

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In re:

Champlain Towers South Collapse Litigation

**RECEIVER’S MOTION TO APPROVE STIPULATED PROTOCOL FOR
INSPECTION, DOCUMENTATION, AND STORAGE OF COMPONENTS,
REMNANTS, AND DEBRIS OF THE CHAMPLAIN TOWERS SOUTH COLLAPSE**

Michael I. Goldberg (the “**Receiver**”), pursuant to Rule 4 of the Complex Business Litigation Rules, seeks entry of an Order approving that certain *Stipulated Protocol for Inspection, Documentation, and Storage of Components, Remnants, and Debris of the Champlain Towers South Collapse* attached hereto as **Exhibit A** (the “**Stipulated Protocol**”), and in support thereof states:

1. At a hearing conducted on July 2, 2021 (the “**Commencement Date**”), in the captioned cases, the Court ordered the appointment of Michael I. Goldberg as Receiver for Association. Following the hearing, the Court entered an order so appointing Mr. Goldberg.

2. This receivership is the result of multiple lawsuits that were filed after the tragic collapse of a portion of the real property with a physical address of 8777 Collins Avenue, Surfside, Florida 33154 (the “**Property**”).

3. The essential purpose of the Stipulated Protocol, with the permission, consent, and agreement of Co-Lead Counsel and the Receiver is for the Receiver to make available to the Participants¹ access to the Property and the Champlain Towers South On-Site Remnants over

¹ All capitalized terms not defined herein shall have the definitions ascribed to them in the Stipulated Protocol.

which the Receiver may have control. In the future, the Receiver will make available the Champlain Towers South Off-Site Remnants over which the Receiver may have control for visual inspection, documentation, non-destructive and destructive testing on later dates to be determined and subject to additional protocol(s) to be formulated by the Receiver and presented to the Court. Making the Champlain Towers South On-Site Remnants and Champlain Towers South Off-Site Remnants over which the Receiver later may have control available to the Participants (and their respective designated counsel, experts, and forensics professionals) will further the goal of administering this case in an efficient manner for the benefit of all interested parties and their representatives.

4. The mechanics of making the Champlain Towers South On-Site Remnants are set forth in detail in the Stipulated Protocol. The Receiver and his counsel and Co-Lead Counsel for the Plaintiffs have made substantial efforts to seek input from all presently known interested parties. The Receiver and his counsel and Co-Lead Counsel for the Plaintiffs have circulated drafts of the Stipulated Protocol to the presently known interested parties, received comments thereon and have had multiple telephone conferences with various of the known interested parties in respect of the proposed Stipulated Protocol in an effort to reach agreement on all material points. In part, the Stipulated Protocol provides that discoverability of any measurements, photographs, observations, test results or other work product resulting from the site visit to the Property shall be governed by the Florida Rules of Civil Procedure and interpretative case law. In the event of a claim of privilege or work product protection, no party shall oppose a request for the Court to conduct an in-camera review and a hearing in advance of any ruling concerning production.

5. The Stipulated Protocol further provides, in part, that to the extent the Receiver and/or governmental entity with jurisdiction over the Property had or has control over them, all Champlain Towers South Off-Site Remnants and all Champlain Towers South On-Site Remnants

that are later removed to an off-site storage location (thereby qualifying as Champlain Towers South Off-Site Remnants) shall be stored and preserved in a secure facility consistent with the Court's evidence preservation requirements and orders. Pursuant to the proposed Stipulated Protocol, these materials shall be preserved until the last lawsuit that this Stipulated Protocol applies to is resolved by unappealed verdict, dismissal, or settlement and only after the party in control of those materials provides 30 days' prior written notice to all Participants of its intention to dispose of those materials. This paragraph may be modified for good cause upon motion by the Receiver.

6. The Stipulated Protocol explicitly recognizes that it may not address each and every issue or concern that could arise during the inspection and documentation process. Should an issue arise that is not contemplated in the Stipulated Protocol or a situation arise that requires interpretation of the Stipulated Protocol, or should a Participant object to any action that is taking place or about to take place, the Participants will first attempt to resolve the ambiguity or concern among themselves to the satisfaction of all Participants who are present at the time. If the ambiguity or concern cannot be so resolved, the Participants will submit the issue for determination to the Receiver, who will be physically present at the Property during the inspection process and, in his judgment and discretion, will contact the Court to set an emergency telephonic or remote hearing on the dispute. If any Participant disagrees with the decision of the Receiver, the Participant may bring it to the attention of the Court by appropriate motion or otherwise.

7. The Receiver respectfully submits that approval of the Stipulated Protocol is in the best interests of all interested parties and their representatives. Approval of the Stipulated Protocol will help avoid significant motion practice by various interested parties and their representatives regarding the subject matter of the proposed Stipulated Protocol.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order approving the Stipulated Protocol in its entirety, and grant such other, further and related relief as may be appropriate under the circumstances.

Dated: August 30, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 30, 2021, the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal, which furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal. I further certify that a true and correct copy of the foregoing was served by electronic transmission upon all parties on the attached E-Mail Service List.

By: s/ Paul Steven Singerman
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Exhibit A

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA**

**COMPLEX BUSINESS LITIGATION
DIVISION**

CASE NO: 2021-015089-CA-01
SECTION: CA43
JUDGE: MICHAEL HANZMAN

In re:

Champlain Towers South Collapse Litigation
_____ /

**STIPULATED PROTOCOL FOR INSPECTION, DOCUMENTATION, AND STORAGE
OF COMPONENTS, REMNANTS, AND DEBRIS OF THE
CHAMPLAIN TOWERS SOUTH COLLAPSE**

Receiver, Michael I. Goldberg, Esq., on behalf of the Champlain Towers South Condominium Association, Inc. (the “**Receiver**”) -- and with the permission, consent, and agreement of Co-Lead Counsel – will, subject to the terms hereof, make all materials, components, remnants, and debris of the Champlain Towers South collapse that are located at the Site of the collapse, 8777 Collins Avenue, Surfside, Florida 33154 (the “**Champlain Towers South On-Site Remnants**”) available to designated representatives of (1) all named parties in the *In re: Champlain Towers South Collapse Litigation*, Case No. 2021-015089-CA-01 and related cases (collectively, the “Litigation”), (2) all reasonably known potential parties to the Litigation, and (3) all governmental entities with jurisdiction over the collapse site which wish to participate for visual inspection and documentation (collectively, “Participants”) upon obtaining possession and control from Miami-Dade County.

In addition, the Receiver will, subject to the terms hereof, make all materials, components, remnants, and debris of the Champlain Towers South collapse that are located off the Site of the

collapse over which he may have control (the “**Champlain Towers South Off-Site Remnants**”) available to the Participants for visual inspection, documentation, non-destructive and destructive testing on later dates to be determined and subject to an additional Court approved protocol for destructive testing. The Receiver shall also separately allow for sampling, non-destructive and destructive testing of Champlain Towers South On-Site Remnants on later dates to be determined and subject to an additional protocol to be approved by the Court.

The details of this Stipulated Protocol for inspecting and documenting the Champlain Towers South On-Site Remnants are set forth below. This Stipulated Protocol has been agreed to by the Receiver and Plaintiffs’ Co-Lead Counsel, has been previewed with all Participants and commented upon by those Participants who wished to do so, and has been approved by the Court. At the request of the Receiver, any Participant may file a motion seeking amendments to this Stipulated Protocol or the Court, *sua sponte*, may update or amend this Stipulated Protocol.

1. The Receiver shall make the Champlain Towers South On-Site Remnants simultaneously available to the Participants and their designated counsel, experts, and forensic professionals for an initial period not exceeding ten (10) hours per day on four consecutive days, at the Champlain Towers South collapse site, commencing as soon as is practicable after the Receiver is vested with control of the Site by Miami-Dade, County. In the Receiver’s discretion, upon notice to the Participants, the Receiver may modify the inspection dates so as to not run consecutively, and/or make the Champlain Towers South On-Site Remnants available for additional inspection in the future. If any Participant disagrees with the Receiver’s decision regarding additional inspections or scheduling, that Participant may file an appropriate motion with the Court. Participants shall handle their own parking arrangements. In the event of adverse weather conditions on one of the agreed upon dates, the parties will jointly select the next possible

alternative date and the affected Participant(s) shall be entitled to resume the inspection at that time for the same amount of time that was lost due to adverse weather. All inspections will be conducted in accordance with applicable health and safety laws and protocols.

2. On a date and for a timeframe to be arranged prior to the on-site inspection dates, subject to any applicable local, state and federal laws and regulations, each Participant and its designees will be granted access to the airspace above the Site and the Champlain Towers South On-Site Remnants to fly a single drone (i.e., one drone per Participant) with LIDAR equipment and record the condition of the Site with photographs and video equipment. In the event that the simultaneous flight of multiple drones is impractical, then the Receiver shall coordinate times for each Participant to fly its own drone separately. In the Receiver's discretion, upon notice to the Participants, the Receiver may (subject to any applicable local, state and federal laws and regulations) make the airspace above the Site and the Champlain Towers South On-Site Remnants available for additional drone flights in the future. If any Participant disagrees with the Receiver's decision regarding additional drone flights, that Participant may file an appropriate motion with the Court.

3. Access to the Site for the purpose of visual inspection and documentation is restricted to eight designated persons per Participant at any one time ("Designees" and each a "Designee"). Participants may change Designees during the inspection provided they do not exceed the eight-person limit, and subject in all respects to any replacement Designee complying with the terms of this Protocol, including, without limitation, paragraph 4 hereof. All plaintiffs in the Litigation are collectively limited to one group of eight Designees on Site at any one time, selected by Plaintiffs' Co- Lead Counsel. Each Participant shall designate at least one attorney Designee, who shall count as one of the eight designated persons and who shall be responsible for

and the point of communications for that Participant's Designees. Non-attorney Designees shall be limited to those retained by a Participant.

4. No later than 48 hours prior to its inspection date, each Participant shall provide the Receiver with a written list of its Designees and shall include satisfactory evidence of the following for each: titles and credentials, valid identification, proof of liability insurance in the amount of at least \$2 million for engineering professionals naming the Receiver as an additional insured, and an executed waiver and hold-harmless agreement in a form to be provided by the Receiver. On each inspection day, Designees must present themselves at the meeting area selected by the Receiver and provide valid identification. All Designees shall sign-in prior to entering the Site and sign-out upon leaving the Site. A record of the Designees (including, if applicable, the Participant who retained them) will be shared with all Participants. Each day, the sign-in process will start at 7:00 a.m. (or at an alternative time to be set by the Receiver) and the first visual inspection, as set forth below, will start as soon as practicable thereafter.

5. Once in the Site, each Designee may visually inspect and document the condition of the Champlain Towers South On-Site Remnants with photography, video recording, ground penetrating radar (GPR), LIDAR, 3D laser scanning/modeling, surveying equipment, or any other non-destructive methods of inspection and documentation. Designees may also measure by conventional means, take notes, draw sketches, and conduct additional non-destructive visual inspections, scans, surveys, and measurements including ferroskans and corrosion evaluation (to the extent that such ferroskans and corrosion evaluations are conducted in a non-destructive manner on already exposed Champlain Towers South On-Site Remnants that are free from concrete encasement). At their own risk and without machinery or tools employed to alter the Site or Champlain Towers South On-Site Remnants (other than to make temporary markings for

measurement purposes), Designees may touch by hand or with measuring devices any piece or portion of the Champlain Towers South On-Site Remnants provided that the Designee's contact will not alter or damage that material or other material. Designees may not otherwise alter the condition and may not modify the location of any piece or portion of the Champlain Towers South On-Site Remnants. Designees must take all necessary steps to avoid damaging or physically altering the condition or location of any piece or portion of the Champlain Towers South On-Site Remnants. Under no circumstances may any Designee take samples from, remove, or take possession of any materials, pieces, or portions of the Champlain Towers South On-Site Remnants. Reasonably necessary personnel of the Receiver will be available to facilitate the visual inspection process, but no physical assistance, tools, or equipment, such as cranes or dollies, will be provided.

6. Third-party videography arranged and paid for by each Participant (but the Receiver will provide one videographer for the plaintiffs and shall be entitled to copies of all videos produced by such videographer) to document their respective efforts to inspect and document the Champlain Towers South On-Site Remnants. The videographer used by a Participant shall not count as a Designee, but will be accompanied at all times by a Designee.

7. Discoverability of any measurements, photographs, observations, test results or other work product resulting from the site visit shall be governed by the Florida Rules of Civil Procedure and interpretative case law. In the event of a claim of privilege or work product protection, no party shall oppose a request for the Court to conduct an in-camera review and a hearing in advance of any ruling concerning production.

8. In advance of the site inspections by the Participants, the Receiver shall engage a videographer to conduct and record an initial site visit. The Receiver shall also engage a vendor to fly a drone with LIDAR equipment to conduct and record an initial site visit with photographs and

video equipment. These video and records will be provided to every Participant prior to its inspection. Any person or entity later named as a party in the Litigation but that did not receive notice of the visual inspections governed by this Stipulated Protocol shall be promptly provided a copy of the video and records from the Receiver's initial site visit upon its request.

9. To the extent the Receiver and/or governmental entity with jurisdiction over the collapse site had or has control over them, all Champlain Towers South Off-Site Remnants and all Champlain Towers South On-Site Remnants that are later removed to an off-site storage location (thereby qualifying as Champlain Towers South Off-Site Remnants) shall be stored and preserved in a secure facility consistent with the Court's preservation requirements and orders. These materials shall be preserved until the last lawsuit that this Stipulated Protocol applies to is resolved by a final and non-appealable order, dismissal, or settlement and only after the party in control of those materials provides 30-days' written notice to all Participants of its intention to dispose of those materials. This paragraph may be modified for good cause upon motion by the Receiver.

10. The Participants recognize that this Stipulated Protocol may not address each and every issue or concern that could arise during the inspection and documentation process. Should an issue arise that is not contemplated in this Stipulated Protocol or a situation arises that requires interpretation of this Stipulated Protocol or should a Participant object to any action that is taking place or about to take place, the Participants will first attempt to resolve the ambiguity or concern among themselves to the satisfaction of all Participants who are present at the time and the Receiver. If the ambiguity or concern cannot be so resolved, the Participants will submit the issue for determination to the Receiver, who will be physically present on Site during the inspection process and, in his judgment and discretion, will be empowered to contact the Court to request an emergency telephonic or remote hearing on the dispute. If any Participant disagrees with the

decision of the Receiver, the Participant may bring it to the attention of the Court by appropriate motion or otherwise.

11. Should any Participant wish to visually inspect and document the Champlain Towers South On-Site Remnants at a future date, such access will be permitted in the Receiver's discretion. If any Participant disagrees with the decision of the Receiver, the Participant may request appropriate relief from the Court.

12. No destructive testing will be permitted at this time. It is understood, however, that at a date in the future, one or more parties may wish to conduct some form of destructive inspection or testing. The Participants agree that before any such inspection or testing occurs, an order of the Court approving a further stipulated protocol will be sought, and that such activities will not proceed until such an order is obtained.

13. After turn over of the site to the Receiver by Miami-Dade County, if either it or the Town of Surfside contends that there is a circumstance implicating life safety concerns at the site which empowers it to enter upon the site, Miami-Dade County or the Town of Surfside, as the case may be, will file a motion with the Court seeking a hearing on an emergency basis describing the life safety issue(s) with reasonable specificity and setting forth the relief sought by the movant. Any such motion shall be served on the Receiver and his counsel and the Participants, along with the notice of hearing thereon. Except in circumstances that the movant and its counsel certify as a life-threatening emergency at the site, neither Miami-Dade County nor the Town of Surfside shall enter upon the site until the Court has adjudicated the subject motion.

14. Without notice to the Participants, the Receiver may relocate or dispose of any materials not originally on-site at the time of the collapse, but that were later brought onto the site for search and rescue, recovery, demolition, site management, and/or forensic investigation in a

manner consistent with the Court's evidence preservation requirements and orders. These include but are not limited to unused supplies, formwork, storage sheds, tools, and equipment.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this ____ day of _____, 2021.

HON. MICHAEL HANZMAN
CIRCUIT COURT JUDGE

Copies furnished to:
Counsel of Record