be offering or providing, any opinion or advice relating to any of the issues noted in paragraph 20 above. Similarly, Class Counsel, the Adjudicator, the Appeal Officer and the Settlement Administrator shall not be required to review, question, investigate or confirm whether any written direction as signed by the parties in accordance with paragraph 19 above was or would be considered fair or appropriate in any circumstance. By virtue of the court approval of this Plan, Class Counsel, the Representative Plaintiffs, the Defendants, the Adjudicator, the Appeal Officer and the Settlement Administrator are each jointly and severally released by all members of the Class as well as any Subrogated Parties or Benefits Provider from any claims, liability or responsibility in respect of any issues referred to in paragraph 20 above and/or any steps, decisions, communications, actions or omissions taken by any Class Member, Subrogated Party or Benefit Provider relating thereto.

Reminder Program

22. The Settlement Administrator shall, by email, telephone and/regular mail, send a reminder to any Class Member or Subrogated Party who has not cashed a compensation cheque within one (1) month of its mailing. The Settlement Administrator may (but is not obliged to) send a further reminder to any Class Member or Subrogated Party who has not cashed a compensation cheque with 5 months of its mailing.

Residue and Payout/Donation

23. Any cheques that remain uncashed 7 months following their delivery will form part of the remaining balance (the “**Residue**”) of the Net Settlement Fund. Any Residue left after all cheques have been cashed, or remaining 8 months after the last uncashed cheque was mailed, shall be reported by the Administrator to Class Counsel. If in the reasonable view of the Administrator and Class Counsel there may be sufficient residual funds as may be cost-effectively and efficiently distributed fairly to Claimants’ who received funds under this Plan, Class Counsel may request that the Court approve a further distribution of the Residue (less any necessary reserve for expenses) to such Claimants. If the distribution of any Residue to Class Members does not appear reasonably possible on a cost-effective basis, or if after such distribution of the Residue there still remains some funds, the Court may approve any remaining funds being donated to a charity or non-profit organization that would reasonably be expected to directly or indirectly benefit the Class or the residents of Elliot Lake, or otherwise paid out as Counsel may advise and the Court deems appropriate. For clarity, if there are any outstanding Administrative Expenses or other reasonable outstanding expenses relating to the settlement and the distribution of funds (or any reasonable reserve reasonably necessary to stand as security or payment of such), the Residue should first be used to pay such expenses or maintain such reserve.

Tax, Reporting, etc

24. The losses claimed or the compensation awarded for any losses or type of losses under this Plan may be subject to withholding tax, other payments or statutory/regulatory deductions and related filings or reporting. The Administrator will be responsible for withholding any such tax or deductions, and making all filings, reporting and payments as it relates to the payment of the Net Settlement Fund to Class Members.

25. The Administrator will also be responsible for all other tax, deduction, withholding, payments, reporting and filing, including all government or regulatory reporting, filings or payments, as it relates to the Settlement Fund, the Net Settlement Fund (or its investment) or the payment of the Net Settlement Fund to Class Members.

26. Class Members may have their own tax, reporting, filing or other obligations relating to the receipt of compensation under this Plan, and should consider same and seek advice in respect of same.

27. Class Counsel, the Representative Plaintiffs, the Defendants, Counsel for the Defendants, the Adjudicator, the Appeal Officer and the Court will have no obligation or liability to the Claimants or otherwise with respect to any taxes, deductions, withholdings, payments, reporting or filings

with respect to the Settlement Funds, the Net Settlement Funds, the payments under this Plan or otherwise.

Report to Court and Close of Settlement

28. If requested by the Court or Class Counsel, the Settlement Administrator shall, within 60 days of any Residue distribution referred to immediately above, file a report with the Court setting out some or all of the information referred to in section 27.1(16) of the *Class Proceedings Act, 1992*.
29. Following the distribution of the net settlement funds and the payment of all Administrative Expenses, and following the submission of any report requested as set out in paragraph 28 above, the Court may be asked on motion to approve any such report and/or declare the completion and closure of the settlement and this Plan, and declare and order the release of the Class Counsel, the Adjudicator, the Appeal Officer and the Settlement Administrator from any further duties or obligations in respect of the settlement and this Plan.

PART 2 - ADDITIONAL DETAILS OF THE CLAIMS AND DISTRIBUTION PROCESS

Claims Previously Provided to Class Counsel

30. As part of the lengthy mediation process, sessions and submissions that have taken place and been exchanged over the years in this case before two retired Ontario Court of Appeal Justices, Class Members and various Subrogated Parties provided to Class Counsel differing levels of particulars and documentation relating to claims for losses or damages that they assert that they sustained or incurred. Class Counsel have in fact received volumes of information and documentation in connection with potential claims by or on behalf of many Class Members (numbering approximately 225 or more) and Subrogated Claims.
31. Class Members who previously advised or notified Class Counsel that they may have a claim (and did not subsequently advise Class Counsel that they in fact have no claim or wish to withdraw their claim) and anyone who has already submitted materials to Class Counsel in support of a Subrogated Claim will be presumed to still be advancing a claim under this Plan, unless they notify Class Counsel in writing that they no longer advance (or otherwise want to withdraw) any claim at: mallinfo@royoconnor.ca within thirty (30) days after Notice of Approved Settlement is first posted or provided to any member of the Class.
32. In order to expedite and lower the cost of the administration of this Plan, the Court authorizes and directs Class Counsel to forward the following to the Adjudicator within 60 days after Notice of Approved Settlement is first provided to the Class:
 - a. a list to be prepared by Class Counsel, to the extent reasonably possible based on the information already in the possession of Class Counsel, simply indicating the type of claim advanced by any Class Member (that is, business or property losses, employment income losses or personal injury or related expenses) or Subrogated Party;
 - b. the documentation provided to or received by Class Counsel in respect of any Class Member's claim or any Subrogated Claim for business/property or employment income losses (but not for personal injury damages);
 - c. solely for claims for business/property losses or employment income losses (and not for personal injury losses), certain factual information relating to the claims by each Class Member or Subrogated Party based on the information and documentation that each Class Member or Subrogated Party has provided, including:

- i. whether the Class Member is making a claim for compensation for an insurance deductible – and it should be noted that all claims for insurance deductibles will be valued by the Adjudicator as part of this Plan at the amount of that deductible in accordance with the footnote below³,
- ii. any monetary, temporal (time period) or other limit, restriction, end or cap relating to any claim if and to the extent that the Class Member has indicated such a limit, restriction, end or cap in relation to his, her or its claim (for example, if a Class Member has indicated that he, she or it planned on retiring or otherwise closing a business within or at a certain period of time) – the Class Member will be entitled to explain to the Adjudicator in writing if any such limit, restriction, end or cap is incorrect or no longer applicable,
- iii. for employment loss claims, any information about any post Collapse employment or employment income,
- iv. information suggesting or confirming that any particular business or store in the Mall continued to pay wages or employment income to its employees after the Collapse,
- v. any facts relating to the planned closure of any businesses or stores in the Mall,
- vi. for business loss claims, any information about the re-opening of the business or income earned from the business post Collapse,
- vii. any information about the Class Member’s planned retirement date or similar date for closure of a business,
- viii. any information provided by the Class Member indicating if and when his, her or its business, property or employment losses were offset, mitigated or entirely ended/resolved, and
- ix. whether any Class Member has purported to advance a claim for property losses, or a Subrogated Claim has been proposed, in respect of that Class Member’s business, property or employment loss claim and, if so:

³ the Adjudicator will value all claims for any deductible amounts that any insurer or indemnifier deducted from each Class Member’s insurance or indemnity claim arising from the Collapse at the amount of that deductible. For purposes of proof of the amount of that deductible, the Adjudicator may accept the deductible amount that is disclosed by any insurer or indemnifier. If an insurer or indemnifier does not disclose the deductible amount or related documentation to the satisfaction of the Adjudicator, the Class Member will be required to demonstrate the amount of the deductible amount charged to the satisfaction of the Adjudicator.

- the total amount of that subrogated claim (e.g. the amount paid by an insurance company after evaluating the alleged losses sustained by the insured Class Member), and
- if readily available, whether any part of a Subrogated Claim or Class Member Direct Claim is for property loss/destruction and, if so, is the claimed amount set at replacement value or, alternatively, the fair market/actual cash value of property just prior to the date it was lost or destroyed in the Collapse – please note that fair market value at the time of the Collapse would be available for recovery in a negligence action and thus all claims by Class Members (both Subrogated and non-subrogated) will only be valued at such fair market/actual cash values as at June 2012 (and not replacement values) as part of this Plan.

Class Counsel will not be required to provide any evaluation or opinion on the merit or value of any Class Member's claim. Further and in any event, Class Counsel will also not be responsible or liable for the disclosure of any information to the Adjudicator.

33. Any Class Member or Subrogated Party who does not wish the documentation and information referred to in paragraph 32 immediately above to be provided to the Adjudicator, must so notify Class Counsel in writing by email at mallinfo@royoconnor.ca within thirty-five (35) days after Notice of Approved Settlement is first posted or provided to any Class Member.
34. Any Class Member or Subrogated Party who has already advised Class Counsel that they have a claim (which has not been withdrawn) should immediately gather any additional or updated information or documentation relating to their claim or alleged damages and to submit same to the Adjudicator within 60 days after Notice of Approved Settlement is first posted or provided, with one exception. That exception is - in the case of medical records, letters, opinions and reports as may be required for purposes of satisfying the requirements for any threshold in the personal injury grids as referred to below or for purposes of an Extraordinary Claim, the Claimant should submit proof to the Adjudicator (in a form satisfactory to the Adjudicator) within 60 days after Notice of Approved Settlement is first posted or provided that such medical records, letters, opinions and reports have been requested in writing from the appropriate health professional or office or, if an appointment(s) with a health professional(s) is required to secure the necessary medical letters, opinions and reports, submitting proof to the Adjudicator (in a form satisfactory to the Adjudicator) within 60 days after Notice of Approved Settlement is first posted or provided that the appointment(s) has been made (the "Medical Records Ordering Exception"). Any such medical records, letters, opinions and reports must be submitted to the Adjudicator within 30 days after they are received.
35. The additional information and available documentation as referred to in paragraph 34 immediately above should include among other things:

- a. any update or changes relating to their claims since the last update that they provided to Class Counsel, including:
- b. any steps taken to address, lessen or recover (mitigate) their alleged damages since the last update that they provided to Class Counsel, including:
 - i. any steps by individuals making an employment claim to search and secure alternative employment within the 2 years after the Collapse (if they were not an owner or operator of the business) or within 5 years after the Collapse (if they were an owner or operator of the business),
 - ii. any steps taken by Class Members making a claim for business losses to continue or re-open or operate their business within the 5 years after the Collapse,
 - iii. any update on their diagnosis, prognosis, state of their alleged injuries, professional/hospital visits or treatments taken (or ceased/ended) by those who claim for personal injury to date,
- c. any success or costs incurred in respect of the mitigation efforts outlined in subparagraph b immediately above,
- d. if and when Class Members' damages, losses or injuries were resolved, ceased, reduced or otherwise modified (for the periods referred to in subparagraph b above),
- e. any back-up or supporting documentation relating to the subparagraphs a through d immediately above.

New/First Time Claims

36. Any Class Member or Subrogated Party who has not already advised Class Counsel that they have a potential claim and who wishes to make a claim will be required, within sixty (60) days after Notice of Approved Settlement is first posted or provided: (a) to advise Class Counsel, the Settlement Administrator and the Adjudicator of their intention to claim in writing; and (b) to forward details of the basis of their claim (on what basis they purport to have a right to make a claim), the details of their claim in writing along with all back up documentation to the Adjudicator, subject to the aforesaid Medical Records Ordering Exception.
37. If any such Class Member or Subrogated Party for whom paragraph 36 immediately above is applicable fails to advise of their claim and otherwise satisfy the provisions of that paragraph within 60 days after Notice of Approved Settlement is first posted or provided, their claim will not be considered as part of this Plan, no funds will be paid to them as part of this settlement, and any claim that they may have had will be released as set out in the Settlement Agreement and Settlement Approval Order.

38. The Adjudicator may grant leave for such a late new (previously not advanced) claim to be considered as part of this settlement only in exceptional circumstances. The decision of the Adjudicator may be appealed to the Appeal Officer.

Adjudicator Ability to Make Requests for Additional Info and Documents for any/all Claims

39. The Adjudicator will be able and entitled to make reasonable requests for additional information, documentation (including back-up documentation) or clarification in respect of any claim, with such request to be transmitted in writing either by mail or email to any Claimant. The Claimant will provide such information, documentation or clarification in writing to the Adjudicator by mail or email within 30 days of delivery of the request (to the extent possible and subject to the Medical Records Ordering Exception as it may apply or reasonably be applied by the Adjudicator).

40. If no further information, documentation or clarifications are provided, the Adjudicator will deem or consider there to be no further information to support the claim in question, and the Adjudicator may take that lack of such further information, documentation or clarifications into account when evaluating and valuing the claim.

41. Among other things, to the extent that such additional or updated information or documentation may relate to or may have indicated what efforts were taken to reasonably reduce or mitigate any damages at any point (including efforts to find new employment, treatment sought or steps taken to address any physical injuries, steps to recover/earn business income/profits, etc.), the Adjudicator may draw an adverse inference if that additional or updated information and documentation is not provided (or no reasonable explanation is provided therefor) and, in particular, the Adjudicator may reasonably conclude that such mitigation efforts were not made and the claim advanced for any period during which evidence of such mitigation efforts is not available may be reduced accordingly by the Adjudicator.

Right of Appeal

42. Each class member will be advised in writing of the Adjudicator's determination of the Class Member's Total Claim Value and a listing of the subtotal value assigned to any personal injury (including indicating the category of the grid(s) assigned by the Adjudicator to the personal injury claim, the total amount of damages determined for any Extraordinary Claim if the Adjudicator finds that personal injury does exceed the highest category thresholds, and the total of any

related expenses), business loss, loss of property (not associated with a business loss), or loss of employment income.

43. Within thirty (30) days of receipt of the Adjudicator's determination, an occupant, tenant or employee Class Member and any Subrogated Party (but not a Family Member) has a right to appeal the Adjudicator's determination or valuation of:
 - a. the category of a grid for personal injury for the occupant Class Member if and only if the category determination by the Adjudicator assessed the personal injury damages at a lower value category than the Class Member selected in his/her initial submission of the claim;
 - b. the personal injury damages if the occupant Class Member made an Extraordinary Application for personal injuries;
 - c. the total value of the business or property loss for the Class Member;
 - d. the total value of loss of employment income; or
 - e. a determination that any Claim was submitted beyond the timelines set out this Plan.
44. Any such appeal shall be made to an Appeal Officer. The Appeal Officer will be proposed by Class Counsel and must be approved by the Court.
45. To commence an appeal, an occupant, tenant or employee Class Member and any Subrogated Party (but not a Family Member) will be required to submit a written indication of an intention to appeal to the Adjudicator by email (at an email address to be set), with a copy sent to Class Counsel by email at mallinfo@royoconnor.ca, within the twenty (20) days of receipt of the notification of the Adjudicator claims value. Any Claimant is who is appealing must also forward or pay a filing or appeal fee of \$250.00 (the "Filing Fee") by cheque to the Administrator. That cheque must also be received within that 20 day period. The Filing Fee is designed in part to assist with the payment of the Appeal Officer Charges (but will most likely not cover the Appeal Officer Charges for any particular appeal). To the extent that the total Filing Fees are not needed to cover expenses, they will be added to the Residue available.
46. The written indication or notice of appeal must set out the specific valuations appealed from (personal injury, business loss, property loss or loss of employment income). The written indication or notice of appeal must not exceed one (1) standard letter sized page in length.
47. The Adjudicator will, within thirty (30) days of the receipt of the written indication of appeal from a Class Member and upon notice from the Administrator that the requisite filing fee has been paid, provide to the Claimant in question and the Appeal Officer a summary of no more than three (3) pages of the basis or reasons for the Adjudicator's determination(s) of the relevant

claims. At the same time, the Adjudicator will provide the Appeal Officer with a copy of the material submitted to or reviewed by the Adjudicator.

48. Each of the Claimants in question who are appealing will have fourteen (14) days to provide his, her or its own responding written submissions (not to exceed five (5) pages) explaining in summary fashion his, her or its reasons or basis for the appeal. Those responding submissions will be required to be sent to the Appeal Officer by email (at an email address to be set) within fourteen (14) days of receiving the Adjudicator's written summary as noted above.
49. In the context of any appeal, Class Members will not be entitled to submit any new or additional documentation or records to the Appeal Officer. The Appeal Officer may contact the Adjudicator if the Appeal Officer requires further information or explanation about the claims by the Class Member or the Adjudicator's decision, and the Appeal Officer and the Adjudicator may communicate by telephone or zoom/virtual meeting (without the need for the further exchange of written information).
50. The Appeal Officer will decide whether the Adjudicator's determinations were reasonable. If the Appeal Officer finds that any determination was not reasonable, the Appeal Officer will determine what is a reasonable determination. The Appeal Officer will not be required to provide reasons for his/her determination. If and only if the Appeal Officer materially increases the Class Member's Total Claim Value (or accepts a claim that was entirely rejected by the Adjudicator), the Appeal Officer will have the discretion (but not the obligation) to direct that the \$250.00 Filing Fee paid by that Class Member be returned or paid back to the Claimant. If the Appeal Officer allows an appeal and values an appeal from the Adjudicator's entire rejection of a personal injury claim, the Adjudicator will be asked to value any Family Member Claim (if it has not already been valued by the Adjudicator) and the determination by the Adjudicator in such circumstances is final and not subject to any appeal.
51. The Appeal Officer will notify the Administrator (with a copy to Class Counsel) whether the appeal was granted and, if so, provide the particulars of the appeal determination. The determination by the Appeal Officer shall be final and binding, and there shall be no further review or appeals of the Appeal Officer's determination.

Court Jurisdiction - and Potential Further Direction and Guidance

52. The Court retains authority and jurisdiction to interpret, apply and provide directions in respect of this Plan, including the general principles, processes and timelines as set out herein.

53. Without limiting the generality of the foregoing, the Adjudicator and/or Appeal Officer may contact Class Counsel if they conclude that it may be appropriate or advantageous to raise a question or seek general guidance about the approach to be taken to certain issues or particular aspects of claims (or evidence required in relation thereto) that may arise in the context of considering Class Member claims.
54. Class Counsel may consult and speak with both the Adjudicator and Appeal Officer in an effort to reasonably understand and address such questions. No such questions put to Class Counsel will however relate to, or involve the consideration of, any particular Class Member claim, and Class Counsel will have no role in deciding or providing input into any specific Class Member claim.
55. If and to the extent that Class Counsel decides that the question or issue raised is not appropriate for Class Counsel to consider or address, or that the question or issue would benefit from direction from the Court, Class Counsel will be at liberty to seek directions from the Class Action Judge at a case conference convened for that purpose. Class Counsel or the Court may request that the Adjudicator and/or the Appeal Officer attend any such case conference. The Defendants and their counsel will not receive notice of any such case conference and will not be entitled to attend same.

PART 3 - PROVISIONS RE TYPES OF CLAIM – PERSONAL INJURY, BUSINESS/PROPERTY & INCOME

56. Further additional information and procedures relating to personal injury, business/property losses and employment income losses are addressed in the paragraphs below.

Personal Injury Claims

57. Class Members who were occupants in the Mall at the time of the Collapse (i.e. on the property at the time of the Collapse) are eligible to advance a claim for personal injuries (physical or psychiatric injuries). Any such injuries must have been caused or materially exacerbated by the Collapse. Any pre-existing personal injuries (whether physical or psychological or both) will not qualify for compensation under this Plan unless they are found by the Adjudicator to have been materially exacerbated by the Collapse.

58. The claims process for personal injuries is for the most part designed based on any injured occupant Class Member selecting an appropriate level or category of injury, for which level or category a set amount or dollar value of compensation is pre-determined as set out in the charts or grids immediately below. An occupant Class Member can make a claim under either or both grids or charts below (i.e. for a physical and/or psychiatric injury). Certain documentation is required to support the various levels or categories in the grids or charts, with more documentation and support generally required for higher levels or categories. For example, Class Members who sustained a physical or psychiatric injury may submit a statutory declaration and claim \$750, without providing medical documentation. For more serious injuries, medical documentation, letters or reports (and supporting expense documentation) must be provided.

59. The two grids below set out the types or categories of physical and psychiatric injury, the corresponding level of proof or evidence required, and the amount of compensation available for that category or type of injury:

Physical Injury Grid/Chart:

<u>\$ VALUE BY CATEGORY</u>	<u>TYPE OF PHYSICAL INJURY</u> (references to time periods below start or run from the date of the Collapse, June 23, 2012)	<u>LEVEL OF PROOF/EVIDENCE REQUIRED</u> *Statutory declaration required for all Claims ⁴
A1 \$750	Minor physical injuries such as sprains, cuts bruises that were resolved in 45 days.	A statutory declaration describing the Class Member’s minor injury and the duration of his or her minor injury must be provided, with any supporting photos or other readily available supporting records. No immediate

⁴ The occupant Class Member, or a parent or guardian in the case of a Minor, must complete a statutory declaration.

		or any visit to a physician or a hospital required.
A2 \$5,000 + medical/treatment expenses & costs of medical records not covered by insurance	Musculo-skeletal (soft tissue) injuries which lasted for 45 days but were resolved within 6 months	Injuries must be documented with contemporaneous medical records ⁵ (including any proof and dates of treatments). A statutory declaration will also be required.
A3 \$12,500 + medical/treatment expenses & costs of medical records not covered by insurance	Musculo-skeletal (soft tissue) injuries which lasted for at least 6 months but were resolved within 1 year	Injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) with confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional. A statutory declaration will also be required.
A4 \$20,000 + medical/treatment expenses & costs of medical records not covered by insurance	Musculo-skeletal (soft tissue) injuries which lasted for at least 1 year but were resolved within 2.5 years	Injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) and confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional. A statutory declaration will also be required.
A5 \$30,000 + medical/treatment expenses & costs of medical records/letter/report	Orthopedic injuries such as broken bones, sprains (with symptoms and/or treatment for sprain lasting more than 45 days), fractures, muscle tears, and/or ligament damage, which healed within 1 year with no ongoing impairment. <u>Or, alternatively,</u> Musculo-skeletal (soft tissue) injuries which lasted at least 2.5 years but resolved within 5 years.	Orthopedic injuries must be documented with contemporaneous medical records and imaging, and confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional. Musculo-skeletal injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) and confirmatory report from doctor or other qualified health care treating practitioner/professional. A statutory declaration will also be required.

⁵ Contemporaneous medical records means medical records (hospital, clinic, OHIP, physician, psychiatrist, psychologist, treating professional or specialist for 3 years prior to the Collapse and for any relevant period thereafter (relevant to the period applicable to the category of compensation claimed by an occupant Class Member under the grids or to date for any Extraordinary Application).

<p>A6 \$60,000 + medical/treatment expenses & costs of medical records/report + all pecuniary damages</p>	<p>Orthopedic injuries such as broken bones, sprains, fractures, muscle tears, and/or ligament damage, which did not heal within 1 year or involved material impairment longer than 1 year</p> <p><i>Or, alternatively,</i></p> <p>Musculo-skeletal (soft tissue) injuries which lasted at least 2.5 years but resolved within 5 years.</p>	<p>Orthopedic injuries must be documented with contemporaneous medical records and imaging, and confirmatory opinion/report from a physician or specialist.</p> <p>Musculo-skeletal injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) and confirmatory opinion/report from a physician or specialist.</p> <p>A statutory declaration will also be required (for any of these claims), plus all supporting documentation.</p>
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Psychiatric Injury Grid/Chart:

<u>\$ VALUE BY CATEGORY</u>	<u>TYPE OF PSYCHIATRIC INJURY</u> (references to time periods below start or run from the date of the Collapse, June 23, 2012)	<u>LEVEL OF PROOF/EVIDENCE REQUIRED</u> *Statutory declaration required for all Claims
<p>B1 \$750</p>	<p>Minor psychiatric injuries or conditions such as anxiety, fearfulness, nightmares, loss of sleep, emotional distress or temporary exacerbation of another physical or emotional issue. All such injuries are completely resolved.</p>	<p>A statutory declaration will be required.</p> <p>No physician or hospital visits are required, and no medical records are required.</p>
<p>B2 \$5,000 + medical/treatment expenses & costs, and costs of letter (if any)</p>	<p>Psychiatric disorder with resolution of symptoms within 6 months</p>	<p>Confirmatory/supporting letter from doctor, psychologist, psychiatrist or physician required. Contemporaneous medical records are not required, but may be helpful to Adjudicator.</p> <p>A statutory declaration will be required.</p>
<p>B3 \$12,500 + medical/treatment expenses & costs of medical records/letter</p>	<p>Psychiatric disorder with resolution of symptoms between 6 months and 1 year</p>	<p>Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse are required.</p> <p>A statutory declaration will be required.</p>
<p>B4 \$20,000 + medical/treatment expenses & costs of</p>	<p>Psychiatric disorder with symptoms that exceed 1 year and resolution of symptoms within 2 years</p>	<p>Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or</p>

medical records and letter		contributed to by the Collapse are required. A statutory declaration will be required.
B5 \$30,000 + medical/treatment expenses & costs of medical records and letter	Psychiatric disorder with symptoms that exceed 2 years	Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse are required.. A statutory declaration will be required.
B6 \$60,000 + medical/treatment expenses & costs of medical records and report, + all consequential pecuniary damages	Chronic psychiatric disorder as defined in DSM-5-TR (Diagnostic and Statistical Manual of Mental Disorders (DSM) 5 Text Revision) causing a level of impairment that significantly impedes useful functioning in at least one of four aspects: limitations in activities of daily living; social functioning; concentration, persistence, and pace; and deterioration or decompensation in work or work-like settings as described in chapter 14 of the American Medical Association Guides to the Evaluation of Permanent Impairment, 6 th edition 2025. ⁶	Confirmatory report from psychiatrist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse and explaining why there exists a marked impairment cause by the disorder and expressing the opinion that the marked impairment and disorder was cause or contributed to by the Collapse required, together with all medical records evidencing medical treatment since the Collapse consistent with this type of diagnosis also required. A statutory declaration will be required.

60. As noted above in the grids, in addition to the dollar value of compensation for any level or category beyond A1 or B1, the injured occupant Class Member and his Family Members may also claim compensation for expenses reasonably incurred (and reasonably established or confirmed by appropriate documentation with the Adjudicator) as a result of the Class Member's injuries, including but not limited to:

- (a) for any actual medical or treatment expenses reasonably incurred for the benefit of the injured occupant Class Member (including medical, treatment or other related expenses),
- (b) reasonable travel expenses actually incurred by Family Members attending to the care of the injured Occupant Class Member during his/her treatment or recovery;

⁶ Chapter 14 of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment focuses on the assessment of Mental and Behavioral Disorders (M&BD). It provides a standardized framework for psychiatrists and physicians to evaluate impairment stemming from psychiatric conditions, often utilizing criteria from the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).

- (c) costs of obtaining medical records, letters or reports (as noted in the above grids); and
- (d) where the Family Members provided nursing, housekeeping or other services for the injured occupant Class Member, a reasonable allowance for their loss of income or value of such services that the Family Member provided may be awarded.

All such expenses are referred to below as the “**Injury Related Expenses**”. Except in cases where an occupant Class Member establishes as part of an Extraordinary Application (as defined below) that his or her injuries exceed the highest levels or thresholds of the types of injuries set out in the grid, Family Members are not permitted to seek compensation for any alleged loss of care, guidance or companionship under the Family Law Act, RSO 1990, c F.3, as amended, or otherwise.

61. Occupant Class Members may want to review some of their medical or other records before they consider whether to make a personal injury claim. Any occupant Class Member who previously contacted Class Counsel about personal injuries sustained as a result of the Collapse may request that Class Counsel send him or her an electronic copy of all documents or records that were sent to or obtained by Class Counsel relating to that person’s personal injuries. To request those documents, an occupant Class Member should email Class Counsel at mallinfo@royoconnor.ca and indicate that they are requesting those documents. Class Counsel shall then take reasonable steps to provide an electronic copy of the records by email or electronic transfer/dropbox (not paper copies) along with an indication of any additional documents or information that Class Counsel had previously requested or sought but which were not provided or received by Class Counsel to date.
62. Class Members may, in any event, want or need to contact their own doctors or other qualified health care treating practitioners/professionals to ascertain what records or additional records are available for review or available to be provided to satisfy the documentation requirements of any category of the charts or grids above.
63. Each occupant Class Member who is considering making a personal injury claim should first consider and decide if any of his or her alleged injuries that were caused as a result of the Collapse fit within the description and requirements of any category of the type of personal injury as set out in the charts or grids above, and also decide if he or she has or can obtain and forward to the Adjudicator the documentation required for that category.
64. Any occupant Class Member who decides to make a claim for personal injuries will be required to send the Adjudicator an email or letter so indicating that they are making a physical and/or psychiatric injury claim within 60 days of days after Notice of Approved Settlement is first posted or provided. Each such Class Member will be required to declare what category(ies) in the grids

(e.g. A1, A2, B3, etc) that best and most accurately and reasonably describes or summarizes the type, extent and duration of his/her injuries and treatments (if any), and for which the Class Member can satisfy the documentary requirements associated with that level or category on the form. If the Class Member is instead seeking to advance an Extraordinary Application, the email or letter will be required to declare that they believe that his/her injuries are materially more serious than the type or extent of the most serious injuries (physical or psychiatric) as described in the grids or charts above or that his or her injuries have resulted in a permanent serious impairment of an important bodily function and declare that a doctor or other qualified health care treating practitioner/professional (who will have to be described by name, title/professional designation and contact information in the email or letter) agrees with their belief in that regard.

65. Each occupant Class Member will be required to send or forward to the Adjudicator any and all documentation required for the appropriate category of the grid selected by the Class Member. If the medical records, letter, opinion or report that is required for the category of the chart or grid selected is not immediately available, the occupant Class Member will be required to submit proof to the Adjudicator (in a form satisfactory to the Adjudicator) that such medical records, letters, opinions and reports have been requested in writing with 60 days after Notice of Approved Settlement is first posted or provided. Any such medical records, letters, opinions and reports must be submitted to the Adjudicator within 30 days after they are received by the occupant Class Member.

66. The Adjudicator will determine if the claim of the Class Member satisfies the requirements of the category selected by the Class Member (both in terms of the nature, extent and duration of injury or treatment, and in terms of the documentation required).

a. If the Adjudicator finds that the Class Member has satisfied the requirements of the selected category of a grid or chart, the Adjudicator shall value the personal injury claim of the Class Member at the corresponding value for that category, and will add to that value the cost of any medical, treatment or other Injury Related Expenses accepted by the Adjudicator. The set dollar value for that grid category and the total value of such Injury Related Expenses (plus any subrogated claim in respect of personal injuries (not including any claim by OHIP)) shall be the total value of the personal injury claim value.

b. If the Adjudicator finds that the Class Member does not satisfy the requirements of the category in the grid or chart as selected by the Class Member, the Adjudicator shall decide if the Class Member's injuries and documentation satisfy any lower value level in the categories of the grid or chart. If the Adjudicator finds that the Class Member's injuries and documentation satisfy such a lower value level, the Adjudicator shall value the

personal injury claim of the Class Member at that lower value level, and (other than for categories A1 and B1) will add the Injury Related Expenses accepted by the Adjudicator to the value for that category. The value for that category and the value of such Injury Related Expenses (plus any subrogated claim in respect of personal injuries (not including any claim by OHIP)) shall be the value of the personal injury claim value. However, if the Adjudicator concludes that the Class Member had no reasonable basis to believe that his or her injuries fell within the higher category of the grid or chart that he or she selected, or had no reasonable basis to believe that he or she could satisfy the proof or evidence requirements of that category, the Adjudicator shall have the discretion to reduce the value of the Class Member's personal injury claim by ten (10) percent.

- c. If the Adjudicator finds that the injuries or documentation submitted in support of the allegedly injured occupant Class Member claim for personal injury do not satisfy the requirements of any category as set out in the grids, the Class Member's claims for personal injury (and any related claim by a Family Member) shall be valued at \$0.
- d. If the occupant Class Member, for whom a Family Member advances a claim, does not make a claim for personal injuries, any claim by a Family Member will not be considered and will be rejected by the Adjudicator, and there will be no right of appeal from that rejection.

Extraordinary Application

67. If a Class Member reasonably believes that his or her injuries are materially more serious than the type and extent of the most serious injuries (physical or psychiatric) as described in the grids above or that his or her injuries have resulted in a permanent serious impairment of an important bodily function, and if a doctor or qualified health care treating practitioner/professional has agreed with the Class Member's belief in that regard, then that Class Member and any of his/her Family Members who believe that they are entitled to any Expenses or any compensation for the loss of care, guidance and companionship under section 61(2)(d) of the *Family Law Act*, may make a separate application (an "Extraordinary Application") to the Adjudicator and have the opportunity to receive more compensation than categories A6 and/or B6 in the charts above provide.

68. It is not intended or expected that many Class Members will make an Extraordinary Application, and Class Members should recognize that the overall funds available to be distributed to them and the other Class Members will be reduced if the Adjudicator has to consider unjustified or unreasonable Extraordinary Applications.

69. The proof or evidence required in support of an Extraordinary Application is more onerous than the level of proof required for category A6 or B6 in the grids above. Any Class Member advancing such an Extraordinary Application must not only submit the same proof or evidence required for category A6 or B6 above (depending on whether the Class Member has sustained physical or psychiatric injury, or both) but the Class Member and/or the Family Members must prepare and submit detailed affidavits (along with supporting documents/exhibits) particularizing how and on what basis the Class Member purportedly suffered such a materially more serious injury or such a permanent serious impairment. The Adjudicator will review the material submitted in support of any Extraordinary Application. The following provisions will apply:

- a. If the Adjudicator concludes that the material provided by the occupant Class Member does not establish on its face that the Class Member has suffered such a materially more serious injury or such a permanent serious impairment or that a doctor or qualified health care treating practitioner/professional has agreed with the Class Member's belief in that regard, the Adjudicator will decide if the injury and the evidence or materials provided by the Class Member satisfy one of the categories set out in the grids or charts above and, if so, will value the Class Member's claim at the compensation level for that grid category.
- b. If the Adjudicator concludes that the Class Member had no reasonable basis to believe or contend that he or she suffered such a materially more serious injury or such a permanent serious impairment, or that the Class Member had no reasonable basis to believe (based on the material that the Class Member did provide to the Adjudicator) that he or she could satisfy the proof or evidence requirements associated with an Extraordinary Application (including the requirement that a doctor or qualified health care treating practitioner/professional agreed with the Class Member's belief), the Adjudicator shall have the discretion to reduce the ultimate value of the Class Member's personal injury claim by up to ten (10) percent.
- c. If the Adjudicator initially concludes that the occupant Class Member may have reasonably suffered such a materially more serious injury or such a permanent serious impairment, the Adjudicator may request and require further information, some reasonable independent medical expert review(s) or other reasonable steps if it is necessary or appropriate in the Adjudicator's view to reach a fair decision on, and/or valuation, of the Extraordinary Application.

- d. If the Adjudicator concludes that such a materially more serious injury or such a permanent serious impairment and the evidentiary requirements are met, the Adjudicator will accept the claim as extraordinary and set a reasonable value for same. That reasonable value shall not be less than the \$60,000 value included in the grids as the highest set dollar value compensation. The Adjudicator will determine a reasonable value for any claim by Family Members (for Injury Related Expenses or the loss of care, guidance and companionship).

Business/Property Losses

70. Business/commercial and property losses may include, among other things:

- a. loss of profits of business or commercial enterprises that were tenants or subtenants in the Mall, or that had revenue generating assets in the Mall;
- b. the loss of profits from subparagraph a above are available for recovery for up to five (5) years post Collapse
- c. the fair market/actual cash value (not replacement value) of leasehold/tenant improvements, furnishings, fixtures, equipment, inventory/stock/merchandise, personal goods or property, lost cash, tools or other assets that were lost or destroyed in Collapse;

Employment Income Losses

71. Employment or income losses are available for those individuals who were employed by entities located in the Mall or who were employed by businesses that performed work in the Mall. Each such Class Member will have to establish that they were actively or currently so employed at the time of the Collapse (even if they were not actively working on the day of the Collapse). Such active or current employed may be established by the employee Class Member providing proof of employment income from a business within the 2 weeks prior to the Collapse (through pay cheques, pay stubs, CRA filings by the employee or employer, etc). Employers (tenants, stores and businesses working) within the Mall will or may be asked to provide a list of active or current employees at the time of the Collapse for verification purposes.

72. Employment or income losses will not exceed 2 years post-Collapse, except in the case of owner operated businesses. In the case of owner operated businesses, the owner/operating employees will be entitled to claim employment or income losses for up to 5 years post-Collapse.

Miscellaneous

73. The losses claimed by Class Members may also include losses or claims for expenses related to, or arising as a result of the Collapse, including mitigation expenses (for example, expenses in

moving to or opening a new location) and other expenses (for example, accounting expenses, etc) that would not have been incurred but for the Collapse. Such expenses must be established and proved based on appropriate evidence, explanation (by statutory declaration) and documentation (including, receipts, invoices, etc).

74. The business/property and employment income loss claims will be subject to the Class Members taking reasonable steps to mitigate their losses. If Class Members have failed to take such steps, their claims may be reduced accordingly or appropriately in the discretion of the Adjudicator. Further, to the extent that Class Members have in fact mitigated their losses (by finding alternative employment, being paid by their employer post Collapse, or otherwise), such mitigation/mitigated amounts will be deducted from their claimed losses.

75. The business/property and employment/income loss claims will be subject to the Class Members to adjustment for expected closures of businesses in the Mall (as planned or announced by the businesses, or otherwise) or reasonable expectations or subsequent occurrences/experiences of Class Members which may have in any event caused businesses to cease operating or employees to cease working (for example, due to actual unrelated illnesses or health issues, retirement, expected retirement dates, moving from the City, etc).