

**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 FIRST  
AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'  
THIRD AMENDED CLASS ACTION COMPLAINT**

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

23. The allegations contained in paragraph 23 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge, except admitted that Stantec Architecture Inc (“Stantec”) provided architectural services for Eighty Seven Park.

24. The allegations contained in paragraph 24 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge, except admitted, based upon information and belief, that Geosonics, Inc. (“Geosonics”) provided vibration monitoring services for Eight Seven Park.

25. The allegations contained in paragraph 25 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge, except admitted, based upon information and belief, that Florida Civil, Inc. (“Florida Civil”) provided dewatering plans for Eighty Seven Park.

26. The allegations contained in paragraph 26 are not directed toward JMAF so no response is required. To the extent a response is required, JMAF is without knowledge.

**JURISDICTION AND VENUE**

27. 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.

28. 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.

29. The allegations set forth in paragraph 29 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 29 are directed toward JMAF, they are denied.

**GENERAL ALLEGATIONS**

30. Upon information and belief, admitted.

31. 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 31.

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

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

34. Denied.

35. Without knowledge concerning the allegations set forth in paragraph 35.

36. Without knowledge concerning the allegations set forth in paragraph 36.

37. Without knowledge concerning the allegations set forth in paragraph 37.

38. Without knowledge concerning the allegations set forth in paragraph 38.

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

40. Without knowledge concerning the allegations in paragraph 40.

41. Without knowledge concerning the allegations in paragraph 41.

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

43. Without knowledge concerning the allegations set forth in paragraph 43, except it is denied that any act or omission by JMAF caused damage to CTS or contributed to the collapse of CTS.

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. Without knowledge concerning the allegations in paragraph 47.

48. Without knowledge concerning the allegations in paragraph 48.

49. Without knowledge concerning the allegations in paragraph 49.

50. Without knowledge concerning the allegations in paragraph 50.

51. The allegations in paragraph 51 are unintelligible. As such, no response is required.

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

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

53. Denied, except admitted that Eighty Seven Park is located at 8701 Collins Avenue and has 18 stories.

54. 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.

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. Without knowledge concerning the allegations set forth in paragraph 61. To the extent a response is required, 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. The first sentence of paragraph 65 is a legal conclusion to which no response is required. Without knowledge concerning the allegations set forth in the second sentence of paragraph 65. To the extent a response is required to the second sentence, all allegations are denied.

66. Without knowledge concerning the allegations set forth in paragraph 66. To the extent a response is required, all allegations are denied.

67. Without knowledge concerning the allegations set forth in paragraph 67. To the extent a response is required, all allegations are denied.

68. Without knowledge concerning the allegations set forth in paragraph 68. To the extent a response is required, all allegations are denied.

69. Without knowledge concerning the allegations set forth in paragraph 69. To the extent a response is required, all allegations are denied.

70. Without knowledge concerning the allegations set forth in paragraph 70, 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.

71. The allegations contained in paragraph 71 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.

72. The allegations contained in paragraph 72 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” 87<sup>th</sup> Terrace and, to

the extent, if any, the allegations in paragraph 72 concern JMAF, it is denied that any act or omission by JMAF caused any damage to CTS.

73. Paragraph 73 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.

74. Paragraph 74 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.

75. Paragraph 75 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.

76. Without knowledge concerning the allegations set forth in paragraph 76, except admitted, based upon information and belief, that NV5 was retained by 8701 Collins Development, LLC to provide geotechnical services.

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

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

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

80. The referenced report speaks for itself. Otherwise, denied. JMAF is without knowledge as to the allegations set forth in paragraph 80 concerning the knowledge of the Terra Defendants. To the extent a response is required for those allegations, they are denied.

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

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



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

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. Paragraph 85 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.

86. Paragraph 86 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.

87. Paragraph 87 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.

88. Paragraph 88 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.

89. 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.

90. 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.

91. Paragraph 91 states a legal conclusion to which no response is required. To the extent a response is required, all allegations are 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. The referenced report speaks for itself. Otherwise, denied.

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

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

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

100. 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.

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

102. 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.

103. Admitted.

104. Admitted.

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

106. The referenced e-mail speaks for itself. Otherwise, denied.
107. The referenced e-mail speaks for itself. Otherwise, denied.
108. The referenced e-mail speaks for itself. Otherwise, denied.
109. 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.
110. The referenced e-mail speaks for itself. Otherwise, denied.
111. Denied.
112. Admitted.
113. Admitted.
114. Denied.
115. Admitted.
116. Without knowledge as to the allegations set forth in paragraph 116. To the extent a response is required, the allegations are denied.
117. Without knowledge as to the allegations set forth in paragraph 117. To the extent a response is required, the allegations are denied.
118. Based upon information and belief, admitted.
119. Based upon information and belief, denied.
120. Denied.
121. The referenced report speaks for itself. Otherwise, denied.
122. Denied.
123. The referenced report speaks for itself. Otherwise, denied.
124. Denied, except admitted that sheet pile installation continued after adjustments to the installation process had been made.

125. The referenced e-mail speaks for itself. Otherwise, denied.
126. Denied.
127. Denied.
128. The meeting minutes speak for themselves. Otherwise, denied.
129. Without knowledge concerning the allegations set forth in paragraph 129. To the extent a response is required, the allegations are denied.
130. The referenced e-mail speaks for itself. Otherwise, denied.
131. Denied.
132. Denied.
133. 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.
134. Without knowledge concerning the allegations set forth in paragraph 134. To the extent a response is required, the referenced e-mail speaks for itself. Otherwise, denied.
135. The referenced e-mail speaks for itself. Otherwise, denied.
136. Without knowledge as to the allegations set forth in paragraph 136, except admitted, based upon information and belief, that the referenced individuals lost their lives when CTS collapsed.
137. Denied.
138. The referenced e-mail speaks for itself. Otherwise, denied.
139. The referenced e-mail speaks for itself. Otherwise, denied
140. The referenced meeting minutes speak for themselves. Otherwise, denied.

141. Denied.

142. Denied.

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

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

145. Without knowledge as to the allegations set forth in paragraph 145. To the extent a response is required, all allegations are denied.

146. 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 146 that may concern JMAF are denied.

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

148. 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 148 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.

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

150. 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.

151. 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.

152. 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.

153. Denied.

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

155. Denied.

156. Denied.

157. Denied.

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

159. Denied.

160. Denied.

161. Denied.

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

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

164. Without knowledge concerning the allegations set forth in paragraph 164. To the extent a response is required, all allegations are denied.

165. Denied.

166. Denied.

167. Denied.

168. Denied.

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

170. The statements in paragraph 170 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.

171. The statements in paragraph 171 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.

172. The statements in paragraph 172 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.

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

174. Denied.

175. Denied.

176. Denied.

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

178. Denied.

179. Denied.

180. The statements in the first sentence of paragraph 180 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 180 are denied.

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

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

183. Denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

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

190. Without knowledge concerning the allegations set forth in paragraph 190. The referenced Agreement speaks for itself. Otherwise, denied.

191. Denied.

192. Denied.

193. Denied.

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

195. Denied.

196. Denied.

197. Denied.

198. 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.

199. Denied.

200. Without knowledge concerning the allegations set forth in paragraph 200. To the extent a response is required, all allegations are denied.



201. Without knowledge concerning the allegations set forth in paragraph 201. To the extent a response is required, the referenced report speaks for itself. Otherwise, denied.

202. Denied.

203. Denied.

204. Denied.

205. 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 205, but without knowledge as to whether the inspection was an “extensive and thorough pre-construction survey of CTS.”

206. Without knowledge concerning the allegations set forth in paragraph 206. To the extent a response is required, all allegations are denied.

207. Without knowledge concerning the allegations set forth in paragraph 207. To the extent a response is required, all allegations are denied.

208. 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.

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

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

211. Denied.

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

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

213. Denied.

214. Denied.

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

216. Without knowledge concerning the allegations set forth in paragraph 216. To the extent a response is required, the allegations are denied.

217. Without knowledge concerning the allegations set forth in paragraph 217. To the extent a response is required, the allegations are denied.

218. Denied.

219 - 244. The allegations contained in paragraphs 219 – 244 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.

245. Without knowledge concerning the allegations set forth in paragraph 245, 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.

246-308. The allegations contained in paragraphs 246 through 308 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**

309-325. The allegations set forth in paragraphs 309 through 325 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.

326. 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.

327. The allegations set forth in paragraph 327 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.

328-330. The allegations set forth in paragraphs 328 through 330 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 331-343 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied.

**COUNT II**  
**STRICT LIABILITY**  
**(Against the Terra Defendants)**

The allegations contained in paragraphs 344-355 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required: to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied; the allegations in paragraphs 347-350 are denied; the report referenced in paragraph 351 speaks for itself, otherwise denied; and paragraphs 352-355 are denied.

**COUNT III**  
**NEGLIGENCE**  
**(Against JMAF)**

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

357. 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.

358. Without knowledge whether all information provided by NV5 to the Terra Defendants was "relayed" to JMAF. Otherwise, all 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 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.

360. The allegations set forth in paragraph 360 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. The allegations set forth in paragraph 361 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.

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. The allegations set forth in paragraph 363 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.

364. The referenced report speaks for itself. As such, Plaintiffs’ characterizations concerning the report otherwise are denied. The allegations set forth in paragraph 364 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.

365. Denied.

366. The allegations set forth in paragraph 366 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.

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

368. Denied.

369. Denied (including all subparts).

370. Denied.

371. Denied.

372. Denied.

**COUNT IV**  
**STRICT LIABILITY**  
**(Against JMAF)**

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

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

375. Denied, except admitted that installation of sheet piling was included in JMAF's scope of work for Eighty Seven Park.

376. The allegations set forth in paragraph 376 are legal conclusions to which no response is required. To the extent a response is required, all allegations are denied.

377. The allegations set forth in first sentence of paragraph 377 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 377 are denied.

378. Denied.

379. Denied.

380. The allegations set forth in paragraph 380 cannot be answered because they are unintelligible. To the extent a response is required, all allegations are denied.

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

382. Denied.

383. Denied.

384. Denied.



385. Denied.

**COUNT V**  
**NEGLIGENCE**  
**(Against NV5)**

The allegations contained in paragraphs 386-406<sup>1</sup> are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied.

**COUNT VI**  
**STRICT LIABILITY**  
**(Against NV5)**

The allegations contained in paragraphs 407-419 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required: to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied; the allegations in paragraphs 411-414 are denied; the report referenced in paragraph 415 speaks for itself, otherwise denied; and paragraphs 416-419 are denied.

**COUNT VII**  
**NEGLIGENCE**  
**(Against DeSimone)**

The allegations contained in paragraphs 420-439 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied.

---

<sup>1</sup> Paragraph 403 of Count V states that the allegations are against “JMA.” JMAF assumes this is a typographical error as Count V is pled against NV5. If not, all allegations in paragraph 403 (and all subparts) are denied.

**COUNT VIII**  
**STRICT LIABILITY**  
**(Against DeSimone)**

The allegations contained in paragraphs 440-452 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required: to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied; the allegations in paragraphs 444-447 are denied; the report referenced in paragraph 448 speaks for itself, otherwise denied; and paragraphs 449-452 are denied.

**COUNT IX**  
**NEGLIGENCE**  
**(Against the Association)**

The allegations contained in paragraphs 453-466 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 467-528 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 529-553 are not directed toward JMAF. As such, no responses are required. To the extent responses to these paragraphs are required, without knowledge.

**COUNT XII**  
**NEGLIGENCE**  
**(Against Stantec)**

The allegations contained in paragraphs 554-575 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied.

**COUNT XIII**  
**STRICT LIABILITY**  
**(Against Stantec)**

The allegations contained in paragraphs 576-588 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required: to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied; the allegations in paragraphs 580-583 are denied; the report referenced in paragraph 584 speaks for itself, otherwise denied; and paragraphs 585-588 are denied.

**COUNT XIV**  
**NEGLIGENCE**  
**(Against Geosonics)**

The allegations contained in paragraphs 589-619 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied

**COUNT XV**  
**STRICT LIABILITY**  
**(Against Geosonics)**

The allegations contained in paragraphs 620-632 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required: to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are

denied; all allegations in paragraphs 624-627 are denied; the report referenced in paragraph 628 speaks for itself, otherwise denied; and paragraphs 629-632 are denied.

**COUNT XVI**  
**NEGLIGENCE**  
**(Against Florida Civil)**

The allegations contained in paragraphs 633-658 are not directed toward JMAF. As such, no responses are required. If responses to these paragraphs are required, to the extent, if any, they allege that any act or omission by JMAF caused any damages to Plaintiffs, all allegations are denied.

**COUNT XVII**  
**NEGLIGENCE**  
**(Against 8701 Association)**

The allegations contained in paragraphs 659-682 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 Third 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 negligence or strict liability as alleged by Plaintiffs 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 Statutes Section 768.81. JMAF cannot be held liable for more than its proportionate share of any damages awarded.

### **SECOND AFFIRMATIVE DEFENSE**

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.;;  
Company 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 to the  
extent not parties;  
CTS unit owners to the extent not parties;

DeSimone Consulting Engineers, LLC  
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; and  
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.

### **THIRD AFFIRMATIVE DEFENSE**

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

### **FOURTH 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.

### **FIFTH 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.

### **SIXTH 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.

**SEVENTH AFFIRMATIVE DEFENSE**

JMAF had no duty to Plaintiffs because the causes of the CTS collapse and resulting damages alleged in the Third 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.

**EIGHTH AFFIRMATIVE DEFENSE**

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

**NINTH 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.

**TENTH 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.

**ELEVENTH 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).

**TWELFTH 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.

**THIRTEENTH 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.

**FOURTEENTH 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.

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

### **EIGHTEENTH 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.

### **NINETEENTH 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.

### **TWENTIETH AFFIRMATIVE DEFENSE**

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

### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

JMAF denies it has any liability to Plaintiffs, but to the extent JMAF pays more in damages than its *pro rata* share of common liability, pays damages arising from construction activities for

which it has been contractually indemnified, or pays more than its *pro rata* share of damages due to the imposition of strict liability, it is entitled to contribution and/or full indemnification.

**TWENTY- SECOND AFFIRMATIVE DEFENSE**

JMAF denies that any activity performed by it or its subcontractors was inherently or abnormally dangerous, or ultrahazardous, but, to the extent JMAF is deemed liable, JMAF cannot be held liable for damages claimed to be caused by JMAF’s alleged “abnormally dangerous” or ultrahazardous activities, because any alleged harm suffered by Plaintiffs would not have resulted but for the pre-existing, abnormally sensitive and structurally unsound condition of CTS, of which JMAF was previously unaware, and had no reason to expect. A defendant’s liability is limited to the harm that the defendant could reasonably expect to result from an alleged dangerous activity undertaken under normal circumstances.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

JMAF denies it has any liability to Plaintiffs but, to the extent JMAF is deemed liable, JMAF cannot be held liable for damages to personal property or real property that exceed the true market value for such property. The valuation of the CTS condominiums must be reduced by estimated costs to correct the structural defects within the building, or the value of the condominiums with the building’s structural defects, to the extent not held contributorily caused by JMAF.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The relief sought by Plaintiffs is within the particular expertise of, and is being addressed by, federal, state, and local governments and their agencies. This Court should abstain and defer to the jurisdiction of public agencies, including, but not limited to, the National Institute of Standards and Technology (“NIST”).

### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' have failed to allege a claim for attorneys' fees because they fail to cite to any statute, contract, or other applicable authority that authorizes the recovery of attorneys' fees for the claims asserted against JMAF. JMAF hereby moves to strike Plaintiffs' requests for attorneys' fees from their Third Amended Complaint.

### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrine of equitable estoppel. JMAF is not liable to Plaintiffs because Plaintiffs made a representation regarding the property described in the Third Amended Complaint, and/or the construction thereof, that is contrary to the position Plaintiffs now assert, JMAF changed position based on Plaintiffs' representations, and that change in position was detrimental to JMAF. For example, Plaintiffs represented to prospective purchasers of condominium units at CTS, lenders, and others that CTS was well maintained, structurally sound, and otherwise devoid of problems after JMAF completed its services at the Eighty Seven Park site. Additionally, Plaintiffs were put on notice of and warned regarding problems with CTS in 2018 and again in 2020, as alleged in the Third Amended Complaint, and did nothing.

### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands. Plaintiffs' conduct is related to conduct alleged in the Third Amended Complaint, JMAF was the target of Plaintiffs' conduct, JMAF relied on Plaintiffs' conduct, and JMAF has been damaged as a result of Plaintiffs' conduct. For example, Plaintiffs represented to prospective purchasers of condominium units at CTS, lenders, and others that CTS was well maintained, structurally sound, and otherwise devoid of problems after JMAF completed its services at the Eighty Seven Park site.

Additionally, Plaintiffs were put on notice of and warned regarding problems with CTS in 2018 and again in 2020, as alleged in the Third Amended Complaint, and did nothing.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred in whole or in part because the plans, drawings, and other design documents for both CTS and Eighty Seven Park were reviewed by the applicable design professionals, engineers, and governmental entities with authority over the projects described in Plaintiffs' Third Amended Complaint, and, after review, the plans drawings, and other design documents were approved and permitted for construction. Further, the services provided by JMAF were reviewed by the applicable design professionals, engineers, and governmental entities with authority over the project described in Plaintiffs' Third Amended Complaint, found to comply with applicable building codes and industry standards, and were approved. "When an agency with authority to implement [the building code] construes the [building code] in a permissible way, that interpretation must be sustained even though another interpretation may be possible." *Seibert v. Baypoint Beach & Tennis Club Ass'n*, 573 So. 2d 889, 892 (Fla. 2d DCA 1990).

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims for mental or emotional distress and/or pain and suffering damages are barred to the extent that Plaintiffs were not physically impacted or failed to manifest a physical injury as a result of the CTS collapse and/or any alleged conduct by JMAF.

**THIRTIETH 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: April 12, 2022

*/s/ Seth M. Schimmel*

Seth M. Schimmel (FBN: 986781)

Michael S. Hooker (FBN: 330655)

William J. Tinsley (FBN: 116264)

Bret M. Feldman (FBN: 370370)

A. Brian Albritton (FBN: 0777773)

**PHELPS DUNBAR LLP**

100 South Ashley Drive, Suite 2000

Tampa, Florida 33602-5315

Ph: (813) 472-7550; Fax: (813) 472-7570

*Counsel for Defendant*

JOHN MORIARTY & ASSOCIATES OF  
FLORIDA, INC.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 12, 2022, a true and correct copy of the foregoing *First Amended Answer and Affirmative Defenses to Plaintiffs' Consolidated Third 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