

**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

**JOHN MORIARTY & ASSOCIATES OF FLORIDA, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'
SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant John Moriarty & Associates of Florida, Inc. ("JMAF"), by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses to Plaintiffs' Consolidated Second Amended Class Action Complaint ("SAC") and responds to the numbered paragraphs of the SAC as follows:

INTRODUCTION

1. Upon information and belief, admitted.
2. Denied that any act or omission of JMAF caused the collapse of CTS or any damages to Plaintiffs. Without knowledge as to the remaining allegations of paragraph 2.
3. Admitted that Champlain Towers South ("CTS") was an older building. Without knowledge concerning the remainder of the allegations set forth in paragraph 3 and, to the extent, if any, the allegations concern JMAF, it is denied that any act or omission by JMAF caused the collapse of CTS or any other damages to Plaintiffs.
4. Without knowledge concerning the allegations set forth in paragraph 4, but to the extent, if any, the allegations concern JMAF, it is denied that any act or omission by JMAF caused the collapse of CTS or any other damages to Plaintiffs.

5. The allegations in paragraph 5 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

PARTIES

6. Without knowledge as to the identities of the putative class or subclasses, or their alleged losses, except admitted that CTS residents perished in the collapse and that they and other residents lost their homes and personal belongings.

7. Without knowledge concerning the allegations set forth in paragraph 7.

8. Without knowledge concerning the allegations set forth in paragraph 8.

9. Without knowledge concerning the allegations set forth in paragraph 9.

10. Without knowledge concerning the allegations set forth in paragraph 10.

11. Without knowledge concerning the allegations set forth in paragraph 11.

12. Without knowledge concerning the allegations set forth in paragraph 12.

13. The allegations contained in paragraph 13 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

14. The allegations contained in paragraph 14 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

15. The allegations contained in paragraph 15 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

16. The allegations contained in paragraph 16 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

17. Denied, except admitted that JMAF is a Massachusetts corporation licensed to conduct and doing business in Florida, and was the general contractor for the condominium project located at 8701 Collins Avenue in Miami Beach (“Eighty Seven Park”).

18. The allegations contained in paragraph 18 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

19. The allegations contained in paragraph 19 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

20. The allegations contained in paragraph 20 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

21. The allegations contained in paragraph 21 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

22. The allegations contained in paragraph 22 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

JURISDICTION AND VENUE

23. Denied that this putative class action arises due to any act or omission by JMAF. Admitted that alleged damages sought exceed \$30,000. The remaining allegations are legal conclusions to which no response is required. To the extent a response to the remaining allegations is required, JMAF is without knowledge.

24. Admitted that jurisdiction properly lies in this Court. Admitted that JMAF has conducted business in Miami-Dade County. Without knowledge as to the remainder of the allegations, except it is denied that JMAF committed any tortious act.

25. The allegations set forth in paragraph 25 are legal conclusions to which no response is required, but JMAF does not dispute that venue is proper in Miami-Dade County. To the extent the “acts or omissions” referred to in paragraph 25 are directed toward JMAF, they are denied.

GENERAL ALLEGATIONS

26. Upon information and belief, admitted.

27. Upon information and belief, admitted that a portion of CTS collapsed on the date and time alleged and that 98 individuals lost their lives due to the collapse. Without knowledge as to the remaining allegations set forth in paragraph 27.

28. Without knowledge concerning the allegations set forth in paragraph 28.

29. Without knowledge concerning the allegations set forth in paragraph 29.

30. Denied.

31. Without knowledge concerning the allegations set forth in paragraph 31.

32. Without knowledge concerning the allegations set forth in paragraph 32.

33. Without knowledge concerning the allegations set forth in paragraph 33.

34. Without knowledge concerning the allegations set forth in paragraph 34.

35. Admitted, except that JMAF is without knowledge concerning the walkway's maintenance, and it is denied that JMAF maintained the walkway.

36. Without knowledge concerning the allegations in paragraph 36.

37. Without knowledge concerning the allegations in paragraph 37.

38. The referenced drawing speaks for itself. Otherwise, denied.

39. Without knowledge concerning the allegations set forth in paragraph 39, except it is denied that any act or omission by JMAF caused damage to CTS or contributed to the collapse of CTS.

40. Without knowledge concerning the allegations in paragraph 40.

41. Without knowledge concerning the allegations in paragraph 41.

42. Without knowledge concerning the allegations in paragraph 42.

43. Without knowledge concerning the allegations in paragraph 43.

44. Without knowledge concerning the allegations in paragraph 44.

45. Without knowledge concerning the allegations in paragraph 45.
46. Without knowledge concerning the allegations in paragraph 46.
47. The allegations in paragraph 47 are unintelligible. As such, no response is required.

To the extent a response is required, all allegations are denied.

48. The referenced e-mail speaks for itself. Otherwise, denied.
49. Denied, except admitted that Eighty Seven Park is located at 8701 Collins Avenue and has 18 stories.

50. Denied, except admitted that: Eighty Seven Park was adjacent to CTS; there is a beach access walkway separating the properties; Eighty Seven Park is located in the City of Miami Beach; and CTS was located in the Town of Surfside.

51. Without knowledge concerning the allegations set forth in paragraph 51. To the extent a response is required, all allegations are denied.

52. Without knowledge concerning the allegations set forth in paragraph 52. To the extent a response is required, all allegations are denied.

53. Without knowledge concerning the allegations set forth in paragraph 53. To the extent a response is required, all allegations are denied.

54. Without knowledge concerning the allegations set forth in paragraph 54. To the extent a response is required, all allegations are denied.

55. Without knowledge concerning the allegations set forth in paragraph 55. To the extent a response is required, all allegations are denied.

56. Without knowledge concerning the allegations set forth in paragraph 56. To the extent a response is required, all allegations are denied.

57. Without knowledge concerning the allegations set forth in paragraph 57. To the extent a response is required, all allegations are denied.

58. Without knowledge concerning the allegations set forth in paragraph 58. To the extent a response is required, all allegations are denied.

59. Without knowledge concerning the allegations set forth in paragraph 59. To the extent a response is required, all allegations are denied.

60. Without knowledge concerning the allegations set forth in paragraph 60. To the extent a response is required, all allegations are denied.

61. The first sentence of paragraph 61 is a legal conclusion to which no response is required. Without knowledge concerning the allegations set forth in the second sentence of paragraph 61. To the extent a response is required to the second sentence, all allegations are denied.

62. Without knowledge concerning the allegations set forth in paragraph 62. To the extent a response is required, all allegations are denied.

63. Without knowledge concerning the allegations set forth in paragraph 63. To the extent a response is required, all allegations are denied.

64. Without knowledge concerning the allegations set forth in paragraph 64. To the extent a response is required, all allegations are denied.

65. Without knowledge concerning the allegations set forth in paragraph 65. To the extent a response is required, all allegations are denied.

66. Without knowledge concerning the allegations set forth in paragraph 66, except denied that beach access is “8 to 10 feet wide” and that JMAF performed its work in a “destructive” manner. And to the extent, if any, the allegations involve the work of JMAF, it is denied that any act or omission by JMAF caused any damage to CTS, its collapse, or other damages to plaintiffs.

67. The allegations contained in paragraph 67 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF has no knowledge regarding the Terra Defendants' knowledge or awareness. To the extent, if any, the allegations involve the work of JMAF, it is denied that any act or omission by JMAF had any impact upon CTS.

68. The allegations contained in paragraph 68 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF has no knowledge regarding what would have happened if the Terra Defendants has not allegedly "purchased" 87th Terrace and, to the extent, if any, the allegations in paragraph 68 concern JMAF, it is denied that any act or omission by JMAF caused any damage to CTS.

69. Paragraph 69 states a legal conclusion to which no answer is required. To the extent a response is required, the "applicable building code" speaks for itself. Otherwise, without knowledge.

70. Paragraph 70 states a legal conclusion to which no response is required. To the extent a response is required, the cited code section speaks for itself. Otherwise, without knowledge.

71. Paragraph 71 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

72. Without knowledge concerning the allegations set forth in paragraph 72, except admitted, based upon information and belief, that NV5 was retained by 8701 Collins Development, LLC to provide geotechnical services.

73. The referenced report speaks for itself. Otherwise, denied.

74. The referenced report speaks for itself. Otherwise, denied, except admitted that a copy of the referenced report was provided to JMAF.

75. The referenced report speaks for itself. Otherwise, denied.

76. The referenced report speaks for itself. Otherwise, denied. JMAF is without knowledge as to the allegations set forth in paragraph 76 concerning the knowledge of the Terra Defendants. To the extent a response is required for those allegations, they are denied.

77. The referenced report speaks for itself. Otherwise, denied.

78. The referenced report speaks for itself. Otherwise, denied.

79. The referenced report speaks for itself. Otherwise, denied.

80. Paragraph 80 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

81. Paragraph 81 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

82. Paragraph 82 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

83. Paragraph 83 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

84. Paragraph 84 states a legal conclusion to which no response is required. To the extent a response is required, the referenced code section speaks for itself. Otherwise, without knowledge.

85. Without knowledge concerning the alleged knowledge of the other defendants. All allegations concerning JMAF are denied. It is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs.

86. Without knowledge concerning the alleged knowledge, acts and/or omissions of the other defendants. All allegations concerning JMAF are denied. It is also denied that any act or omission by JMAF had any impact upon CTS's structural integrity or caused any damages to Plaintiffs.

87. Paragraph 87 states a legal conclusion to which no response is required. To the extent a response is required, all allegations are denied.

88. The referenced report speaks for itself. Otherwise, denied.

89. The referenced report speaks for itself. Otherwise, denied.

90. The referenced report speaks for itself. Otherwise, denied.

91. The referenced report speaks for itself. Otherwise, denied.

92. The referenced report speaks for itself. Otherwise, denied.

93. The referenced report speaks for itself. Otherwise, denied.

94. The referenced report speaks for itself. Otherwise, denied.

95. The referenced report speaks for itself. Otherwise, denied.

96. Without knowledge concerning the alleged knowledge, acts, and/or omissions of other defendants. All allegations concerning JMAF are denied. It is also denied that any act or

omission by JMAF had any impact upon CTS' structural integrity or caused any damages to Plaintiffs.

97. Without knowledge concerning the alleged knowledge, acts and/or omissions of other defendants. All allegations concerning JMAF are denied.

98. Denied, except admitted that the installation of sheet piles at Eighty Seven Park occurred in 2016, and, based upon information and belief, that a PVE 23, Model No. 23VM pile hammer attached to a JCB 0174583 tractor crane was utilized to drive the 35 to 41 foot-long sheet piles into the ground.

99. Admitted.

100. Admitted.

101. Denied that all sheet piles were installed 10 feet away from CTS' south wall.

102. The referenced e-mail speaks for itself. Otherwise, denied.

103. The referenced e-mail speaks for itself. Otherwise, denied.

104. The referenced e-mail speaks for itself. Otherwise, denied.

105. Without knowledge as to the alleged Terra Defendants' decisions, but denied that vibrations due to sheet pile installation at Eighty Seven Park were dangerous to Plaintiffs or CTS.

106. The referenced e-mail speaks for itself. Otherwise, denied.

107. Denied.

108. Admitted.

109. Admitted.

110. Denied.

111. Admitted.

112. Without knowledge as to the allegations set forth in paragraph 112. To the extent a response is required, the allegations are denied.

113. Without knowledge as to the allegations set forth in paragraph 113. To the extent a response is required, the allegations are denied.

114. Based upon information and belief, admitted.

115. Based upon information and belief, denied.

116. Denied.

117. The referenced report speaks for itself. Otherwise, denied.

118. Denied.

119. The referenced report speaks for itself. Otherwise, denied.

120. Denied, except admitted that sheet pile installation continued after adjustments to the installation process had been made.

121. The referenced e-mail speaks for itself. Otherwise, denied.

122. Denied.

123. Denied.

124. The meeting minutes speak for themselves. Otherwise, denied.

125. Without knowledge concerning the allegations set forth in paragraph 125. To the extent a response is required, the allegations are denied.

126. The referenced e-mail speaks for itself. Otherwise, denied.

127. Denied.

128. Denied.

129. Denied that JMAF ever received notices concerning vibrations directly from Chaplain Towers South Condominium Association, Inc. (the "Association") and/or CTS

occupants. Without knowledge as to notices alleged to have been directly received by the other identified defendants.

130. Without knowledge concerning the allegations set forth in paragraph 130. To the extent a response is required, the referenced e-mail speaks for itself. Otherwise, denied.

131. The referenced e-mail speaks for itself. Otherwise, denied.

132. Without knowledge as to the allegations set forth in paragraph 132, except admitted, based upon information and belief, that the referenced individuals lost their lives when CTS collapsed.

133. Denied.

134. The referenced e-mail speaks for itself. Otherwise, denied.

135. The referenced e-mail speaks for itself. Otherwise, denied

136. The referenced meeting minutes speak for themselves. Otherwise, denied.

137. Denied.

138. Denied.

139. The referenced e-mail speaks for itself. Otherwise, denied.

140. The referenced e-mail speaks for itself. Otherwise, denied.

141. Without knowledge as to the allegations set forth in paragraph 141. To the extent a response is required, all allegations are denied.

142. Without knowledge of the alleged “reports” or any actions taken by the other referenced defendants with respect to the alleged reports. To the extent a response is required, those allegations are denied. The remaining allegations in paragraph 142 that may concern JMAF are denied.

143. Without knowledge of the referenced meeting minutes, which speak for themselves. Otherwise, denied.

144. Without knowledge as to what the other referenced defendants allegedly knew or the alleged inspections of CTS. With respect to the allegations set forth in paragraph 144 that concern JMAF, all allegations are denied, and it is also denied that any act or omission by JMAF had any impact upon CTS' structural integrity or caused any damages to Plaintiffs.

145. Denied that installation of sheet piling caused any damage to CTS, and without knowledge of the alleged "settlement discussions."

146. Denied that installation of sheet piling caused any damage to CTS. Without knowledge of the alleged complaints concerning such alleged damage or the alleged settlement agreement. The referenced e-mail speaks for itself. Otherwise, denied.

147. Denied that installation of sheet piling caused any damage to CTS. Without knowledge of the alleged settlement discussions. The referenced e-mail speaks for itself. Otherwise, denied.

148. Without knowledge of alleged settlement discussions or CTS owner and/or resident complaints except for complaints concerning the hours of construction work time, noise, and minor debris from the work site. The referenced e-mail speaks for itself. Otherwise, denied.

149. Denied.

150. The referenced report speaks for itself. Otherwise, denied.

151. Denied.

152. Denied.

153. Denied.

154. The referenced report speaks for itself. Otherwise, denied.

155. Denied.

156. Denied.

157. Denied.

158. The referenced e-mail speaks for itself. Otherwise, denied.

159. The referenced e-mail speaks for itself. Otherwise, denied.

160. Without knowledge concerning the allegations set forth in paragraph 160. To the extent a response is required, all allegations are denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. The referenced report speaks for itself. Otherwise, denied.

166. The statements in paragraph 166 are not factual allegations directed towards JMAF. As such, JMAF is not required to respond. To the extent, if any, the statements are construed as allegations against JMAF, they are denied.

167. The statements in paragraph 167 are not factual allegations directed towards JMAF. As such, JMAF is not required to respond. To the extent, if any, the statements are construed as allegations against JMAF, they are denied.

168. The statements in paragraph 168 are not factual allegations directed towards JMAF. As such, JMAF is not required to respond. To the extent, if any, the statements are construed as allegations against JMAF, they are denied.

169. The referenced report speaks for itself. Otherwise, denied.

170. Denied.

171. Denied.

172. Denied.

173. The referenced plan speaks for itself. Otherwise, denied.

174. Denied.

175. Denied.

176. The statements in the first sentence of paragraph 176 are not factual allegations directed towards JMAF. As such, JMAF is not required to respond. To the extent, if any, the statements in the first sentence are construed as allegations against JMAF, they are denied. The remainder of the allegations set forth in paragraph 176 are denied.

177. The referenced e-mail speaks for itself. Otherwise, denied.

178. The referenced e-mail speaks for itself. Otherwise, denied.

179. Denied.

180. Denied.

181. Denied.

182. Denied.

183. Denied.

184. Denied.

185. Denied except admitted that JMAF constructed the beach access walkway in or about 2019.

186. Without knowledge concerning the allegations set forth in paragraph 186. The referenced Agreement speaks for itself. Otherwise, denied.

187. Denied.

188. Denied.

189. Denied.

190. The referenced e-mail speaks for itself. Otherwise, denied.

191. Denied.

192. Denied.

193. Denied.

194. The referenced e-mail speaks for itself. Otherwise, denied. It is also denied that any work by JMAF caused water to drain into CTS's basement parking garage.

195. Denied.

196. Without knowledge concerning the allegations set forth in paragraph 196. To the extent a response is required, all allegations are denied.

197. Without knowledge concerning the allegations set forth in paragraph 197. To the extent a response is required, the referenced report speaks for itself. Otherwise, denied.

198. Denied.

199. Denied.

200. Denied.

201. Based upon information and belief, admitted that NV5 was hired by 8701 Collins Development, LLC to perform an inspection of CTS prior to the construction activities identified in paragraph 201, but without knowledge as to whether the inspection was an "extensive and thorough pre-construction survey of CTS."

202. Without knowledge concerning the allegations set forth in paragraph 202. To the extent a response is required, all allegations are denied.

203. Without knowledge concerning the allegations set forth in paragraph 203. To the extent a response is required, all allegations are denied.

204. Based upon information and belief, denied that the pre-construction survey was to “document every observable defect or area of damage at CTS,” except admitted, based upon information and belief, that the reason for NV5’s inspection was to document existing conditions at CTS in the event there was a subsequent claim by CTS that construction of Eighty Seven Park caused damage to CTS.

205. The referenced report speaks for itself. Otherwise, denied.

206. The referenced report and photographs speak for themselves. Otherwise, denied.

207. Denied.

208. The referenced survey and photographs speak for themselves. Otherwise, denied.

Also denied that the construction of Eighty Seven Park caused any damage to CTS.

209. Denied.

210. Denied.

211. The referenced video speaks for itself. Otherwise, denied.

212. Without knowledge concerning the allegations set forth in paragraph 212. To the extent a response is required, the allegations are denied.

213. Without knowledge concerning the allegations set forth in paragraph 213. To the extent a response is required, the allegations are denied.

214. Denied.

215 - 240. The allegations contained in paragraphs 215 – 240 are not directed towards JMAF. As such, responses to these paragraphs are not required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

241. Without knowledge concerning the allegations set forth in paragraph 241, except, to the extent any allegation is directed towards JMAF, it is denied that any act or omission by JMAF caused any damage to CTS.

242-304. The allegations contained in paragraphs 242 through 304 are not directed towards JMAF. As such, responses to these paragraphs are not required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

CLASS REPRESENTATION ALLEGATIONS

305-321. The allegations set forth in paragraphs 305 through 321 are either legal conclusions or statements concerning Plaintiffs' intent. As such, responses to these paragraphs are not required. To the extent responses to these paragraphs are required, all allegations are denied.

322. Upon information and belief, admitted that Plaintiffs' claims arise out of the collapse of CTS, which was located in Miami-Dade County. All other allegations are denied.

323. The allegations set forth in paragraph 323 are either legal conclusions or statements concerning Plaintiffs' intent. As such, no response is required. To the extent, if any, however, the allegations pertain to JMAF, it is denied that any act or omission by JMAF caused structural damage to CTS or caused any other damages to Plaintiffs.

324-326. The allegations set forth in paragraphs 324 through 326 are either legal conclusions or legal advocacy. No responses are required. To the extent responses are required, all allegations are denied.

COUNT I
NEGLIGENCE
(Against the Terra Defendants)

The allegations contained in paragraphs 327-339 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT II
STRICT LIABILITY
(Against the Terra Defendants)

The allegations contained in paragraphs 340-351 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, JMAF is without knowledge.

COUNT III
NEGLIGENCE
(Against JMAF)

352. JMAF incorporates its previous responses to all foregoing paragraphs as if fully set forth herein.

353. Denied, except Admitted that JMAF was the general contractor for Eighty Seven Park and had knowledge of the Project and JMAF's contractual scope of work.

354. Without knowledge whether all information provided by NV5 to the Terra Defendants was "relayed" to JMAF. Otherwise, all allegations are denied.

355. The allegations set forth in paragraph 355 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF's responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Agreement between JMAF and 8701 Collins Development, LLC for construction of Eighty Seven Park (the "Construction Contract"). Among other things, the Construction Contract specifically excluded from JMAF's scope of work and potential liability: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to

adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16 and 28. Otherwise, the allegations are denied.

356. The allegations set forth in paragraph 356 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

357. The allegations set forth in paragraph 357 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any

liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

358. The allegations set forth in paragraph 358 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

359. The allegations set forth in paragraph 359 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a

vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

360. The referenced report speaks for itself. As such, Plaintiffs’ characterizations concerning the report otherwise are denied. The allegations set forth in paragraph 360 concerning JMAF’s legal duties are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

361. Denied.

362. The allegations set forth in paragraph 362 are legal conclusions to which no response is required. Nonetheless, it is admitted that JMAF’s responsibilities and duties were defined by applicable law, the applicable standard of care, and the Construction Contract. Among other things, the Construction Contract specifically excluded from JMAF’s scope of work and potential liability: (a) “testing or monitoring of vibration caused during installation of sheet piling”; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means

and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B (“GMP Amendment”) at Exhibit 4 (“Qualifications and Assumptions”), paragraphs 3, 16, and 28. Otherwise, the allegations are denied.

363. NV5’s report speaks for itself. Otherwise denied.

364. Denied.

365. Denied (including all subparts).

366. Denied.

367. Denied.

368. Denied.

COUNT IV
STRICT LIABILITY
(Against JMAF)

369. JMAF incorporates its previous responses to all foregoing paragraphs as if fully set forth herein.

370. Denied, except admitted that JMAF’s construction of Eighty Seven Park included the installation of sheet piling.

371. Denied, except Admitted that installation of sheet piling was included in JMAF’s scope of work for Eighty Seven Park.

372. The allegations set forth in paragraph 372 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

373. The allegations set forth in first sentence of paragraph 373 are legal conclusions to which no response is required. To the extent a response is required, all allegations in the first sentence are denied. The allegations set forth in the remainder of paragraph 373 are denied.

374. Denied.

375. Denied.

376. The allegations set forth in paragraph 376 cannot be answered because they are unintelligible. To the extent a response is required, all allegations are denied.

377. NV5's report speaks for itself. Otherwise denied.

378. Denied.

379. Denied.

380. Denied.

381. Denied.

COUNT V
NEGLIGENCE
(Against NV5)

The allegations contained in paragraphs 382-402 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT VI
STRICT LIABILITY
(Against NV5)

The allegations contained in paragraphs 403-415 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT VII
NEGLIGENCE
(Against DeSimone)

The allegations contained in paragraphs 416-435 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT VIII
STRICT LIABILITY
(Against DeSimone)

The allegations contained in paragraphs 436-448 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT IX
NEGLIGENCE
(Against the Association)

The allegations contained in paragraphs 449-462 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT X
NEGLIGENCE
(Against Morabito)

The allegations contained in paragraphs 463-524 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

COUNT XI
GROSS NEGLIGENCE
(Against Becker)

The allegations contained in paragraphs 525-549 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

GENERAL DENIAL

JMAF denies each and every allegation in each and every paragraph of the Second Amended Complaint that has not been otherwise expressly admitted or as to which JMAF has stated it is without knowledge.

AFFIRMATIVE AND OTHER DEFENSES

Unless otherwise provided by law, JMAF does not accept the burden of proof or persuasion for any defense asserted herein.

FIRST AFFIRMATIVE DEFENSE

JMAF respectfully denies that it has any liability for Plaintiffs' tragic losses or damages. To the extent, however, that JMAF and/or the other defendants are found liable, any damages awarded to Plaintiffs are subject to the comparative fault provisions of Florida Statute Section 768.81. JMAF cannot be held liable for more than its proportionate share of any damages awarded. Pursuant to *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993); *Allied-Signal, Inc. v. Fox*, 623 So. 2d 180 (Fla. 1993); and *Messmer v. Teacher's Insurance Co.*, 588 So. 2d 610 (Fla. 5th DCA 1991), any damages awarded to Plaintiffs are subject to apportionment by the jury of the total fault of all participants in the accident. Plaintiffs' alleged damages were solely the result of the negligence, acts, omissions, wanton lack of care, misuse or other conduct, wrongdoing, or fault of other persons, entities, or parties, that may not be joined in this action, and are not under the care and control of JMAF, including without limitation, responsible persons or parties whose specific

identities are currently unknown to JMAF if different from and/or in addition to those identified below and to be identified in the future:

8701 Collins Avenue Condominium;
Association, Inc.;

A. Tomassi Roof Testing, Inc.;

ASAP Installations, Inc.;

BIZZI & Partners Development, LLC;

Becker & Poliakoff, P.A.

Brieterman Jurado & Assoc.;

Campany Roof Maintenance Roofing
Division, LLC;

Can-Fla Development;

CDPW, Inc., d/b/a Complete Dewatering
and Wellpoints (now Holland Pump);

City Engineering Contractors, Inc.;

City of Miami Beach;

Collins Development, LLC;

Complete Pump Service Co., Inc.;

Concrete Protection & Restoration, Inc.;

Craig A. Smith & Assoc.;

CTS Association Board Members and/or
unit owners;

Eighty-Seven Park, LLC;

Essig Pools, Inc.;

Florida Civil, Inc.;

Fortin, Leavy;

GeoSonics USA, Inc.;

H. Vidal & Associates, Inc.;

HJ Foundation Co.;

Irish Tower, LLC;

Jaffer Well Drilling (a division of AC
Shultes of FL, Inc.)

J Le Electric, LLC;

JJI Supply, LLC;

Jorge Batievsky and Alfred Weisbrod;

Keller Group, PLC;

Kobi Karp Architecture and Interior Design,
Inc.;

Morabito Consultants, Inc.

Nattel Construction, Inc.;

NV5 Global, Inc.;

O&S Associates, Inc.;

Premier Fire Alarms & Integration, Inc.;

Randall Fowler Engineering, Inc.;

Reinforced Structures, Inc.;

Reinforced Structures, Inc.;

Rhett Roy Landscape Architecture, LLC;

Roof Surveys, Inc.;

Sannat Investments, Inc.;

Scott D. Dyer, P.A.;

Scott R. Vaughn, PE, LLC;

Scott Stewart;

Securitas Security Services USA, Inc.;

Skiles, Inc.;

SmartLink, LLC;

Thomas E. Henz, PE, Inc.;

Town of Surfside;

West 8 Urban Design & Landscape
Architecture, PLLC;

Western Waterproofing Company, Inc.;

Wilcott Engineering, Inc.;

William M. Friedman & Assoc.;

JMAF does not currently know the identities or roles of all nonparties who may be at least partially responsible for Plaintiffs' alleged damages, but they may include, without limitation: (a) all other nonparty owners, developers, architects, design consultants, engineers, contractors, subcontractors and other persons or entities involved in the construction of CTS and/or repair work performed at CTS; (b) all nonparty persons and entities involved in renovations of buildings adjacent to CTS; (c) all nonparty persons and entities involved in the Surfside beach re-nourishment

project(s); and (d) all nonparty persons and entities involved in any vibration-generating and/or dewatering activity at or near the vicinity of CTS from the date the building was constructed up to and including the date of the collapse on June 24, 2021, to the extent, if any, such activities contributed to the collapse. JMAF also incorporates by reference herein all *Fabre* defendants identified by all other defendants in their Affirmative Defenses, as well as all subsequently identified *Fabre* defendants at any time prior to trial. JMAF reserves the right to identify additional nonparties to whom it may seek to allocate fault as discovery proceeds, evidence is made available, and additional facts become known and/or evaluated including any and all current parties to this action who settle claims asserted against them prior to trial.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege sufficient, ultimate facts to set forth or support causes of action against JMAF.

THIRD AFFIRMATIVE DEFENSE

JMAF is entitled to a setoff for any collateral source benefits, including insurance payments, settlements and/or any other payments paid or payable in favor of Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

All injuries or damages allegedly sustained by Plaintiffs were caused solely by the negligence, fault, omission or lack of care on the part of persons or entities for whose conduct JMAF bears no responsibility. These persons or entities include, but are not limited to, the original architect, engineer, contractor, subcontractors and material suppliers for the construction of CTS, as well as any contractors, subcontractors or design professionals who performed any permitted or unpermitted work at CTS since that project was constructed, and all individuals and entities responsible for maintenance or lack of maintenance of CTS since that project was constructed. Their acts and/or omissions were the proximate cause of Plaintiffs' injuries and damages, thus

barring or reducing proportionately all claims for damages against JMAF. JMAF reserves the right to amend this affirmative defense prior to trial to identify other responsible parties or nonparties identified through discovery or investigation.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, based upon intervening and superseding actions of others for whom JMAF is not responsible.

SIXTH AFFIRMATIVE DEFENSE

JMAF had no duty to Plaintiffs because the causes of the CTS collapse and resulting damages alleged in the Second Amended Complaint were not foreseeable to JMAF. As such, any breach of a duty by JMAF could not be the proximate cause of Plaintiffs' damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' recovery is limited to the extent required by Florida's Wrongful Death Act (Florida Statute Section 768.16 *et seq.*).

EIGHTH AFFIRMATIVE DEFENSE

The duties of JMAF in the construction of the Eighty Seven Park were defined by its contractual obligations with the project's owner. Those duties were fulfilled and all work was performed in full compliance with JMAF's contractual obligations.

NINTH AFFIRMATIVE DEFENSE

To the extent that the cause of the CTS collapse was due to the failure of the Association and/or unit owners to: (i) timely and appropriately investigate the alleged concerns raised by the construction of Eighty Seven Park; (ii) implement the repairs recommended in Morabito's 2018 Report; and/or (iii) take any other action recommended for the maintenance, repair, and/or investigation of structural integrity of CTS, such failure constitutes an assumption of risk by Plaintiffs and a failure by Plaintiffs to mitigate damages.

TENTH AFFIRMATIVE DEFENSE

JMAF denies that the design or construction of Eighty Seven Park caused or contributed to the collapse of CTS. However, if defects existed in the plans and specifications provided to JMAF for the construction of Eighty Seven Park, and such defects proximately caused or contributed to the damages or failures asserted by Plaintiffs, then, as a general contractor obligated to follow the plans and specifications provided, JMAF cannot be held liable for building Eighty Seven Park as designed by others. *See U.S. v. Spearin*, 248 U.S. 132 (1918); *Martin K. Eby Const. Co., Inc. v. Jacksonville Transp. Authority*, 436 F.Supp.2d 1276 (M.D.Fla. 2005).

ELEVENTH AFFIRMATIVE DEFENSE

To the extent, if any, the work performed by JMAF during the construction of Eighty Seven Park is deemed to be an “ultrahazardous activity,” which JMAF specifically denies, the wrongful death and personal injury damages alleged to be caused by the use of vibratory sheet pile driving at Eighty Seven Park, years prior to the collapse of CTS (which JMAF also denies), were not within the zone of risk or otherwise foreseeable to JMAF. Accordingly, Plaintiffs’ recovery from JMAF, if any, is limited to property damages.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege the required elements to set forth a valid cause of action for negligence (Count III). Specifically, Plaintiffs have not alleged sufficient, ultimate facts to establish that JMAF owed any duty to Plaintiffs, that JMAF breached any duty, or that the breach of a duty was the legal cause of Plaintiffs’ damages.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs' alleged damages resulted from the acts or omissions of the Association, Plaintiffs' total damages are subject to set off against individual unit owners up to the value of their respective units pursuant to Florida Statute Section 718.119.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, based upon the statute of limitations and/or statute of repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of payment, accord and satisfaction, waiver, release, discharge of contract, and/or compromised settlement.

SIXTEENTH AFFIRMATIVE DEFENSE

JMAF performed its work at Eighty Seven Park in accordance with all applicable standards of care and industry guidelines.

SEVENTEENTH AFFIRMATIVE DEFENSE

JMAF's duties and potential liability are limited by the terms of its contract for construction of Eighty Seven Park which specifically excluded, among other things: (a) "testing or monitoring of vibration caused during installation of sheet piling"; (b) any liability or cost to correct/repair settlement damages to adjacent structures due to any means and methods utilized by JMAF for installation of a deep foundation (*i.e.*, dewatering); and (c) any liability or cost to correct/repair damage or settlement to adjacent structures caused by use of a vibratory hammer to install and remove sheet piling. *See* Construction Contract, Exhibit B ("GMP Amendment") at Exhibit 4 ("Qualifications and Assumptions"), paragraphs 3, 16, and 28.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages are barred, in whole or in part, to the extent such damages were caused by acts of God or as a result of other unavoidable causes such as flooding, changes in sea level or subsurface water, hurricanes, or unknown underground erosion or movement.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the *Slavin* doctrine as asserted in JMAF's Motion to Dismiss the SAC. *See Slavin v. Kay*, 108 So. 2d 462 (Fla. 1958).

TWENTIETH AFFIRMATIVE DEFENSE

JMAF reserves its right to plead additional affirmative defenses as discovery and investigation continues.

WHEREFORE, Defendant John Moriarty & Associates of Florida, Inc. respectfully requests that this Court enter judgment in its favor:

- a. Dismissing all counts asserted by Plaintiffs against JMAF and denying all relief requested by Plaintiffs with respect to JMAF; and
- b. Granting any other and further such relief as this Court deems just and proper.

Dated: February 23, 2022

/s/ Seth M. Schimmel
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 23, 2022, a true and correct copy of the foregoing *Answer and Affirmative Defenses to Plaintiffs' Consolidated Second Amended Class Action Complaint* was filed with the Court via the Florida Court's E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

/s/ Seth M. Schimmel

Attorney