

**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.

NOTICE OF FILING

***JOINT ACCESS PROTOCOL FOR NON-INVASIVE REVIEW AND
TESTING – PRIMARY EVIDENCE FACILITY AND
[PROPOSED] ORDER REGARDING JOINT ACCESS PROTOCOL FOR NON-INVASIVE
REVIEW AND TESTING – PRIMARY EVIDENCE FACILITY***

Champlain Towers South Condominium Association, Inc. (the “Association”), through its Court-appointed Receiver Michael I. Goldberg, hereby files the *Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility* (Exhibit A) and proposed *Order Regarding Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility* (Exhibit B).

Dated: March 15, 2022

Respectfully submitted,

AKERMAN LLP

201 East Las Olas Boulevard, Suite 1800

Fort Lauderdale, Florida 33301-2229

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By: /s/ Christopher S. Carver

Andrew P. Gold, Esq.

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and

Brenda Radmacher, Esq.
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Admitted Pro Hac Vice
brenda.radmacher@akerman.com
AKERMAN LLP
601 West Fifth Street, Suite 300
Los Angeles, California 90071
Attorneys for Receiver/Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2022, a true and correct copy of this *Notice of Filing Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility and [proposed] Order Regarding Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility* was filed electronically through the Florida Court’s E-Filing Portal, which will provide electronic service of the filing to all counsel of record.

By: /s/ Christopher S. Carver
Attorney

Exhibit A

**CHAMPLAIN TOWERS SOUTH COLLAPSE INVESTIGATION:
Joint Access Protocol for Non-invasive Review and Testing– Primary Evidence Facility – PHASE ONE**

WHEREAS, the named parties in the action captioned *In Re: Champlain Towers South Collapse Litigation*, Case No. 2021-015089-CA-01, pending in the Eleventh Judicial Circuit Court of Miami-Dade County, Florida, including all putative class members (the “Civil Litigants”) have an interest in physical evidence, relating to the collapse of Champlain Towers South (the “Evidence”), stored in the Primary Evidence Facility, as herein defined;

WHEREAS, the Receiver acting on behalf of the Champlain Towers South Condominium Association, Inc., Michael I. Goldberg, Esq. (the “Receiver”) has ownership of and an interest in the Evidence;

WHEREAS, the National Institute of Standards and Technology (“NIST”) has an interest in the Evidence; and

WHEREAS, the Miami-Dade County Police Department (“MDCPD”) has an interest in the Evidence;

The Civil Litigants, Receiver, NIST, and MDCPD hereby agree:

- 1) To the following access Protocol for non-invasive review and testing of the Evidence;
- 2) To work in good faith to develop a joint access protocol for cooperative management of independent invasive testing of the Evidence; and
- 3) To reserve all rights concerning any assertions or claims of legal rights of access to, or authority over, the Evidence.

ADDITIONAL DEFINITIONS

- **Expert** – Engineer (or other discipline) investigating the collapse on behalf of a Participant.
- **Participant** – A party to this Protocol, including the Receiver, NIST, MDCPD, the Receiver, and the Civil Litigants.
- **Primary Evidence Facility (PEF)** – Warehouse(s) located in Miami-Dade County, Florida and used for storage of the Evidence.
- **Protocol** – This document, titled *CHAMPLAIN TOWERS SOUTH COLLAPSE INVESTIGATION: Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility, Phase One*.
- **NIST Inventory of Evidence**. One or more documents prepared by NIST, or others on behalf of NIST, that indicates NIST’s numbering system for the Evidence stored at the PEF, and the number assigned.

Objective. This Protocol is intended to allow for the non-invasive review and testing by the Civil Litigants and Receiver relating to the Evidence that preserves the chain-of-custody and Evidence for all Participants, as described below for Phase One.

Scope. The Protocol applies to all physical Evidence removed from the Champlain Towers South site and stored at the PEF.

Location of Evidence. Evidence is currently being stored in a PEF, the location of which is known to the Participants. To ensure safe and effective access to the Evidence, it will be necessary to move some of the Evidence to additional PEF(s); however, Evidence at the PEF may not be moved to another PEF absent the prior written consent from the Receiver, representing for that purpose the consent of the Receiver and the Civil Litigants, which consent shall not be unreasonably withheld. All such PEFs shall be located within Miami-Dade County. All Participants shall have the opportunity to document the Evidence to be moved.


Phase One. This Protocol shall be divided into two phases. Phase One is the subject of this agreement. Phase One shall consist of non-invasive review and testing at the PEF. During Phase One, the Civil Litigants and Receiver shall coordinate with NIST to be permitted to access the entire PEF for the purposes of photographing, measuring, and laser-scanning the Evidence located at the PEF. A GPR consultant will be retained by the Civil Litigants and Receiver to accomplish up to two (2) days of ground penetrating radar scanning of select items on a list to be agreed upon by them. Additional consultant scanning shall require the agreement of the Civil Litigants and the Receiver. PEF access shall be done in a safe manner with MDCPD and NIST given full authority to manage personnel on site at any one time for safety and security purposes. To assist with the efficient operation of this Protocol, NIST shall provide the Receiver and Civil Litigants with the NIST Inventory of Evidence.

Participants shall have continuous access to the PEF to carry out the objectives of this Protocol, Monday – Friday from 9am – 5pm starting on February 21, 2022 through and until March 11, 2022. All Participants shall work in good faith and coordinate with each other at all times during the performance of this Protocol, including the modification of the schedule, if needed. NIST shall have the right to restrict access to ensure the safety and security of personnel on site and the integrity of the Evidence. Should NIST restrict access to any individual under such circumstances, the reasoning therefore shall be promptly communicated to all Participants. It is understood that MDCPD and NIST will also be accessing the PEF for non-invasive review and testing during this time period for their respective investigations. At no time shall any Participant handle a piece of Evidence with the intention of altering the Evidence in any way whatsoever without the express prior permission of NIST. Touching of clean surfaces of Evidence with GPR scan equipment shall be permitted, and when scanning, no debris on any surfaces of Evidence shall be disturbed. All participants agree that no Participant shall engage in any destructive testing (this includes penetration tests such as Windsor Probe) until the parties have either agreed upon a Protocol or declared an impasse and had the opportunity to seek Court intervention.

Phase Two. While the Participants investigate the PEF Evidence under Phase One, the Participants shall work in good faith to agree upon a protocol for access for the invasive and destructive testing of Evidence at the PEF (the “Phase Two Protocol”).

IT IS SO AGREED.

National Institute of Standards and Technology

By:  **JASON AVERILL**
Digitally signed by JASON AVERILL
Date: 2022.02.25 13:42:41 -05'00'
Jason D. Averill, Division Chief
Materials and Structural Systems Division
Engineering Laboratory

Date: _____

Plaintiffs

By: _____
Jeff Goodman, Esq. (*pro hac vice*)
Saltz Mongeluzzi & Bendesky

Date: _____

Miami-Dade County

By: _____

Date: _____

8701 Collins Development, LLC

By: _____
Michael Thomas, Esq.
Greenberg Traurig, P.A.

Date: _____

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National Institute of Standards and Technology

By: _____
Jason D. Averill, Division Chief
Materials and Structural Systems Division
Engineering Laboratory

Date: _____

Plaintiffs

By: _____
Jeff Goodman, Esq. (*pro hac vice*)
Saltz Mongeluzzi & Bendesky

Date: _____

Miami-Dade County

By: 
JD Patterson
Chief Public Safety Officer

Date: 2/25/2022

JD PATTERSON
CHIEF PUBLIC SAFETY OFFICER
MIAMI-DADE COUNTY, FL

8701 Collins Development, LLC

By: _____
Michael Thomas, Esq.
Greenberg Traurig, P.A.

Date: _____

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IT IS SO AGREED.

National Institute of Standards and Technology

By: _____
Jason D. Averill, Division Chief
Materials and Structural Systems Division
Engineering Laboratory

Date: _____

Plaintiffs

By:  _____
Jeff Goodman, Esq. (pro hac vice)
Saltz Mongeluzzi & Bendesky

Date: 3.8.21

Miami-Dade County

By: _____

Date: _____

8701 Collins Development, LLC

By: _____
Michael Thomas, Esq.
Greenberg Traurig, P.A.

Date: _____

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IT IS SO AGREED.

National Institute of Standards and Technology

Miami-Dade County

By: _____
Jason D. Averill, Division Chief
Materials and Structural Systems Division
Engineering Laboratory

By: _____

Date: _____

Date: _____

Plaintiffs

8701 Collins Development, LLC

By: _____
Jeff Goodman, Esq. (*pro hac vice*)
Saltz Mongeluzzi & Bendesky

By: 
Michael Thomas, Esq.
Greenberg Traurig, P.A.

Date: _____

Date: _____

Terra Group, LLC and Terra World Investments, LLC

John Moriarty & Associates of Florida, Inc.

By:


Michael Thomas, Esq.
Greenberg Traurig, P.A.

By:

Jonathan E. Kanov, Esq.
Marshall Dennehey

By:

Seth Schimmel, Esq.
Phelps Dunbar

Date:

3/10/22

Date:

NV5, Inc.

By:

George Truitt, Esq.
Ryan Charlson, Esq.
Cole, Scott & Kissane

Date:

Terra Group, LLC and Terra World Investments, LLC

John Moriarty & Associates of Florida, Inc.

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Greenberg Traurig, P.A.

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Date: 3-8-22

NV5, Inc.

By: _____

George Truitt, Esq.
Ryan Charlson, Esq.
Cole, Scott & Kissane

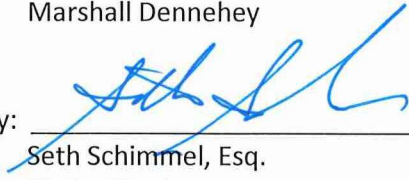
Date: _____

Terra Group, LLC and Terra World Investments, LLC

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By: _____
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By: _____
Jonathan E. Kanov, Esq.
Marshall Dennehey

By:  _____
Seth Schimmel, Esq.
Phelps Dunbar

Date: _____

Date: 3/4/22

NV5, Inc.

By: _____
George Truitt, Esq.
Ryan Charlson, Esq.
Cole, Scott & Kissane

Date: _____

Terra Group, LLC and Terra World Investments, LLC

John Moriarty & Associates of Florida, Inc.

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Jonathan E. Kanov, Esq.
Marshall Dennehey

By: _____
Seth Schimmel, Esq.
Phelps Dunbar

Date: _____

Date: _____

NV5, Inc.

By:  _____
George Truitt, Esq.
Ryan Charlson, Esq.
Cole, Scott & Kissane

Date: 3/7/2022

Michael Goldberg, Esq. in his capacity as
Receiver for the Champlain Towers
South Condominium Association, Inc.

By: Brenda Radmacher
Brenda Radmacher (*pro hac vice*)
Akerman LLP

Date: March 5, 2022

Exhibit B

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

**COMPLEX BUSINESS
LITIGATION DIVISION**

**IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION.**

CLASS REPRESENTATION

CASE NO. 2021-015089-CA-01

**ORDER REGARDING
JOINT ACCESS PROTOCOL FOR NON-INVASIVE REVIEW AND TESTING –
PRIMARY EVIDENCE FACILITY – PHASE ONE**

THIS CAUSE came before the Court upon a series of conferences and hearings, including the December 22, 2021 evidentiary hearing, the Court’s December 30, 2021, *sua sponte* Order, the Court’s January 3, 2022 Order, and hearings on January 14, 2022, January 21, 2022, and thereafter. The Court having considered the issues and positions of the parties, it is **ORDERED AND ADJUDGED** as follows:

1. The *CHAMPLAIN TOWERS SOUTH COLLAPSE INVESTIGATION: Joint Access Protocol for Non-invasive Review and Testing – Primary Evidence Facility – PHASE ONE* (“*Primary Evidence Facility Protocol*”; attached as **Exhibit A**) is APPROVED and ADOPTED as an ORDER of the Court.¹

2. Activities at the Primary Evidence Facility shall proceed and continue as set forth in the *Primary Evidence Facility Protocol* and a PHASE TWO protocol shall be developed on the testing and sampling of the materials at the Primary Evidence Facility.

¹ Capitalized terms shall have their meaning as defined in the *Primary Evidence Facility Protocol*.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida, on this _____ day
of March, 2022.