

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

FOURTEEN RE PRIATEK, LLC,

Plaintiff,

vs.

Case No.

KT ST PETE CENTRAL, LLC,

**JURY TRIAL DEMANDED**

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, Fourteen Re Priatek, LLC (“**Priatek**”) sues KT St Pete Central, LLC (“**Kolter**”), and alleges as follows:

**Parties, Jurisdiction, and Venue**

1. Priatek is a Florida limited liability company with its principal place of business in Tampa, Hillsborough County, Florida, and owns the real property located in St. Petersburg, Pinellas County, Florida that is the subject of this action.

2. Kolter is a Florida limited liability company with its principal place of business in Delray Beach, Palm Beach County, Florida and owns, and is constructing a residential condominium tower on, real property located in St. Petersburg, Pinellas County, Florida, immediately adjacent to Priatek’s real property that is the subject of this action.

3. Kolter and its affiliate, Kolter Group Acquisitions LLC (“**KGA**”), are sophisticated real estate developers with experience building high-rise buildings.<sup>1</sup>

<sup>1</sup> The “Kolter Group LLC” is the listed manager of both KT LLC and Kolter Group Acquisitions LLC on their respective 2023 Florida limited liability company annual reports.

4. This Court has subject matter jurisdiction over this Complaint pursuant to sections 26.012(2) and 34.01(1), Florida Statutes. The amount in controversy in this action exceeds the sum of \$50,000.00, exclusive of attorneys' fees and costs.

5. Venue is proper in this Court as the property that is the subject of this dispute is in Pinellas County and because Article 8.11 of the parties' purchase and sale agreement for real property located in Pinellas County, Florida mandates venue in Pinellas County, Florida.

### **General Allegations**

6. Kolter is currently constructing a 42-story residential condominium tower known as "Art House" in downtown St. Petersburg on land it purchased from Priatek (the "**Residential Project**").

7. Priatek owns the immediately adjacent land as well as the two-story retail building (the "**Retail Building**") and the tallest office tower in St. Peterburg (the "**Office Tower**"), collectively known as 200 Central, that sit on that land (collectively, the "**Commercial Property**").

8. To aid Kolter in the construction of the Residential Project, Priatek agreed to allow Kolter to perform construction activities on and over Priatek's Commercial Property. Among other things, Priatek agreed to allow Kolter to perform certain work on the foundation of Priatek's Retail Building so Kolter could construct the foundation for the Residential Project, which would be located in some areas fewer than 1.5 feet from the foundation of Priatek's Retail Building.

9. Priatek's consulting engineers repeatedly raised concerns to Kolter regarding Kolter's design and construction methods, including work Kolter proposed that involved novel construction methods theorized in a trade article authored by professors at two universities in Portugal. After Priatek questioned the proposed construction methods and pointed out to Kolter they did not comply with the Florida Building Code, Kolter abandoned its proposed exotic

construction methods. Nevertheless, Kolter proceeded with a design based on insufficient data and engaged in faulty construction work that fails to meet industry standards and was inadequate for its purpose.

10. Kolter's work on the foundation of Priatek's Retail Building was insufficient to prevent the soil underlying its foundation from shifting as Kolter has proceeded to build its 42-story residential tower on its adjacent property.

11. In a report issued April 22, 2024, Priatek's professional engineering consultants reiterated their conclusions, which had been shared with Kolter repeatedly over the prior year, that:

**The damage observed to the 200 Central building was caused by the Art House construction activities located immediately adjacent to and west of the subject property. The Art House construction activities have induced soil settlement below the west-wing of 200 Central, causing movement of the foundations and ground-level slab-on-grade.**

12. Indeed, Kolter's construction activities have caused substantial physical damage to Priatek's Retail Building and caused Priatek substantial economic damages.

13. Although Kolter has repeatedly acknowledged its responsibility for the damage it has caused Priatek and its obligation to pay for it, Kolter has refused to take any corrective action to shore up the foundation of Priatek's Retail Building to ensure Kolter's continued construction of the 42-story Art House condominium tower does not cause any additional damage to Priatek's building and has refused to pay for the damage its construction activities have already caused.

***The agreements to purchase the Residential Property and develop the Residential Project***

14. On July 13, 2021, Priatek and KGA executed a purchase and sale agreement (the "PSA") by which Priatek sold to KGA land that was then a part of the Commercial Property and used as a surface parking lot for the Office Tower and the Retail Building upon which KGA or its affiliates planned to build the Residential Project (the "**Residential Property**").

15. On December 22, 2021, KGA assigned its rights, title, and interest in the Residential Property to Kolter, providing Kolter the ability to develop the Residential Project.

***The Development and Easement Agreement***

16. Also on December 22, 2021, Priatek and Kolter, as assignee of KGA, executed a Development and Easement Agreement establishing a non-exclusive, temporary construction and access easement for the purpose of facilitating construction of the Residential Project (the “**Easement Agreement**,” a copy of which is here attached as **Exhibit 1**).

17. By the Easement Agreement, Priatek granted to Kolter, among other rights: (1) “a non-exclusive, temporary construction and access easement upon, over and across” certain portions of the Commercial Property to enable and facilitate construction of the Residential Project; (2) “a non-exclusive, temporary easement across and through the air space above” the areas of Commercial Property “for the purposes of permitting the extension arm of a crane or cranes to go, return, pass, and pass over and into the unobstructed air space” of parts of the Commercial Property during construction of the Residential Project; and, (3) “the right and non-exclusive and temporary easement to access the Retail Building and make such modifications to the Retail Building” that “may be reasonably necessary to permit construction of the [Residential] Project.” *Id.* §2(a), (b), (c).

18. Under the Easement Agreement, Kolter agreed to “protect, defend, reimburse, indemnify, and hold ... harmless” Priatek from and against, among other things, “expenses, losses, costs, and damages ... [including] any damage to property or the environment, [or] economic losses... arising out of or incident to or in connection with any entry upon the Commercial [Property] by [Kolter] pursuant to” the Easement Agreement. *Id.* at § 8(a).

***Kolter's Planned work on the Foundation of Priatek's Retail Building***

19. In the Fall of 2022, Kolter informed Priatek of specific work it would need to perform on and around the foundation of Priatek's Retail Building to ensure Kolter's construction of the foundation for the Residential Project would not adversely affect the foundation of the Commercial Property, including the foundation of the Retail Building.

20. Specifically, Kolter proposed an earth retaining curtain wall for the entire west and south elevations of the Retail Building, temporary shoring and chemical grouting of the soil around and under the foundation of the Retail Building and underpinning of spread footings on the west and south of the Retail Building.

21. Priatek agreed, subject to certain terms and conditions, to allow Kolter to perform work on the foundation of the Retail Building necessary to ensure its continued integrity and to prevent damage to the Retail Building and Office Tower that could result if soils under the foundation shifted as a result of the work Kolter intended to perform to construct the Residential Project, including the foundation of the Residential Project.

22. To aid in its review of, and address concerns with, Kolter's plans for the work on the foundation of the Retail Building, Priatek retained the services of Burby Engineering, Inc. ("**Burby**").

23. On September 23, 2022, Burby performed a pre-condition survey of the Commercial Property, including the Retail Building, to document the condition of the Commercial Property before Kolter began its work on the foundation of the Retail Building.

24. Burby also reviewed permit document packages submitted by Kolter to the City of St. Petersburg as well as a document titled: *Underpinning Narrative and Earth Retention and*

*Underpinning System Design* prepared by Kolter’s retained engineers in connection with Kolter’s proposal to underpin the shallow foundations supporting the west side of Priatek’s Retail Building.

25. As part of its review, Burby noted, and Priatek shared with Kolter, the following concerns with Kolter’s planned work on the foundation of Priatek’s Retail Building, among others:

- a. As of September 22, 2022, Kolter was preparing to “move the grease trap vault for the restaurant [in the Retail Building] within the far west portion of [the Commercial Property]. . . . Extreme care and monitoring should be exercised in excavating, removing and/or replacing the sanitary sewer line in this area because the plans indicate it could be located in the bearing soils currently supporting [the Retail Building’s] foundations.”;
- b. “Lateral deflection of the sheet piling, and movement of the soils below [the Retail Building’s] footings could result in foundation displacement.”
- c. “The eccentricity of underpins installed on spread footings is a concern. . . .Placing underpins at the outer edges of spread footings will introduce eccentrically applied loads that could detrimentally affect existing structural elements. Partial underpinning of a foundation perimeter without underpinning the foundation interior, as well as underpinning without a complimentary program of compaction grouting carries a higher risk of differential movement of the foundation over time. These items need to be addressed by [Kolter], and an analysis of the spread footings should be conducted to the extent the earth potential soil movement affects spread footing design.”; and,
- d. Kolter “is proposing the earth retention systems and underpinning design which will directly affect the foundation stability of [the Retail Building].”

26. Kolter, through its engineer, Keller North America, Inc. (“**Keller**”), responded to Burby’s concerns and attempted to allay them via letter dated October 13, 2022.

27. Thereafter, Burby met with members of Kolter’s Residential Project team on October 14 and 17, 2022.

28. Kolter and its engineers assured Priatek their plans for and the work they would perform on the Retail Building’s foundation would not damage or adversely affect the Retail Building.

29. After receipt of Keller’s October 13, 2022, letter and the October 14 and 17, 2022, meetings, Burby reiterated the following concerns, among others, which were again shared with Kolter:

- a. “the very loose sands with organic zones recorded in” certain boring samples performed by Keller “potentially supporting [the Retail Building] have an increased settlement risk if dewatering efforts within 13.5-foot deep excavation breach the sheet pile barrier” and, therefore, “ [m]onitoring of the groundwater level stability within the use of piezometers will be critical to ensure protection of the 6-foot groundwater table below [the Retail Building]. . . .”;
- b. Kolter’s plans do not “minimize the risk of soil movement for the proposed temporary soil excavation and micropile installation program”; and,
- c. Kolter’s planned temporary soil excavation and micropile installation programs “do not align with the highly variable soil conditions” known to exist.

30. Despite the concerns Burby raised, Kolter again assured Priatek its construction work on the Retail Building’s foundation would not damage the Retail Building or adversely affect its foundation.

31. Based on these assurances, Priatek agreed to allow Kolter to perform the work on the Retail Building's foundation Kolter deemed necessary. As a condition, however, Priatek required that Kolter agree to pay for all expenses and losses Priatek had and would incur or suffer, and pay to repair all damage to Priatek's Commercial Property that may result, from Kolter's construction work on the foundation of the Retail Building.

***The Foundation Indemnification Agreement***

32. Accordingly, on October 28, 2022, Priatek and Kolter entered into a Foundation Indemnification Agreement "to memorialize their agreement with respect to [Kolter's] agreement to indemnify [Priatek] relating to any damages arising from [Kolter's] work on [Priatek's] foundation on the Commercial [Property] . . . ." (the "**Foundation Agreement**," a copy of which is here attached as **Exhibit 2**).

33. Pursuant to the terms of the Foundation Agreement, Kolter agreed to "protect, defend, reimburse, indemnify, and hold [Priatek]... free and harmless at all time from and against," among other things, "all claims, liability, expenses, losses, costs, fines, and damages ... [including] any damage to property or the environment, [and] economic losses ... incurred or sustained by [Priatek], arising out of or in incident to or in connection with any entry upon the Commercial [Property] by [Kolter] pursuant to [Kolter's] work on [Priatek's] foundation on the Commercial [Property]. *Id.* at § (2).

***Kolter Proceeded with its construction activities and damaged Priatek's Retail Building.***

34. Kolter's excavation and shoring plan required Kolter to enter upon the Commercial Property to install sheet pile retaining walls, micropiles, and auger-cast piles under, on, or immediately adjacent to the west-side of the Commercial Property and Retail Building.

35. Kolter began its excavation and shoring work on or about October 21, 2022.



36. Kolter's work on the foundation of Priatek's Retail Building included the installation of 36 70-foot long micropiles anchored to the strip footings along the perimeter and the exterior edges of six columns along the east and south elevations of the Retail Building.

37. From on or about November 8 to on or about December 8, 2022, Kolter drove 59 sheet pile sections to an approximate depth of 17.5 feet and installed 34 grouted H piles to a depth of 35 feet. This retaining wall system was located within 1.5 lateral feet of the foundation of Priatek's Retail Building.

38. Burby reviewed engineering and construction plans Kolter had prepared and was to follow in performing the work on the foundation of Priatek's Retail Building. Burby also performed an assessment of the effects of that work and visual inspections and produced a "Forensic Engineering & Construction Report" dated April 7, 2023, (the "**4/7/23 Burby Report**," a copy of which is here attached as **Exhibit 3**).

39. Based on its review of documents, its inspections, and assessments, as of April 7, 2023, Burby concluded Kolter's construction activities damaged the Retail Building.

40. Indeed, in its 4/7/23 Report, Burby stated its conclusions, among others, that:

- a. **"[t]he west portion of [the Retail Building] has sustained damage as a direct result of the construction activity occurring on the adjacent [Residential Project] development site. The damage was caused by vibrations, and soil settlement associated with the installation of sheet piles, micropiles, auger-cast piles, and other construction activity.";**  
**and,**

**b. “The installed micropiles along with the west and south elevations of [the Retail Building] west wing did not prevent movement of the foundation” of the Retail Building.**

41. In the 4/7/23 Burby Report, Burby noted that during Kolter’s work on the foundation of the Retail Building, Kolter did not perform the soil monitoring program Burby had recommended.

42. Further, Burby noted, during Kolter’s work its construction vibration monitoring program failed to accurately record and report the vibration energy generated from the construction.

43. Had Kolter performed the soil monitoring program Burby recommended and accurately recorded vibration energy, it would have realized its construction activities were causing, or were likely to cause, damage to the Commercial Property, including the Retail Building so that actions could be taken to prevent the full extent of the damages Kolter’s construction activities have caused.

***Cracks resulting from downward deflection caused by Kolter’s construction activities.***

44. On or about November 30, 2022, a consultant for Kolter, Driggers Engineering Services, Inc. (“**Driggers**”), began a crack monitoring program for portions of the ground floor of the Retail Building.

45. Burby reviewed the results of Driggers’s crack monitoring program and noted that on November 30, 2022, crack widths measured below the surface coating of the slab of the Retail Building measured from hairline to .5 millimeters.

46. When measured again by Driggers on or about March 13, 2023, the cracks had increased by 1 to 6 millimeters as a result of Kolter’s construction activities.

47. In December 2022, Burby, on behalf of Priatek, retained SurvTech Solutions, Inc. (“SurvTech”), to prepare an elevation survey of the ground level and second-story floor surfaces of the Retail Building (the “December 2022 SurvTech Survey”). As Burby reported in its 4/7/23 Report, the December 2022 SurvTech Survey revealed significant downward deflection in two localized areas within the west wing of the Retail Building: (1) approximately 1.8 inches on both floors within a 10-foot radius of Column T-25 located along the west elevation and (2) approximately 1.2 inches and 1.1 inches on the ground and first floors, respectively, around Column P-24 located on the south elevation of the Retail Building. Excerpts of the SurvTech topographical “heat maps” depicting the downward deflection are attached to the 4/7/23 Burby Report as Exhibit B.

48. Burby further noted in its 4/7/23 Report:

The results of BURBY's precondition survey performed on September 23, 2022, the engineering data available for our review, and multiple visual inspections of the west wing of the subject building by several entities including BURBY, indicate that significant cracking of the interior floor slab, increased separation along the expansion joints within the floor slab, distress to wall and ceiling joints and finishes, and other damage to interior building components have occurred. Specifically, the following should be noted:

- As observed during a site inspection on April 2, 2023 and shown in Figure 2, the north-south trending cracks located within approximately 15 feet of the west and south exterior walls appear to have vertical differentials measuring up to 3 millimeters or less and indicated a generalized downward slope towards the west and south.

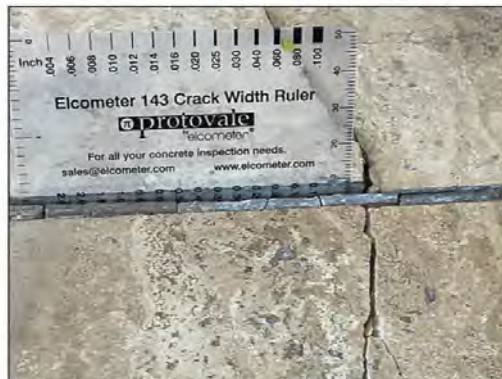


Figure 2: Three-millimeter vertical differential of in southwest quadrant of Lobby tile crack located near entrance from south elevation; Photo dated April 2, 2023

- The severity and location of the measured downward deflection of both floors as detailed in the section above and *Exhibit B*.
- Recently, within the westernmost 15 feet of the foundation and building frame of the west wing, damage was documented on the ground floor (The Mill), the west stairwell, and on the second-story directly above (Ark Invest). Refer to *Exhibit C: Interior Wall & Floor Distress Photographs* for typical conditions observed. The damage observed is consistent with movement of the footing for column T-25 during or after the installation of Keller’s micropiles. It should be noted that additional damage may be present and concealed by interior building finishes.

49. Burby included in its 4/7/23 Report at Exhibit C photographs of the above referenced damage to interior walls and the floor of the Retail Building, including the following photographs:



Photograph 1: Ground-level floor slab around Column T-25.



Photograph 3: Ground-level floor slab around Column T-25.



Photograph 6: Ground-level slab at stair exterior door at west elevation.



Photograph 4: Ground-level floor slab along west exterior wall.



Photograph 9: West stair ceiling.



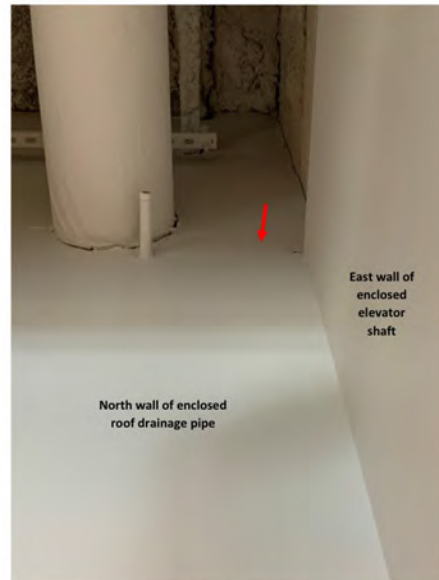
Photograph 14: Ark Invest kitchen above cabinets.



Photograph 7: Ground-level slab at west stairwell.



Photograph 18: Above Ark Invest northwest meeting room entrance, opposite Photograph 17.



Photograph 17: Ark Invest hallway across from northwest meeting room entrance.

50. Based on its observation and analysis, Burby concluded in its 4/7/23 Report:

The location, severity, and condition of these cracking systems are consistent with differential settlement within the bearing soils supporting the west and south walls of 200 Central's west wing. **It is our professional opinion that construction vibration generated by the installation of Keller's excavation shoring plan has induced soil settlement within the loose surficial sands supporting these shallow foundations.**

Since the micropiles were installed prior to the installation of the excavation retaining wall, the recent damage implies that the micropiles did not supply additional support and prevent movement of the foundation, and as such, may not have achieved Keller's performance objectives outlined in their "Underpinning and Shoring Narrative - Art House" dated October 11, 2022. **It is our opinion that the column and perimeter footings along the west and south elevation will require additional support. Geotechnical testing of the soil below 200 Central will be required.**

(Emphasis supplied)

51. Burby's 4/7/23 Report included a detailed discussion and analysis of a visual inspection of the underside of the structural framing supporting the west edge of the second-story of the Retail Building performed on April 2, 2023, during which significant cracking was observed at the beam-column joist for column T-25, one of the supports for the second-floor of the Retail Building.

52. Burby included in its 4/7/23 Report the following narrative and photographs (attached to the 4/7/23 Report as Exhibit D) of damage observed surrounding column T-25:

- a. "Diagonal cracking on both sides of interior beam 2RSB-7. Access to the south face of the beam was limited; however, delaminated concrete was chipped away on the north face of the beam and the crack was observed to continue through the beam."



Photograph 9: Cracking to south face of beam 2RSB-7.



Photograph 11: Beam-column joint overview. Diagonal crack to north face of 2RSB-7.



Photograph 12: Close-up view of crack shown in Photograph 11. Delaminated concrete chipped off.



Photograph 13: Diagonal crack in Photograph 12 continues into beam.

b. Cracking between south face of column and underside of 2RSB-2;



Photograph 3: Underside of beam 2RSB-2.



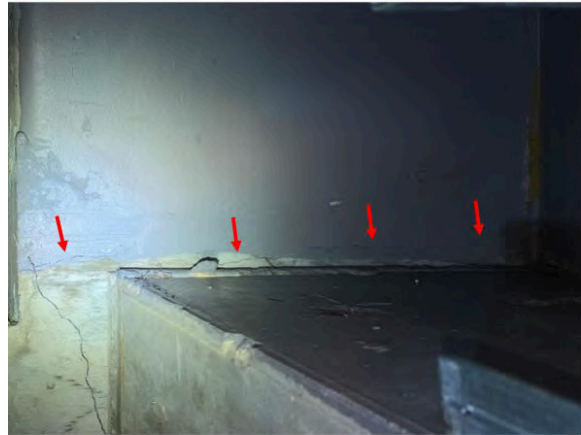
Photograph 4: Close-up view of Photograph 3.



c. Cracking between east face of column and underside of 2RSB-7;



Photograph 5: Column T-25 overview, as observed from the east.



Photograph 6: Close up view of Photograph 5, showing underside of beam 2RSB-7.



Photograph 7: Close-up view of Photograph 6.

d. Vertical cracking between 2RSB-3 and 2RSB-7;



Photograph 17: Vertical crack between beams 2RSB-7 and 2RSB-3.

- e. Generally diagonal cracking on the underside of the second-story floor slab that propagated from the intersection of 2RSB-3 and 2RSB-7.



Photograph 16: Vertical crack between beams 2RSB-7 and 2RSB-3.



Photograph 18: Diagonal crack on underside of second-story floor slab adjacent to beam 2RSB-7.



Photograph 19: Close-up view of the crack in Photograph 18.

53. Burby concluded, “based on the measured vertical floor displacement and generally radial slab cracking around the base of” column T-25, “as well as the distress to various interior finishes throughout the first and second stories around the location of this column,” the above observed conditions:

are consistent with differential displacement of the underlying soils supporting [the Commercial Building]. **It is our opinion that continued disturbance of the soil below 200 Central, resulting from construction-induced vibrations and installation of helical anchors will cause additional vertical displacement of and potential structural damage to the various framing elements.**

(Emphasis supplied)

54. Burby warned in its 4/7/23 Report: “Failure of the sheet pile retaining wall will likely result in catastrophic failure of structural load-bearing components and significant damage to the building.”

55. Burby further noted in its 4/7/23 Report that in a one-page letter to Coastal Construction titled “Solider Beam and Remedial Plan Narrative,” issued by Keller, Kolter’s own engineer, on March 9, 2023, reported that “[d]uring installation some of the solider beams were installed out of tolerance. The out of tolerance beams are now in conflict with the pile cap construction.” (Emphasis supplied).

56. To remedy this construction mistake, Keller proposed installation of additional micropiles and helical piles below the Retail Building to provide lateral support for the sheet piles.

57. Upon review of Keller’s proposal, Burby warned in its 4/7/23 Report, “the proposed changes to Keller’s plan to modify the bearing soils supporting the west portion of [the Retail Building], as outlined in [Keller’s] drawings dated March 3, 2023, increase the risk of damage to [the Retail Building].

58. Burby further warned in its 4/7/23 Report that “[a]dditional damage to [the Retail Building] may occur if Coastal, Keller, and other Art House project participants proceed with the temporary excavation design contemplated by Keller.”

59. Kolter proceeded with its plans.

***Kolter’s construction activities caused significant damage to the Mill Restaurant in the Retail Building causing the Mill Restaurant to abandon its lease.***

60. The Mill is a former restaurant and commercial tenant that operated from premises located on the far west side first floor of the Retail Building, closest to the Residential Property (the “**Mill**”).

61. After signing a lease in November 2014, and opening in 2015, the Mill became a staple restaurant in the downtown St. Petersburg community.

62. As part of its construction activities, Kolter, with Priatek's permission, relocated a grease trap serving the Mill, which required excavating and rerouting the main sewer line from the Mill to the grease trap.

63. After Kolter had commenced its foundation construction activities, in the Fall of 2022, management for the Mill expressed concerns over various plumbing systems and the impact of Kolter's construction activities. The Mill also reported cracks in the concrete floor slab of its premises, and damage to several interior walls, ceilings, and plumbing system.

64. On November 28, 2022, Burby conducted a visual inspection of the Mill Restaurant and a limited visual inspection of the office space located immediately above the Mill Restaurant.

65. Burby compared its November 28, 2022, visual inspection to its pre-construction inspection conducted on September 23, 2022.

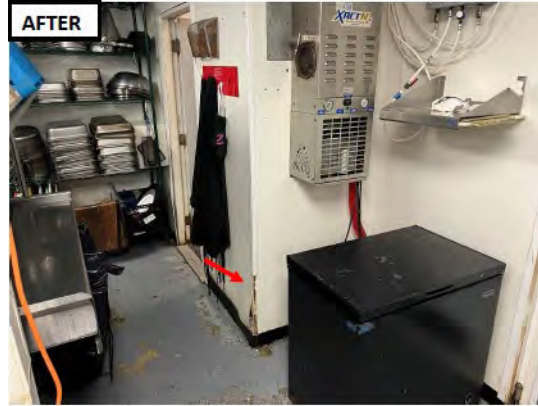
66. On December 2, 2022, Burby issued a "Damages Assessment Report" detailing damage that was observed in and above the Mill on November 28, 2022, that was not observed during Burby's September 23, 2022, site inspection. A copy of Burby's December 2, 2022, Damages Assessment Report (the "**12/2/22 Burby Report**") is here attached as **Exhibit 4**.

67. In its 12/2/22 Report, Burby documented the following, among other, damage in the Mill Restaurant, as seen in "before" and "after" photographs:

- a. The utility closet wall paneling was buckled at the base of the wall. The corner trim was missing.

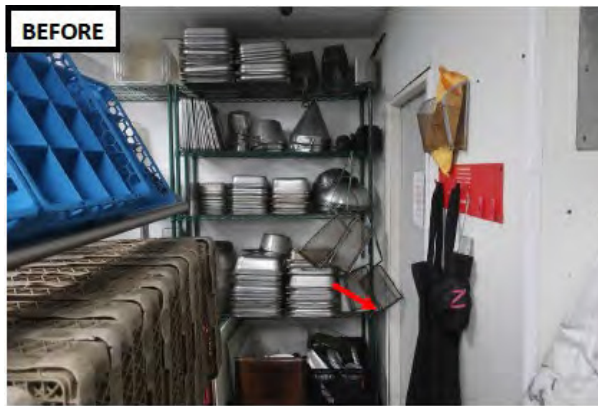


Photograph 3: Kitchen floor and utility closet (9/23/22).

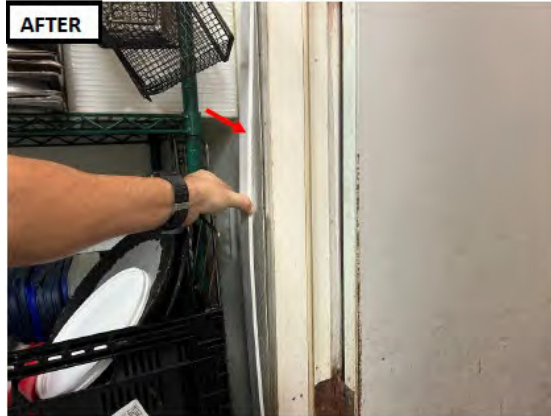


Photograph 4: Kitchen floor and utility closet (11/28/22).

b. The trim on the west side of the utility closet door had buckled outward.



Photograph 5: Utility closet door trim (9/23/22).



Photograph 6: Utility closet door trim (11/28/22).

c. A diagonal crack (relative to the exterior wall) in the concrete floor slab was observed in the prep kitchen.



Photograph 7: Prep kitchen floor (9/23/2022).

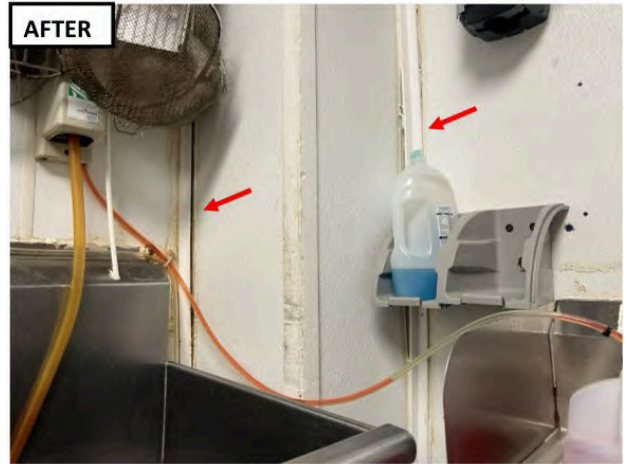


Photograph 8: Prep kitchen floor (11/28/2022).

d. The wall-to-wall trim located against the exterior column was buckled outward:



Photograph 9: Column covering at southwest corner of prep kitchen (9/23/22).



Photograph 10: Column covering at southwest corner of prep kitchen (11/28/22).

e. A generally straight joint is located through the center of the kitchen floor. On November 28, 2022, the joint was more noticeable and appeared to exhibit out-of-plane separation.

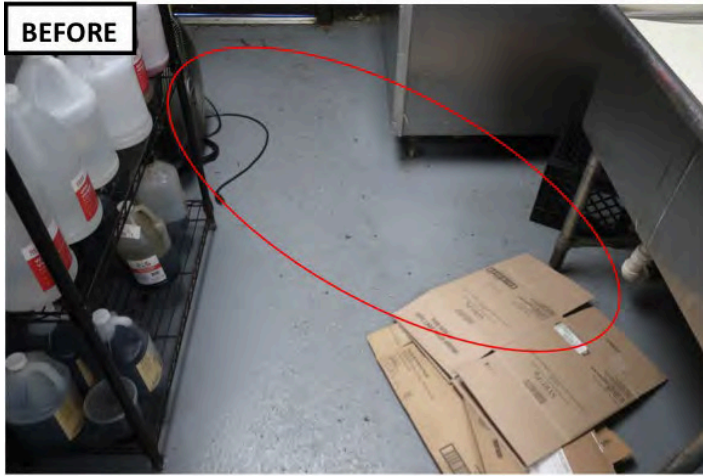


Photograph 11: Joint in kitchen floor (9/23/22).



Photograph 12: Joint in kitchen floor (11/28/22).

- f. A diagonal crack (relative to the exterior wall) in the concrete floor slab was observed on the kitchen floor, adjacent to the exterior double-doors.



Photograph 13: Kitchen floor near double-doors (9/23/22).



Photograph 14: Kitchen floor near double doors (11/28/22).

- g. The concrete floor adjacent to the exterior double-doors evidenced a slab joint that had separated. Cracks were also observed on the floor slab along the exterior wall. Additionally, separations were noted between the steel door frame and the underlying floor slab.

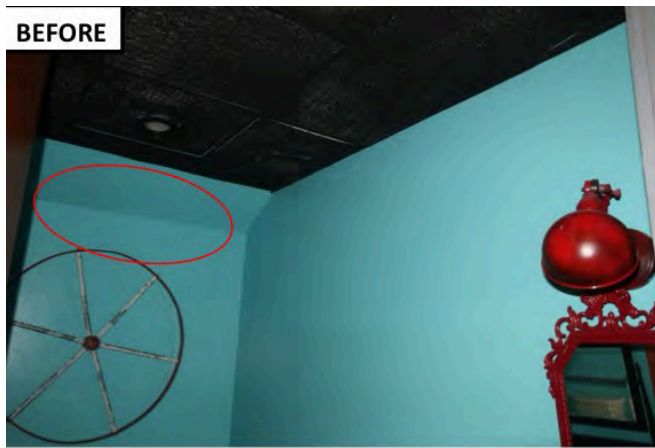


Photograph 15: Floor adjacent to double-doors (9/23/22).



Photograph 16: Floor adjacent to double-doors (11/28/22).

- h. Separations were observed along the wall-to-wall interface against the exterior wall, located to the south of the exterior double-doors. Refer to Photographs 17-18. Damage consisting of shearing wall finishes were observed within a women's bathroom stall.

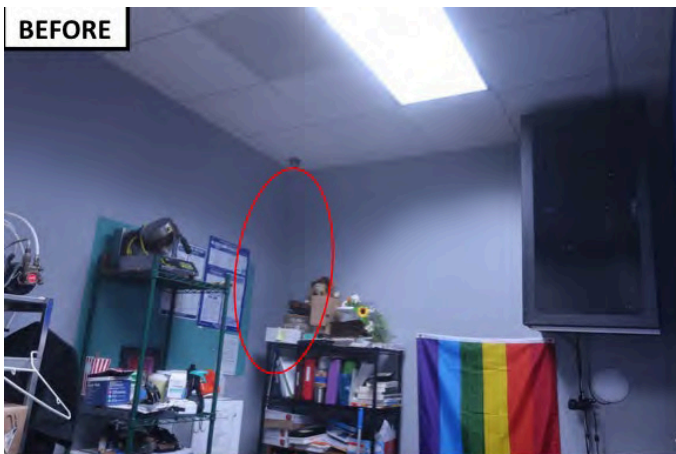


Photograph 23: Women's restroom stall ceiling (9/23/22).

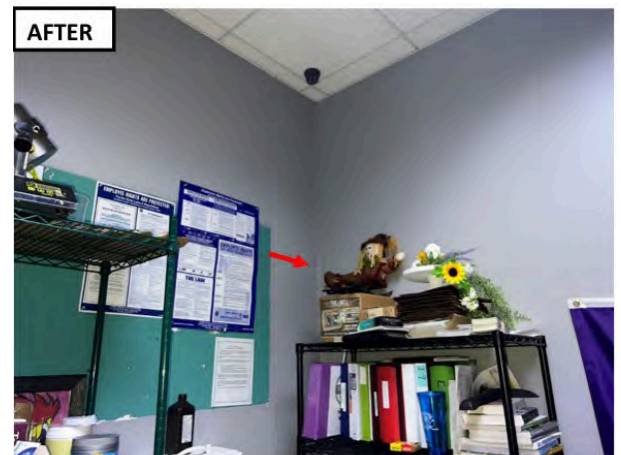


Photograph 24: Women's restroom stall ceiling (11/28/22).

- i. Distress was observed along the wall-to-wall interface at the northwest corner of the restaurant office.



Photograph 25: Office wall-to-wall interface (9/23/22).



Photograph 26: Office wall-to-wall interface (11/28/22).



68. In December 2022, after Kolter had relocated the grease trap and rerouted the sewer line, the sewer line to the grease trap backed up due to improper rerouting and moving of it, causing sewage to back up into the Retail Building.

69. As a result, another tenant, Taverna Costale Restaurant (“**Taverna**”), was forced to close for a day, causing a loss of sales of \$17,989.27.

70. Priatek was forced to compensate Taverna for the entire amount of its lost sales.

71. Kolter, in acknowledgement of its contractual and legal obligations to Priatek, paid for certain repairs to the damaged sewer line. Kolter, however, never reimbursed Priatek for the amount it was forced to pay to Taverna for lost sales.

72. Kolter’s construction activities caused the damage reported and documented at the Mill and Taverna described above.

***Kolter and its construction team proposed and proceeded with a faulty supplemental foundation design, which failed to prevent additional damage to Priatek’s Retail Building.***

73. In May 2023, Kolter provided to Priatek documents supporting Kolter’s proposal for a supplemental foundation design it would construct to provide additional support for the foundation of Priatek’s Retail Building.

74. Kolter’s proposed design contemplated supporting the existing spread footings of the Retail Building with four micropiles at column locations P-24, P-25, T-25, and U-25, which it proposed connecting to the existing footing through core drilling holes using grout and weld bead casting.

75. After reviewing Kolter’s proposal, Burby provided comments via letter dated June 2, 2023, which was shared with Kolter and its construction team and raised significant concerns, including the following:

- a. Kolter’s proposed connection between the micropiles and the existing foundations had not been shown to comply with the applicable Florida Building Code, but rather, is based only on an article published in July/August 2016 by engineering professors at universities in Leiria and Lison, Portugal;
- b. If the supporting soils are displaced, the existing spread footings would behave as a pile cap, potentially causing additional damage to the Retail Building;
- c. Due to the varying depth of the embedment clay and the slenderness ratio of the micropiles, the proposed vertical installations are susceptible to buckling due to loss of lateral support, which would cause additional damage to the Retail Building;
- d. The displacements and vertical deflection estimated associated with Kolter’s proposal for supplementing the existing footing with an external pile cap and micropiles to support loads from column R-25, would result in rotation and vertical displacement of the foundation the column; and,
- e. The soil borings on which the design was based are not sufficient to design for the considerable variability in the soil supporting the foundation of the Retail Building.

76. In its June 2, 2023, letter, Burby recommended Kolter perform additional soil testing—and even provided a cost estimate Burby had obtained from a vendor to perform such testing—to ensure Koler’s supplemental design would indeed stabilize the soils underlying the foundation of the Retail Building and ensure that Kolter’s continued construction activities would not cause additional damage to the Retail Building.

77. Despite the concerns raised and recommendation made by Burby, Kolter proceeded with supplemental work on the foundation of the Retail Building without performing all the reasonable and necessary soil testing.

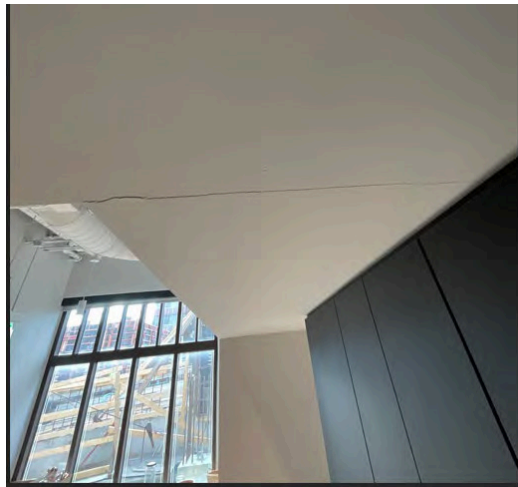
78. Kolter proceeded with its plans, including the supplemental foundation work, and purported to have completed its work on the foundation of the Retail Building and the foundation for its own Residential Project by the end of September 2023.

79. Thereafter, Kolter continued construction of its Residential Project, including vertical construction of the 42-story tower.

***Kolter's continued construction of the 42-story residential tower caused additional damage to Priatek's Retail Building***

80. After Kolter completed its work on the foundation of Priatek's Retail Building and the foundation for its own Residential Tower, Burby performed additional inspections of the Retail Building on October 6 and November 13, 2023. During these inspections Burby noted and photographed additional damage to the Retail Building, including that shown the photographs below:









81. On October 6, 7, and 20, 2023, SurvTech conducted additional floor elevation surveys of the ground-level slab-on-grade and second story of the Retail Building (the “**2023 SurvTech Survey**”).

82. SurvTech’s 2023 Survey confirmed additional downward movement of the foundation of the Retail Building, including columns supporting the second story of the Retail Building.

83. Based on Burby’s prior work and inspections, including those on October 6 and November 13, 2023, and its review and analysis of the 2002 SurvTech Survey and the 2023 SurvTech Survey, Burby issued a report dated April 22, 2024 (the “**4/22/24 Burby Report**”), in which it stated its conclusion that:

**The damage observed to the 200 Central building was caused by the Art House construction activities located immediately adjacent to and west of the subject property. The Art House construction activities have induced soil settlement below the west-wing of 200 Central, causing movement of the foundations and ground-level slab-on-grade. The movement of 200 Central’s foundations has caused the damage observed throughout the west wing of the building.**

A copy of the 4/22/24 Burby Report is here attached as **Exhibit 5**.

84. Further, on April 19, 2024, geotechnical engineers from MKA International, Inc. (“MKA”) issued a report after having performed a geotechnical engineering evaluation of the reported foundation damage to the west wing of the Retail Building (the “MKA Report,” a copy of which is attached as Exhibit F to the 4/22/24 Burby Report).

85. Among other things, the MKA geotechnical engineers compared the results of the December 2002 SurvTech Survey and 2003 SurvTech Survey and concluded:

The results of the 2022 and 2023 SurvTech survey comparisons indicate significant increases in downward deflection of two columns on the south elevation, the column at the southwest corner, and three columns along the west elevation. Specifically, columns N23 at the Lobby’s south entrance, column P24 in the south dining room and column P25 in the storage room experienced 0.8 inch, 1.1 inch and 0.5 inch, respectively, of settlement in the 10-month comparison period. Along the west elevation, column R25 in the stairwell, column T25 in the kitchen dishwashing area, and column U25 in the north dining room each experienced 0.5 inch of downward movement.

86. MKA further concluded:

Based on our comparison of the data collected by BURBY, SurvTech Solutions Inc (SurvTech), Driggers Engineering Services (Driggers), it is our professional opinion that the photographs and measurements of the building components taken between December 2022 and October 2023 have detected and documented movement of the shallow foundations and floor slabs of the west wing. Furthermore, it is our findings that the sheet pile retaining wall did not prevent the movement of the bearing soils, and the micropiles installed along the foundation perimeter in October and November 2022 did not prevent differential settlement of the 200 Central building that was documented. The specific cause(s) of the soil movement are under investigation and require additional subsurface exploration.

87. Finally, MKA concluded:

**It is our opinion that the Art House construction activities have adversely affected the foundation of [Priatek’s Retail Building]. Therefore, it is our opinion that repair of the shallow foundation of the west wing [of the Retail Building] is required. Also, it is likely that the bearing soils require stabilization and/or densification.**

(Emphasis supplied).

88. To remediate the damage caused by Kolter’s construction activities, MKA advised, Priatek will be required to evaluate “the existing soils and groundwater conditions below the west

wing foundations.” And, because as part of its work Kolter failed to adequately perform any testing of the soils under the foundation of the Retail building and did not perform a “post-foundation-construction geotechnical exploration program” within the footprint of the Retail Building, MKA recommended “a program of fourteen (14) standard penetration test (SPT) borings and cone penetration test (CPT) soundings are recommended.”

89. To mitigate its damages and begin the remediation and repair of the damage Kolter’s construction activity has caused, Priatek has engaged, and is obligated to pay, experts and contractors to perform the SPT borings and CPT soundings recommended by MKA. That work began on May 7, 2024.

90. Once this soil testing work—which should have been done by Kolter before it began work on the foundation of the Retail Building—is complete and the results analyzed, Priatek’s engineers will be able to design an appropriate remediation and repair plan to properly shore up the foundation of the Retail Building so it will no longer shift during Kolter’s continued construction of its 42-story Residential Property and cause additional damage to Priatek’s Retail Building. Thereafter, Priatek must repair the damage Kolter’s construction activity has caused.

***The Mill Restaurant abandoned Priatek’s Commercial Building.***

91. The Mill was subject to a Lease that obligated it to remain open in the Retail Building and pay rent to Priatek through November 2024.

92. Priatek repeatedly informed Kolter of the damage their construction activities were causing to the Mill, including the sewer backups.

93. While Kolter made repairs to the sewer line they had previously moved and performed some cosmetic repairs, Kolter’s construction activities continued to cause physical damage to the Mill, which Kolter failed to repair.



94. The Mill stopped paying rent and ultimately closed and abandoned the premises and its Lease at the end of December 2022.

95. At the time it abandoned the premises, the Mill owed Priatek past-due rent in the amount of \$216,512.30.

96. In a January 3, 2023, Facebook Post, pasted below, the Mill explained why it did not pay rent and closed its doors:



97. As a result of the Mill's abandonment of its lease and refusal to pay rent through the end of its lease term in November 2024, Priatek has suffered and will suffer additional damages in the form of rents due under the Mill's lease in the total amount of \$453,544.52, which, but for the damage to the Mill caused by Kolter's construction activities, Priatek would have received.

98. Priatek has mitigated its damages by signing a lease with a new tenant for the premises in the Retail Building formerly occupied by the Mill.

99. As part of its lease with the new tenant, Priatek has agreed to incur substantial costs for tenant improvements and other concessions.

***Priatek has demanded Kolter compensate it for the damages Kolter's construction activities have caused.***

100. Kolter's construction activities have caused significant physical damage to Priatek's Retail Building and have and continue to cause Priatek to suffer significant economic damages, including: (i) substantial engineering fees; (ii) costs incurred to mitigate losses and for temporary repairs; (iii) costs for remediation and repair of the physical damage Kolter's construction activities have caused; (iv) damages paid and concessions made to tenants; (v) attorneys' fees and costs; and, (v) lost rents from the Mill.

101. Priatek has repeatedly informed Kolter of the significant damages to Priatek's Retail Building Kolter has caused by its construction activities and demanded Kolter compensate Priatek to satisfy its obligations under the Easement Agreement, the Foundation Indemnification Agreement, and applicable law.

102. Kolter has repeatedly acknowledged its obligations to Priatek under the Easement Agreement, the Foundation Indemnification Agreement, and applicable law, and has repeatedly committed to Priatek that it would compensate Priatek for its damages. Kolter, however, has refused to indemnify or compensate Priatek for its expenses, losses, costs, and damages.

103. Priatek has been forced to retain the undersigned law firm to enforce its rights and recover its damages from Kolter.

104. Kolter is liable to Priatek for payment of attorneys' fees and costs incurred by Priatek pursuant to section 8(a) of the Easement Agreement and section 2 of the Foundation Indemnification Agreement.

105. All conditions precedent to bringing this lawsuit have been satisfied, performed, or waived.

**COUNT I – BREACH OF EASEMENT AGREEMENT**

106. Piatek incorporates by reference paragraphs 1 through 105 as though fully set forth herein.

107. This is an action for damages by Piatek for Kolter’s breach of the Easement Agreement.

108. Kolter has breached section 8(a) of the Easement Agreement by failing to reimburse Piatek for its “expenses, losses, costs, and damages [and] economic losses... arising out of or incident to” Kolter’s “entry upon the Commercial [Property],” particularly its work on the foundation of the Retail Building as described above.

109. As a result of Kolter’s breach of the Easement Agreement, Piatek has incurred and will continue to incur expenses, losses, costs and damages as described above, for which Kolter is obligated to pay.

WHEREFORE, Plaintiff, Piatek, demands judgment against Defendant, Kolter, for expenses, losses, costs, damages, attorneys’ fees and costs, pre- and post-judgment interest and other relief as this Court deems just and proper.

**COUNT II – BREACH OF FOUNDATION INDEMNIFICATION AGREEMENT**

110. Piatek incorporates by reference paragraphs 1 through 105 as though fully set forth herein.

111. This is an action for damages by Piatek for Kolter’s breach of the Foundation Indemnification Agreement.

112. Kolter has breached section 2 of the Foundation Indemnification Agreement by failing to reimburse and to indemnify and hold harmless Piatek for and against expenses, losses, costs and damages, including damages to Piatek’s property, incurred by Piatek that arose out of

or are incident to or in connection with Kolter's entry upon the Commercial Property pursuant to Kolter's work on the foundation of the Commercial Property.

113. As a result of Kolter's breach of the Foundation Indemnification Agreement, Priatek has incurred and will continue to incur expenses, losses, costs and damages as described above, for which Kolter is obligated to pay.

WHEREFORE, Plaintiff, Priatek, demands judgment against Defendant, Kolter, for expenses, losses, costs, damages, attorneys' fees and costs, pre- and post-judgment interest and other relief as this Court deems just and proper.

### **ALTERNATIVE COUNT III – NEGLIGENCE**

114. Priatek incorporates by reference paragraphs 1 through 105 as though fully set forth herein.

115. This is an action, pled in the alternative to Counts I and II, for damages by Priatek for Kolter's negligent construction of the Residential Project's foundation and negligence in performing construction on its own Residential Project in a manner that has caused physical damage to Priatek's adjacent property.

116. Beginning in 2021, Kolter initiated construction of the Residential Project immediately adjacent to the west side of the Commercial Property and Retail Building.

117. Kolter owed a duty of care to Priatek as the owner of the Commercial Property and the Retail Building immediately adjacent to the construction of the Residential Project to perform its construction activities in a way that would not cause damage to Priatek's Commercial Property.

118. Kolter breached its duty of care to Priatek by conducting construction activities on its Residential Project in a manner that caused damage to Priatek's Commercial Property.

119. When it sought to, received permission to, and performed work on the foundation of Priatek's Retail Building, Kolter undertook a duty to perform such work with reasonable care and in conformance with industry and professional standards and to ensure its work on the foundation, and its construction work on its adjacent property, would not cause damage to the foundation of Priatek's Commercial Property or to the structures upon and comprising the Commercial Property.

120. Kolter breached its duty to Priatek by performing construction activities on its Residential Property and on Priatek's Commercial Property that have caused damage to Priatek's Commercial Property.

121. Kolter's breaches of its duties to Priatek have caused Priatek damages, as described above, for which Kolter is liable regardless of, and separate and apart from, Kolter's obligations under the Easement Agreement and the Foundation Indemnification Agreement.

WHEREFORE, Plaintiff, Priatek, demands judgment against Defendant, Kolter, for expenses, losses, costs, damages, attorneys' fees and costs, pre- and post-judgment interest and other relief as this Court deems just and proper.

**ALTERNATIVE COUNT IV – NUISANCE**

122. Priatek incorporates by reference paragraphs 1 through 105 as though fully set forth herein.

123. This is an action, pled in the alternative to Counts I, II, and III, for nuisance.

124. Kolter owed a duty of care to Priatek as the owner of the Commercial Property and the Retail Building immediately adjacent to the construction of the Residential Project to perform its construction activities in a way that would not cause damage to Priatek's Commercial Property and would not constitute a nuisance.

125. Kolter breached its duty of care to Priatek by conducting construction activities on its Residential Project in a manner that caused damage to Priatek's adjacent Commercial Property, constitutes a nuisance.

126. When it sought to, received permission to, and performed work on the foundation of Priatek's Retail Building, Kolter undertook a duty to perform such work with reasonable care and in conformance with industry and professional standards and to ensure its work on the foundation, and its construction work on its adjacent property, would not constitute a nuisance and cause damage to the foundation of Priatek's Commercial Property or to the structures upon and comprising the Commercial Property.

127. As a result of Kolter's failures to properly construct the improvements to the foundation of Priatek's Retail Building, Kolter's construction activities on its Residential Property have caused and continue to damage to Priatek's Retail Building as described above and thereby unreasonably interfere with Priatek's use and enjoyment of its Commercial Property.

128. Kolter's construction activities on its Commercial Property have caused and continue to cause Priatek damages, including financial losses and decreased property value.

129. Priatek will continue to suffer physical damage to its Commercial Building and suffer further financial losses if Kolter continues its construction activities on its Residential Project before the foundation of Priatek's Commercial Property is shored up to ensure Kolter's construction activities, and the vibrations therefrom, do not cause further movement of soil under the foundation of Priatek's Retail Building.

WHEREFORE, Plaintiff, Priatek, demands judgment against Defendant Kolter: (1) preliminarily and permanently enjoining Kolter from continuing its construction activities on its Residential Project until necessary work to stabilize and shore up the soil and foundation of

Priatek's Retail Building is complete; (2) awarding Priatek all expenses, losses, costs, damages, attorneys' fees and costs it has incurred as a result of the nuisance Kolter caused; (3) pre- and post-judgment interest; and, (4) all other relief this Court deems just and proper.

**PLAINTIFF DEMANDS A JURY ON ALL ISSUES SO TRIABLE**

Dated this 3rd day of June, 2024.

*/s/ E. Colin Thompson* \_\_\_\_\_

**ETHAN J. LOEB**

Florida Bar No. 0668338

[EthanL@BLHTLaw.com](mailto:EthanL@BLHTLaw.com)

[KerriR@BLHTLaw.com](mailto:KerriR@BLHTLaw.com)

[HeatherW@BLHTLaw.com](mailto:HeatherW@BLHTLaw.com)

[eservice@BLHTLaw.com](mailto:eservice@BLHTLaw.com)

**E. COLIN THOMPSON**

Fla. Bar No.: 684929

[ColinT@BLHTlaw.com](mailto:ColinT@BLHTlaw.com)

[HeatherW@BLHTlaw.com](mailto:HeatherW@BLHTlaw.com)

**BARTLETT LOEB HINDS**

**THOMPSON & ANGELOS**

100 North Tampa Street, Suite 2050

Tampa, Florida 33602

Phone: (813) 223-3888

Fax: (813) 228-6422

*Attorneys for Plaintiff,*

*Fourteen Re Priatek, LLC*