IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2019-CP-40-00919

Appellate Case No. 2022-001434

Emad Tadros, as Trustee of the Grace Living Trust dated October 12, 2010, as amended..Appellant,

v.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants,

of which

ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association ,..Respondents.

RECORD ON APPEAL – VOL. I

T. JEFF GOODWYN, JR. (SC Bar #:73789)
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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4000919

Emad Tadros et al
PLAINTIFF(S)

Holder Properties Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The Motions for Summary Judgment (filed 9/24/20 and 12/28/20) heard on January 7, 2021 are taken UNDER ADVISEMENT.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/08/2021 .

Emad Tadros Trustee
Grace Living Trust
John R Holder
Emad Tadros

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Richland Common Pleas

Case Caption: Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al

Case Number: 2019CP4000919

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-01-08 13:27:59 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2019-CP-40-00919

Emad Tadros, M.D. as Trustee of the Grace Grace Living Trust dated October 12, 2010, as amended,
PLAINTIFF(S)

Holder Properties, Inc., et al.,
DEFENDANT(S)

Submitted by: ____________________	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ____________________

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other __________

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other ____________________

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

This matter is before the Court on January 7, 2021 for a hearing on Defendants' Motion for Summary Judgment pursuant to Rule 56, SCRCP. Plaintiff was represented at the hearing by Charles Blackburn, Esq. Defendants were represented by Kevin Bell, Esq. and Michael Masciale, Esq. This court makes the following findings of fact:

1. Plaintiff's claims against Defendants' Holder Properties, Inc. and Adesso/Columbia, LLC (collectively "Holder Properties") were released, waived, and dismissed with prejudice pursuant to the May 2017 settlement agreement;
2. Defendants have complied with the terms of the Adesso Master Deed in charging assessments to Plaintiff's commercial units located at the Adesso;
3. Parking spaces in and around the Adesso, currently available for the use of Plaintiff's commercial units and their tenants, comply with both the Adesso Master Deed and the applicable City of Columbia Zoning Ordinance;
4. Plaintiff should have known of his claims regarding the allocation of parking spaces and the charging of assessments when he purchased the units in 2014. At the time of purchase information regarding the parking-related conditions and charging of assessments which Plaintiff complains of were matters of public record.
5. Plaintiff failed to file this action within the three (3) year statute of limitations period provided by S.C. Code Ann. §13-3-530;

6. Plaintiff has agreed to withdraw his South Carolina Unfair Trade Practices (SCUTP) claim as to Defendants.

Therefore, for the above-stated reasons, Defendants' Motion for Summary Judgement is hereby **GRANTED**. Counsel for Defendants' shall prepare an order in accordance with these findings.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge ______________________ **Judge Code** ________ **Date** ______________

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of __________, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of __________, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter ______________________ **Clerk of Court** ______________________

Richland Common Pleas

Case Caption: Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al

Case Number: 2019CP4000919

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-07-15 12:26:18 page 3 of 3

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants.	) **ORDER GRANTING ADESSO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER comes before the Court on Motions for Summary Judgment of Defendants Holder Properties, Inc.; John R. Holder, Individually; Adesso/Columbia, LLC ("Holder Defendants' Motion"); Adesso Horizontal Property Regime; and Adesso Homeowners' Association ("Adesso Defendants' Motion") (collectively, "Defendants' Motions"), filed September 24, 2020 and December 28, 2020, respectively. Defendants' Motions came on for hearing before the undersigned on January 7, 2021. The Court has been informed of an agreement between Plaintiff and the Holder Defendants to dismiss Plaintiff's claims against the Holder Defendants with prejudice, thereby making a formal Order on the Holder Defendants' Motion unnecessary. Therefore, this Order will only address the Adesso Defendants' Motion.

Upon consideration of the pleadings, evidence, written briefs, and arguments of counsel, the Adesso Defendants' Motion is hereby GRANTED. In support of this Order, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Defendant Adesso Homeowners' Association ("Association") is a nonprofit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business being in Richland County.

2. Defendant Adesso Horizontal Property Regime ("Regime") is a horizontal property regime organized pursuant to the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq*.

3. Defendant Holder Properties, Inc. ("Holder") is a corporation organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

4. Defendant Adesso/Columbia, LLC is a limited liability company organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

5. Defendant John R. Holder is a citizen and resident of the State of Georgia, and at times relevant hereto, transacted business in Richland County as the sole member of Adesso/Columbia, LLC.

6. The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements.

7. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201.

8. Holder developed the Adesso. On January 14, 2008, Defendant Adesso/Columbia, LLC established the Regime by recording the Adesso Master Deed in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855 ("Master Deed"). The Master Deed is

attached as Exhibit 3 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated, in full, in this Order by reference.

9. The Master Deed also created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements...".

10. Each owner of a unit at the Adesso is a member of the Regime and the Association, and he or she is subject to the Master Deed, Bylaws, and other governing documents of the Association.

11. The Association, acting through its Board of Directors ("Board"), possesses the authority "[t]o make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association."

12. To calculate annual assessments to unit owners, the Master Deed generally requires that each unit owner be assessed an amount for his or her share of the Association's expenses equal to the share of the interest his or her unit bears in relation to the entire undivided interest of the Regime.

13. The Plaintiff's Commercial Units at issue in this case ("Commercial Units") comprise a total 8.54279% interest in the total undivided interest of the Regime.

14. To develop annual assessment budgets for the Adesso, the Master Deed also requires the allocation of residential and commercial assessments as follows:

> "[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units..."

15. The Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units.

16. Section V(A)(3) of the Master Deed sets forth examples of Limited Common Elements benefitting both Commercial and Residential Units. Such Limited Common elements include, but are not limited to: (1) "Sidewalks, Plantings, and Lighting along Main and Blossom and all appurtenances thereof;" (2) "Trash Chute;" (3) "Trash Compactor;" (4) "Service Elevator;" (5) "Loading Dock and all appurtenances thereof;" (6) Exterior security cameras and all appurtenances thereof;" and (7) "Roof." Additionally, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole.

17. Further, any budget items for Adesso Common Elements, whether Limited or General, which affect both Residential and Commercial Units are properly chargeable to the owner of the Commercial Units, in proportion to his or her use of such Common Elements.

18. The Adesso budget items for which Plaintiff's Commercial units have been assessed are properly chargeable to Plaintiff's units, and the Adesso Defendants have complied with the terms of the Master Deed in doing so.

19. Pursuant to § V(C)(5) of the Master Deed, "Retail Parking Spaces as identified in Exhibit 'C' [to the Master Deed] shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such...[and]...may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit."

20. The Fourth Amendment to Master Deed of Adesso Horizontal Property Regime ("Fourth Amendment") was recorded on April 22, 2013 in the Richland County

Register of Deeds Office, in Book 1854 at Page 818. The Fourth Amendment is attached as Exhibit 6 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated in this Order by reference.

21. The Fourth Amendment contravened § V(C)(5) of the Master Deed by reassigning the Retail Parking Spaces—specifically spaces numbered 001-017, 108, 157, and 220-221—either to the use of both Commercial and Residential guests, or as leased spaces to the United States Marine Corps and one Adesso resident.

22. The reassignment of the Retail Parking Spaces also violated the commercial parking requirements established by the governing zoning ordinance, the Adesso Planned Unit Development ("PUD"), as amended by letter of Holder Properties, Inc. dated January 24, 2008 ("January 2008 Amendment"). The January 2008 Amendment is attached as Plaintiff's Exhibit 5 to the Deposition of Rachel Lynn Bailey, City of Columbia Zoning Administrator, and is incorporated in this Order by reference.

23. Per the January 2008 Amendment, the Adesso Commercial Units were required to have a total of at least twenty-six (26) dedicated parking spaces, with nineteen (19) restricted access spaces within the building itself, and seven (7) spaces located along Main and Blossom Streets. The January 2008 Amendment also sets forth a formula to calculate the required number of parking spaces based upon future increases or decreases in the Commercial Units' square footage.

24. The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances, controls the parking requirements for the Adesso.

25. Plaintiff purchased the Adesso Commercial Units on December 5, 2014. He did not purchase the properties from the Adesso Defendants or Holder Defendants; rather, Plaintiff purchased them from Ford Elliott, the current owner at the time.

26. By 2014, Plaintiff—who is a well-educated, board-certified Psychiatrist—possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes.

27. Despite his prior experience, Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. Further, Plaintiff did not actually visit the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units.

28. Neither Plaintiff nor his hired professional communicated with the Adesso Defendants with regard to Plaintiff's acquisition of the Commercial Units, and the Adesso Defendants made no statements or other representations to Plaintiff in connection therewith.

29. On March 4, 2015, Plaintiff was notified by a representative of Holder—which provided property management services to the Association until May, 2016—that a lottery would be held among the Adesso owners to determine leasing rights for three of the Adesso Commercial Parking Spaces. Plaintiff was informed that such rights would be sold to the highest bidder.

30. The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner.

31. Around March of 2015, one of Plaintiff's tenants, the United States Marine Corps ("Marines"), notified Plaintiff of insufficient parking and of their intent to vacate their leased recruiting center space in one of Plaintiff's Commercial Units if Plaintiff was not able to secure parking for them.

32. Despite being made aware of the Marines' complaints regarding parking, as well as being required to lease back Commercial Parking Spaces almost immediately after he took ownership of the Commercial Units, Plaintiff took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017.

33. Further, Plaintiff has paid assessments to the Association since the date he purchased the commercial units, and he took no action to investigate any potential claims relating to the charging of assessments until 2017.

34. In June, 2018, the Adesso Defendants changed the signage for, or otherwise restricted access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed.

35. In addition to the 21 parking spaces within the Adesso, there is sufficient on-street parking within 400 feet of the Adesso to serve Plaintiff's Commercial Units, such that the parking spaces available for the use of Plaintiff's units also comply with the Adesso PUD, which is the applicable City of Columbia Zoning Ordinance.

36. Plaintiff took no action to investigate his potential claims until 2017.

37. Plaintiff did not file this action until February 14, 2019.

38. Plaintiff has agreed to withdraw his South Carolina Unfair Trade Practices (SCUTP) claim as to the Adesso Defendants.

Based upon the foregoing, the undersigned finds and concludes as follows:

CONCLUSIONS OF LAW

39. This Court has proper jurisdiction over the parties to this action and the claims herein asserted.

40. Venue is proper in Richland County.

41. The Adesso Defendants have not breached the Master Deed.

42. The Adesso Defendants have complied with the provisions of the Adesso Master Deed in charging assessments to Plaintiff's Commercial Units.

43. The allocation of Adesso Retail Parking Spaces limited to the use of Plaintiff's Commercial Units complies with the Master Deed.

44. Further, the allocation of Adesso Retail Parking Spaces available for the use of Plaintiff's Commercial Units complies with the requirements of the Adesso PUD, which is the controlling City of Columbia Zoning Ordinance.

45. By as early as December, 2014, at the time Plaintiff purchased the Commercial Units, Plaintiff knew or should have known of the existence of his claims regarding the allocation of parking spaces at the Adesso and the charging of assessments. At the time of purchase, information regarding parking-related conditions and charging of assessments, about which Plaintiff complains, were matters of public record.

46. Further, by as late as March, 2015, Plaintiff knew or should have known of his parking-related claims because Plaintiff possessed actual knowledge regarding matters of Commercial parking allocation, raised by both Holder and the Marines, which conflicted with Section V of the Master Deed.

47. Plaintiff's claims, if any, regarding the allocation of parking spaces at the Adesso and the charging of assessments to his Commercial Units accrued as early as December, 2014, and by no later than March, 2015.

48. Pursuant to the discovery rule, as articulated by the Court of Appeals in *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (S.C. Ct. App. 1998) and the Supreme Court in *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994)), the undersigned finds that a person of common knowledge and experience, through the

exercise of reasonable diligence, would have discovered Plaintiff's parking-related claims and assessment claims by as early as December, 2014, and in any event, no later than March, 2015. Prior to and at the time he purchased the Commercial Units, Plaintiff had ample opportunity to investigate the public record—which would have disclosed the state of Commercial parking allocation at the Adesso and the method by which assessments would be charged to Plaintiff's Commercial Units—had he chosen to do so.

49. A person of common knowledge and experience, through the exercise of reasonable diligence under the facts of this case, would have investigated any matters potentially affecting Plaintiff's Commercial Units prior to purchasing them—including the publicly-available: (1) Adesso Master Deed; (2) amendments to the Master Deed; (4) other Adesso governing documents; and (5) Adesso PUD and other City of Columbia Zoning documents.

50. Plaintiff made no attempts to investigate the matters underlying his claims until 2017, and Plaintiff did not file this action February 14, 2019.

51. The doctrines of equitable estoppel and equitable tolling are inapplicable to this case because Plaintiff has failed to produce sufficient evidence that the Adesso Defendants made any false representations to Plaintiff. Further, Plaintiff knew or had the means to know the truth as to the facts in question by no later than March, 2015, and Plaintiff could not have justifiably relied on representations, if any, made by Defendants.

52. Pursuant to S.C. Code Ann. § 15-3-530, Plaintiff was required to bring his claims for Negligence/Gross Negligence, Breach of Master Deed, Declaratory Judgment, Injunctive Relief, Negligent Misrepresentation, and Constructive Fraud by 2018, or his claims were forever barred.

53. Pursuant to S.C. Code Ann. § 39-5-150, Plaintiff was required to bring an action to enforce his Unfair Trade Practices Act claim by 2018, or his claim was forever barred. Additionally, even if such claim were not time-barred, Plaintiff has withdrawn it as to the Adesso Defendants.

54. Therefore, pursuant to Rule 56, SCRCP, and upon consideration of all the evidence and arguments presented by the parties, the undersigned finds there is no genuine issue of material fact that Plaintiff had at least constructive knowledge of the existence of his potential parking-and-assessment-related claims by no later than March, 2015, and further, that Plaintiff failed to bring an action to enforce his claims by 2018. Therefore, the Adesso Defendants are entitled to judgment as a matter of law that Plaintiff's claims are time-barred by the above statutes of limitations.

55. In addition to the grounds set forth in Paragraph 54, the undersigned also finds there is no genuine issue of material fact that: (1) the allocation of Commercial parking spaces at the Adesso complies with both the Master Deed and the Adesso PUD, which is the applicable City of Columbia Zoning ordinance; and (2) the Adesso Defendants have complied with the terms of the Master Deed in charging assessments to Plaintiff's Commercial Units. Further, because the Commercial parking allocation and charging of assessments comply with the Adesso Master Deed and City of Columbia Zoning requirements, Plaintiff has failed to demonstrate facts and circumstances warranting an injunction in this action. *See Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Therefore, the Adesso Defendants are entitled to judgment as a matter of law regarding Plaintiff's claims for Declaratory Judgment, Injunctive Relief, Breach of Master Deed, and Negligence/Gross Negligence.

Therefore, it is ORDERED, ADJUDGED, AND DECREEED that:

A. The Adesso Defendants' Motion for Summary Judgment is hereby GRANTED as to all claims asserted in this action by Plaintiff.

B. This action, and all claims asserted herein against the Adesso Defendants, are hereby **dismissed with prejudice**.

IT IS SO ORDERED.

____
The Honorable DeAndrea G. Benjamin
Fifth Judicial Circuit

[Signature Page to Follow]

6639372v.1

Richland Common Pleas

Case Caption:	Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al
Case Number:	2019CP4000919
Type:	Order/Summary Judgment

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2021-09-21 12:33:21 page 12 of 12

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2019-CP-40-00919

Emad Tadros, M.D. as Trustee of the Grace Grace Living Trust dated October 12, 2010, as amended,

Holder Properties, Inc., et al.,

DEFENDANT(S)

Submitted by: ____________	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ____________

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other ____________

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other ____________

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

This matter comes before the Court on a Motion to Reconsider filed by Plaintiff Emad Tadros. The Court considered the competent evidence in connection with Defendants' Motion for Summary Judgment and found no genuine issues of material fact relating to Defendants' defenses and Plaintiff's claims. After full consideration of the arguments by counsel within their memorandum in regard to the Motion to Reconsider, this Court finds no additional information persuasive enough to reconsider the Order previously entered which granted summary judgment to the Defendants.

Therefore, the Order entered by this Court on September 21, 2021 stands and Plaintiff's Motion to Reconsider is, hereby, **DENIED**.

IT IS SO ORDERED.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled**
		$
		$
		$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

SCRCP Form 4C (10/2011)

Circuit Court Judge ______________________ **Judge Code** ________ **Date** ______________

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of __________, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of __________, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

______________________________ ______________________________

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter ______________________ **Clerk of Court** ______________________

Richland Common Pleas

Case Caption: Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al

Case Number: 2019CP4000919

Type: Order/Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2022-09-19 12:47:07 page 3 of 3

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND | CIVIL ACTION NO: 2019-CP-40-00919

EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010, AS AMENDED

APPELLANT,

vs.

ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME, AND ADESSO HOMEOWNERS' ASSOCIATION

RESPONDENTS.

ORDER

The Appellant in the foregoing action would respectfully show:

1. Respondents' Motion for Summary Judgment came before the Court of Common Pleas, Fifth Judicial Circuit, on January 7, 2021;

2. Charles G. Blackburn, Esquire, appeared on behalf of the Plaintiff and attorneys Michael C. Masciale, Esquire and Douglas W. MacKelcan, Esquire appeared on behalf of the Defendants;

3. The Court GRANTED Respondents' Motion for Summary and this appeal followed;

4. Charles G. Blackburn, Esquire currently works for the Goodwyn Law Firm, LLC;

5. The Goodwyn Law Firm was not counsel of record for the January 7, 2021, hearing and the court reporter will not produce a copy of the transcript for the January 7, 2021, hearing to an attorney not of record for the hearing;

6. Accordingly, Appellants have been unable to obtain the transcript of the Motion for Summary Judgment hearing held on January 7, 2021;

7. The Circuit Court directed Appellant to prepare an Order allowing the Goodwyn Law Firm, LLC, and attorney T. Jeff Goodwyn to obtain the transcript.

WHEREFORE, the court reporter that covered the hearing on January 7, 2021, is directed to produce the transcript from the January 7, 2021, hearing to the Goodwyn Law Firm, LLC and attorney T. Jeff Goodwyn, Esquire.

AND IT IS SO ORDERED!

Judicial Signature on Following Page

Richland Common Pleas

Case Caption:	Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al
Case Number:	2019CP4000919
Type:	Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants.	) **ORDER ON RECONSTRUCTING THE RECORD**

This matter came before the Court for a hearing on June 17, 2025, on Adesso Defendants' Motion to Reconstruct the Record. Present at the hearing were (1) Michael Masciale, former counsel for Adesso Defendants; (2) Skyler Wilson, current counsel for Adesso Defendants; (3) Charles Blackburn, former counsel for Plaintiff; and (4) Jeff Turnipseed, an attorney with Goodwyn Law, which currently represents Plaintiff. Based on the motion, submissions of counsel, and arguments at the hearing, this Court finds the following:

Findings of Fact

This lawsuit involves Plaintiff's claims that the Adesso HOA violated its Master Deed and City of Columbia zoning ordinances in allocating parking for his commercial units, and violated the Master Deed in assessing Plaintiff for costs, expenses, and other budget items for the maintenance and upkeep of common areas.

After discovery, Adesso Defendants moved for summary judgment, arguing that Plaintiff's claims were barred by the applicable statutes of limitation, the parking issue was moot, and Plaintiff was being assessed appropriately under the Master Deed. Plaintiff contested the motion for summary judgment, submitting a memorandum in opposition with exhibits outlining Plaintiff's position. Judge DeAndrea G. Benjamin held a virtual hearing on the motion on January 7, 2021, which was recorded via WebEx. Present at the hearing were Attorney Mike Masciale on behalf of Adesso, Attorney Charles Blackburn for Plaintiff Emad Tadros, and Attorney Kevin Bell for Holder Properties. Judge Benjamin granted Adesso Defendants summary judgment on September 21, 2021. Plaintiff moved to reconsider, which was denied on September 19, 2022.

Plaintiff filed a Notice of Appeal on October 11, 2022. Plaintiff ordered the transcript of the summary judgment hearing. The transcript, however, contained numerous instances of "inaudible" or other notes that reflected the court reporter's inability to transcribe arguments from both counsel. As a result of the transcript issues, the Court of Appeals held the appeal in abeyance and remanded it to the circuit court for reconstruction of the record. Subsequently, Adesso Defendants moved this Court for an order reconstructing the record.

This Court held a hearing on Adesso Defendants' motion on April 16, 2025. Adesso Defendants submitted a memorandum in support of finding the record reconstructed. Because original counsel who argued the summary judgment motion were not present at the April 16 hearing, however, this Court continued the hearing so that original counsel could appear and be heard on the matter. The motion was heard on June 17, where current and original counsel appeared.

Findings

At the hearing, former counsel for Plaintiff, Mr. Blackburn, and current counsel for Adesso Defendants agreed that, based on the arguments and exhibits in Adesso Defendants' memorandum in support of reconstruction, the inaudible portions of the transcript would not interfere with the appeal going forward because the "inaudibles" are either represented in the written submissions related to the summary judgment motion or can be discerned from surrounding context in the transcript of the hearing. Further, according to communications with the Court reporter who transcribed the recorded hearing, the inaudible portions lasted only one or two seconds each. Mr. Masciale concurred, and his recollection was that there were no extended interruptions in audio during the summary judgment hearing.

Mr. Turnipseed did not agree with Adesso's current and former counsel or with Plaintiff's former counsel, Mr. Blackburn. However, this Court finds that the record is as complete as it is going to get and, therefore, the appeal can move forward based on the current record and discussion of counsel.

Therefore, based on the submissions of counsel and discussions at the hearing, this Court finds that the record is as reconstructed as it can be and that the inaudible sections of the transcript are represented in written submissions from the summary judgment hearing or can be discerned from the surrounding context of the transcript. Out of an abundance of caution, this Court also directs Court Administration to release a copy of the audio recording of the summary judgment hearing to Attorney Wilson and Attorney Goodwyn.

IT IS SO ORDERED!

____
The Honorable Jocelyn Newman
Fifth Judicial Circuit

Richland Common Pleas

Case Caption:	Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al
Case Number:	2019CP4000919
Type:	Order/Other

So Ordered

Jocelyn Newman

Electronically signed on 2025-11-29 11:42:06 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	)	Civil Action No.: 2019-cv-40-_______
Plaintiff,	)	**SUMMONS**
v.	)	
Holder Properties, Inc., ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber, Burnette Shutt & McDaniel, PA, 912 Lady Street (29201), Second Floor, PO Box 1929 Columbia, South Carolina 29202, within 30 days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the aforesaid time, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Kathleen McDaniel
Kathleen McDaniel (SC Bar No. 74826)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, South Carolina 29202
Telephone: (803) 904-7913
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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
February 14, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	)	Civil Action No.: _______________
Plaintiff,	)	
v.	)	**COMPLAINT**
Holder Properties, Inc., ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)	

Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, complaining of Defendants ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association would allege and show as follows:

PARTIES

1. Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended ("Tadros"), a trust formed under the laws of the State of California, owns the real property known as the commercial property units ("the commercial units") in the Adesso Horizontal Property Regime, located at 601 Main Street, Suites A – D, in Columbia, South Carolina.

2. Holder Properties, Inc. is a corporation organized and existing under the laws of the State of Georgia and authorized to do business in the State of South Carolina.

3. ADESSO/Columbia, LLC is a corporation organized and existing under the laws of the State of Georgia and authorized to do business in the State of South Carolina.

4. The ADESSO Horizontal Property Regime is a horizontal property regime that exists by virtue of the Master Deed of the ADESSO Horizontal Property Regime, dated January 14, 2008 and recorded January 14, 2008, in the Office of the Register of Deeds for Richland County, South Carolina, in Book 1392-855 ("Master Deed").

5. ADESSO Homeowners' Association is nonprofit corporation organized and existing under the laws of the State of South Carolina.

VENUE

6. Venue is proper in Richland County as this is where the property interests at issue are located and where the actions giving rise to this claim took place.

JURISDICTION

7. This Court has personal and subject matter jurisdiction over all parties.

FACTS

8. The ADESSO condominium project entailed the development of a "live/work" planned unit development at 601 Main Street, Columbia, South Carolina 29201.

9. The ADESSO condominium project includes residential and commercial condominiums.

10. Holder Properties, Inc. was the developer of the ADESSO condominium project.

11. ADESSO/Columbia, LLC is identified as the Owner on the Master Deed.

12. On December 5, 2014, Plaintiff Tadros took title to the commercial units.

13. The commercial units are part of the ADESSO Horizontal Property Regime and members of the ADESSO Homeowners' Association.

14. The Master Deed assigns a certain number of specified parking spaces to the exclusive use of the commercial units.

15. The City of Columbia required, through its rezoning for the ADESSO project, that a certain number of parking spaces be allocated for the exclusive use of the commercial units.

16. Defendants have converted, changed, or altered the parking configuration to reduce the number of parking spaces assigned to the commercial units from the number specified in the Master Deed and by the City of Columbia.

17. Plaintiff Tadros did not consent to any reduction in the number of parking spaces assigned to the commercial units.

18. Defendants have required Plaintiff Tadros to pay monthly rent for certain parking spaces that should have been allocated to the commercial units rent-free.

19. Defendants have charged Plaintiff Tadros fees in excess of the amounts permitted by the Master Deed, including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units and not to the commercial units.

20. Defendants have failed and refused to provide Plaintiff Tadros with a clearly itemized annual budget applicable to the commercial units.

21. Defendants have failed and refused to provide Plaintiff Tadros with a clear and complete accounting of the monthly fees charged for the commercial units.

22. Plaintiff Tadros has leased the commercial units to various retail, restaurant, and service establishments.

23. Plaintiff Tadros has lost multiple tenants from the commercial units because such tenants' employees and patrons were unable to access the parking spaces that should have been allocated to the commercial units causing those tenants' businesses to become economically infeasible to maintain.

24. The exorbitant fees charged by Defendants to the commercial units have also contributed to Plaintiff Tadros losing commercial tenants.

FOR A FIRST CAUSE OF ACTION
Negligence/Gross Negligence

25. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim.

26. Defendants owed a duty to Plaintiff Tadros to exercise reasonable care in the maintenance and modification of any parking spaces allocated to the commercial units.

27. Defendants were negligent, grossly negligent, reckless, willful, and wanton in converting, changing, or altering the parking configuration to reduce the number of parking spaces assigned to the commercial units from the number specified in the Master Deed and by the City of Columbia.

28. Defendants owed a duty to Plaintiff Tadros to assess fees in a manner consistent with the terms of the Master Deed.

29. Defendants were negligent, grossly negligent, reckless, willful, and wanton, by assessing fees for the commercial units in excess of those permitted by the Master Deed, including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units.

30. As a direct and proximate result of Defendants' conduct, Plaintiff Tadros has sustained damages in the form of lost rental income, excessive and improper fees paid to Defendants, and rent Plaintiff has had to pay for the use of parking spaces that should have been allocated to the commercial units.

31. As a result of Defendants' negligent, grossly negligent, reckless, willful, and wanton conduct, Plaintiff Tadros is entitled to recover from Defendants direct, consequential, and punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Master Deed

32. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim.

33. The Master Deed assigns a certain number of specified parking spaces to the exclusive use of the commercial unit.

34. Defendants have breached and violated the terms of the Master Deed by converting, changing, or altering the parking configuration to reduce the number of parking spaces assigned to the commercial units from the number specified in the Master Deed.

35. Plaintiff Tadros did not consent to any reduction in the number of parking spaces assigned to the commercial units.

36. Defendants have breached and violated the terms of the Master Deed by requiring Plaintiff Tadros to pay monthly rent for certain parking spaces that should have been allocated to the commercial units rent-free.

37. Defendants have breached and violated the terms of the Master Deed by assessing fees for the commercial units in excess of those permitted by the Master Deed,

including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units.

38. As a direct result of Defendants' conduct, Plaintiff Tadros has incurred actual and consequential damages, and he is entitled to an award of such actual and consequential damages in an amount to be proven at trial.

<u>FOR A THIRD CAUSE OF ACTION</u>
Declaratory Judgment

39. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim.

40. This is an action for a declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in Section 15-53-10 of the South Carolina Code of Laws, 1976, as amended, *et seq.*, for the purpose of determining the rights, status, and legal relations between Plaintiff Tadros and Defendants arising under the Master Deed and the City of Columbia municipal ordinance approving the rezoning of the property for the development of the ADESSO project.

41. A justiciable controversy exists between the parties regarding their rights under the Master Deed and the municipal rezoning ordinance.

42. Such justiciable controversy concerns the proper number of parking spaces that should be allocated to the exclusive use of the commercial units rent-free.

43. Plaintiff Tadros is informed and believes that he is entitled to a decree from the Court finding that he is entitled to have the number of parking spaces as required by the Master Deed and the municipal rezoning ordinance allocated to the exclusive use of the commercial units.

44. A further justiciable controversy exists regarding the terms of the Master Deed addressing the amount of fees that are permitted to be assessed against the commercial units.

45. Plaintiff Tadros is further informed and believes that he is entitled to a decree from the Court finding that the commercial units should only be assessed amounts permitted under the Master Deed and should not be assessed costs, expenses, and budget items specifically attributable only to the residential units.

FOR A FOURTH CAUSE OF ACTION
Injunctive Relief

46. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim.

39. Plaintiff Tadros will continue to suffer irreparable harm if Defendants are not enjoined to take action to allocate and designate the correct number of parking spaces for the exclusive use of the commercial units.

40. Plaintiff Tadros will continue to suffer irreparable harm if Defendants are permitted to continue to assess improper fees against the commercial units, including but not limited to costs, expenses, and budget items specifically attributable only to the residential units.

41. The harm that would be suffered by Plaintiff Tadros if Defendants are not so enjoined outweighs any harm that would be suffered by Defendants as a result of any such injunction.

42. Plaintiff Tadros has no adequate remedy at law.

43. Plaintiff Tadros, therefore, is entitled to a permanent injunction requiring Defendants to take action to allocate and designate the correct number of parking spaces

as set forth in the Master Deed for the exclusive use of the commercial units rent-free and to prohibit Defendants from assessing improper costs against the commercial units, including but not limited to costs, expenses, and budget items specifically attributable only to the residential units.

WHEREFORE, having complained of Defendants, Plaintiff Tadros prays the Court enter judgment awarding it all available relief including but not limited to the following:

A. Plaintiff Tadros requests a jury trial;

B. Plaintiff Tadros be awarded actual, consequential, and punitive damages;

C. Plaintiff Tadros be awarded any prejudgment interest to which it might be entitled;

D. Plaintiff Tadros be awarded declaratory judgment.

E. Plaintiff Tadros be awarded injunctive relief.

F. Plaintiff Tadros be awarded attorney's fees and court costs; and

G. The Court award Plaintiff Tadros such other relief as the Court may deem just and proper.

/s Kathleen M. McDaniel
Kathleen M. McDaniel
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ATTORNEY FOR PLAINTIFF

February 14, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association Defendants.	Civil Action No. 2019-CP-40-00919 **ANSWER AND COUNTERCLAIM OF DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC**

Defendants Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder") answer and respond to the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations not specifically admitted are denied.

2. Paragraph 1 is admitted upon information and belief.

3. Paragraphs 2 is admitted.

4. Answering paragraph 3, ADESSO/Columbia, LLC was organized under the laws of the State of Georgia, but was administratively dissolved as of December 31, 2015.

5. Paragraph 4 is admitted with the qualification that the Master Deed has been amended subsequent to the original recording date.

6. Paragraph 5 is admitted upon information and belief.

7. Answering Paragraph 6, Holder does not contest venue in Richland County.

8. Answering Paragraph 7, Holder does not contest jurisdiction over Holder.

9. Paragraphs 8, 9, 10, and 11 are admitted.

10. Paragraph 12 is admitted upon information and belief.

11. Paragraphs 13 and 14 are admitted.

12. Answering Paragraph 15, Holder admits the ADESSO project was subject to certain requirements and/or specifications imposed by the City of Columbia, including requirements and/or specifications pertaining to parking. Any remaining allegations are denied.

13. Paragraphs 16, 17, 18, 19, 20, and 21 are denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

14. Paragraph 22 is admitted upon information and belief.

15. Holder lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 23.

16. Paragraph 24 is denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

17. Answering the incorporated allegations of Paragraph 25, Holder incorporates the preceding admissions and denials as if fully restated.

18. Paragraphs 26, 27, 28, 29, 30, and 31 are denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

19. Answering the incorporated allegations of Paragraph 32, Holder incorporates the preceding admissions and denials as if fully restated.

20. Paragraph 33 is admitted.

21. Paragraph 34 is denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

22. Holder lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 35.

23. Paragraphs 36, 37, and 38 are denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

24. Answering the incorporated allegations of Paragraph 39, Holder incorporates the preceding admissions and denials as if fully restated.

25. Paragraph 40 presents a characterization of Plaintiff's claims and requires no responsive pleading.

26. Paragraphs 41, 42, 43, 44, and 45 are denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

27. Answering the incorporated allegations of Paragraph 46, Holder incorporates the preceding admissions and denials as if fully restated.

28. Paragraph 46, as well as the second set of paragraphs bearing numbers 39, 40, 41, 42, and 43, are denied as to Holder. Holder lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

FOR A FIRST AFFIRMATIVE DEFENSE—STATUTE OF LIMITATIONS

29. ADESSO/Columbia, LLC sold its interest in the ADESSO commercial units to Plaintiff's predecessor in title in 2011.

30. ADESSO/Columbia, LLC ended its Grantor control of the Adesso Home Owner's Association ("AHOA") on April 23, 2013, when the AHOA elected a new AHOA Board.

31. Plaintiff purchased the ADESSO commercial units in 2014, at which time all issues with respect to parking as set forth in the Master Deed as amended were open, obvious, and a matter of public record.

32. Plaintiff's claims against Holder are barred by the applicable statute(s) of limitations which expired as early as 2014 and under any circumstance no later than 2017.

FOR A SECOND AFFIRMATIVE DEFENSE—RULE 12(b)(6)

33. To the extent Plaintiff's claims are based on: (a) municipal ordinances enacted by the City of Columbia; (b) alleged entitlement to parking beyond what is reflected in the Master Deed as amended; or (c) actions of other parties and/or events occurring after Holder sold its ownership interest in the ADESSO commercial units, Plaintiff's Complaint fails to set forth facts sufficient to constitute a cause of action against Holder.

FOR A THIRD AFFIRMATIVE DEFENSE—ASSUMPTION OF RISK

34. As it relates to Holder, all conditions related to parking were open, obvious, and a matter of public record as of the time Holder sold its interest in the ADESSO commercial units in 2011 and at the time Plaintiff purchased the ADESSO commercial units in 2014.

35. Plaintiff's claims sounding in tort are barred by Plaintiff's assumption of the risk of these open and obvious conditions that were a matter of public record.

FOR A FOURTH AFFIRMATIVE DEFENSE—STATUTE OF FRAUDS

36. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

FOR A FIFTH AFFIRMATIVE DEFENSE—LACK OF PRIVITY/CONSIDERATION

37. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with Holder and did not furnish any consideration to Holder.

<u>FOR A COUNTERCLAIM—Rule 11, SCRCP and S.C. Code Ann. § 15-36-10, *et seq.*</u>

38. The preceding paragraphs are incorporated by reference.

39. No reasonable attorney or party would believe: (a) that Plaintiff's Complaint as to Holder complies with Rule 11, SCRCP; (b) that Plaintiff's claims are warranted under existing law; (c) that the initiation and continuation of Plaintiff's claims against Holder is for any purpose other than to harass or injure Holder; or (d) that Plaintiff's claims are not frivolous as to Holder.

40. Holder's counsel brought these deficiencies to the attention of Plaintiff and his current counsel, and Plaintiff has refused to withdraw his frivolous pleading against Holder.

41. Plaintiff's Complaint as to Holder is a violation of Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. § 15-36-10, *et seq.*

42. As a direct and proximate result of Plaintiff's violations of Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Act, Holder has been forced to incur the expense of retaining counsel, has been required to expend internal resources, and has been otherwise injured and damaged.

WHEREFORE, having fully answered the Plaintiff's Complaint and having counterclaimed against the Plaintiff, Holder prays that the Plaintiff's Complaint be dismissed with costs taxed against Plaintiff, prays for judgment for actual damages and attorneys' fees pursuant to its Counterclaim in the amounts established at trial, and prays for such additional relief as the Court deems appropriate.

s/ Paul H. Hoefer
Kevin K. Bell [SC Bar No. 65495]
Paul H. Hoefer [SC Bar No. 77506]
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Counsel for Defendant Holder Properties, Inc., and ADESSO/Columbia, LLC.

April 15, 2019

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	Case No.: 2019-CP-40-00919
Plaintiff,	ANSWER OF THE DEFENDANTS, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS ASSOCIATION, INC.
v.	
Holder Properties, Inc., Adesso/Columbia, LLC, Adesso Horizontal Property Regime, and Adesso Homeowners' Association,	
Defendants.	

The Defendants, Adesso Horizontal Property Regime and Adesso Homeowners Association, Inc. answering the Complaint of the Plaintiff, alleges:

For a First Defense

1. All allegations not specifically admitted herein are denied.

2. The allegations of paragraphs 1 and 2 and 4 and 5 are admitted upon information and belief.

3. The allegations of paragraph 3 are denied inasmuch as these defendants are informed and believes that Adesso /Columbia has been administratively dissolved.

4. The allegations of paragraphs 6 and 7 are admitted.

5. The allegations of paragraphs 8, 9, 10, 11, 12, 13, and 14 are admitted.

6. As to the allegations of paragraph 15 these Defendants admit only that the City of Columbia imposed certain requirements and specifications, including some pertaining to parking, on the Adesso project, but the remaining allegations of this paragraph are denied.

7. These Defendants deny the allegation of paragraph 16, 17, 18, 19, 20 and 21.

8. The allegations of paragraph 22 are admitted upon information and belief.

9. The allegations of paragraphs 23 and 24 are denied.

For a Second Defense
(as to Negligence/Gross Negligence)

10. The allegations of paragraph 28 in the Plaintiff's First Cause of Action are admitted.

11. The remaining allegations of the Plaintiff's First Cause of Action are denied.

12. These Defendants allege that if they were negligent, which is herein denied, the Plaintiff was comparatively negligent to a greater degree than were these Defendants, and that therefore, the Plaintiff cannot recover under this cause of action.

For a Third Defense
(as to Breach of Master Deed)

13. All of the allegations of Plaintiff's Second Cause of Action are denied.

For a Fourth Defense
(as to Declaratory Judgment)

14. As to the allegations of paragraph 40, these Defendants neither admit nor deny the Plaintiffs characterizations of his claims in paragraph 40 of the Complaint.

15. The remaining allegations of the Plaintiff's Second Cause of Action for a Declaratory Judgment are denied.

For a Fifth Defense
(as to the Plaintiff's claim for Injunctive Relief)

16. These Defendants deny all the allegations of the Plaintiff's Fourth Cause of Action for Injunctive Relief.

For a Sixth and Affirmative Defense
(Assumption of the Risk)

17. At the time the Plaintiff purchased the commercial units at Adesso in 2014 all conditions relating to parking were open and obvious and were a matter of public record in the

governing documents of these Defendants recorded with the Richland County Register of Deeds; thus, Plaintiffs claims sounding in tort are barred.

For a Seventh and Affirmative Defense
(Statute of Frauds)

18. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

For an Eighth and Affirmative Defense
(Lack of Privity/Consideration)

19. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with these Defendant's and did not furnish any consideration to them.

For a Ninth and Affirmative Defense
(Statute of Limitations)

20. The Plaintiff purchased the Adesso Commercial units in 2014 at which time all issues relating to parking were open and obvious, and were a matter of public record in the governing documents of these defendants recorded with the Richland County Register of Deeds; thus, the applicable statute(s) of limitations expired in 2017.

WHEREFORE having fully answered the Complaint these Defendants pray that the Complaint be dismissed.

s/Walter B. Todd Jr.
Walter B. Todd, Jr. [SC Bar # 5593]
Walter B. Todd Jr. PC
Post Office Box 1549
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(803) 753-7953
Attorney for the Defendants Adesso Horizontal Property Regime and Adesso Homeowners Association

April 29, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	)	Civil Action No.: 2019-CP-40-00919
	)	**AMENDED SUMMONS**
Plaintiff,	)	
	)	
v.	)	
	)	
Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)	

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscriber, Charles G. Blackburn, Allen & Newman, PLLC, Post Office Box 1481 Columbia, South Carolina 29202, within 30 days after service hereof, exclusive of the day of such service. If you fail to answer the Amended Complaint within the aforesaid time, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

s/ Charles G. Blackburn
(SC Bar No. 69458)
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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 9, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, v. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)	Civil Action No.: 2019-CP-40-00919 **AMENDED COMPLAINT (Verified)**

Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, complaining of Defendants Holder Properties, Inc., ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association herein files this Amended Complaint and would allege and show as follows:

PARTIES

1. Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended ("Tadros"), a trust formed under the laws of the State of California, owns the real property known as the commercial property units ("the commercial units") in the ADESSO Horizontal Property Regime (the "Adesso"), located at 601 Main Street, Suites A – D, in Columbia, South Carolina.

2. The Adesso is a horizontal property regime that exists by virtue of the Master Deed of the ADESSO Horizontal Property Regime, dated January 14, 2008 and

recorded January 14, 2008, in the Office of the Register of Deeds for Richland County, South Carolina, in Book 1392-855 ("Master Deed").

3. Holder Properties, Inc. ("Holder Properties") is a foreign corporation organized and existing under the laws of the State of Georgia, authorized to do business in the State of South Carolina and at all times relevant hereto conducted and transacted business in the State of South Carolina in the form of the original planning, designing, developing, constructing, marketing, selling, repairing, maintaining and/or managing the Adesso.

4. ADESSO/Columbia, LLC ("ADESSO") is a foreign limited liability company organized and existing under the laws of the State of Georgia, authorized to do business in the State of South Carolina, and at all times relevant hereto conducted and transacted business in the State of South Carolina in the form of planning, designing, developing, constructing, marketing, selling, repairing, maintaining and/or managing the Adesso.

5. John R. Holder ("Holder") is, upon information and belief, a citizen and resident of the State of Georgia and at all times relevant hereto transacted business in the State of South Carolina in the form of planning, developing, constructing, marketing, selling, repairing, maintaining and/or managing the Adesso as the sole member of ADESSO.

6. ADESSO Homeowners' Association ("ADESSO HOA") is a nonprofit corporation organized and existing under the laws of the State of South Carolina that controlled the Adesso since April 23, 2013 after turnover by ADESSO.

VENUE

7. Venue is proper in Richland County as this is where the property interests at issue are located and where the actions giving rise to this claim took place.

JURISDICTION

8. This Court has personal and subject matter jurisdiction over all parties.

FACTS

9. The ADESSO condominium project (the "project") entailed the development of a "live/work" planned unit development at 601 Main Street, Columbia, South Carolina 29201.

10. The project includes residential condominiums and commercial units constructed over a two-level parking garage.

11. Holder Properties was the developer of the project.

12. Holder Properties, upon information and belief, control of the Adesso on or about April 23, 2013 but retained control of the management and finances of Adesso until May 2016.

13. ADESSO/Columbia, LLC is identified, in the Master Deed, as the Grantor and sole owner of the land and improvements of the project and, among other things, compliance with the terms of the Master Deed.

14. Holder is, upon information and belief the sole member of the ADESSO.

15. The Master Deed, drafted by Holder Properties, set forth many contractual obligations including, but not limited to, complying with all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Adesso.

16. On December 5, 2014, Tadros purchased and took title (the "purchase") to the commercial units in the Adesso.

17. The purchase by Tadros is subject to, among other things, compliance with all zoning ordinances and applicable governmental regulations set forth in the Master Deed.

18. The commercial units are part of the ADESSO Horizontal Property Regime and members of the ADESSO Homeowners' Association.

19. The Master Deed assigns a certain number of parking spaces to the exclusive use of the commercial units owned by Tadros.

20. The City of Columbia Planning and Zoning Development requires that a certain number of parking spaces be allocated for the exclusive use of the commercial units.

21. The number of parking spaces allocated to the commercial units in the Master Deed and in subsequent meetings with the City of Columbia Planning and Zoning Department to amend the square footage of the commercial units has been miscalculated by deception and misrepresentations by the Defendants to the City of Columbia Planning and Zoning Department

22. The Master Deed identified the square footage of the commercial units to be approximately 8,139 square feet.

23. Defendants have converted, changed, or altered the commercial unit parking spaces so that the parking spaces do not comply, and have never complied, with the City of Columbia Planning and Zoning Development's ordinances.

24. Defendants knew its actions in failing to comply with the City of Columbia Planning and Zoning Department parking space requirements for the commercial units violated the City of Columbia Planning and Zoning Department parking space requirements from the beginning of construction of the project.

25. However, Defendants did not take necessary actions to correct the violations of the zoning requirements set forth in the Master Deed and subsequent amendments to the Master Deed especially during the several meetings with the City of Columbia Planning and Zoning Department.

26. The Defendants, in particular Holder Properties, through deception and misrepresentations, created a parking situation for the commercial units that did not comply with the City of Columbia Planning and Zoning Department's ordinances.

27. Tadros was not aware of the zoning violations when he purchased the commercial units in December 2014.

28. Tadros relied upon the false and misleading information he received regarding the parking spaces during his purchase of the commercial units, all to his detriment.

29. Tadros did not consent to any reduction in the number of parking spaces assigned to the commercial units and has brought the parking issue to the Defendants' attention and to the attention of the City of Columbia Planning and Zoning Department without any relief from the parking situation.

30. Furthermore, in particular Holder Properties and the HOA, have required Tadros to pay monthly rent for certain parking spaces that should have been allocated

to the commercial units pursuant to the City of Columbia Planning and Zoning ordinances.

31. Defendants have, in violation of the Master Deed, charged Tadros fees in excess of the amounts permitted by the Master Deed, including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units and not to the commercial units.

32. Defendants have failed and refused to provide Tadros with a clear explanation and itemization or quantification of annual budgets applicable to the costs for maintenance of the common areas of the commercial units compared to that of the residential condominiums.

33. Defendants have failed and refused to provide Tadros with a clear and complete accounting of the monthly fees charged to the commercial units.

34. Tadros has leased the commercial units to various retail, restaurant, and service establishments.

35. Tadros has lost multiple tenants from the commercial units because Tadros' tenants' employees and patrons were unable to access the parking spaces that should have been allocated to the commercial units.

36. The domino effect of the turnover of Tadros' tenants, because of the lack of parking, resulted in the tenants' businesses failing and in the inability of Tadros to keep tenants in his commercial units, creating a stigma on the commercial units and have all lead to Tadros' damages.

37. The fees charged to Tadros for maintenance of the common areas outside of the commercial units' common areas of the Adesso, charges for parking spaces that

were to be owned by Tadros in combination with the violations of the parking ordinances set and enforced by the City of Columbia Planning and Zoning Department have damaged Tadros.

FOR A FIRST CAUSE OF ACTION
Negligence/Gross Negligence

38. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

39. Defendants owed a duty to Tadros to exercise reasonable care in the enforcement of the terms of the Master Deed, original construction, planning, design, maintenance and modification of any parking spaces allocated to the commercial units and in compliance with all zoning requirements mandated by the City of Columbia Planning and Zoning Department.

40. Defendants were negligent, grossly negligent, reckless, willful, and wanton in converting, changing, or altering the parking configuration to reduce the number of parking spaces assigned to the commercial units to comply with the zoning requirements set forth in the City of Columbia's Planning and Zoning Department's ordinances.

41. Defendants owed a duty to Tadros to assess regime fees in a manner consistent with the terms of the Master Deed.

42. Defendants were negligent, grossly negligent, reckless, willful, and wanton, by assessing fees for the commercial units in excess of those permitted by the Master Deed, including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units.

43. The co-mingling of the assessment of fees to the commercial units with the assessment fees of the residential units has damaged Tadros in subjecting Tadros to pay more than he is required by the terms of the Master Deed.

44. As a direct and proximate result of Defendants' conduct, Tadros has been damaged in the form of lost rental income, excessive and improper fees paid to Defendants, rent Tadros has had to pay for the use of parking spaces that should have been allocated to the commercial units and the threat of foreclosure of his commercial units for allegedly paying fees that were not the responsibility of Tadros.

45. As a result of Defendants' negligent, grossly negligent, reckless, willful, and wanton conduct, Tadros is entitled to recover from Defendants direct, consequential, punitive damages and reasonable attorney fees in bringing this action.

FOR A SECOND CAUSE OF ACTION
Breach of Master Deed

46. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

47. The Master Deed assigns a certain number of specified parking spaces to the exclusive use of the commercial units.

48. However, the number of specified parking spaces set forth in the Master Deed and subsequent amendments to the Master Deed are incorrect and violate the ordinances set by the City of Columbia Planning and Zoning Department.

49. Defendants have breached and violated the terms of the Master Deed since the filing of the Master Deed by failing to identify the correct number of parking spaces allocated to the commercial units, converting, changing, or altering the parking

configuration to reduce the number of parking spaces assigned to the commercial units in violation of the City of Columbia Planning and Zoning Department's ordinances.

50. Tadros did not consent to any reduction in the number of parking spaces assigned to the commercial units and had no control for the deceptive and fraudulent allocation of the parking spaces dedicated to the commercial units.

51. All such actions began with the filing of the Master Deed, subsequent amendments to the Master Deed and during meetings with the City of Columbia Planning and Zoning Department.

52. Defendants have breached and violated, among other things, the terms of the Master Deed by requiring Tadros to pay monthly rent for certain parking spaces that should have been allocated to the commercial units rent-free.

53. Defendants have breached and violated, among other things, the terms of the Master Deed by assessing fees for the commercial units in excess of those permitted by the Master Deed, including but not limited to costs, expenses, and budget items that should have been specifically attributable only to the residential units.

54. As a direct result of Defendants' conduct, Tadros has incurred actual and consequential damages, and he is entitled to an award of such actual and consequential damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
Declaratory Judgment

55. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

56. This is an action for a declaratory judgment pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in Section 15-53-10 of the

South Carolina Code of Laws, 1976, as amended, *et seq.*, for the purpose of determining the rights, status, and legal relations between Tadros and Defendants arising under the Master Deed and in compliance with the City of Columbia Planning and Zoning Department's ordinances governing commercial unit parking spaces.

57. A justiciable controversy exists between the parties regarding their rights under the Master Deed and the zoning ordinance requirements set forth in the City of Columbia's Planning and Zoning ordinances.

58. Such justiciable controversy concerns the proper number of parking spaces that should be allocated to the exclusive use of the commercial units rent-free.

59. Tadros is informed and believes that he is entitled to a decree from the Court finding that he is entitled to have the number of parking spaces as required by the City of Columbia Planning and Zoning Department ordinances applicable to the exclusive use of the commercial units in the Adesso.

60. A further justiciable controversy exists regarding the terms of the Master Deed addressing the amount of fees that are permitted to be assessed against the commercial units.

61. Tadros is further informed and believes that he is entitled to a decree from the Court finding that the commercial units should only be assessed amounts permitted under the Master Deed and should not be assessed costs, expenses, and budget items specifically attributable only to the residential units.

<u>FOR A FOURTH CAUSE OF ACTION</u>
Injunctive Relief

62. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

39. Tadros will continue to suffer irreparable harm if Defendants are not enjoined to take action to allocate and designate the correct number of parking spaces for the exclusive use of the commercial units and eliminate the excessive fees charged by Defendants to Tadros for the upkeep of the common areas.

40. Tadros will continue to suffer irreparable harm if Defendants are permitted to continue to assess improper fees against the commercial units, including but not limited to costs, expenses, and budget items specifically attributable only to the residential units.

41. The harm that would be suffered by Tadros if Defendants are not so enjoined outweighs any harm that would be suffered by Defendants as a result of any such injunction.

42. Tadros has no adequate remedy at law.

43. Tadros, therefore, is entitled to a permanent injunction requiring Defendants to take action to allocate and designate the correct number of parking spaces for the exclusive use of the commercial units, rent-free and to prohibit Defendants from assessing improper costs against the commercial units, including but not limited to costs, expenses, and budget items specifically attributable only to the residential units.

FOR A FIFTH CAUSE OF ACTION
Violation of South Carolina Unfair Trade Practices Act

44. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

45. The Plaintiff has suffered an ascertainable loss of money.

46. Defendants' conduct constitutes unfair and deceptive trade practices, as defined by the Unfair Trade Practices Act (SCUTPA), S.C. Code Ann. § 39-5-10, *et seq.*

47. Furthermore, Defendants' conduct was willful.

48. Defendants' conduct is capable of repetition.

49. Defendants' actions constitute unfair and deceptive acts.

50. Defendants' conduct affects the public interest.

51. Defendants' knew or should have known that Defendants' actions constituted unfair and deceptive trade practices.

52. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive trade practices, the Tadros has suffered an ascertainable loss of money and property.

53. Tadros is entitled to recover his actual damages, which amount should be trebled, together with interest and attorney's fees.

FOR A FIFTH CAUSE OF ACTION
Negligent Misrepresentation

54. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

55. Defendants held themselves out and represented to Tadros that Defendants were familiar with the requirements set forth in the governing documents of Adesso, including the Master Deed, subsequent amendments to the Master Deed and the South Carolina Horizontal Property Regime Act, S.C. Code §27-31-10, *et. Seq.*

56. Tadros relied upon Defendants' representations to his detriment.

57. The representations of Defendants' were material in Tadros entering into the contract to purchase the commercial units.

58. Defendants' were negligent, reckless, willful and wanton in making these representations including the perpetuation of violations of the City of Columbia Planning and Zoning ordinances.

59. Defendants had a pecuniary interest in making these statements.

60. Defendants knew or should have known Tadros would rely upon the Defendants' representations and Tadros justifiably relied on the representations to his detriment and pecuniary loss.

61. As a direct and proximate result of Defendants' negligent misrepresentations, Tadros is entitled to actual and punitive damages, reasonable attorney fees and costs in an amount to be determined at the trial of this matter, plus pre-judgment and post-judgment interest.

FOR A FIFTH CAUSE OF ACTION
Constructive Fraud

62. Each and every allegation not inconsistent herewith is incorporated herein as if set forth verbatim above.

63. Defendants made representations to Tadros the parking for the commercial units were in compliance with the City of Columbia Planning and Zoning ordinances and Tadros would be charged fees as set forth in the Master Deed.

64. The Defendants knew of the falsity of Defendants' statements.

65. The Defendants statements, actions and inactions were material to Tadros' purchase of the commercial units.

66. The Defendants knew the statements, actions and inactions made by the Defendants were false and/or made with a reckless disregard of its truth or falsity.

67. The Defendants' statements, actions and inactions as set forth above were made with the intent that the representations, actions and inactions be acted upon by Tadros.

68. Tadros was not aware of the falsity of Defendants' statements, actions and inactions.

69. Tadros relied on the Defendants' statements, actions and inactions and relied on Defendants' statements, actions and inaction to the detriment of Tadros.

70. As a direct and proximate result of Defendants' false and fraudulent statements used to induce Tadros to purchase the commercial units, Tadros has been damaged and suffered pecuniary loss.

71. Tadros has been damaged and is entitled to actual, consequential, punitive damages and reasonable attorney fees and costs in bringing this action.

WHEREFORE, having complained of Defendants, Tadros prays the Court enter judgment awarding it all available relief including but not limited to the following:

A. a trial by jury on all such issues so triable;

B. Tadros be awarded actual, consequential, and punitive damages;

C. Tadros be awarded any prejudgment and post-judgment interest;

D. Tadros be awarded declaratory judgment as pled herein;

E. Tadros be awarded injunctive relief;

F. Tadros' damages be trebled pursuant to S.C. Code Ann. § 39-5-10, *et seq.*;

G. Tadros be awarded reasonable attorney's fees and court costs; and

H. For such other and further relief as this Court may deem just and proper.

Signature on Following Page

Respectfully submitted,

/s Charles G. Blackburn

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ATTORNEYS FOR PLAINTIFF

May 9, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A No: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010, AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME, AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**CERTIFICATE OF SERVICE**

I, the undersigned of Allen & Newman, PLLC, Attorneys for Plaintiff, do hereby certify that I have served the **Plaintiff's Amended Complaint** in connection with the above-referenced case by Electronic Court Filing and by placing a copy of the same in the U.S. Mail, first class, postage prepaid to the following address:

Defendant's Attorney for Holder Properties, Inc. and Adesso/Columbia, LLC
Kevin K. Bell, Esquire (SC Bar No. 65494)
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Defendant's Attorney for Adesso Horizontal Property Regime and Adesso Homeowners' Association
Walter B. Todd, Jr. (SC Bar No. 5593)
Walter B. Todd, Jr., PC
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Signature on Following Page

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
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TO: KEVIN K. BELL, ESQUIRE AND PAUL H. HOEFER, ESQUIRE, ATTORNEYS FOR DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC AND TO THE DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC ABOVE-NAMED:

The Plaintiff Emad Tadros, M.D. as Trustee of The Grace Living Trust dated October 12, 2010 as Amended ("Plaintiff") through counsel hereby files this Reply to the Counterclaim of Defendant Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder") filed herein and states as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Plaintiff denies each and every allegation of the Counterclaims of Holder not hereinafter admitted.

2. Plaintiff incorporates by reference herein all allegations and causes of actions made in its Complaint and pleadings filed in this action.

WHEREFORE, having fully answered the Counterclaim of Defendant Holder, Plaintiff prays that the same be dismissed with costs, including reasonable attorney fees, and for such other and further relief as this Court may deem to be just and proper.

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Columbia, South Carolina
May 9, 2019

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME, AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**REPLY**

TO: KEVIN K. BELL, ESQUIRE AND PAUL H. HOEFER, ESQUIRE, ATTORNEYS FOR DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC AND TO THE DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC ABOVE-NAMED:

The Plaintiff Emad Tadros, M.D. as Trustee of The Grace Living Trust dated October 12, 2010 as Amended ("Plaintiff") through counsel hereby files this Reply to the Counterclaim of Defendant Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder") filed herein and states as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Plaintiff denies each and every allegation of the Counterclaims of Holder not hereinafter admitted.

2. Plaintiff incorporates by reference herein all allegations and causes of actions made in its Complaint and pleadings filed in this action.

WHEREFORE, having fully answered the Counterclaim of Defendant Holder, Plaintiff prays that the same be dismissed with costs, including reasonable attorney fees, and for such other and further relief as this Court may deem to be just and proper.

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May 9, 2019

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A No: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010, AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME, AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**CERTIFICATE OF SERVICE**

I, the undersigned of Allen & Newman, PLLC, Attorneys for Plaintiff, do hereby certify that I have served the **Plaintiff's Reply to Defendant's Holder Properties, Inc. and Adesso/Columbia, LLC's Counterclaim** in connection with the above-referenced case by Electronic Court Filing and by placing a copy of the same in the U.S. Mail, first class, postage prepaid to the following address:

Defendant's Attorney for Holder Properties, Inc. and Adesso/Columbia, LLC
Kevin K. Bell, Esquire (SC Bar No. 65494)
Paul H. Hoefer, Esquire (SC Bar No. 77506)
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Defendant's Attorney for Adesso Horizontal Property Regime and Adesso Homeowners' Association
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Columbia, South Carolina
May 9, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., John R. Holder, individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association Defendants.	Civil Action No. 2019-CP-40-00919 **ANSWER OF DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder Properties") answer and respond to the Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations not specifically admitted are denied.

2. Paragraph 1 is admitted upon information and belief.

3. Paragraph 2 is admitted with the qualification that the Master Deed has been amended subsequent to the original recording date.

4. Answering Paragraph 3, Holder Properties admits only that Holder Properties, Inc. is a corporation organized and existing under the laws of the State of Georgia, has transacted business in the State of South Carolina, and was the developer of the ADESSO condominium project. All remaining allegations are denied.

5. Answering paragraph 4, Holder Properties admits only that ADESSO/Columbia, LLC was organized under the laws of the State of Georgia, but was administratively dissolved as of December 31, 2015. ADESSO/Columbia, LLC was the sole owner of the land and improvements as described under the Master Deed of ADESSO Horizontal Property Regime. All remaining allegations of the paragraph are denied.

6. Answering paragraph 5, Holder Properties denies the allegation that John R. Holder is the sole member of ADESSO/Columbia, LLC. No response is required to the remaining allegations of the paragraph which are not directed to these answering Defendants.

7. Answering paragraph 6, Holder Properties admits that ADESSO Homeowners' Association is a nonprofit corporation organized and existing under the laws of South Carolina, but it is without sufficient information or belief to admit or deny the remaining allegations of the paragraph.

8. Answering Paragraph 7, Holder Properties does not contest venue in Richland County.

9. Answering Paragraph 8, Holder Properties does not contest jurisdiction.

10. Paragraphs 9, 10, and 11 are admitted.

11. Answering Paragraph 12, the sentence appears to be missing a verb, and therefore Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of the paragraph.

12. Answering Paragraph 13, Holder Properties admits only that ADESSO/Columbia, LLC is identified as the Grantor and sole owner of the land and improvements referenced in the Master Deed. All remaining allegations of the paragraph are denied.

13. Paragraph 14 is denied.

14. Answering Paragraph 15, the allegations are vague and therefore Holder Properties lacks information sufficient to form a belief as to the truth of them.

15. Paragraph 16 is admitted upon information and belief.

16. Answering Paragraph 17, Holder Properties admits that Tadros is subject to compliance with certain zoning ordinances and government regulations.

17. Paragraphs 18 and 19 are admitted.

18. Answering Paragraph 20, Holder Properties admits the ADESSO project was subject to certain requirements and/or specifications imposed by the City of Columbia, including requirements and/or specifications pertaining to parking. All remaining allegations are denied.

19. Paragraph 21 is denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

20. Answering Paragraph 22, Holder Properties admits that Section V(A)(2) of the Master Deed describes the Commercial Units as "Retail 1" containing approximately 6,913 square feet and "Retail #2" containing approximately 1,226 square feet.

21. Paragraphs 23, 24, 25, 26, and 27 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

22. Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 28.

23. Paragraph 29, 30, 31, 32, and 33 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

24. Paragraph 34 is admitted upon information and belief.

25. Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 35.

26. Paragraphs 36 and 37 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties

27. Answering the incorporated allegations of Paragraph 38, Holder Properties incorporates the preceding admissions and denials as if fully restated.

28. Paragraphs 39, 40, 41, 42, 43, 44, and 45 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

29. Answering the incorporated allegations of Paragraph 46, Holder Properties incorporates the preceding admissions and denials as if fully restated.

30. Paragraph 47 is admitted.

31. Paragraphs 48, 49, 50, 51, 52, 53, and 54 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

32. Answering the incorporated allegations of Paragraph 55, Holder Properties incorporates the preceding admissions and denials as if fully restated.

33. Paragraph 56 presents a characterization of Plaintiff's claims and requires no responsive pleading.

34. Paragraphs 57, 58, 59, 60, and 61 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

35. Answering the incorporated allegations of Paragraph 62, Holder Properties incorporates the preceding admissions and denials as if fully restated.

36. The allegations of the second set of paragraphs bearing numbers 39, 40, 41, 42, and 43 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

37. Answering the incorporated allegations of second Paragraph bearing number 44, Holder Properties incorporates the preceding admissions and denials as if fully restated.

38. The allegations of the second set of paragraphs bearing numbers 45, 46, 47, 48, 49, 50, 51, 52, and 53 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

39. Answering the incorporated allegations of second Paragraph bearing number 54, Holder Properties incorporates the preceding admissions and denials as if fully restated.

40. The allegations of the second set of paragraphs bearing numbers 55, 56, 57, 58, 59, 60, and 61 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

41. Answering the incorporated allegations of second Paragraph bearing number 62, Holder Properties incorporates the preceding admissions and denials as if fully restated.

42. The allegations of the second set of paragraphs bearing numbers 63, 64, 65, 66, 67, 68, 68, 69, 70, and 71 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

43. The allegations under the WHEREFORE provision of Plaintiff's Amended Complaint are denied.

FOR A FIRST AFFIRMATIVE DEFENSE—STATUTE OF LIMITATIONS

44. ADESSO/Columbia, LLC sold its interest in the ADESSO commercial units to Plaintiff's predecessor in title in 2011.

45. ADESSO/Columbia, LLC ended its Grantor control of the Adesso Home Owner's Association ("AHOA") on April 23, 2013, when the AHOA elected a new AHOA Board.

46. Plaintiff purchased the ADESSO commercial units in 2014, at which time all issues with respect to parking as set forth in the Master Deed as amended were open, obvious, and a matter of public record.

47. Plaintiff's claims against Holder Properties are barred by the applicable statute(s) of limitations which expired as early as 2014 and under any circumstance no later than 2017.

FOR A SECOND AFFIRMATIVE DEFENSE—RULE 12(b)(6)

48. To the extent Plaintiff's claims are based on: (a) municipal ordinances enacted by the City of Columbia; (b) alleged entitlement to parking beyond what is reflected in the Master Deed as amended; or (c) actions of other parties and/or events occurring after Holder Properties sold its ownership interest in the ADESSO commercial units, Plaintiff's Amended Complaint fails to set forth facts sufficient to constitute a cause of action against Holder Properties.

FOR A THIRD AFFIRMATIVE DEFENSE—ASSUMPTION OF RISK

49. As it relates to Holder Properties, all conditions related to parking were open, obvious, and a matter of public record as of the time Holder Properties sold its interest in the ADESSO commercial units in 2011 and at the time Plaintiff purchased the ADESSO commercial units in 2014.

50. Plaintiff's claims sounding in tort are barred by Plaintiff's assumption of the risk of these open and obvious conditions that were a matter of public record.

FOR A FOURTH AFFIRMATIVE DEFENSE—STATUTE OF FRAUDS

51. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

FOR A FIFTH AFFIRMATIVE DEFENSE—LACK OF PRIVITY/CONSIDERATION

52. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with Holder Properties and did not furnish any consideration to Holder Properties.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Holder Properties prays that the Plaintiff's Amended Complaint be dismissed with costs taxed against Plaintiff and for such additional relief as the Court deems appropriate.

s/ Paul H. Hoefer
Kevin K. Bell [SC Bar No. 65495]
Paul H. Hoefer [SC Bar No. 77506]
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400
kbell@robinsongray.com
phoefer@robinongray.com

Counsel for Defendant Holder Properties, Inc., and ADESSO/Columbia, LLC.

June 4, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	)	Case No.: 2019-CP-40-00919
Plaintiff,	)	ANSWER OF THE DEFENDANTS, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS ASSOCIATION, INC.
v.	)	
Holder Properties, Inc., Adesso/Columbia, LLC, Adesso Horizontal Property Regime, and Adesso Homeowners' Association,	)	
Defendants.	)	

The Defendants, Adesso Horizontal Property Regime and Adesso Homeowners Association, Inc. answering the Amended Complaint of the Plaintiff, allege:

For a First Defense

1. All allegations not specifically admitted herein are denied.

2. The allegations of paragraphs 1, 2, 3, 5 and 6 are admitted upon information and belief.

3. The allegations of paragraph 4 are denied inasmuch as these defendants are informed and believe that Adesso /Columbia has been administratively dissolved.

4. The allegations of paragraphs 7, 8, 9, 10 and 11 are admitted.

5. As to the allegations of paragraphs 12, 13, 14, 15, 16 and 17, these Defendants are without sufficient information to admit or deny these allegations; therefore, the same are denied.

6. The allegations of paragraphs 18 and 19 are admitted.

7. As to the allegations of paragraphs 20 and 21 these Defendants admit only that the City of Columbia imposed certain requirements and specifications, including some pertaining to parking, on the Adesso project, but the remaining allegations of these paragraphs are denied.

8. The allegations of paragraph 22 are admitted upon information and belief.

9. The allegations of paragraphs 23, 24, 25, 26 and 30 through 37 are denied.

10. As to the allegations of paragraphs 27, 28 and 29 these Defendants are without sufficient information to admit or deny these allegations; therefore, the same are denied.

For a Second Defense
(as to Negligence/Gross Negligence)

11. The allegations of the Plaintiff's First Cause of Action are denied.

12. These Defendants allege that if they were negligent, which is herein denied, the Plaintiff was comparatively negligent to a greater degree than were these Defendants, and that therefore, the Plaintiff cannot recover under this cause of action.

For a Third Defense
(as to Breach of Master Deed)

13. All of the allegations of Plaintiff's Second Cause of Action are denied.

For a Fourth Defense
(as to Declaratory Judgment)

14. As to the allegations of paragraph 56, these Defendants neither admit nor deny the Plaintiffs characterizations of his claims in paragraph 56 of the Complaint.

15. The remaining allegations of the Plaintiff's Third Cause of Action for a Declaratory Judgment are denied.

For a Fifth Defense
(as to the Plaintiff's claim for Injunctive Relief)

16. These Defendants deny all the allegations of the Plaintiff's Fourth Cause of Action for Injunctive Relief.

For a Sixth Defense

17. The Defendants deny all the allegations of the Plaintiff's Fifth Cause of action.

<u>For a Seventh Defense</u>

18. These Defendants deny all the allegations of the Plaintiff's Fifth (should be Sixth) Cause of Action.

<u>For an Eighth Defense</u>

19. These Defendants deny all the allegations of the Plaintiff's Fifth (should be Seventh) Cause of Action.

<u>For a Ninth and Affirmative Defense</u>
(Assumption of the Risk)

17. At the time the Plaintiff purchased the commercial units at Adesso in 2014 all conditions relating to parking were open and obvious and were a matter of public record in the governing documents of these Defendants recorded with the Richland County Register of Deeds; thus, Plaintiffs claims sounding in tort are barred.

<u>For a Tenth and Affirmative Defense</u>
(Statute of Frauds)

18. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

<u>For an Eleventh and Affirmative Defense</u>
(Lack of Privity/Consideration)

19. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with these Defendant's and did not furnish any consideration to them.

<u>For a Twelth and Affirmative Defense</u>
(Statute of Limitations)

20. The Plaintiff purchased the Adesso Commercial units in 2014 at which time all issues relating to parking were open and obvious, and were a matter of public record in the governing documents of these defendants recorded with the Richland County Register of Deeds; thus, the applicable statute(s) of limitations expired in 2017.

WHEREFORE having fully answered the Amended Complaint these Defendants pray that the Amended Complaint be dismissed.

s/Walter B. Todd Jr.
Walter B. Todd, Jr. [SC Bar # 5593]
Walter B. Todd Jr. PC
Post Office Box 1549
Columbia, SC 29202
(803) 753-7953
Attorney for the Defendants Adesso Horizontal Property Regime and Adesso Homeowners Association.

July 8, 2019

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO.: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**AFFIDAVIT OF EMAD TADROS, M.D.**

PERSONALLY, APPEARED BEFORE ME, the undersigned, Emad Tadros, MD, who after being duly sworn, deposes and says:

1. My name is Emad Tadros, M.D.
2. I reside at 13349 Caminito Mar Villa, Del Mar, San Diego County, California.
3. I am above 18 years of age.
4. I make this affidavit based on my knowledge, observations and the facts that I have alleged as the Plaintiff in this matter.
5. I am the owner and landlord of four (4) commercial units (the "units") consisting of approximately 8,500 square feet located at 601 S. Main Street, Columbia, Richland County, South Carolina 29201.
6. The units are located within a five (5) story structure known as the ADESSO Horizontal Property Regime (the "ADESSO").
7. The ADESSO includes approximately one-hundred and ten (110) condominium units in addition to my units.
8. I purchased the units in December 2014.
9. By virtue of my ownership interest in the ADESSO, I am subject to the terms and conditions of the Master Deed that created the ADESSO.
10. I am also a member of the ADESSO Homeowners' Association (the "HOA").

11. The HOA filed a lawsuit (the "lawsuit") on February 9, 2016 on behalf of all unit owners related to construction defects from the original construction of the ADESSO.

12. I, by virtue of my ownership interest in my units, had to be a party in the lawsuit.

13. The lawsuit reached a settlement on or around March 2017.

14. I was required to execute Settlement Agreements and Releases as part of the settlement of the lawsuit in May 2017.

14. The attorney representing the HOA in the lawsuit forwarded me a copy of three (3) separate Settlement Agreements and Releases for my review and execution.

15. I am attaching one (1) of the Settlement Agreement and Release that references all three (3) Settlement Agreements and Releases to my Affidavit as **Exhibit A**.

16. I had several discussions and exchanges of emails with the HOA's attorney related to my execution of the proposed Settlement Agreements and Releases.

17. I refused to execute the Settlement Agreements and Releases due to my concerns I had about the liability of the original developer and contractor that developed and built the ADESSO.

18. I am attaching to my Affidavit as **Exhibit B** a copy an agreement I executed and subsequently withdrew as an example of my concerns and disagreement with the proposed settlement agreements and releases.

19. I was led to believe, under the assurances of the HOA attorney and threats of possible lawsuits against me by the other unit owners, that I could maintain my claims against the developer and contractor that developed and built the ADESSO.

20. I am attaching an email thread to my Affidavit as **Exhibit C** of what I believe to be an example of the threats and duress used by the HOA attorney to force me to execute the Settlement Agreements and Releases.

21. The attorney for the HOA was fully aware of the issues I had with parking spots that were allocated to the exclusive use of my units pursuant to the Master Deed.

22. Furthermore, my units are subject to compliance with the City of Columbia Commercial Planning and Zoning Regulations and Ordinances.

23. The HOA attorney repeatedly assured me that my execution of the Settlement Agreements and Releases would not preclude me from pursuing the claims I have against the developer and contractor that developed and built the ADESSO.

24. The HOA attorney became aware that I refused to sign the proposed Settlement Agreements and Release because of my concerns about the stolen commercial parking spots originating from the actions and inactions of Holder Properties, Inc. and its agents.

25. When I objected to the broadness of the Settlement Agreements and Releases, the HOA attorney repeatedly assured me that the Settlement Agreements and Releases was for known and unknown construction defects only.

26. The HOA attorney repeatedly assured me that the stolen commercial parking spots were a totally isolated and irrelevant issue to the subject of the Settlement Agreements and Releases which was concerned with construction defects only.

27. The HOA attorney also advised me that the HOA would take a legal action against me for recovery of the whole settlement amount if I refused to sign his prepared Settlement Agreements and Releases for construction defects only.

28. I reluctantly executed the Settlement Agreements and Releases with the understanding that my execution of the Settlement Agreements and Release would not prejudice my claims I have against the developer and builder of the ADESSO, namely the Holder defendants named in this lawsuit.

29. I only signed the Settlement Agreements and Releases when I was assured by the HOA attorney that I could pursue a separate legal action in regard to the stolen commercial parking spots which is the case at bar.

30. I felt that I had no other choice but to execute the Settlement Agreements and Releases.

FURTHER AFFIANT SAYETH NOT.

Emad Tadros, MD
Emad Tadros, MD

SWORN to before me this 12
day of November, 2019.
Notary Public for San Diego County
My Commission Expires: Oct 7, 2020

ALYSSA M. SARDINA
COMM. #2261754
Notary Public - California
San Diego County
My Comm. Expires Oct. 7, 2022

EXHIBIT A (part B):

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

BATES LABELED "HOLDER_000160 TO HOLDER_000182"

PRODUCED JULY 24, 2019

d. except as set forth in Paragraph VII.8. below, and except as provided in any existing defense cost sharing agreement (i.e., the sharing arrangement between ILU and AIG with respect to the defense of Key Construction, Inc. and Holder defendants), any and all costs, expenses and attorney's fees incurred by any Settling Party in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

e. However, the Settling Defendants do not release the Insurer Releasees from coverage or a duty to defend for unknown bodily injury claims relating to the Property, and the Settling Defendants do not release the Insurer Releasees from coverage or a duty to defend for any claims unrelated to the Property. Further, Commercial Building Services, Inc. does not release its insurers (The Hartford Fire Insurance Company, American Southern Insurance Company, Main Street America Group, and Peerless Indemnity Insurance Company (Liberty Mutual)) from any obligations those Insurers may have under any insurance policy they issued for Commercial Building Services, Inc. Further, Capital Group, LLC does not release its insurers from any obligations those Insurers may have under any insurance policy they issued for Capital Group,. LLC.

3. **As Between Contributing Insurers**. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and effective immediately upon the payment by each insurer identified in Article II above of its respective settlement contribution as set forth in Article II above, each of the said

contributing insurers, on its own behalf and on behalf of its respective present, former and future members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, successors, predecessors, administrators, executors, trustees, assigns, and associated subsidiary and affiliated entities, shall be deemed to forever release and discharge each such other contributing insurer, and each of their respective present, former and future members, personal representatives, partners, managers, directors, officers, shareholders, names, investors, employees, agents, successors, predecessors, administrators, assigns, attorneys and associated subsidiary and affiliated entities, from and against any and all causes of action, disputes, suits, debts, liabilities, dues, sums of money, accounts, bonds, reckonings, specialties, covenants, contracts, agreements, judgments, controversies, promises, claims (including, but not limited to claims for compensatory, punitive, exemplary, extra-contractual or statutory damages based upon any allegations of bad faith, unfair claims practices, unfair settlement practices, or other act or failure to act in connection with the investigation, adjustment, litigation or settlement of any claim released hereunder), assessments and demands of any nature whatsoever, in law or equity, whether contractual, common law, statutory, federal, state, local or otherwise, whether known or unknown, asserted or unasserted, that the contributing insurers, and each of them had or now have against such other contributing insurers, relating to or arising from the Action and:

a. any work or services performed by or on behalf of the Settling Defendants in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any materials otherwise installed or applied at the Property;

c. any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted in the Action;

d. except as set forth in Paragraph VII.8., and except as provided in any existing defense cost sharing agreement (i.e., the sharing arrangement between ILU and AIG with respect to the defense of Key Construction, Inc. and Holder defendants), any and all costs, expenses and attorney's fees incurred by any contributing insurer in connection with or relating in any manner to the Action, the Property, this Agreement, or in any way related to the claims asserted by Adesso or the Class or the Class Action, the Putative Class Action, or the Commercial Claims; and,

e. any settlement payments made by any insurer pursuant to this Agreement.

ARTICLE V
ACKNOWLEDGEMENTS, WAIVER AND INDEMNITY

1. It is agreed and understood by the Settling Parties that they are not required to settle this matter at this time, and that they could continue to investigate with respect to the matter involved in the suit, but that they voluntarily choose to finally resolve the matter at this time by entering into this settlement. The Settling Parties, in deciding to enter into this Agreement, are not relying on any representations, statements, actions, disclosures of information, discovery responses, deposition testimony or failures to disclose information by Settling Parties, or their representatives, or their attorneys. Settling Parties further agree, warrant and represent that their decision to settle this matter is final and will not be affected, altered or changed by documentation, discovery or other information of any type whatsoever that may be revealed, disclosed or learned in the future.

2. Settling Parties expressly waive and assume the risk of any and all claims for damages and/or damages which exist as of this date, or which may arise in the future, but which they do not now know of or suspect to exist, whether through ignorance, oversight, error,

negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time. These issues were considered in the course of negotiations leading to this Agreement and Settling Parties determined this Agreement to reflect fair and adequate compensation with due regard for such future possibilities.

3. Without regard to whether the settlement of the Putative Class Action claims are finally approved by the Court, Adesso shall defend, indemnify, and hold harmless the Settling Defendants from and against all claims, damages, losses, and expenses that have been asserted, or may be asserted, by any residential or retail unit owner arising out of, or in any way connected with the Action, this Agreement, the Putative Class Action, the settlement of the Putative Class Action, the settlement of the Commercial Claims and the planning, design, development, construction, marketing, sale, management, control, maintenance and repair of any work, and any materials applied or installed at the Property.

ARTICLE VI
ADDITIONAL CONDITIONS OF SETTLEMENT

1. It is the express purpose and intent of the Settling Defendants and the Contributing Insurers that all claims in the Action be settled and resolved with finality. Therefore, this Agreement is conditioned on the final execution and approval of the Commercial Claims Settlement Agreement and Release and the Class Action Settlement Agreement and Release executed contemporaneously herewith. If the respective parties fail to execute the Commercial Claims Settlement Agreement and Release or the Class Action Settlement Agreement and Release, each Settling Defendant has the unilateral right to withdraw from this Agreement. Additionally, if the Class Action Settlement Agreement and Release is not finally

approved by the Court, each Settling Defendant has the unilateral right to withdraw from this Agreement. Furthermore, if, pursuant to Article IV, Section 1.d of the Class Action Settlement Agreement and Release, any Defendant acquires the right and option to withdraw from the Class Action Settlement Agreement and Release, that Defendant further has the unilateral right to withdraw from this Agreement.

2. In connection with, and as a material inducement to the Settling Defendants for this Agreement, Adesso represents and warrants that:

a. It has thoroughly investigated the conditions at the property, including those conditions currently existing and related to the design and construction of the Project;

b. It is accepting the settlement funds from the Settling Defendants on the condition that with those funds it accepts the obligation to take whatever corrective action, and to make whatever repairs are necessary, to address any defective design and construction issues or conditions at the Property;

c. It is accepting responsibility for such corrective action and repairs or the failure to perform such corrective action and repairs as may be necessary or appropriate;

d. It will provide notice of this Settlement Agreement, and the release of the Settling Defendants hereunder, to subsequent purchasers of retail or residential units at the Property by filing a copy of this Agreement with the Covenants and Restrictions associated with the Property such that this Agreement becomes part of the record chain of title to provide notice to any subsequent purchasers.

ARTICLE VII
MISCELLANEOUS

1. **Costs and Expenses**. Each party is responsible for its own attorneys' fees and

costs associated with the Actions, except to the extent paid by their respective insurance carriers.

2. **Construction**. This Settlement Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of this Agreement.

3. **Successors and Assigns**. All covenants and agreements contained in this Settlement Agreement shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors, and assigns.

4. **Further Assurances**. The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be executed and delivered, all such other instruments, and will take all such other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions and purposes hereof.

5. **Modifications**. Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought and by any party who would be affected thereby.

6. **Governing Law**. This Settlement Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party, and will be deemed for those purposes to have been made, executed, and performed in South Carolina.

7. **Time of the Essence**. Time is of the essence in this Settlement Agreement and each provision of this Settlement Agreement.

8. **Legal Fees**. In the event of a breach by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith

shall be entitled to recover from such other party its costs and expenses, including reasonable legal fees, expenses and associated court costs.

9. **Entire Agreement**. This instrument constitutes the entire and final agreement among the Settling Parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Settlement Agreement. The parties hereto covenant that each shall not enter into an agreement or understanding with respect to this Settlement Agreement without the consent and agreement of all parties hereto.

10. **Invalidity**. If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision, consented to by all parties, as similar in terms to the original provision as is possible and which is legal, valid, and enforceable.

11. **Counterparts**. This Settlement Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will collectively constitute a single document.

12. **No Assignment**. Adesso warrants and represents that it has not assigned, conveyed, pledged, or transferred to any other natural person, firm, corporation or other legal entity any claim, demand, action or cause of action described in this Agreement.

13. **No Admissions**. This Agreement and the settlement of the Action do not constitute a concession or admission of wrongdoing or liability by the Settling Defendants and will not be used or construed as an admission of any fault, omission, liability or wrongdoing on the part of the Settling Defendants in any statement, release or written document or financial

report issued, filed or made. Neither this Agreement, nor the exhibits hereto, nor the fact of settlement, nor any settlement negotiations or discussions, nor the judgments to be entered approving this Settlement Agreement, nor any related document will be deemed an admission, concession, presumption or inference against the Settling Defendants in a proceeding other than such a proceeding as may be necessary to consummate or enforce this Agreement and the settlement. To the contrary, the Settling Parties acknowledge that each of the Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this _____ day of ___________, 2017.

____
Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By:____________________________

Its:____________________________

____
Holder Properties, Inc.

By:____________________________

Its:____________________________

____
ADESSO/Columbia, LLC

By:____________________________

Its:____________________________

____
Drake/Adesso, LLC

By:____________________________
Its:____________________________

specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 5th day of May, 2017.

____

Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By: [signature]

Its: Board Member

Darrell A Terry

Holder Properties, Inc.

By: ______________________________

Its: ______________________________

____

ADESSO/Columbia, LLC

By: ______________________________

Its: ______________________________

____

Drake/Adesso, LLC

By: ______________________________

Its: ______________________________

specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this _____ day of ___________, 2017.

____

Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By:______________________________

Its:______________________________

____

Holder Properties, Inc.

By:______________________________

Its: John R. Holder
Chairman & CEO

____

ADESSO/Columbia, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

Drake/Adesso, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

Holder Adesso, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

JRH Adesso, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

JRH, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

John R. Holder, Individually

____

Niles Bolton Associates, Inc.

By:______________________________

Its:______________________________

<u>EXHIBIT B</u>:

CROSSED OUT/RESCINDED AGREEMENT

4060 Fourth Avenue Ste.102
San Diego, Ca 92103
Phone # (619)692-8118
Fax # (619)800-7385
Cell #(858)775-2122

Emad Tadros, M.D.

Fax

To: Mr Frank Smith	From:
Fax: 803-929-0196	Pages: 1+2
Phone: 803-779-0016	Date:
Re:	cc:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please Cancel it

I disagree with this agreement

STATE OF SOUTH CAROLINA)
) **AGREEMENT**
COUNTY OF RICHLAND)

WHEREAS, the Adesso Homeowners Association (HOA) brought an action against various parties relating to design and construction defects in the Adesso Condominiums such action being styled as *ADESSO Homeowners' Association et al. vs. Holder Properties, Inc. et al*, Civil Action No.: 3:16-cv-710-JFA (Lawsuit);

WHEREAS, Emad Tadros, M.D. as Trustee of the Grace Living Trust (Tadros) is the owner of all of the commercial units at Adesso and is a plaintiff in the Lawsuit;

WHEREAS, HOA and Tadros wish to finalize the settlement with all defendants in order to proceed with exterior repairs to the building;

WHEREAS, Tadros has concerns about the Settlement Agreement for the commercial units due to possible claims from the commercial tenants relating to the exterior repairs; and

WHEREAS, the parties have reached an agreement to address Tadros' concern so that Tadros will sign the Settlement Agreement for the commercial units; thereby allowing the settlement to be completed;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The parties agree that it is in the best interests of all commercial and residential unit owners and the HOA to finalize the settlement with the Defendants in the above matter.

2. In return for Tadros signing the proposed Settlement Agreement for the commercial retail units, the HOA agrees to indemnify, defend, and hold Tadros harmless from any claims by Adesso commercial tenants relating to loss of use, lost revenue, lost profits or other economic loss claims relating to the exterior repairs that may be performed at Adesso.

3. The parties agree to cooperate in minimizing the risk that the commercial tenants suffer any economic loss because of the repairs. Tadros agrees to take all reasonable efforts to avoid any claims by any of the commercial tenants and will not in any way encourage any tenant to bring an action relating to the repairs. HOA will give tenants advance notice of the repairs and will take all reasonable efforts in minimizing any impacts from the repairs on the commercial tenants.

4. Tadros agrees to provide copies of all commercial tenant leases to the HOA upon request. Tadros agrees to not disclose this agreement to any of the commercial tenants. Disclosure is exempted if there is a filed formal complaint or legal action taken against Tadros.

5. Tadros agrees to provide reasonable assistance to the HOA in defending against any tenant claims including but not limited to providing documentation, taking other actions that

Please Cancel
Disagree with this agreement
Thank you

require the consent, permission or action of the Landlord, meeting the Landlord's obligations under the lease.

6. The parties agree that the $2,000 provided to Tadros for the commercial unit Settlement Agreement shall be a credit against any amounts the HOA may incur in indemnifying, defending, and holding Tadros harmless of future tenant claims.

7. This indemnity is limited to tenant's economic loss claims arising from the exterior repairs recommended by HOA's experts in the Lawsuit.

Adesso Homeowners Association, Inc. and Adesso Horizontal Property Regime

By:

Michael Anastasion
Its: Adesso Board Secretary

Emad Tadros, M.D. as Trustee of the Grace Living Trust

5/9/17.

I thank you for your reply. Due to the seriousness of this situation with the defendants, I ask you please to provide my attorney with a **Sworn Affidavit** accordingly.

I appreciate your professional understanding and I apologize for coming across frustrated.

On Tue, Sep 10, 2019 at 2:20 PM Frank Smith <FSmith@richardsonplowden.com> wrote:

Dr. Tadros

While I do not agree with all of the statements in your email I do not need to address all of them. Suffice it to say that our firm is not representing the Adesso HOA in the current matter relating to your parking spots. I do not believe that the parking spots were an issue in the litigation with Holder and the other defendants. I am happy to discuss any matters further with your attorney, Charles Blackburn.

I wish you the best.

Frank

From: Dr. T [mailto:tadrosmd@gmail.com]
Sent: Monday, September 09, 2019 2:59 AM
To: Frank Smith; Jared Garraux; Charles Blackburn; Emad Tadros
Subject: Fwd: Pending Settlement agreement in Adesso v Holder et. al.

9-8-2019

Dear Mr. Smith,

I hereby FWD my attorney of record, Mr. Charles Blackburn in the case of Grace Living Trust v. Holder Properties, John Holder, Adesso's HOA etc... Chronology,

In May 2017, I was suddenly approached with an email from you to sign an Adesso's owners and HOA v. Holder's Properties Settlement that you and your office of Richard Plowden had prepared. At that time, I expressed my concern that you have already drafted a settlement citing me a major plaintiff without even consulting with me once. However, within few days you asked me to sign, regardless. I refused. You then rushed and threatened me that I will be sued by the same Adesso's HOA that you represented in 2017.

We spoke on the phone where I worriedly expressed my serious concerns about some missing commercial parking spots and the inflated HOA monthly fees. You repeatedly assured me that, that very settlement was only about **"Construction Defects."** The record in the email thread will also circumstantially substantiate your understanding of my serious concerns, your threats and your provided reassurances that the stolen commercial parking spots and HOA fees were a totally different issue. I later learned that you and your office cashed in **more than three (3) million dollars** for attorney fees achieving that Settlement successfully signed with Adesso v. Holder, for **"Construction Defects."**

Please review the record here: that will circumstantially prove that I have repeatedly refused to sign your Settlement as per email dated 5-20-2017. You then replied back threatening me that I will be sued by the HOA (where you were the attorney of record representing Adesso's HOA) if I do not sign your prepared Settlement. Again, on the phone you logically and repeatedly assured me that my issue regarding the commercial parking spots theft and/or inflated fees was totally unrelated to the **"Construction Defects."**

Only on the basis of your professional reassurances to the logical fact that the parking spots theft and inflated HOA fees were totally unrelated to the Construction Defects, I then signed your prepared Settlement. I am forwarding you email threads and to also remind you here of what transpired and mentioned on the phone from you to me. Also record will substantiate your statements and assurances on the phone that were exchanged for threats if I didn't sign your prepared Settlement.

Please note that approximately six weeks ago, I informed my attorney Mr. Charles Blackburn, that I utterly refuse your law firm representing Adesso's HOA in my lawsuit against that very HOA. My rejection for your law-firm being appointed by the HOA was due to the threats I received from you and Adesso's HOA(attached), if I did not sign your Settlement that you prepared for me and the HOA to sign and you later formally filed with the court.

Please note that the most recently discovered HOA and Holder Builder shocking theft of 38 commercial parking spots has been a consistent violation of the City of Columbia Zoning Code. I do not know why such City Zoning Violation was kept in the Grave - for years?

In medicine one would always think about *"Results & Consequences."* The *Results* of the HOA and Holder the Builder violating the city zoning code stealing a total of 38 commercial parking spots have been and continue to be an ongoing financially harm to all commercial tenants. The *Consequences* of continuing that theft are only to the inevitable financial detriment, Domino Action historical failures and move outs of the commercial tenants,... **to date.**

I have no other choice but to tenaciously pursue the retrieval of now 38 "HOA and Builder" stolen commercial parking property to help the commercial businesses thrive and stop the HOA choking their financial survival. I will also respectfully hold you for the assurances that you made to induce me sign the Construction Defects Settlement where you obviously had a significant pecuniary interest.

Respectfully,

Emad Tadros, M.D./Trustee of the Grace Living Trust and Owner of Commercial Units A-D @ Adesso.

---------- Forwarded message ---------
From: Dr. T <tadrosmd@gmail.com>
Date: Sun, May 21, 2017 at 1:59 PM
Subject: Re: Pending Settlement agreement in Adesso v Holder et. al.
To: Frank Smith <FSmith@richardsonplowden.com>, Emad Tadros <tadrosmd@gmail.com>
Cc: Jared Garraux <JGarraux@richardsonplowden.com>

Sunday 5-21-17

Dear Mr. Smith and Mr Garraux,

I appreciate Adesso HOA emailing me, for the first time, the *ABS Applied Building Sciences INC. dated September 22, 2016.* I briefly surfed through that extensive report. I am very sorry that it obviously documents serious damages to the Adesso building throughout. I never realized such damage extent. Such damages are mostly to the building exterior, ground level *(where my Commercial Units are)*, the walls and ceilings. **The years to come potential consequences of such poor building construction defects are not outlined in that ABS Report.** No one ever outlined to me such extensive and serious construction defects.

ABS summarized that there are damages to my commercial windows and the cement flooring including high moisture level. There was also a mention about water leaks above my Commercial Units. According to my limited MD comprehension, in the upcoming years, that damage can easily extend to:

The eventual growth of Mold inside the wall interiors.

Damage to the Ceiling and its electrical wiring, lights etc.

Other unknown eventual damage findings, Yet To be Determined? that would be related to the current ABS Construction Defects and High Moisture.

I have already outlined Very Concerning Dishonest HOA acts(Previous Holder Properties) and emailed our new HOA requesting remedy of such HOA Dishonest and Master Deed Violations. None had taken place. That is a violation of the Master Deed towards my Commercial Ownership. Unfortunately my frustration has been falling on deaf ears and this building's Commercial Unit purchase has been a financial nightmare from day one. Yes, I am one good unhappy owner.

Due to the very concerning dishonest acts performed by the HOA (represented by the earlier Holder Properties) I need our well respected new Adesso HOA to reasonably:

1- Serve me in writing that Adesso HOA will timely repair all relevant damages to the satisfaction of the current and financially unhappy tenants. Such timely repairs will include any eventual unforeseen and unknown ABS Report complicating consequences that would include but not limited to potential Interior Wall Damages, Ceiling Damage, Wiring, Electrical and Floor Damage. ***I refer the HOA to review Photo***

 # 57 Floor and window damage and Photo #60 where water is directly leaking above the Commercial units ceilings and windows.

2- There is a potential Legal Action where Holder Properties might be named as a defendant for other Causes of Action. More so related to the false declaration upon COE which were made upon my Adesso Commercial Units purchase. **<u>ABS report page 9</u> indicates Holder's repeated attempts to unprofessionally cover up and fix damages in the years 2009 and 2010. Such damages and their unprofessional cover-up were never declared in my COE on 12-5-2014. I only learn this very fact for the first time today! I ask you to please exempt the ABS page #9 - the two Stafford Consulting Engineer's 2009 Reports and the three 2010 HL2 engineering reports and all their findings from this settlement.**

Such exemption will not be used to ask for any additional monies. Such exemption would be only limited to be support the fraudulent sale evidence(s) if Holder was named in the pending lawsuit for Holder's Fraudulent COE sale of the December 2014 Adesso Commercial Units to my ownership. This exemption is needed so not to obstruct justice pending court proceeding. The pending lawsuit will name the major Def. Seller Owner Ford Elliott and others Y.T.D where Holder Properties might be one.

As you all can see, the 9-26-2016 ABS Report, Photos and current Settlement are not about income loss. **Only now I get it**. They are all about settlement of Serious Financial Damages and Repairs and as to who exactly is going to be responsible carrying the remedy from now forwards?

***If you provide me with this logical and reasonable satisfaction to items 1-2, I will respectfully sign your drafted Settlement pending a signed addendum from the HOA as outlined per 1-2 above. I am NOT asking for any extra monies. I am merely asking for reasonable eventual protection and pending my lawsuit proceedings.**

Mr. Smith, I am taking you seriously. I am responding to your today's lawsuit threats with haste but with logical expectations and requests. I exercise the reasonable man's approach where I was definitely lacking the needed detailed explanation from you that you only provided to me today. You replied to me earlier today with a lawsuit against me, if I do not allow you and the HOA to bend my arm. I am trying my best to cooperate with your sinking-ship. None of your tenants is going through what I am going through with the county and the courts as we speak.

I deserve recognition and understanding to my very difficult financial situation. No one can bend anyone's arm to sign misleading documents that can clearly result to my financial detriment and would definitely Obstruct Justice.

I respectfully expect that you and members of the HOA will act accordingly. Yes Mr. Smith you definitely ignored me, a major Plaintiff, whom you are asking to relief responsible parties from serious responsibilities. I hope my final decision here makes everyone happy and I apologize about this inconvenience.

Thank you,

Email Signed,

Emad Tadros M.D./ Trustee of the Grace Living Trust-Owner of Adesso Commercial units A-D.

On Sun, May 21, 2017 at 9:02 AM, Frank Smith <FSmith@richardsonplowden.com> wrote:

Dr. Tadros

It appears that I have failed clearly and adequately explain the nature of the pending lawsuit and it appears that you misunderstand your rights as it relates to the commercial units, the building, the responsibilities of the HOA and you as the owner of the commercial units. When you purchased the units you bought them pursuant to the Master Deed which contains restrictive covenants and rules and regulations regarding ownership rights. As owner of the commercial units you have common ownership of the building with all of the other unit owners. The building is considered a "common element". You own an undivided interest in the common elements but you do not control the common elements. The only element that you own as the owner of a unit is the space within the unit and whatever personal property you have put in the unit.

Pursuant to the Master Deed, the HOA is responsible for maintaining the building and the owners do not have the obligation nor the right to make repairs to the building or bring a lawsuit to seek damages for defective work relating to the common elements.

You should have received a copy of the Master Deed when you bought your units. I sent a copy of the Master Deed in an earlier email. It explains all of the obligations and rights that I described above. You are legally bound by the Master Deed and your rights as a commercial owner are set out in the Master Deed. I also provided a copy of the expert's reports and recommended scope of repairs. The expert's reports detail the defects in the building. The defects relate primarily to the exterior walls and roof.

In January 2016 the HOA hired our firm to bring an action for defects in the building. There had been numerous roof and wall leaks over the years. When we were contacted the statute of repose was going to expire on February 15 and we had to file an action quickly. All unit owners were notified of the lawsuit by the HOA prior to filing and we protected the rights of all owners by filing the action.

Pursuant to the Master Deed, the HOA is the proper entity to seek recover for defects in the common elements; i.e. the building. As a unit owner you cannot bring that action. you have no right to recover any damages for repairs to the building. The unit owners only own the space in their unit and the personal property in the units; i.e. furniture, equipment, etc. Therefore, the only damages that a unit owner could recover would be for damage to personal property or loss of use of the unit if you could not occupy the unit during repairs. When the lawsuit was filed the complaint sought these damages for the unit owners.

After the lawsuit was filed, our experts investigated the building. The only problem they found in the commercial units was a leak at one of the windows in Maddio's Pizza. The window frames are common elements and therefore, the HOA has the right to recover for this defect. Our expert indicated that the leak was actually caused by defects in the stucco above the window and not the window itself. As the unit owner you do not have any right to recover for this defect. Our experts also determined that all repairs to the buildings could be performed without any owner having to vacate their unit. Therefore, unit owners would have no damage unless they had damage to personal property. Since you own commercial units and the units are leased, potentially one of your tenants could argue that while they did not have to close during the repairs, the repairs caused their revenues to be less than they would have been. This is a potential damage that you would be entitled to recover. Since no one knows if or how much that damage will be, the HOA agreed to indemnify you for that potential loss. By agreeing to indemnify you, the HOA is protecting you from the only loss that you have a right to recover.

You seem to be worried about the extent of the release that you are being asked to sign. The release is very broad at the defendants' request. They want to make sure that they are protected from any future claims from the HOA or any owners. Regardless of the broad language of the release, as a unit owner, you do not have the right to recover any damages from the defendants other than for damage to personal property, loss of use or loss of revenue. The HOA has agreed to indemnify you from any potential loss relating to your tenants. The HOA is going to repair the building because that is its obligation. You are totally protected. The building will be repaired. You are protected from claims from your tenants. There is no other possible damage that you could sustain because of the repairs.

I am representing the HOA and all owners in this action. The HOA and the owners have a common interest in recovering for the defects in the building. The Master Deed sets out the ownership interests of the HOA and owners and each is allowed to recover only damages relating to their ownership interest. From the defendants' perspective they only see the total damages that may be recovered and do not care which entity may recover those damages. they only want to insure that they get a complete release. **I have a professional and ethical obligation to represent the interests of my clients. As my client, I am telling you that the settlement is in your best interest. you will never be in a better position. You have no risk in signing the settlement agreement. You have significant risk of future costs from attorney fees and special assessments if you do not sign the release. I encourage you to have a lawyer review your options. I am confident that they will give you the same advice.** I understand that you may other issues with the HOA that are unrelated to this lawsuit. I cannot represent you or the HOA in those matters and those issues should not be involved in the analysis of the benefits of this settlement.

If you refuse to sign the settlement agreement, I expect that the HOA will file an action against you for breach of the agreement that you are attempting to revoke. You signed that agreement and in return for the HOA indemnifying you against tenants' claims for loss of revenue, you agreed to sign the settlement agreement. the HOA performed its obligations but you did not when you refused to sign the agreement. Since I represent you and the HOA in the action against the defendants I cannot represent either you or the HOA in the dispute over the indemnity agreement. You will have to retain your own lawyer which will cause you to incur substantial costs with no benefit.

The HOA is being very fair in agreeing to indemnify you. I highly recommend that you take advantage of that protection and return the signature page of the attached settlement agreement.

Please call me if you have any questions.

Thanks

Frank

From: Dr. T [mailto:tadrosmd@gmail.com]
Sent: Saturday, May 20, 2017 7:37 PM
To: Frank Smith; Emad Tadros
Subject: Re: FW: Agreement with Adesso HOA

Please take a note of this agreement is cancelled by Tadros. Tadros is NOT fully informed..

Thank you,

On Sat, May 20, 2017 at 3:53 PM, Dr. T <tadrosmd@gmail.com> wrote:

Emad Tadros, M.D.

Diplomate American Board of Psychiatry and Neurology

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO.: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**AFFIDAVIT OF DARRELL A. TERRY, PhD**

PERSONALLY, APPEARED BEFORE ME, the undersigned, Darrell A. Terry, PhD, who after being duly sworn, deposes and says:

1. My name is Darrell A. Terry.
2. I reside at 601 Main Street Columbia, SC 29201.
3. I make this affidavit based on my knowledge, observations and the facts that I have witnessed in this matter.
4. I am the owner of 2-bedroom Unit #516 at 601 Main Street Columbia SC 29201.
5. The units are located within a five (5) story mixed-use structure known as the ADESSO Horizontal Property Regime (the "ADESSO").
6. The ADESSO includes exactly one-hundred ten (110) residential condominium units and the commercial units owned by the plaintiff in this action.
7. I have been residing in that location since December 2009.
8. I am also a member of the ADESSO Homeowners' Association (the "HOA").

9. I was a member of the ADESSO Board of Directors (the "Board") to the HOA, appointed in January 2016, and subsequently elected to a two-year term at the following Annual Meeting in late Spring 2016.
10. I have taken an active interest in the affairs of the HOA before, during, and after my time on the Board of Directors including the lawsuit (the "construction defects lawsuit") filed by the HOA in February 2016 bearing Case No.: 3:16-cv-710-JFA that resulted in a settlement (the "settlement").
11. At a Board meeting in May 2017 I first learned that Dr. Tadros had a separate agreement to sign for settlement, even though Dr. Tadros had only recently learned of the construction defects lawsuit.
12. The attorney representing the Plaintiffs in the construction defect lawsuit, Frank Smith of Richardson Plowden, was frustrated that Dr. Tadros would not execute the necessary Settlement Agreements and Releases to fully settle the construction defect lawsuit.
13. Mr. Smith knew that Dr. Tadros had other major issues beyond construction defects and stated it would be a conflict of interest for him to file suit against Dr. Tadros if Dr. Tadros did not sign the necessary Settlement Agreements and Releases to fully settle the construction defect lawsuit.
14. Mr. Smith recommended the Board retain an attorney to file suit against Dr. Tadros if Dr. Tadros didn't sign the Settlement Agreements and Releases.
15. On hearing this, in my role as a Board member, it was unsettling to hear I could be asked to hold Dr. Tadros responsible for the entire amount of the settlement,
16. Mr. Smith assured the Board that Dr. Tadros' execution of the Settlement Agreements and Releases would not preclude Dr. Tadros from pursuing the claims he had against the developer and contractor that developed and built the ADESSO.
17. Mr. Smith claimed to be fully aware of the issues Dr. Tadros had with the retail parking at the ADESSO.
18. I also became concerned of not being free to make my own decision as a residential owner without being subject to the same threat or abuse as was being focused on Dr. Tadros.
19. A few days later in a more casual conversation with me, Mr. Smith claimed the Settlement Agreement and Release, though broad, only related to construction defects, and would not

preclude Dr. Tadros from bringing claims against the developer and contractor that developed and built the ADESSO.

20. To the best of my knowledge none of us as owners were given any opportunity to exempt ourselves from the lawsuit or settlement, leaving myself and other owners, including Dr. Tadros, who might have other claims, with no recourse but to sign the Settlement Agreements and Releases.

FURTHER AFFIANT SAYETH NOT.

Darrell A. Terry, Ph.D.

SWORN to before me this 10th day of December, 2019.

Lynne M. Mack

Notary Public for South Carolina
My Commission Expires 4/11/29

LYNNE M. MACK
NOTARY
PUBLIC
4/11/29
SOUTH CAROLINA

EXHIBIT A (part B):

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

BATES LABELED "HOLDER_000160 TO HOLDER_000182"

PRODUCED JULY 24, 2019

d. except as set forth in Paragraph VII.8. below, and except as provided in any existing defense cost sharing agreement (i.e., the sharing arrangement between ILU and AIG with respect to the defense of Key Construction, Inc. and Holder defendants), any and all costs, expenses and attorney's fees incurred by any Settling Party in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

e. However, the Settling Defendants do not release the Insurer Releasees from coverage or a duty to defend for unknown bodily injury claims relating to the Property, and the Settling Defendants do not release the Insurer Releasees from coverage or a duty to defend for any claims unrelated to the Property. Further, Commercial Building Services, Inc. does not release its insurers (The Hartford Fire Insurance Company, American Southern Insurance Company, Main Street America Group, and Peerless Indemnity Insurance Company (Liberty Mutual)) from any obligations those Insurers may have under any insurance policy they issued for Commercial Building Services, Inc. Further, Capital Group, LLC does not release its insurers from any obligations those Insurers may have under any insurance policy they issued for Capital Group,. LLC.

3. **As Between Contributing Insurers**. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and effective immediately upon the payment by each insurer identified in Article II above of its respective settlement contribution as set forth in Article II above, each of the said

contributing insurers, on its own behalf and on behalf of its respective present, former and future members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, successors, predecessors, administrators, executors, trustees, assigns, and associated subsidiary and affiliated entities, shall be deemed to forever release and discharge each such other contributing insurer, and each of their respective present, former and future members, personal representatives, partners, managers, directors, officers, shareholders, names, investors, employees, agents, successors, predecessors, administrators, assigns, attorneys and associated subsidiary and affiliated entities, from and against any and all causes of action, disputes, suits, debts, liabilities, dues, sums of money, accounts, bonds, reckonings, specialties, covenants, contracts, agreements, judgments, controversies, promises, claims (including, but not limited to claims for compensatory, punitive, exemplary, extra-contractual or statutory damages based upon any allegations of bad faith, unfair claims practices, unfair settlement practices, or other act or failure to act in connection with the investigation, adjustment, litigation or settlement of any claim released hereunder), assessments and demands of any nature whatsoever, in law or equity, whether contractual, common law, statutory, federal, state, local or otherwise, whether known or unknown, asserted or unasserted, that the contributing insurers, and each of them had or now have against such other contributing insurers, relating to or arising from the Action and:

a. any work or services performed by or on behalf of the Settling Defendants in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any materials otherwise installed or applied at the Property;

c. any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted in the Action;

d. except as set forth in Paragraph VII.8., and except as provided in any existing defense cost sharing agreement (i.e., the sharing arrangement between ILU and AIG with respect to the defense of Key Construction, Inc. and Holder defendants), any and all costs, expenses and attorney's fees incurred by any contributing insurer in connection with or relating in any manner to the Action, the Property, this Agreement, or in any way related to the claims asserted by Adesso or the Class or the Class Action, the Putative Class Action, or the Commercial Claims; and,

e. any settlement payments made by any insurer pursuant to this Agreement.

ARTICLE V
ACKNOWLEDGEMENTS, WAIVER AND INDEMNITY

1. It is agreed and understood by the Settling Parties that they are not required to settle this matter at this time, and that they could continue to investigate with respect to the matter involved in the suit, but that they voluntarily choose to finally resolve the matter at this time by entering into this settlement. The Settling Parties, in deciding to enter into this Agreement, are not relying on any representations, statements, actions, disclosures of information, discovery responses, deposition testimony or failures to disclose information by Settling Parties, or their representatives, or their attorneys. Settling Parties further agree, warrant and represent that their decision to settle this matter is final and will not be affected, altered or changed by documentation, discovery or other information of any type whatsoever that may be revealed, disclosed or learned in the future.

2. Settling Parties expressly waive and assume the risk of any and all claims for damages and/or damages which exist as of this date, or which may arise in the future, but which they do not now know of or suspect to exist, whether through ignorance, oversight, error,

negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time. These issues were considered in the course of negotiations leading to this Agreement and Settling Parties determined this Agreement to reflect fair and adequate compensation with due regard for such future possibilities.

3. Without regard to whether the settlement of the Putative Class Action claims are finally approved by the Court, Adesso shall defend, indemnify, and hold harmless the Settling Defendants from and against all claims, damages, losses, and expenses that have been asserted, or may be asserted, by any residential or retail unit owner arising out of, or in any way connected with the Action, this Agreement, the Putative Class Action, the settlement of the Putative Class Action, the settlement of the Commercial Claims and the planning, design, development, construction, marketing, sale, management, control, maintenance and repair of any work, and any materials applied or installed at the Property.

ARTICLE VI
ADDITIONAL CONDITIONS OF SETTLEMENT

1. It is the express purpose and intent of the Settling Defendants and the Contributing Insurers that all claims in the Action be settled and resolved with finality. Therefore, this Agreement is conditioned on the final execution and approval of the Commercial Claims Settlement Agreement and Release and the Class Action Settlement Agreement and Release executed contemporaneously herewith. If the respective parties fail to execute the Commercial Claims Settlement Agreement and Release or the Class Action Settlement Agreement and Release, each Settling Defendant has the unilateral right to withdraw from this Agreement. Additionally, if the Class Action Settlement Agreement and Release is not finally

approved by the Court, each Settling Defendant has the unilateral right to withdraw from this Agreement. Furthermore, if, pursuant to Article IV, Section 1.d of the Class Action Settlement Agreement and Release, any Defendant acquires the right and option to withdraw from the Class Action Settlement Agreement and Release, that Defendant further has the unilateral right to withdraw from this Agreement.

2. In connection with, and as a material inducement to the Settling Defendants for this Agreement, Adesso represents and warrants that:

a. It has thoroughly investigated the conditions at the property, including those conditions currently existing and related to the design and construction of the Project;

b. It is accepting the settlement funds from the Settling Defendants on the condition that with those funds it accepts the obligation to take whatever corrective action, and to make whatever repairs are necessary, to address any defective design and construction issues or conditions at the Property;

c. It is accepting responsibility for such corrective action and repairs or the failure to perform such corrective action and repairs as may be necessary or appropriate;

d. It will provide notice of this Settlement Agreement, and the release of the Settling Defendants hereunder, to subsequent purchasers of retail or residential units at the Property by filing a copy of this Agreement with the Covenants and Restrictions associated with the Property such that this Agreement becomes part of the record chain of title to provide notice to any subsequent purchasers.

ARTICLE VII
MISCELLANEOUS

1. **Costs and Expenses**. Each party is responsible for its own attorneys' fees and

costs associated with the Actions, except to the extent paid by their respective insurance carriers.

2. **Construction**. This Settlement Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of this Agreement.

3. **Successors and Assigns**. All covenants and agreements contained in this Settlement Agreement shall bind and inure to the benefit of the parties hereto, their heirs, legal representatives, successors, and assigns.

4. **Further Assurances**. The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be executed and delivered, all such other instruments, and will take all such other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions and purposes hereof.

5. **Modifications**. Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought and by any party who would be affected thereby.

6. **Governing Law**. This Settlement Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party, and will be deemed for those purposes to have been made, executed, and performed in South Carolina.

7. **Time of the Essence**. Time is of the essence in this Settlement Agreement and each provision of this Settlement Agreement.

8. **Legal Fees**. In the event of a breach by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith

shall be entitled to recover from such other party its costs and expenses, including reasonable legal fees, expenses and associated court costs.

9. **Entire Agreement**. This instrument constitutes the entire and final agreement among the Settling Parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Settlement Agreement. The parties hereto covenant that each shall not enter into an agreement or understanding with respect to this Settlement Agreement without the consent and agreement of all parties hereto.

10. **Invalidity**. If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision, consented to by all parties, as similar in terms to the original provision as is possible and which is legal, valid, and enforceable.

11. **Counterparts**. This Settlement Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will collectively constitute a single document.

12. **No Assignment**. Adesso warrants and represents that it has not assigned, conveyed, pledged, or transferred to any other natural person, firm, corporation or other legal entity any claim, demand, action or cause of action described in this Agreement.

13. **No Admissions**. This Agreement and the settlement of the Action do not constitute a concession or admission of wrongdoing or liability by the Settling Defendants and will not be used or construed as an admission of any fault, omission, liability or wrongdoing on the part of the Settling Defendants in any statement, release or written document or financial

report issued, filed or made. Neither this Agreement, nor the exhibits hereto, nor the fact of settlement, nor any settlement negotiations or discussions, nor the judgments to be entered approving this Settlement Agreement, nor any related document will be deemed an admission, concession, presumption or inference against the Settling Defendants in a proceeding other than such a proceeding as may be necessary to consummate or enforce this Agreement and the settlement. To the contrary, the Settling Parties acknowledge that each of the Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this _____ day of ___________, 2017.

____
Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By:______________________________

Its:______________________________

____
Holder Properties, Inc.

By:______________________________

Its:______________________________

____
ADESSO/Columbia, LLC

By:______________________________

Its:______________________________

____
Drake/Adesso, LLC

By:______________________________
Its:______________________________

specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 5th day of May, 2017.

____

Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By: Darrell A Terry

Its: Board Member

Darrell A Terry

Holder Properties, Inc.

By:__________________________

Its:__________________________

____

ADESSO/Columbia, LLC

By:__________________________

Its:__________________________

____

Drake/Adesso, LLC

By:__________________________

Its:__________________________

specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this _____ day of ___________, 2017.

____

Adesso Homeowners Association, Inc and Adesso Horizontal Property Regime

By:______________________________

Its:______________________________

____

Holder Properties, Inc.

By:______________________________

Its: John R. Holder
Chairman & CEO

____

ADESSO/Columbia, LLC

By:______________________________

Its: John R. Holder
Managing Member

____

Drake/Adesso, LLC

By:______________________________

Its: John R. Holder
Managing Member

Holder Adesso, LLC

By: ______________________

Its: John R. Holder
Managing Member

JRH Adesso, LLC

By: ______________________

Its: John R. Holder
Managing Member

JRH, LLC

By: ______________________

Its: John R. Holder
Managing Member

____

John R. Holder, Individually

____

Niles Bolton Associates, Inc.

By: ______________________

Its: ______________________

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010 as Amended Plaintiff, vs. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association Defendants.	**AFFIDAVIT OF FRANKLIN J. SMITH, JR.**

PERSONALLY, APPEARED BEFORE ME, the undersigned, Franklin J. Smith, Jr., who after being duly sworn, deposes and says:

1. My name is Franklin J. Smith, Jr.
2. I am a shareholder with Richardson Plowden, Attorneys at Law in Columbia, South Carolina.
3. I am above 18 years of age.
4. I make this affidavit based on my knowledge and observations.
5. I represented the Plaintiff, the Adesso Homeowner's Association and the homeowner class members in a prior construction litigation case styled *ADESSO Homeowners' Association, as controlled by the Owners since April 23, 2013, ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated and Emad Tadros, M.D. as Trustee of the Grace Living Trust as owner of all retail units*, Case No. 3:16-cv-710-JFA (the "suit").
6. The suit settled and the parties agreed upon and executed settlement documents.
7. A copy of the "ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE" (the "Settlement Agreement") is attached to my Affidavit as **Exhibit A.**
8. Unrelated to my representation of the parties in the Adesso lawsuit, the plaintiff consulted me sometime in 2016 regarding issues relating to his original purchase of

the commercial units. He indicated a desire to bring an action against the entity that sold the units to him and his purchasing agent. I declined to represent the Plaintiff on that matter. Subsequently, in early 2017, the Plaintiff asked me about parking issues related to his units. I advised the Plaintiff that the parking issues were not an issue in the suit that I was handling and that I was not the HOA's attorney for general matters. I told the Plaintiff that I was not familiar with the history of the parking spaces and that I did not know how to answer his questions. I suggested that he contact the current HOA Board members about that issues. I did not agree to represent Plaintiff on the parking issues and I did not consider the parking issues to be part of the construction defect suit.

9. Dr. Tadros repeatedly opposed the referenced Settlement Agreement due to various issue but eventually agreed to sign the release. In or around this time I was aware that Dr. Tadros was discussing various issues with the HOA Board; however, I was not involved in those issues since I was representing the Plaintiff and the Adesso HOA in the construction lawsuit.

10. With Dr. Tadros and other parties executing the necessary Settlement Documents, the construction lawsuit was resolved. I was unaware then and am unaware now of the status of Dr. Tadros' issues with the HOA Board on the parking issues which were not a part of the construction defect lawsuit.

FURTHER AFFIANT SAYETH NOT.

Mr. Franklin J. Smith, Jr.

SWORN to before me this 12th
day of ~~October~~ December, 2019.

Notary Public for South Carolina
My Commission Expires: 6/24/2025

<u>EXHIBIT A</u>:

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

BATES LABELED "HOLDER_000160 TO HOLDER_000182"

PRODUCED JULY 24, 2019

THIS AGREEMENT IS TO BE INDEXED IN THE GRANTEE AND GRANTOR INDICES AS RELATED TO MASTER DEED OF ADESSO HORIZONTAL PROPERTY REGIME RECORDED IN **RECORD BOOK 1392, AT PAGE 855**, AS THE SAME MAY HAVE BEEN AMENDED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013*, ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units

Plaintiffs,

-vs-

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association, *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of

Case No. 3:16-cv-710-JFA

Book 2245-496
2017069754 09/20/2017 10:52:55:923 Notice
Fee: $58.00 County Tax: $0.00 State Tax: $0.00
2017069754 John T. Hopkins II Richland County R.O.D.

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC., STO Corp., Isidro Meza and Towers Paint Contractors, Inc.,

Defendants.

Commercial Building Services, Inc.,

Third-Party Plaintiff,

vs.

Capital Group, LLC and Will Whitaker,

Third-Party Defendants.

Artistic Enterprises, Inc.,

Third-Party Plaintiff,

vs.

Benito Galicia,

Third-Party Defendant.

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Agreement**" or the "**Settlement Agreement**") is made and entered into as of this ___ day of _______, 2017 by and between Plaintiffs Adesso Homeowners Association, Inc. and Adesso Horizontal Property Regime (collectively, "**Adesso**"), and Defendants, Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder; Drake/Adesso, LLC, Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC; Niles Bolton Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic

Enterprises, Inc.; Commercial Building Services, Inc.; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Andersen Windows, Inc.; Carlisle Construction Materials Inc.; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC, STO Corp., Towers Paint Contractors, Inc., Capital Group, LLC and Will Whitaker (collectively, the "**Settling Defendants**"). Adesso and Settling Defendants are hereinafter collectively referred to as "**Settling Parties**."

RECITALS

WHEREAS, Adesso is a corporation lawfully doing business in the State of South Carolina and is the entity charged with and responsible for maintenance, repair, and upkeep of the common areas and limited common areas, as well as exterior and related elements of the residential and commercial units known as Adesso, located at 601 Main Street in Columbia, South Carolina ("**Property**"); and

WHEREAS, Adesso affirms it is the sole, proper party to settle this matter as to all claims for damages to the common or limited common areas of the Property or arising from defective conditions in the common or limited common areas and, additionally, to resolve all other claims that have been or could be made by Adesso against the Settling Defendants; and

WHEREAS, the Settling Defendants provided services or materials for the planning, design, development, construction, marketing, sale, management, control, maintenance and/or repair of the Property; and

WHEREAS, this action relates to alleged improper design and construction defects and deficiencies at the Property as well as alleged improper marketing, management, control and sale of the Property, which are the subject of litigation now pending in the above styled action (the "**Action**"); and

WHEREAS, Adesso stated claims against all Settling Defendants in the Action, except for Capital Group, LLC and Will Whitaker; and

WHEREAS, William Durkin has asserted claims against Settling Defendants, except for Capital Group, LLC and Will Whitaker, on behalf of himself and other similarly situated residents at the Property (the "Putative Class Action Claims");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Class Action Settlement Agreement and Release with Plaintiff William Durkin, individually, and on behalf of all others similarly situated (the residential unit owners at Adesso);

WHEREAS, Emad Tadros, M.D asserted claims against Settling Defendants, except for Capital Group, LLC and Will Whitaker, as Trustee of the Grace Living Trust as owner of all retail units at the Property (the "Commercial Claims");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are also executing that particular Commercial Claims Settlement Agreement and Release with Emad Tadros, M.D., as Trustee of the Grace Living Trust, as owner of all retail units at Adesso; and

WHEREAS, this Agreement, together with the Commercial Claims Settlement Agreement and Release and the Class Action Settlement Agreement and Release are intended, collectively, to resolve all claims arising out of the captioned action and are each dependent upon the execution and approval of the others; such that if any one of the three Agreements is not executed, or not approved, or if a Settling Defendant requires the right to withdraw from the Class Action Settlement because of the opt-out provisions, then each Settling Defendant has the unilateral right to withdraw from any or all of the Agreements.

WHEREAS, some of the Settling Defendants stated claims against some of the other Settling Defendants in the Action; and

WHEREAS, the Settling Parties each deny any and all claims of liability, wrongdoing or impropriety in any way connected with this matter; and

WHEREAS, the Settling Parties have agreed to enter this Agreement to bring about the full, complete, and final resolution of all matters between them regarding the Property.

NOW, THEREFORE, in consideration of the performance of the covenants and agreements herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Settling Parties agree as follows:

ARTICLE I
INCORPORATION OF RECITALS

1. The above Recitals are incorporated and made a part of this Settlement Agreement; provided, however, in the event of a conflict between the recitals and the provisions of the following Articles, the provisions of the Articles shall control.

ARTICLE II
PAYMENT

1. In consideration of the mutual releases, the dismissal described herein, and the other obligations set forth herein, the total settlement amount of $7,505,000.00 shall be paid to Adesso, which sum shall be comprised as follows: a) a cash amount of $7,305,000.00; and b) roofing materials from Carlisle Construction Materials, Inc. (Carlisle) valued at $200,000.00 to

be supplied to Adesso (collectively the "**Settlement Amount**"). Of the foregoing cash amount, $55,000.00 has been allocated to fund the settlement of the Putative Class Action Claims and $2,000.00 has been allocated to fund the settlement of the Commercial Claims. These settlements will be entered contemporaneously with this Agreement.

2. Payments to Adesso comprising the above cash amount of $7,305,000.00 shall be made payable to "Richardson Plowden & Robinson Escrow Account," and delivered to Franklin J. Smith Jr., Esq. at PO Drawer 7788 Columbia, SC 29202, within thirty (30) days of the Preliminary Order of Approval regarding the Putative Class. Payments shall be paid by or on behalf of the Settling Defendants in the following amounts on a several basis, each such Settling Defendant being responsible only for its own respective payment as set forth below and not jointly or one for the other. Further, these payments shall be the total amounts which shall ever be required as payment by or on behalf of the Settling Defendants in connection with the releases herein, and regardless of whether Adesso fulfills its obligation to indemnify and hold harmless the Settling Defendants as provided for in Paragraph V of this Agreement.

a. By Illinois Union Insurance Company ("ILU") under its primary and excess wrap policies (Policy Nos. G22025880001 (Primary); G22026057001 (Excess)), on behalf of itself, Adesso/Columbia, Inc., Key Construction, Inc., Holder Properties, Inc., and all other insureds/enrollees in said policies, including but not limited to Reliance Interiors, Inc. and Gill Plumbing Company: $4,100,000.00.

b. On behalf of Holder Properties, Inc. and all other insureds - by Hartford Underwriters Insurance Co. - $775,000.00; by Liberty Mutual Insurance- $75,000.00; by Sussex Insurance- $100,000.00.

c. By Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder;

Drake/Adesso, LLC; Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC and their respective affiliates, subsidiaries, owners, agents, officers, directors, heirs, successors and assigns - $25,000.00.

d. On behalf of Key Construction – by XL Catlin - $825,000.00.

e. Structural Preservation Systems - $125,000.00.

f. Tower Paint Contractors - $25,000.00.

g. On behalf of Commercial Building Services, Inc. – by the Hartford Fire Insurance Company - $6,456.00; American Southern Insurance Company - $20,680.00; Main Street America Group - $8,112.00; and Peerless Indemnity Insurance Company (Liberty Mutual) - $44,752.00.

h. On behalf of Capital Group, LLC – by Certain Underwriters at Lloyd's, London, Subscribing to Certificate No. ART002217 - $40,000.00.

i. On behalf of Will Whitaker – by American Southern Insurance Company - $5,000.00.

j. Andersen Windows, Inc. and Silver Line Building Products LLC - $75,000.00.

k. Niles Bolton Associates, Inc. - $500,000.00.

l. Hussey, Gay, Bell & DeYoung, Inc. - $5,000.00.

m. Jordan & Skala Engineers, Inc. - $95,000.00.

n. Ace Glass Company, Inc. - $25,000.00.

o. Advanced Door Systems, Inc. - $35,000.00.

p. Artistic Enterprises, Inc. - $45,000.00.

q. Flooring Services, Inc. - $45,000.00.

r. Guardian Fence - $25,000.00.

s. Hester Drywall, Inc. - $45,000.00 by its insurers: Berkeley Southeast Insurance Group; Selective Insurance Company of America; Liberty Mutual Commercial Insurance; and Penn National Insurance.

t. Loveless Commercial Contracting, Inc. - $25,000.00 by its insurers: Westfield Insurance; Berkley Insurance; and BITCO.

u. Southern Vistas, Inc. - $60,000.00 by its insurers: Penn National Insurance; State Auto Insurance; and Harleysville Insurance.

v. SRS Concrete Finishing - $40,000.00.

w. Stafford Consulting Engineers, Inc. - $10,000.00.

x. Graystone of Florida, Inc. - $50,000.00.

y. Dryvit Systems, Inc. - $25,000.00.

z. STO Corp. - $25,000.00.

aa. Defendant, Carlisle shall provide all roofing related materials necessary to perform the Roof scope of work in Section IV of Applied Building Sciences' September 22, 2016 Scope of Repair document including but not limited to all roof membrane, insulation, edge metal and protection walk pad materials, at no cost to Adesso. And, Carlisle agrees to deliver all materials to the site upon request of Adesso or its designated representative, at no cost to Adesso. For settlement purposes, these materials are valued at $200,000.00.

ARTICLE III
RELEASE BETWEEN ADESSO and SETTLING DEFENDANTS

1. In consideration of the Settlement Amount, and the obligations and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, Adesso does for itself, its successors, heirs, assigns, subsidiary organizations, affiliates, members, purchasers,

subsequent purchasers, partners, attorneys, agents, and any other entity or person who could claim by or through them, hereby, knowingly and voluntarily, remise, release, acquit, satisfy, and forever discharge Settling Defendants--which term for purposes of this release provision includes any related entities or persons, and all of Settling Defendants' respective owners, subsequent purchasers, family members, spouses, employees, employers, partners, joint venturers, representatives, administrators, heirs, beneficiaries, executors, lenders, creditors, mortgagors, experts, attorneys, insurers, sureties, and their predecessors, successors, assigns, sureties, past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations, surviving corporations, dissolved corporations, stockholders, directors, and officers--from any and all manner of debts, accounting, bonds, express or implied warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, cross claims, counterclaims, demands, and causes of action of any nature whatsoever, whether at law, in equity or by statute, either now accrued or hereafter maturing and whether known or unknown, which Adesso now has or hereafter can, shall, or may have by reason of any matter, cause or thing, in connection with, arising out of, or relating in any manner to:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or otherwise installed or applied at the Property;

c. the Action and any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted therein; and

d. except as set forth in Paragraph VII.8 below, any and all costs, expenses and attorney's fees incurred by Adesso in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

2. Adesso agrees to execute all appropriate documents and to file, or cause to be executed and filed, all such pleadings and will take all such action, as Settling Defendants may reasonably request from time to time in order to effectuate this full and complete settlement agreement and release.

3. Adesso agrees to dismiss with prejudice all claims against Settling Defendants in the Action within 10 days of the execution of this Agreement and receipt of all settlement funds and the entry of a final order by the Court approving the class action settlement.

ARTICLE IV
ADDITIONAL RELEASES

1. **As Between the Settling Defendants**. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Settling Defendants do hereby release, acquit and forever discharge each other and their respective present, former and future owners, members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, predecessors, successors, administrators, executors, heirs, trustees, assigns, associated, subsidiary and affiliated entities, insurers, sureties, and any and all other related persons or entities from any and all manner of debts, accounting, bonds, express or implied warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, cross claims, counterclaims, demands, and causes of action of any nature whatsoever, whether at law, in equity or by statute, whether known or

unknown, asserted or unasserted, that each of them may have, ever had, or now have against any other Settling Defendant and that were or could have been asserted in the Action concerning, arising out of, or relating in any manner to:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or any materials installed or otherwise applied at the Property; and

c. except as set forth in Paragraph VII.8. below, any and all costs, expenses and attorney's fees incurred by any Settling Defendant in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

2. __As Between Settling Parties and Contributing Insurers__. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and effective immediately upon the payment by each contributing insurer identified in Article II above of its respective settlement contribution as set forth in Article II above, and its payment of all litigation fees and expenses to which it is or was previously obligated or committed on behalf of its insured or additional insureds in connection with the captioned action, the Settling Parties, on their own behalf and on behalf of their respective present, former and future owners, members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, predecessors, successors, administrators, executors, heirs, trustees, assigns, associated, subsidiary and affiliated entities, insurers, and any and all other persons or entities on behalf of whom they are empowered to

release claims, hereby forever release and discharge each such contributing insurer, and each of their respective present, former and future members, personal representatives, partners, managers, directors, officers, shareholders, employees, agents, successors, predecessors, administrators, executors, trustees, assigns, attorneys, and associated, subsidiary and affiliated entities (hereinafter, collectively referred to as the "Insurer Releasees") from and against any and all causes of action, disputes, suits, debts, liabilities, dues, sums of money, accounts, bonds, reckonings, specialties, covenants, contracts, agreements, judgments, controversies, promises, claims (including, but not limited to claims for compensatory, punitive, exemplary, extra-contractual or statutory damages based upon any allegations of bad faith, unfair claims practices, unfair settlement practices, or other act or failure to act in connection with the investigation, handling, adjustment, litigation or settlement of any claim released hereunder), assessments and demands of any nature whatsoever, in law or equity, whether contractual, common law, statutory, federal, state, local or otherwise, whether known or unknown, asserted or unasserted, that the Settling Parties, and each of them had or now have against the Insurer Releasees, and each of them, relating to or arising from the Action and:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or any materials otherwise installed or applied at the Property;

c. any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted in the Action; and

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,

Plaintiff,

vs.

Holder Properties, Inc., John R. Holder, individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,

Defendants.

Civil Action No. 2019-CP-40-00919

DEFENDANTS HOLDER PROPERTIES, INC.'S AND ADESSO/COLUMBIA, LLC'S AMENDED ANSWER AND COUNTERCLAIMS

Defendants Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder Properties") answer and respond to the Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations not specifically admitted are denied.

2. Paragraph 1 is admitted upon information and belief.

3. Paragraph 2 is admitted with the qualification that the Master Deed has been amended subsequent to the original recording date.

4. Answering Paragraph 3, Holder Properties admits only that Holder Properties, Inc. is a corporation organized and existing under the laws of the State of Georgia, has transacted business in the State of South Carolina, and was the developer of the ADESSO condominium project. All remaining allegations are denied.

5. Answering paragraph 4, Holder Properties admits only that ADESSO/Columbia, LLC was organized under the laws of the State of Georgia, but was administratively dissolved as of December 31, 2015. ADESSO/Columbia, LLC was the sole owner of the land and improvements as described under the Master Deed of ADESSO Horizontal Property Regime. All remaining allegations of the paragraph are denied.

6. Answering paragraph 5, Holder Properties denies the allegation that John R. Holder is the sole member of ADESSO/Columbia, LLC. No response is required to the remaining allegations of the paragraph which are not directed to these answering Defendants.

7. Answering paragraph 6, Holder Properties admits that ADESSO Homeowners' Association is a nonprofit corporation organized and existing under the laws of South Carolina, but it is without sufficient information or belief to admit or deny the remaining allegations of the paragraph.

8. Answering Paragraph 7, Holder Properties does not contest venue in Richland County.

9. Answering Paragraph 8, Holder Properties does not contest jurisdiction.

10. Paragraphs 9, 10, and 11 are admitted.

11. Answering Paragraph 12, the sentence appears to be missing a verb, and therefore Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of the paragraph.

12. Answering Paragraph 13, Holder Properties admits only that ADESSO/Columbia, LLC is identified as the Grantor and sole owner of the land and improvements referenced in the Master Deed. All remaining allegations of the paragraph are denied.

13. Paragraph 14 is denied.

14. Answering Paragraph 15, the allegations are vague and therefore Holder Properties lacks information sufficient to form a belief as to the truth of them.

15. Paragraph 16 is admitted upon information and belief.

16. Answering Paragraph 17, Holder Properties admits that Tadros is subject to compliance with certain zoning ordinances and government regulations.

17. Paragraphs 18 and 19 are admitted.

18. Answering Paragraph 20, Holder Properties admits the ADESSO project was subject to certain requirements and/or specifications imposed by the City of Columbia, including requirements and/or specifications pertaining to parking. All remaining allegations are denied.

19. Paragraph 21 is denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

20. Answering Paragraph 22, Holder Properties admits that Section V(A)(2) of the Master Deed describes the Commercial Units as "Retail 1" containing approximately 6,913 square feet and "Retail #2" containing approximately 1,226 square feet.

21. Paragraphs 23, 24, 25, 26, and 27 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

22. Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 28.

23. Paragraph 29, 30, 31, 32, and 33 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

24. Paragraph 34 is admitted upon information and belief.

25. Holder Properties lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 35.

26. Paragraphs 36 and 37 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties

27. Answering the incorporated allegations of Paragraph 38, Holder Properties incorporates the preceding admissions and denials as if fully restated.

28. Paragraphs 39, 40, 41, 42, 43, 44, and 45 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

29. Answering the incorporated allegations of Paragraph 46, Holder Properties incorporates the preceding admissions and denials as if fully restated.

30. Paragraph 47 is admitted.

31. Paragraphs 48, 49, 50, 51, 52, 53, and 54 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

32. Answering the incorporated allegations of Paragraph 55, Holder Properties incorporates the preceding admissions and denials as if fully restated.

33. Paragraph 56 presents a characterization of Plaintiff's claims and requires no responsive pleading.

34. Paragraphs 57, 58, 59, 60, and 61 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

35. Answering the incorporated allegations of Paragraph 62, Holder Properties incorporates the preceding admissions and denials as if fully restated.

36. The allegations of the second set of paragraphs bearing numbers 39, 40, 41, 42, and 43 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

37. Answering the incorporated allegations of second Paragraph bearing number 44, Holder Properties incorporates the preceding admissions and denials as if fully restated.

38. The allegations of the second set of paragraphs bearing numbers 45, 46, 47, 48, 49, 50, 51, 52, and 53 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

39. Answering the incorporated allegations of second Paragraph bearing number 54, Holder Properties incorporates the preceding admissions and denials as if fully restated.

40. The allegations of the second set of paragraphs bearing numbers 55, 56, 57, 58, 59, 60, and 61 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

41. Answering the incorporated allegations of second Paragraph bearing number 62, Holder Properties incorporates the preceding admissions and denials as if fully restated.

42. The allegations of the second set of paragraphs bearing numbers 63, 64, 65, 66, 67, 68, 68, 69, 70, and 71 are denied as to Holder Properties. Holder Properties lacks information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties.

43. The allegations under the WHEREFORE provision of Plaintiff's Amended Complaint are denied.

FOR A FIRST AFFIRMATIVE DEFENSE—STATUTE OF LIMITATIONS

44. ADESSO/Columbia, LLC sold its interest in the ADESSO commercial units to Plaintiff's predecessor in title in 2011.

45. ADESSO/Columbia, LLC ended its Grantor control of the Adesso Home Owner's Association ("AHOA") on April 23, 2013, when the AHOA elected a new AHOA Board.

46. Plaintiff purchased the ADESSO commercial units in 2014, at which time all issues with respect to parking as set forth in the Master Deed as amended were open, obvious, and a matter of public record.

47. Plaintiff's claims against Holder Properties are barred by the applicable statute(s) of limitations which expired as early as 2014 and under any circumstance no later than 2017.

FOR A SECOND AFFIRMATIVE DEFENSE—RULE 12(b)(6)

48. To the extent Plaintiff's claims are based on: (a) municipal ordinances enacted by the City of Columbia; (b) alleged entitlement to parking beyond what is reflected in the Master Deed as amended; or (c) actions of other parties and/or events occurring after Holder Properties sold its ownership interest in the ADESSO commercial units, Plaintiff's Amended Complaint fails to set forth facts sufficient to constitute a cause of action against Holder Properties.

FOR A THIRD AFFIRMATIVE DEFENSE—ASSUMPTION OF RISK

49. As it relates to Holder Properties, all conditions related to parking were open, obvious, and a matter of public record as of the time Holder Properties sold its interest in the ADESSO commercial units in 2011 and at the time Plaintiff purchased the ADESSO commercial units in 2014.

50. Plaintiff's claims sounding in tort are barred by Plaintiff's assumption of the risk of these open and obvious conditions that were a matter of public record.

FOR A FOURTH AFFIRMATIVE DEFENSE—STATUTE OF FRAUDS

51. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

FOR A FIFTH AFFIRMATIVE DEFENSE—LACK OF PRIVITY/CONSIDERATION

52. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with Holder Properties and did not furnish any consideration to Holder Properties.

FOR A SIXTH AFFIRMATIVE DEFENSE—RELEASE, WAIVER, AND ASSUMPTION OF RISK

53. In full settlement of a prior lawsuit by Plaintiff against Holder Properties, on or about May 30, 2017, Plaintiff released and discharged Holder Properties from all claims, whether known or unknown, and including but not limited to the claims made against Holder Properties in this action relating to the Adesso Property and alleged improper design and construction defects and deficiencies; improper management, maintenance, sale and control of the Adesso commercial units; any work performed by or materials provided by Holder Properties, or materials otherwise installed or applied at the Adesso commercial units; and any and all claims relating to loss of use, lost rents, inconvenience, lost profits, and all other personal damage claims related to or associated with the commercial units at Adesso.

54. In connection with the release, Plaintiff expressly waived and assumed the risk of any and all claims it may have for damages and/or damages which existed as of the date of the release, or which may arise in the future, whether known or unknown, as related to the Adesso commercial units.

55. Also in connection with the release, waiver, and assumption of the risk of all unasserted claims as to Holder Properties, Plaintiff stipulated to the dismissal with prejudice of all

claims that were or that could have been asserted by Plaintiff against Holder Properties in the prior lawsuit, which includes all claims asserted in this action.

56. Based on the foregoing, Plaintiff's claims are barred by the affirmative defenses of release, waiver, and assumption of the risk.

FOR A FIRST COUNTERCLAIM—Rule 11, SCRCP and S.C. Code Ann. § 15-36-10, *et seq.*

57. The preceding paragraphs are incorporated by reference.

58. No reasonable attorney or party would believe: (a) that Plaintiff's Amended Complaint as to Holder Properties complies with Rule 11, SCRCP; (b) that Plaintiff's claims are warranted under existing law; (c) that the initiation and continuation of Plaintiff's claims against Holder Properties is for any purpose other than to harass or injure Holder Properties; or (d) that Plaintiff's claims are not frivolous as to Holder Properties.

59. Holder Properties' counsel brought these deficiencies to the attention of Plaintiff and his current counsel, and Plaintiff has refused to withdraw his frivolous pleadings against Holder Properties.

60. Plaintiff's Complaint as to Holder Properties is a violation of Rule 11, SCRCP, and the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. § 15-36-10, *et seq.*

61. As a direct and proximate result of Plaintiff's violations of Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Act, Holder Properties has been forced to incur the expense of retaining counsel, has been required to expend internal resources, and has been otherwise injured and damaged.

FOR A SECOND COUNTERCLAIM—BREACH OF SETTLEMENT AGREEMENT

62. The preceding paragraphs are incorporated by reference.

63. Plaintiff, Holder Properties, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association were parties in prior litigation in the United States District Court for the District of South Carolina, Columbia Division (Case No.: 3:16-cv-710-JFA) (the "Action"), which was resolved by and through three settlement documents and a Stipulation of Dismissal with Prejudice. The settlement documents are titled as follows: 1) ADESSO HOA Settlement Agreement and Release ("HOA Settlement Agreement"), 2) Commercial Claims Settlement Agreement and Release ("Commercial Settlement Agreement"), and 3) Class Action Settlement Agreement and Release.

64. Pursuant to the Commercial Settlement Agreement and in exchange for settlement funds, Plaintiff fully and completely released and discharged Holder Properties from all claims made against Holder Properties in this case, including but not limited to including but not limited to those relating to alleged improper design and construction defects and deficiencies; improper management, maintenance, sale and control of the Adesso commercial units; any work performed by or materials provided by Holder Properties, or materials otherwise installed or applied at the Adesso commercial units; and any and all claims relating to loss of use, lost rents, inconvenience, lost profits, and all other personal damage claims related to or associated with the commercial units at Adesso.

65. As a result of Plaintiff filing this current action, Plaintiff has breached the terms of the Commercial Settlement Agreement.

66. Pursuant to the Commercial Settlement Agreement, Holder Properties is entitled to recover against Plaintiff its costs and expenses incurred in defending this action, including reasonable legal fees, expenses, and associated court costs.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Holder Properties prays that this Honorable Court inquire into the matters set forth herein and grant the following relief:

1) Dismiss all claims made against Holder Properties in Plaintiff's Amended Complaint with prejudice and award Holder Properties judgment for all costs and fees it has incurred in the investigation, defense, and resolution of these claims, including reasonable attorney's fees; and
2) Grant judgment in favor of Holder Properties on its first and second counterclaims as raised herein, including ordering judgment against Plaintiff for all costs and fees incurred by Holder Properties in the investigation, defense, and resolution of these claims, including reasonable attorney's fees; and
3) For an award of such other and further relief as the Court deems appropriate.

s/ Paul H. Hoefer
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Counsel for Defendant Holder Properties, Inc., and ADESSO/Columbia, LLC.

December 31, 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2019-CP-40-00919

EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED

PLAINTIFF,

vs.

HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME, AND ADESSO HOMEOWNERS' ASSOCIATION

DEFENDANTS.

REPLY TO DEFENDANTS HOLDER PROPERTIES, INC.'S AND ADESSO/COLUMBIA, LLC'S AMENDED ANSWER AND COUNTERCLAIMS

TO: KEVIN K. BELL, ESQUIRE AND PAUL H. HOEFER, ESQUIRE, ATTORNEYS FOR DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC AND TO THE DEFENDANTS HOLDER PROPERTIES, INC. AND ADESSO/COLUMBIA, LLC ABOVE-NAMED:

The Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010 as Amended ("Plaintiff") through counsel hereby files this Reply to the Counterclaims of Defendant Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder") as set forth in Holder's Amended Answer and Counterclaims filed herein and states:

FOR A FIRST DEFENSE
(General Denial)

1. Plaintiff denies each and every allegation of the Counterclaims of Holder not hereinafter admitted.

FOR A SECOND DEFENSE
(Incorporation of Prior Pleadings)

2. Plaintiff incorporates by reference herein as if set forth verbatim, all allegations and causes of actions made in Plaintiff's Amended Complaint and prior pleadings filed in this action.

FOR A THIRD DEFENSE

(S.C. Code Ann. § 15-36-10, et seq. not applicable)

3. All paragraphs set for forth above are incorporated herein by reference.

4. South Carolina law does not recognize a claim for violation of S.C. Code Ann. §15-36-10 et seq.; rather, sanctions under S.C. Code Ann. §15-36-10 are sought through a post-judgment motion.

5. Holder would have to prevail as to the Plaintiff's claims before they could seek the imposition of sanctions under S.C. Code Ann. §15-36-10 et seq.

6. Plaintiff reserves the right to file a Motion to Dismiss Holder's claims for violations of S.C. Code Ann. §15-36-10 et seq. for the reasons, among others, set forth above.

FOR A FOURTH DEFENSE

(Duress)

7. All paragraphs set for forth above are incorporated herein by reference.

8. The settlement documents and the Stipulation of Dismissal referred to in Holder's first and second counterclaims were obtained and executed under duress as set forth in Plaintiff's Reply in Opposition to Defendants' Motion to Amend Answer to Plaintiff's Amended Complaint.

WHEREFORE, having fully replied the Counterclaims of Defendants Holder, Plaintiff prays that the same be dismissed with costs, including reasonable attorney fees, and for such other and further relief as this Court may deem just and proper

s/Charles G. Blackburn

Charles G. Blackburn, Esquire, SC Bar No.:69458
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Attorneys for the Plaintiff

January 14, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) IN THE COURT OF COMMON PLEAS) FIFTH JUDICIAL CIRCUIT) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants.	**DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS ASSOCIATION, INC.'S AMENDED ANSWER TO AMENDED COMPLAINT**

COME NOW, Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association, by and through undersigned counsel and upon the consent of Plaintiff, and hereby file their Amended Answer to Plaintiff's Amended Complaint, and show the Court as follows:

For a First Defense

1. All allegations not specifically admitted herein are denied.

2. The allegations of paragraphs 1, 2, 3, 5 and 6 are admitted upon information and belief.

3. The allegations of paragraph 4 are denied inasmuch as these defendants are informed and believe that Adesso /Columbia has been administratively dissolved.

4. The allegations of paragraphs 7, 8, 9, 10 and 11 are admitted.

5. As to the allegations of paragraphs 12, 13, 14, 15, 16 and 17, these Defendants are without sufficient information to admit or deny these allegations; therefore, the same are denied.

6. The allegations of paragraphs 18 and 19 are admitted.

7. As to the allegations of paragraphs 20 and 21 these Defendants admit only that the City of Columbia imposed certain requirements and specifications, including some pertaining to parking, on the Adesso project, but the remaining allegations of these paragraphs are denied.

8. The allegations of paragraph 22 are admitted upon information and belief.

9. The allegations of paragraphs 23, 24, 25, 26 and 30 through 37 are denied.

10. As to the allegations of paragraphs 27, 28 and 29 these Defendants are without sufficient information to admit or deny these allegations; therefore, the same are denied.

For a Second Defense
(as to Negligence/Gross Negligence)

11. The allegations of the Plaintiff's First Cause of Action are denied.

12. These Defendants allege that if they were negligent, which is herein denied, the Plaintiff was comparatively negligent to a greater degree than were these Defendants, and that therefore, the Plaintiff cannot recover under this cause of action.

For a Third Defense
(as to Breach of Master Deed)

13. All of the allegations of Plaintiff's Second Cause of Action are denied.

For a Fourth Defense
(as to Declaratory Judgment)

14. As to the allegations of paragraph 56, these Defendants neither admit nor deny the Plaintiffs characterizations of his claims in paragraph 56 of the Complaint.

15. The remaining allegations of the Plaintiff's Third Cause of Action for a Declaratory Judgment are denied.

For a Fifth Defense
(as to the Plaintiff's claim for Injunctive Relief)

16. These Defendants deny all the allegations of the Plaintiff's Fourth Cause of Action for Injunctive Relief.

For a Sixth Defense

17. The Defendants deny all the allegations of the Plaintiff's Fifth Cause of action.

For a Seventh Defense

18. These Defendants deny all the allegations of the Plaintiff's Fifth (should be Sixth) Cause of Action.

For an Eighth Defense

19. These Defendants deny all the allegations of the Plaintiff's Fifth (should be Seventh) Cause of Action.

For a Ninth and Affirmative Defense
(Assumption of the Risk)

17. At the time the Plaintiff purchased the commercial units at Adesso in 2014 all conditions relating to parking were open and obvious and were a matter of public record in the governing documents of these Defendants recorded with the Richland County Register of Deeds; thus, Plaintiffs claims sounding in tort are barred.

For a Tenth and Affirmative Defense
(Statute of Frauds)

18. To the extent Plaintiff's claims with respect to his interests in real estate are based on oral representations, Plaintiff's claims are barred by the Statute of Frauds.

For an Eleventh and Affirmative Defense
(Lack of Privity/Consideration)

19. Plaintiff's claims are barred in whole or in part because Plaintiff was not in privity with these Defendants and did not furnish any consideration to them.

For a Twelfth and Affirmative Defense
(Statute of Limitations)

20. The Plaintiff purchased the Adesso Commercial units in 2014 at which time all issues relating to parking were open and obvious, and were a matter of public record in the

governing documents of these defendants recorded with the Richland County Register of Deeds; thus, the applicable statute(s) of limitations expired in 2017.

For a Thirteenth and Affirmative Defense
(S.C. Code Ann. § 15-32-350)

21. Defendants would show that any award of punitive damages is subject to the limitations set forth in South Carolina Code § 15-32-530.

WHEREFORE having fully answered the Amended Complaint, these Defendants pray that the Amended Complaint be dismissed.

This 9th day of March, 2020.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., et al., Defendants.	)	Civil Action No. 2019-CP-40-00919 **MOTION FOR SUMMARY JUDGMENT BY HOLDER DEFENDANTS**

Pursuant to Rule 56, SCRCP, Defendants Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder Properties") move for summary judgment on all claims by Plaintiff against Holder Properties. Plaintiff's claims against Holder Properties were released, waived, and dismissed with prejudice by Plaintiff as part of the May 2017 settlement of a prior federal court lawsuit Plaintiff filed in 2016 against Holder Properties and a number of other entities. Holder Properties also moves for summary judgment on its counterclaim for breach of contract based on Plaintiff's breach of the May 2017 settlement agreement. The 2017 settlement agreement contains an attorneys' fees provision entitling Holder Properties to judgment for its cost and expenses incurred in this action, including reasonable attorneys' fees.

Concurrent with the filing of this motion, Holder Properties has submitted a separate memorandum setting forth the complete factual and legal grounds entitling Holder Properties to the requested relief. When this matter is scheduled for a hearing, Holder Properties will submit its affidavit(s) on costs and attorneys' fees.

[signature on following page]

s/ Kevin K. Bell

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Counsel for Defendant Holder Properties, Inc., and ADESSO/Columbia, LLC.

September 24, 2020

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., et al., Defendants.	))))))))))))	Civil Action No. 2019-CP-40-00919 **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY HOLDER DEFENDANTS**

I. INTRODUCTION

This is an action in which Plaintiff alleges that Defendants Holder Properties, Inc. and ADESSO/Columbia, LLC (collectively "Holder Properties") violated city zoning ordinances and the master deed for a mixed-use development project ("Adesso") where Plaintiff purchased the four ground floor retail units in 2014. Specifically, in his complaint filed over four years later in 2019, Plaintiff alleges that the number of parking spaces in the parking garage that are allotted to his retail units does not comply with zoning laws or the master deed for the Adesso development. As an initial matter, all of the conditions about which Plaintiff complains were a matter of public record at the time Plaintiff purchased the retail units in 2014. Further, contrary to Plaintiff's allegations in this matter, the City of Columbia issued a formal determination in 2019 stating that there are no zoning violations at the Adesso development. Ex. 1.

This motion, however, does not require the Court to reach the merits of Plaintiff's unsupportable allegations or make any findings regarding the obvious statute of limitations issues because this is not the first lawsuit Plaintiff has filed against Holder Properties. Plaintiff filed a prior action against Holder Properties in February 2016 that was settled in May 2017, a year after

Holder Properties severed all connections with the Adesso development and its owners. At the time he settled that lawsuit, Plaintiff executed a settlement agreement that released all claims, whether known or unknown, arising out of Holder Properties' work on the Adesso development, and he expressly assumed the risk of and waived all claims for damages that existed as of the date of the settlement or that could arise in the future. Consistent with the underlying settlement agreement and release, Plaintiff filed a dismissal with prejudice extending to all claims that were or that could have been asserted by Plaintiff in that action.

Because it is undisputed that Plaintiff's claims against Holder Properties were in existence as of the date of the May 2017 settlement, and because Holder Properties has not engaged in any actions vis-à-vis the Adesso development after it was removed as property manager in May 2016, Plaintiff's claims in this action are released, waived, and barred by the prior settlement. While Plaintiff has asserted that the prior settlement agreement was executed under duress caused by his counsel, Plaintiff concedes that Holder Properties was not involved in that duress. In fact, Plaintiff admits that he did not talk to anyone associated with Holder Properties in connection with the settlement. As such, Plaintiff's claims of duress are of no import as to Holder Properties, which was a stranger to the acts Plaintiff claims give rise to duress. Each of these reasons entitling Holder Properties to summary judgment on Plaintiff's claims is set forth below.

Holder Properties has also asserted counterclaims against Plaintiff. With respect to its counterclaim against Plaintiff for breach of contract, the settlement agreement executed by Plaintiff contains an attorneys' fees and costs provision in the event of a breach of the settlement agreement. Because Plaintiff's filing of this action is in breach of his express warranty that the released claims could not be asserted against Holder Properties, Holder Properties is entitled summary judgment on Plaintiff's liability for Holder Properties' fees and costs incurred in this action. Holder Properties will separately submit an affidavit on attorneys' fees at the time of the hearing on this motion.

II. FACTUAL BACKGROUND PERTINENT TO MOTION

A. Holder Properties Role at Adesso

Adesso Columbia is a mixed-use development consisting of 110 upscale residential condominiums and four ground floor retail units. Exhibit 2 at ¶ 6. The development is a horizontal property regime that exists by virtue of a master deed recorded in 2008. *Id.* at ¶ 3. All owners of commercial and residential units are automatically members of the Adesso Homeowners Association. *Id.* at ¶¶ 4-5.

Holder Properties was the developer for Adesso. *Id.* at ¶¶ 9-12. As developer, Holder Properties controlled the Adesso Homeowners Association until April 23, 2013, at which time Holder Properties turned control of the HOA over to the residents and property owners. *Id.* at ¶ 85. Holder Properties, which was also the original property manager, remained the property manager at Adesso through May 2016. Ex. 3, p. 8, ¶ 12; Ex. 4 (Tadros Deposition) at 179:19-24. After its property management contract was terminated in May 2016, the operation and governance of Adesso was through the HOA and the subsequent property managers. Ex. 3, p. 8, ¶ 12.

B. Plaintiff's Purchase of the Retail Units in 2014

Plaintiff purchased the four retail units on December 5, 2014. Pl. Compl. at ¶ 12. He did not purchase the units from Holder Properties or speak to Holder Properties at the time of his purchase. Ex. 4 at 169:17-22. Instead, he purchased the retail units from Ford Elliott, the then current owner. *Id.* Plaintiff is a sophisticated and well-educated physician who holds a board certification in psychiatry from the American Board of Psychiatry & Neurology. Ex. 5. With respect to commercial real estate, the Adesso retail units were Plaintiff's third acquisition of commercial real estate for investment purposes and his fourth commercial real estate acquisition overall. Ex. 4 at 13:23 – 14:3. As with his other acquisitions, Plaintiff had a professional advisor assist him with his purchase of the Adesso retail units. *Id.* at 17:2-17; 67:7-14. Because he relied on his advisor, Plaintiff did not personally inspect the Adesso development or review any of the recorded documents related to the Adesso development prior to his purchase. *Id.* at 66:21 – 67:1; 89:24 – 90:7. Plaintiff first visited the Adesso development in late 2016 or early 2017. *Id.* at 229:19 – 230:2.

C. The 2016 Lawsuit and the Resulting Settlement Agreement and Release

In 2016, the Adesso Homeowners Association, on behalf of the owners of the residential units, filed a class action against Holder Properties and 38 other defendants involved in the development, construction, and management of the Adesso project. Exhibit 5 (file stamped caption only); Ex. 2 at ¶¶ 9-59 (Fourth Amended Complaint with all defendants identified). Plaintiff, as the owner of the four retail units, filed an individual action against the same collection of defendants. Ex. 2 at ¶ 5. As to Holder Properties, Plaintiff alleged claims for breach of fiduciary duty and the duty of good faith and fair dealing, breach of contract, improper management, negligence, breach of warranty, unfair trade practices, civil conspiracy, and negligent misrepresentation. *Id.* at pp. 21-32. These allegations were made as to Holder Properties in its capacity as developer and as property manager. *Id.*

The 2016 class action and Plaintiff's individual lawsuit were settled in May 2017, approximately a year after Holder ceased being property manager at the Adesso development. With respect to his individual lawsuit, Plaintiff executed a separate "Commercial Settlement Agreement and Release" applicable only to the retail units, and he filed a stipulation of dismissal with prejudice. Exhibit 7 ("Settlement Agreement") and Exhibit 8 ("Stipulation of Dismissal").

The Settlement Agreement contains several provisions that define the scope of the claims being abandoned and relinquished by Plaintiff:

> WHEREAS, the Settling Parties have agreed to enter into this Agreement **to bring about the full, complete, and final resolution of all matters between them.**
>
> Upon receipt of the Settlement Funds which have been paid by the Settling Defendants, and consideration of the Settlement Amount and the of the mutual promises and releases set forth herein, **Tadros does fully and completely release and discharge the Settling Defendants . . . from any and all claims, actions, causes of action**, demands, payments, attorneys' fees, court or other costs, expenses, damages, and judgments whatsoever, **whether known or unknown, including the claims** made in the Action or **that could have been made in the Action**, **arising out of or relating to any work performed by** or materials provided by **the Settling Defendants**, or materials otherwise installed or applied at the Property.
>
> *****
>
> **Settling Parties expressly waive and assume the risk of any and all claims for damages and/or damages which exist as of this date**, or which may arise in the future, but which they do not now know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time.
>
> *****
>
> **Tadros warrants and represents that he is the owner of all claims** for loss of use, lost rents, inconvenience, lost profits, interior damages, damages to contents and all other personal damage claims related to or associated with the retail or commercial units at Adesso **and that such claims are released and cannot be asserted against the Settling Defendants**.

Exhibit 7 at pp. 4-6.

Consistent with the unlimited scope of the Settlement Agreement, Plaintiff's stipulation of dismissal with prejudice was equally broad:

> Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the parties, by and through their undersigned counsel, hereby by stipulate and agree that **all claims**, cross-claims, counterclaims and third-party claims that were of **that could**

> **have been asserted by or between any** or all **of the parties** in the referenced action **are dismissed and forever ended with prejudice**.

Exhibit 8.

D. Plaintiff was advised in writing as to the scope of the release.

Before signing the Settlement Agreement, Plaintiff raised concerns with his counsel because he felt the release was too broad. Ex. 4 at 195:1-4. He requested certain claims against Holder Properties be excepted from the Settlement Agreement, which was refused. *Id.* at 212:23 – 213:19. Plaintiff also stated in his affidavit that his counsel "was fully aware of the issues I had with parking spots that were allocated to the exclusive use of my unites pursuant to the Master Deed." Exhibit 10 at ¶ 21. In response to Plaintiff's concerns, Plaintiff's counsel specifically advised Plaintiff about the broad scope of the release:

> You seem to be worried about the extent of the release you are being asked to sign. The release is very broad at the defendants' request. **They want to make sure that they are protected from any future claims from the HOA or any owners**.
>
> *****
>
> From the defendants' perspective they only see the total damages that may be recovered and do not care which entity may recover those damages. **They only want to insure they get a complete release.**

Exhibit 9 at pp. 3-4 (highlighted portions).

Notably, Plaintiff's counsel qualified his advice by leaving open the possibility of future claims between Plaintiff and the HOA, but not future claims between Plaintiff and the defendants, including Holder Properties: "I understand that you may have other issues with the HOA that are unrelated to this lawsuit. I cannot represent you or the HOA in those matters and those issues should not be involved in the analysis of the benefits of this settlement." *Id.* at p. 4. (highlighted portions).

E. Plaintiff's allegations of duress.

In response to Holder Properties' defenses and counterclaims based on the release and the stipulation of dismissal, Plaintiff asserted that the settlement documents were obtained and executed under duress. Pl. Reply to Amended Counterclaims at ¶¶ 7-8. Specifically, Plaintiff asserts that the HOA's counsel, who was also Plaintiff's counsel, threatened a lawsuit by the HOA if Plaintiff continued his refusal to sign the Settlement Agreement. Ex. 4 at 214:13 – 215:2. The possibility of such a lawsuit was in fact raised by Plaintiff's counsel but only because Plaintiff was not honoring a written agreement with the HOA that required him to execute the Settlement Agreement:

> If you refuse to sign the settlement agreement, I expect that the HOA will file an action against for breach of the agreement you are attempting to revoke. You signed that agreement and in return for the HOA indemnifying you against tenants' claims for loss of revenue, you agreed to sign the settlement agreement. The HOA performed its obligations but you did not when you refused to sign the agreement. Since I represent you and the HOA in the action against the defendants I cannot represent either of you in the dispute over the indemnity agreement. You will have to retain your own lawyer which will cause you to incur substantial costs with no benefit.

Exhibit 9 at p. 4 (highlighted portion).

Pertinent to the assertion of duress as defense to Holder Properties' reliance upon the Settlement Agreement and Stipulation of Dismissal, Plaintiff testified that the threats giving rise to duress were voiced solely by his counsel against whom he has made no claim. Ex. 4 at 215:3 – 216:13. Finally, Plaintiff testified that he did not inform Holder Properties about the perceived threat, and he did not tell Holder Properties that he was signing the release under duress or that his intent was to have a future lawsuit against Holder Properties. *Id.* at 216:22 – 218:6.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

III. ARGUMENT

A. The Settlement Agreement and Stipulation of Dismissal entitle Holder Properties to judgment as a matter of law on Plaintiff's alleged claims that existed as of the date of the Settlement Agreement.

That Plaintiff's claims are within the scope of the release in the Settlement Agreement is self-evident when one simply reads the document. The preclusive effect of the Stipulation of Dismissal as to all claims that were or that could have been asserted by Plaintiff is also well-settled under controlling federal law governing dismissals of lawsuits in federal court. Finally, even assuming for the sake of argument that a threat of a lawsuit for violating a written agreement could rise to the level of duress, Plaintiff's claim of duress fails as a matter of law as to Holder Properties because Holder Properties played no role in that threat or the prospect of litigation with the HOA.

Each of these issues is addressed separately below.

1. Plaintiff's claims for alleged parking violations are within the scope of the 2017 release.

The key facts applicable to the release are not in dispute: (1) Plaintiff's claims against Holder Properties relate to Holder Properties work on the Adesso development; (2) Holder Properties was no longer in control of the Adesso Homeowners association as of April 2013; and

(3) Holder Properties was no longer the property manager after May 2016. The import of these undisputed facts is that all of Plaintiff's current factual allegations as to Holder Properties relate to events occurring a full year prior to the execution of the Settlement Agreement, and all of Plaintiff's legal claims as to Holder were in existence at the time of the Settlement Agreement.

These existing facts and legal claims are well within the scope of the release Plaintiff granted to Holder Properties as part of the Settlement Agreement:

> WHEREAS, the Settling Parties have agreed to enter into this Agreement **to bring about the full, complete, and final resolution of all matters between them**.
>
> . . . **Tadros does fully and completely release and discharge the Settling Defendants** . . . **from any and all claims**, actions, causes of action, . . ., whether known or unknown, . . . that could have been made in the Action, **arising out of or relating to any work performed by** . . . **the Settling Defendants**, . . .

Exhibit 7 at pp. 4-5. This release granted by Plaintiff is a general release that contains a single limitation on scope—the released claims must relate to "any work performed by" Holder Properties at Adesso. In this regard, Plaintiff concedes that management of Adesso and assigning parking spaces were part of Holder's work at Addesso. Ex. 4 at 207:9-14. He further concedes that all of his allegations about Holder Properties in this lawsuit occurred prior to Holder Properties being terminated as property manager a year before he executed the Settlement Agreement. *Id.* at 219:24 – 220:14. Moreover, the separate waiver of all claims that exist as of the date of the release is subject to no scope limitations at all:

> **Settling Parties expressly waive and assume the risk of any and all claims for damages** and/or damages **which exist as of this date**, or which may arise in the future . . . Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time.

Exhibit 7 at p. 6, ¶ 2. Finally, Tadros warranted that he owned all claims for damages associated with the retail units at Adesso and all such claims were released and could not be asserted against the settling parties, including Holder Properties:

> **Tadros warrants and represents that he is the owner of all claims** for loss of use, lost rents, inconvenience, lost profits, . . . and all other personal damage claims **related to or associated with the retail or commercial units at Adesso and that such claims are released and cannot be asserted against the Settling Defendants**.

Id. at ¶ 3.

Under South Carolina law, a release is a contract that is subject to general rules of contract construction. *Bowers v. Dept. of Transp.*, 360 S.C. 149, 600 S.E.2d 543 (S.C. App. 2004). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Palmetto Mortuary Transp., Inc. v. Knight Sys.*, Inc., 424 S.C. 444, 818 S.E.2d 724 (S.C. 2018). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.* "The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." *Nicholson v. Nicholson*, 378 S.C. 523, 663 S.E.2d 74 (S.C. App. 2008).

There being no ambiguity in the terms of the parties' contractual Settlement Agreement, the release of "any and all claims" that Plaintiff granted to Holder Properties and the waiver of all claims existing as of the date of the Settlement Agreement must be enforced as written.

2. Under controlling federal law, a stipulation of dismissal with prejudice precludes subsequent litigation on any claim that could have been asserted in the dismissed action.

As quoted in full in the background section, Plaintiff dismissed the 2016 action with prejudice as to all claims that were or that could have been asserted by the parties. The effect of a dismissal pursuant to Fed.R.Civ.P. 41 is controlled by federal law. *Citibank, N.A. v. Data Lease Financial Corp.*, 904 F.2d 1498 (11th Cir. 1990) ("It follows, then, that federal law defines the preclusive effect of a Rule 41(a) dismissal."). Under federal law, "a dismissal [with prejudice] constitutes a final judgment with the preclusive effect of res judicata not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit." *E.g.*, *Nemaizer v. Baker*, 793 F.2d 58 (2nd Cir. 1986). Notably, this is true even if the plaintiff asserts in a subsequent action that he intended to reserve certain claims for the future and alleges that his counsel failed to protect his right to do so:

> Nemaizer contends that his counsel in the original action did not contemplate the breadth of the stipulation and did not thereby intend to foreclose later bringing an ERISA claim in federal court. The district court accepted this argument and found that entering into the stipulation was an honest mistake; that is, a misunderstanding of what each party intended. Nonetheless, the agreement clearly precluded appellees from bringing the instant ERISA claim. Had appellant intended to preserve that right, he should not have entered into this type of "with prejudice" stipulation.

Id. at 58 (noting that "an attorney's failure to evaluate carefully the legal consequences of a chosen course of action provides no basis for relief."); *Ellis v. Gelson's Markets*, 1 F.3d 1246 (9th Cir. 1993) ("Ellis claims that the stipulation on which dismissal was entered is binding only to the extent the parties intended it to be. The authorities he cited do not support his claim, and we found no such support."); *Citibank*, 904 F.2d at 1505 ("Data Lease, represented by counsel, entered into the stipulation dismissing its claims against the agent directors 'with prejudice.' Represented by new counsel, Data Lease cannot avoid the consequences of such a prior act.").

In the present case, the intent to dismiss all claims that could have been asserted, which includes Plaintiff's additional claims against Holder Properties that he asserts in this action, was consistent with the release and made express in the stipulation of dismissal. Exhibit 8 ("all claims, cross-claims, counterclaims and third-party claims that were or that could have been asserted by or between any or all of the parties in the referenced action are dismissed and forever ended with prejudice"). As with the contractual release, the stipulation of dismissal with prejudice must be given its full legal effect which is to bar Plaintiff's claims against Holder Properties in this action.

3. Plaintiff's claims of duress fail as a matter of law as to Holder Properties.

In his reply to Holder Properties' answer and counterclaim, Plaintiff asserts that "[t]he settlement documents and the Stipulation of Dismissal referred to in Holder's first and second counterclaims were obtained and executed under duress . . ." Pl. Reply to Amended Counterclaims at ¶¶ 7-8. As noted above, Plaintiff entered a binding indemnity agreement with the Adesso Homeowners Association that required him to execute the Settlement Agreement. Ex. 11. ("In exchange for Tadros signing the proposed Settlement Agreement, the HOA agrees to indemnify, defend, and hold Tadros harmless . . ."). After Plaintiff refused to sign the Settlement Agreement he had agreed in writing to sign, his counsel alerted him to the probability that the Adesso Homeowners Association would file suit over the breach. See Section II.E. *supra*. While an attorney counseling a client that he could be sued if breaches a contract is precisely the type of advice attorneys are supposed to provide, Plaintiff's affidavit describes the email exchange as "an example of the threats and duress used by the HOA attorney to force me to execute the Settlement Agreements and Releases." Ex. 10 at ¶ 20. At his deposition, he described the receipt of this legal advice from his counsel as "[a] gun was held to my head." Ex. 4 at 207:25 – 208:9. Plaintiff's claims of duress fail as a matter of law as to Holder Properties because Holder Properties was not a party to the alleged threats by Plaintiff's own counsel or made aware of the threats.

"If **<u>one of the parties to an agreement</u>** is in a position to dictate its terms to such an extent as to substitute his will for the will of the other party thereto, it is not a mutual, voluntary agreement, but becomes an agreement emanating entirely from his own mind." *Willms Trucking*

Co., Inc. v. JW Const. Co. Inc., 442 S.E.2d 197, 314 S.C. 170 (S.C. App. 1993) (emphasis added). The Court of Appeals in *Willms* cited the Restatement (Second) of Contracts § 175(1) (1981) for the proposition that, "if a party's manifestation of assent is induced by **an improper threat by the other party** that leaves the victim no reasonable alternative, the contract is voidable by the victim." *Id.* (emphasis added). The duress about which Plaintiff complains was a "threat" of a lawsuit by the Adesso Homeowners Association advanced through its counsel, which was also Plaintiff's counsel. The only parties to the Settlement Agreement were Plaintiff and the defendants, including Holder Properties. Ex. 7 at pp. 2-3. Because Plaintiff's counsel and the Adesso Homeowners Association were not parties to the Settlement Agreement, the defense of duress simply does not apply to the release of Holder Properties.

Any doubt on this point is removed by the second subsection of Section 175 of the Restatement cited by the Court of Appeals:

> **§ 175 When Duress by Threat Makes a Contract Voidable**
>
> (1) If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.
>
> (2) If a party's manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim **unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.**

Restatement (Second) of Contracts (1981). Both conditions are present under the undisputed facts. With respect to notice, Plaintiff testified that he did not inform Holder Properties that he was executing the release under duress. Ex. 4 at 216:22 – 218-6. The $2,000.00 individual payment to Plaintiff for the Settlement Agreement was included in the collective $7.5M payment by the defendants in the related action, of which Holder Properties paid $25,000.00. Exhibit 7 at p. 4 (Plaintiff's settlement agreement); Exhibit 12 at p. 6, ¶ 2.c (incorporated class action settlement).

The payment of the individual payment to Plaintiff and the larger settlement sum paid in the related action is both the giving of value to Plaintiff and material reliance by each of the defendants, including Holder Properties.

In sum, whatever the impact of Plaintiff's claims of duress may be vis-à-vis the Adesso Homeowners Association, those claims of duress fail as a matter of law as to Holder Properties.[1]

B. Holder Properties is entitled to summary judgment on its counterclaim for breach of the Settlement Agreement.

The Settlement Agreement between the parties provides for attorneys' fees in the event of a breach:

> **Legal Fees.** In the event of a breach by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith shall be entitled to recover from such other party its costs and expenses, including reasonable legal fees, expenses and associated court costs.

Exhibit 7 at p. 9, ¶ 10. Plaintiff's filing and perpetuation of this action constitutes a clear breach of his promise to abandon all claims existing as of the time of the release.

A "release is an abandonment or relinquishment of a right or claim." *Wade v. Berkeley County*, 559 S.E.2d 586, 348 S.C. 224 (S.C. 2002) (citing 76 C.J.S. *Release* § 4 (1994)). In this regard, Plaintiff warranted that he was the owner of all claims associated with the retail units and further acknowledged that those claims could not be asserted against Holder Properties: "Tadros warrants and represents . . . that such claims are released and cannot be asserted against the Settling Defendants." Exhibit 7 at p. 6, ¶ 3.

[1] While Plaintiff's allegations of duress and error by counsel must be taken at face value for purposes of this motion, counsel for Holder Properties wants to be clear that counsel does not believe Plaintiff's attorney in the prior action acted inappropriately in advising Plaintiff on the consequences of Plaintiff's actions if he breached his contract with the HOA. Counsel also believes that Plaintiff's execution of a general release was not the result of a failure on the part of counsel but was instead the natural consequence of settlement. Defendants routinely insist on general releases in the smallest of matters, let alone an action involving millions of dollars.

Under South Carolina law and the express terms of the Settlement Agreement, Plaintiff abandoned and released all claims against Holder Properties arising out of Holder Properties' work on the Adesso project, and he warranted that the released claims could not be asserted against the settling defendants, including Holder Properties. The filing of this action asserting claims and rights that were contractually abandoned is a breach of Plaintiff's express contractual warranty that the released claims could not be asserted against Holder Properties. As such, Holder Properties in entitled to enforce the Settlement Agreement through its counterclaim for breach of contract, including enforcement of the remedy provision quoted above.

When this matter is scheduled for a hearing, Holder Properties will present its affidavit or affidavits concerning its fees and cost incurred in connection with Plaintiff's breach of the Settlement Agreement.

IV. SUMMARY AND CONCLUSION

Plaintiff's claims against Holder Properties were released and abandoned when the Settlement Agreement was executed in May 2017. Moreover, the stipulation of dismissal with prejudice as to all claims that could have been asserted by Plaintiff in his prior action is a separate bar that precludes those claims from being asserted in this action. Even taken at face value, Plaintiff's claim that the Settlement Agreement was executed under duress fails as a matter of law as to Holder Properties because Holder Properties was not involved in the duress, and the existence of duress was not communicated to Holder Properties. As such, Holder Properties is entitled to judgment as a matter of law on the entirety of Plaintiff's complaint.

Because Plaintiff's filing and perpetuation of the released claims is a breach of Plaintiff's express warranty that those claims could not be asserted against Holder Properties, the remedial legal fees provision of the Settlement Agreement entitles Holder Properties to summary judgment on its counterclaim for breach of contract.

Based on the foregoing, Holder Properties respectfully requests that all claims by Plaintiff against Holder Properties be dismissed with prejudice and requests that the Court enter judgment against Plaintiff for the amount of Holder Properties' costs and expenses incurred in this action, including its reasonable attorneys' fees.

s/ Kevin K. Bell

Kevin K. Bell [SC Bar No. 65495]
Paul H. Hoefer [SC Bar No. 77506]
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Counsel for Defendant Holder Properties, Inc., and ADESSO/Columbia, LLC.

September 24, 2020

Emad Tadros, MD as Trustee v. Holder Properties, Inc., et al.
Civil Action 2019-CP-40-00919
Motion for Summary Judgment by Holder Properties

Exhibit 1

2019 City of Columbia

Determination of No Parking Violations at Adesso

We Are Columbia

Planning and Development Services • Zoning Division
1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

March 13, 2018

Charles Blackburn
1701 Cherry Laurel Drive
Columbia, SC 29204

RE: Location: 601 Main Street
Zoning District: PUD-R, -DD

Mr. Blackburn:

I am in receipt of your questions and have conducted a review of the site.

Records indicate that the above referenced parcel is zoned PUD-R (Planned Unit Development-Residential) and –DD (City Center Design/Development District). The 2006 PUD was amended in 2008 to address parking within the parking structure and on-street parking as well as the width of parking bays. The parking requirements for the project were to be accommodated in the parking structure beneath the condominiums as well as with street side parking along Main Street and Blossom Street. The parking facility was set to have approximately 222 spaces. 19 spaces within the parking structure were to be used for retail. Approximately 7 spaces available along Main Street and Blossom Street.

The initial parking requirements were approved based on 4,675 square feet of retail. As the PUD states, any increase in retail shall be calculated at 3.5 parking spaces/1,000 square feet. You allege that commercial is at 8,139 square feet. An increase of 3,464 square feet in retail would result in an increase of 12 parking spaces to be accommodated within the parking structure and via street side parking along Main Street and Blossom Street. Please also note that the property is within the –DD (City Center Design/Development District). Within that design district, on-street parking within 400 feet of a site can be used toward parking requirements.

The Zoning Ordinance nor the PUD differentiate between handicap and non-handicap parking. The spaces are counted the same. ADA requirements and handicap parking are not part of Zoning's purview and I have no authority to speak further on those requirements.

My final determination is that there are no known zoning violations.

Thank you,

Rachel L. Bailey
Zoning Administrator

PLAINTIFF'S EXHIBIT 2
Bailey
2-11-20 GHW

Q. And what is Exhibit Number 2?
A. It is my final determination letter from March 13th of -- there was a typo on the letter of 2018. It was from March 13th of 2019.
Q. Okay. And it was in response to my questions that I had for you, right?
A. Correct. We had been discussing the property and the parking.
Q. And I want to look at that letter a little closer. If I saved myself a copy. And you start off, "I am in receipt of your questions and have conducted a review of the site." Tell me what your review of the site consisted of. Did you have to go there, did you stay in your office and look at papers, or what?
A. I went there, and my inspector, one of my zoning inspectors, went out there to determine that the conditions were identical to the last time we inspected in 2018.
Q. And when you inspected in 2018, what was the purpose for your inspection in 2018?
A. We had had the property change some of the signage in the parking structure, and we were just making sure that signage was completed.
Q. Why did you change the signage?

Exhibit 2

Tadros Fourth Amended Complaint in 2016 Lawsuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013,* ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated, and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units

Plaintiffs,

-vs-

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems,

Case No. 3:16-cv-710-JFA

PLAINTIFFS' FOURTH AMENDED COMPLAINT

LLC., STO Corp., **Isidro Meza and Towers Paint Contractors, Inc.**,

Defendants.

Commercial Building Services, Inc.,

Third-Party Plaintiff,

vs.

Capital Group, LLC and Will Whitaker,

Third-Party Defendants.

Artistic Enterprises, Inc.,

Third-Party Plaintiff,

vs.

Benito Galicia,

Third-Party Defendant.

The Plaintiffs complaining of the Defendants would respectfully show the Court the following:

EXPERT AFFIDAVIT

That pursuant to S.C. Code Ann. §15-36-100, Plaintiffs reasonably believe that the applicable statue of repose will expire within ten days of the date of this filing, and, due to time constraints, Plaintiffs were unable to prepare the expert affidavits necessary to support certain causes of action contained herein. Accordingly, Plaintiffs are exercising their right under §15-36-100(C)(1) to supplement this pleading with the necessary expert affidavits within forty-five (45) days of the date of this filing.

PLAINTIFFS AND BACKGROUND

1. ADESSO Homeowners Association, *as controlled by the Owners since April 23, 2013* and ADESSO Horizontal Property Regime (hereinafter collectively "Plaintiffs" or "Owner HOA" or the "Association") are non-profit organizations located in the City of Columbia, County of Richland, South Carolina.

2. The Association has served as the property owners association for the Adesso Condominiums located in Columbia, South Carolina since April 23, 2013.

3. The ADESSO Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated January 11, 2008 and recorded January 14, 2008 in the Register of Deeds Office of Richland County, South Carolina in Book 1392-855.

4. The Plaintiff William Durkin is a resident of Richland County and owns a residential unit in Adesso. Durkin and other similarly situated residential unit owners are members of the class of residential unit owners at the Adesso Condominiums. By virtue of owning units in the Adesso, Durkin and others similarly situated are members of the Association and have membership and ownership rights relating thereto.

5. The Plaintiff, Emad Tadros, M.D, as Trustee for the Grace Living Trust ("Tadros"), a Trust formed under the laws of a state other than South Carolina, is the owner of the retail units at the Adesso Condominiums. Tadros, by virtue of owning the retail units in Adesso is a member of the Association and has membership and ownership rights relating thereto.

6. The Adesso consists of one hundred ten (110) condominiums, approximately 8,500 square feet of retail space and related common elements, all of which are located in one

building at 601 Main Street, Columbia, South Carolina. The condominiums, retail spaces and common and limited common elements are hereinafter referred to collectively as "The Adesso".

7. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code §27-31-10, *et. Seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Adesso.

8. The Association is charged with, *inter alia*, the management and administration of The Adesso, the inspection, maintenance and repair of The Adesso's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Adesso, the Association, and the respective owners and members.

DEFENDANTS

9. The Defendant Holder Properties, Inc. ("Holder") is a foreign corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted and transacted business in the State of South Carolina in the form of planning, designing, developing, constructing, marketing, selling, repairing, maintaining and/or managing the Adesso.

10. The Defendant ADESSO/Columbia, LLC ("ADESSO/Columbia") is a foreign limited liability company organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted and transacted business in the State of South Carolina in the form of planning, designing, developing, constructing, marketing, selling, repairing, maintaining and/or managing the Adesso.

11. Defendant ADESSO Homeowners Association, *as controlled by the Developers prior to April 23, 2013* (hereinafter referred to as the "Developer HOA") served as the property

owners association for The Adesso prior to April 23, 2013, and was controlled, managed and directed exclusively by the defendants identified in the next paragraph.

12. Defendants Holder, ADESSO Columbia, and Developer HOA are collectively referred to hereafter as the "Holder Defendants" or "Developers."

13. Upon information and belief, the Holder Defendants all became and/or acted as subsidiaries, parents, partners, associates, agents, affiliates, joint-venturers, servants, instrumentalities and/or alter ego entities of each other in the planning, design, development, construction, marketing, sale, repair, maintenance, management and control of The Adesso.

14. The Holder Defendants are responsible to the Plaintiffs for the condition of The Adesso and the damages set forth herein.

15. The Holder Defendants actions are such that they should be amalgamated for the purposes of this lawsuit.

16. The Defendant Niles Bolton Associates, Inc. ("Niles Bolton") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted and transacted business in the State of South Carolina by virtue of providing architectural services for the design and construction and repair of The Adesso.

17. The Defendant Browder + LeGuizamon and Associates, Inc. ("BLA") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted and transacted business in the State of South Carolina by virtue of providing structural engineering services for the design and construction of The Adesso.

18. The Defendant Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers ("Hussey") is a corporation organized and existing under the laws of the State of Georgia, and at

all times relevant hereto conducted and transacted business in the State of South Carolina by virtue of providing civil engineering services for the design and construction of The Adesso.

19. The Defendant Jordan & Skala Engineers, Inc. ("J&S") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted and transacted business in the State of South Carolina by virtue of providing mechanical, electrical and plumbing engineering services for the design and construction of The Adesso.

20. Defendants Niles Bolton, BLA, Hussey and J&S are collectively referred to hereafter as the "Designers."

21. The Defendant Key Construction, Inc. ("Key") is a corporation organized and existing under the laws of the State of Kansas, and at all times relevant hereto conducted and transacted business in the State of South Carolina by virtue of serving as the general contractor for the construction of The Adesso and the repair work performed in 2010.

22. The Defendant Ace Glass Company, Inc. ("Ace") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed storefront windows and doors for the construction of The Adesso.

23. The Defendant Advanced Door Systems, Inc. ("Advanced Door") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed access controls and doors for the construction of The Adesso.

24. The Defendant All-South Electrical Constructors, Inc. ("All-South") is a corporation organized and existing under the laws of the State of Georgia, and at all times

relevant hereto conducted business in South Carolina by supplying electrical services for the construction of The Adesso as a subcontractor to Key.

25. The Defendant Aquarian Pools of Columbia, Inc. ("Aquarian") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed the pool system for the construction of The Adesso.

26. The Defendant Artistic Enterprises, Inc. ("Artistic") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying masonry services for the construction of The Adesso as a subcontractor to Key.

27. The Defendant Fernandez Contractors International, Inc. d/b/a BenZach, Inc. ("BenZach") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying painting and caulking services for the construction of The Adesso as a subcontractor to Key.

28. The Defendant Commercial Building Services, Inc. ("CBS") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and installed windows and doors for the construction of The Adesso.

29. The Defendant Capitol City Custom Iron Works & Fence, LLC ("Capitol") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed balcony railings and hardware for the construction of The Adesso.

30. The Defendant Flooring Services, Inc. ("Flooring Services") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and installed tile flooring for the construction of The Adesso.

31. The Defendant Gill Plumbing, Co. ("Gill") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying plumbing services for the construction of The Adesso as a subcontractor to Key.

32. The Defendant Guardian Fence Suppliers of SC, Inc. ("Guardian") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed balcony railings and hardware for the construction of The Adesso.

33. The Defendant Hester Drywall, Inc. ("Hester") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed drywall and related components for the construction of The Adesso.

34. The Defendant Holland Roofing, Inc. ("Holland") is a corporation organized and existing under the laws of the State of Kentucky, and at all times relevant hereto conducted business in South Carolina by supplying roofing installation services for the construction of The Adesso as a subcontractor to Key.

35. The Defendant SDI Solutions, LLC d/b/a I-Sys Corporation ("I-Sys") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed access control panels and related components for the construction of The Adesso.

36. The Defendant Jamco Doors ("Jamco") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying and installing doors and hardware for the construction of The Adesso as a subcontractor to Key.

37. The Defendant JR Hobbs Co. ("JR Hobbs") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying and installing the HVAC systems for the construction of The Adesso as a subcontractor to Key.

38. The Defendant Loveless Commercial Contracting, Inc. ("Loveless") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied and installed miscellaneous concrete components for the construction of The Adesso.

39. The Defendant Reliance Interiors, Inc. ("Reliance") is a corporation organized and existing under the laws of the State of Georgia, and at all times relevant hereto conducted business in South Carolina by supplying and installing the stucco system for the construction of The Adesso as a subcontractor to Key.

40. The Defendant Southern Fireproofing Company, Inc. ("Southern Fire") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and installed waterproofing and caulking for the construction of The Adesso.

41. The Defendant Southern Vistas, Inc. ("Southern Vistas") is a corporation organized and existing under the laws of the State of South Carolina and, upon information

belief, was a subcontractor to Key and supplied and installed landscaping and irrigation components for the construction of The Adesso.

42. The Defendant SRS Concrete Finishing ("SRS") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied concrete finishing services for the construction of The Adesso.

43. The Defendant Stafford Consulting Engineers, Inc. ("Stafford") is a corporation organized and existing under the laws of the State of North Carolina, and at all times relevant hereto conducted business in South Carolina by providing waterproofing consulting services for the construction of The Adesso as a subcontractor to Key.

44. The Defendant Taylor Brothers Construction Company, Inc. ("Taylor") is a corporation organized and existing under the laws of the State of South Carolina and, upon information belief, was a subcontractor to Key and supplied earthwork and utility related services for the construction of The Adesso.

45. The Defendant Winston Steel, LLC d/b/a Winston Steel & Stair ("Winston") is a corporation organized and existing under the laws of the State of North Carolina, and at all times relevant hereto conducted business in South Carolina by providing miscellaneous steel components for the construction of The Adesso as a subcontractor to Key.

46. **The Defendant Isidro Meza ("Meza"), upon information and belief, at all times relevant hereto provided services for the stucco installation at The Adesso pursuant to a subcontract dated November 4, 2007 with Defendant Reliance Interiors, Inc..**

47. Defendants Key, Ace, Advanced Door, All-South, Aquarian, Artistic, BenZach, CBS, Capitol, Flooring Services, Gill, Guardian, Hester, Holland, I-Sys, Jamco, JR Hobbs,

Loveless, Reliance, Southern Fire, Southern Vistas, SRS, Stafford, Taylor, Winston **and Meza** are collectively referred to hereafter as the "Contractors."

48. The Defendant Andersen Windows, Inc. ("Andersen") is a corporation organized and existing under the laws of the State of Minnesota, and at all times relevant hereto conducted business in South Carolina by manufacturing and supplying the windows and doors for the construction of The Adesso.

49. The Defendant Carlisle Construction Materials Incorporated ("Carlisle") is a corporation organized and existing under the laws of the State of Delaware, and at all times relevant hereto conducted business in South Carolina by manufacturing and supplying the roofing system for the construction of The Adesso.

50. The Defendant Silver Line Building Products ("Silver Line") is a corporation organized and existing under the laws of the State of Delaware, and, upon information and belief is a division or subsidiary of Andersen Windows, Inc., and at all times relevant hereto conducted business in South Carolina by manufacturing and supplying windows and doors for the construction of The Adesso.

51. The Defendant GrayStone of Florida, Inc. ("GrayStone") is a corporation organized under the laws of the State of Florida, and, upon information and belief, at all times relevant hereto conducted business in South Carolina by designing, manufacturing and supplying the stucco system for the construction of The Adesso.

52. The Defendant Dryvit Systems, Inc. ("Dryvit") is a corporation organized and existing under the laws of the State of Rhode Island, and, upon information and belief, at all times relevant hereto conducted business in South Carolina by manufacturing and supplying products and components used in the stucco system installed at The Adesso.

53. Defendants Andersen, Carlisle, Silver Line, GrayStone and Dryvit are collectively referred to hereafter as the "Manufacturers/Suppliers."

54. The Defendant Structural Preservation Systems, LLC ("SPS") is a limited liability company organized and existing under the laws of the State of Maryland, and, upon information and belief, at all times relevant hereto conducted business in South Carolina by performing repairs to the exterior of The Adesso pursuant to a subcontract with Defendant Key Construction.

55. **The Defendant Towers Paint Contractors, Inc. is a North Carolina Corporation and upon information and belief at all times relevant hereto conducted business in South Carolina and performed work related to the repair of the exterior of The Adesso pursuant to a contract with Structural Preservation Systems, LLC.**

56. Defendant SPS **and Towers** may be referred to hereafter as "Repair Contractors."

57. The Defendant STO Corp. ("STO") is a foreign corporation, organized and existing under the laws of the State of New York, with its principal place of business located in the State of Georgia, and upon information and belief, at all times relevant hereto conducted business in the South Carolina by designing, manufacturing and supplying products and components used in the stucco repair system installed at the subject property in or around 2010.

58. Defendant STO may be referred to hereafter as the "Repair Manufacturer/Supplier."

59. The Developers, Designers, Contractors, Manufacturers/Suppliers, Repair Contractors and Repair Manufacturer/Supplier may at times be referred to collectively herein as "the Defendants."

Jurisdictional Allegations

60. Jurisdiction is vested and exists in the Court of Common Pleas, County of Richland, State of South Carolina, and venue is proper in the County of Richland, State of South Carolina, by virtue of, among other things, the subject property is located in the County of Richland, one or more of the defendants have their principal place of business in Richland County and the majority of the activities giving rise to the claims herein occurred in this jurisdiction.

Factual Allegations

61. This matter arises out of the planning, design, development, construction, marketing, sale, management, control, maintenance and repair of The Adesso.

62. The Developers engaged the Designers, Contractors, Repair Contractors, Manufacturers/Suppliers and Repair Manufacturer/Supplier to plan, design, develop, construct, maintain and repair The Adesso.

63. The Developers placed the condominium units and retail spaces into the stream of commerce.

64. At the time the Certificate of Occupancy ("CO") was issued, The Adesso contained latent building defects, which have regularly resulted in the deterioration and failure of the structures and building systems, continuing through the date of this filing.

65. The latent building defects in combination with fortuitous weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

66. A preliminary inspection of The Adesso evidences failure of numerous components of the exterior building envelope; water intrusion into and through the exterior

building envelope; and resulting consequential damage to non-defective building components and other property. Inspection also reveals failure of other various building components, with consequential damages resulting therefrom.

67. In or around June of 2010, Defendant SPS entered into a subcontract agreement with Defendant Key to perform certain repairs to the exterior cladding of the building.

68. Defendant SPS performed certain repairs pursuant to that subcontract agreement in 2010.

69. Defendant STO designed, manufactured, assisted with and/or supplied the stucco system used in the 2010 repairs performed by Defendant SPS.

70. Preliminary investigations reveal that the repairs, including the new stucco system, were improper, ineffective, deficient and defective and have resulted in further and continued water intrusion into and through the exterior building envelope, resulting in consequential damage to non-defective building components and other property.

71. The Defendants' acts and omissions have caused and contributed to the creation of conditions, which pose a hazard to the health, safety and life of the residents at The Adesso.

72. The Defendants had a duty to plan, design, develop, construct, maintain and repair The Adesso in a workmanlike manner with suitable materials and free from all defects and deficiencies.

73. The Defendants knew, or should have known, of the existence of the building defects, deficiencies and damage, which were latent and unknown to the Plaintiffs.

74. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

75. The Defendants' acts and omissions were negligent, grossly negligent, careless, reckless, willful and wanton and have resulted in building deficiencies, consequential damages, and loss of use and enjoyment.

76. Further, remedying the above-wrongs will result in additional consequential damages and loss of use.

77. As a direct and proximate result of Defendants' breach of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and, further, have incurred special damages, including but not limited to, reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

78. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring since shortly after the completion of construction and the 2010 repairs and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies. Plaintiffs were unaware of the defects until recently due to the latent nature of the defects and the Developer's efforts to hide the defects from the Plaintiffs.

79. The Defendants had notice of some or many of the manifestations of the deficiencies. However, they have either denied the existence of, or responsibility for, the deficiencies; concealed the defects and deficiencies; and/or their attempts at repair have failed.

80. The Developers had a duty to place The Adesso into the stream of commerce free of defects, deficiencies and damages.

81. The Developers also had a duty to provide the Owner HOA with a building in good repair, free of defects and deficiencies, or in the alternative, provide adequate funds to bring the building into good repair.

82. From the conception of The Adesso to present day, the Developers have controlled, managed and directed the operations of The Adesso, either through direct control of the property owners association or in its capacity as the property manager for The Adesso.

83. To effectuate the management and direction of The Adesso, the Developers created and controlled numerous entities, referenced in Paragraph 18 above, for the sole purpose of planning, designing, constructing, repairing, developing, purchasing, selling, leasing and performing other related activities for The Adesso.

84. The Developers created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein.

85. The Developers controlled, operated and directed The Adesso Homeowners Association and its Board of Directors until April 23, 2013, when the control of the association was turned over to the condominium owners.

86. At the time of the turnover, the Developers concealed information related to the condition of The Adesso and misrepresented the condition of The Adesso to the Plaintiffs.

87. Further, the Developers failed to make a sufficient inquiry into the conditions of The Adesso and/or concealed deficient conditions which resulted in grossly inadequate reserve funds necessary to correct and repair the deficiencies and damages.

88. The Developers had superior knowledge of the deficiencies and damages at The Adesso and controlled the dissemination of information to third-parties and Plaintiffs in the

research and establishment of reserve funds, thereby resulting in a grossly underfunded reserve account, which was based on inaccurate and misleading information.

89. After the turnover, the Developers continued to exert and maintain control of The Adesso and Plaintiffs in its capacity as the property manager for The Adesso.

90. The Developers took advantage of their superior position by concealing information relating to the condition of The Adesso; providing inadequate repairs and/or refusing to make repairs; and making false and misleading representations to Plaintiffs, with regards to the deficiencies, damages and repairs, all in an intentional effort to delay Plaintiffs from seeking legal recourse against Defendants for the damages asserted herein.

91. The Developers' acts and omissions were intentional, purposeful, fraudulent, negligent, grossly negligent, reckless, careless, willful and/or wanton.

CLASS ACTION ALLEGATIONS

92. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Durkin brings this action both individually and as a proposed class action against the Defendants on behalf of themselves and all other similarly situated persons and entities, who owns a condominium at The Adesso (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

> All persons and entities that own a condominium within Adesso located in the City of Columbia, Richland County, South Carolina.
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

93. *Numerosity:* The Class is composed of in excess of one hundred ten persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

94. *Commonality:* Questions of law and fact common to the Class exist as to all numbers of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

(a) Whether the construction and/or repair of The Adesso was defective;

(b) Whether Defendants knew or should have known of the defects;

(c) Whether Defendants negligently constructed The Adesso;

(d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;

(e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;

(f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

(g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

95. *Typicality:* Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Adesso Condominiums.

96. *Adequate Representation:* Plaintiff Durkin will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiff Durkin has retained counsel experienced in the prosecution of construction defect claims and complex litigation and capable of pursuing claims of the Class.

97. *Predominance and Superiority:* This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgment. In contract to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

98. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because the Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Adesso.

99. Plaintiff Durkin and the Class envision no unusual difficulty in the management of this action as a class action.

100. Each Class Member has an interest of more than $100.00.

<u>ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS</u>

101. The Defendants are estopped from relying on any statutes of limitations or repose by virtue of their acts. Upon information and belief, the Defendants were in a position of superior knowledge and should have known The Adesso was defectively constructed and failed to alert the Plaintiffs and the Class to The Adesso's defective condition.

102. The Defendants had a duty to inform Plaintiffs and the Class of the defects described herein, which Defendants should have known. Notwithstanding their duty, The Defendants never disclosed the defects to Plaintiffs or the Class.

103. Despite exercising reasonable diligence, neither the Plaintiffs nor the Class could have discovered the defective conditions because of the Defendants' control and management of The Adesso.

104. Given the Defendants' failure to disclose this non-public information about the defective nature of The Adesso – information over which it had exclusive control – and because neither Plaintiffs nor the Class could reasonably have known of The Adesso's defective nature, the Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

105. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly misrepresented the nature of the defective conditions to Plaintiffs and the Class, and the Defendants have further represented that the conditions were being repaired.

ESTOPPEL FROM PLEADING ANY ANTI-SUIT PROVISIONS CONTAINED IN THE ADESSO'S GOVERNING DOCUMENTS

106. The Defendants are estopped from relying on any anti-suit provisions contained in The Adesso's governing documents because said provisions are void pursuant to public policy and the Horizontal Property Regime Act and/or voidable as such constitutes a breach of the Developer Defendants' fiduciary duty to Plaintiffs.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty and Duty of Good Faith and Fair Dealing as to the Developers)

107. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

108. The Developers created and maintained control of the property owners association from January 11, 2008 to April 23, 2013.

109. Through its actions and superior position, the Developers established a special relationship with the Plaintiffs and the Class, thereby creating a fiduciary duty to the Plaintiffs and the Class, and further binding themselves to act in good faith and fair dealing and with due regard to the interests of the Plaintiffs and the Class.

110. The Developers breached their fiduciary duties in managing the property owners association and in turning over The Adesso's common and limited common elements to the Owner HOA in one or more of the following particulars:

a. In failing to ensure that the building's common and limited common elements were properly constructed as set forth hereinabove;

b. In failing to properly inspect, maintain and repair the building;

c. In failing to investigate and disclose the condition of the building's common and limited common elements before turning over the property to the Association;

d. In turning over the common and limited common elements to the Association in a substandard and deteriorated condition without depositing sufficient funds to the account of the Association to bring the elements up to a reasonable standard;

e. In failing to provide accurate and truthful information for the reserve study;

f. In concealing and misrepresenting the nature and extent of the deficiencies and damages;

g. In failing to disclose the nature and extent of the deficiencies and damages;

h. In failing to advise the Association on the appropriate actions to take to correct the deficiencies and damages; and

i. In using its position as The Adesso property manager to continue to exert control over the Association even after the Developers turned over control of the property owners association to the Owners.

111. As a direct and proximate result of the Developers' wrongful conduct and breach of fiduciary duty, the Plaintiffs and the Class have been damaged as hereinabove set forth and as to be further proven at trial.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract as to Developers – Condo Sales)

112. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

113. Plaintiffs and the Class entered into contracts with the Developers for the purchase of The Adesso condominiums.

114. Plaintiffs and the Class bargained for high quality upscale condominiums.

115. Instead, Plaintiffs and the Class received condominiums in disrepair.

116. By selling the condominiums to Plaintiffs and the Class in disrepair, the Developers breached its contracts with Plaintiffs and the Class.

117. As a direct and proximate result of the Developers' breach, Plaintiffs and the Class have suffered actual, special and consequential damages, in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Developers – Property Management)

118. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

119. Plaintiffs and the Developers entered into a contract whereby the Developers would manage The Adesso for Plaintiffs and the Class.

120. The Developers failed to fulfill its obligations to manage The Adesso in good faith and fair dealing and failed to protect the interests of the Plaintiffs, thereby breaching its contract with Plaintiffs.

121. As a direct and proximate result of the Developers' breach, Plaintiffs and the Class have suffered actual, special and consequential damages, in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
(Negligence/Gross Negligence as to Developers, Designers,
Contractors, Repair Contractors, Manufacturers/Suppliers and Repair Manufacturer/Supplier)

122. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

123. At all times relevant hereto, the Developers, Designers, Contractors, Repair Contractors, Manufacturers/Suppliers and Repair Manufacturer/Supplier undertook and had a duty to Plaintiffs and the Class to exercise and use due care in the planning, development, design, construction, inspection, maintenance, management and/or repair of the condominiums

and to do so in a good and workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards, and to complete the condominiums free of latent defects.

124. The Developers, Designers, Contractors, Repair Contractors, Manufacturers/Suppliers and Repair Manufacturer/Supplier breached their duties to Plaintiffs and the Class in a manner that was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

a. in failing to properly design the work;
b. in failing to properly construct the structure;
c. in failing to properly perform repairs to the building;
d. by performing work which violated building codes and industry standards;
e. in failing to properly install windows and doors;
f. in failing to properly manufacturer, design and install the roofing system;
g. in failing to properly design and install the stucco system;
h. in failing to properly install adequate flashing;
i. in failing to design and properly install adequate waterproofing;
j. in failing to properly install the masonry;
k. in failing to properly construct exterior balconies;
l. in failing to properly construct landscaping planters;
m. in failing to properly construct the pool and its surrounding deck;
n. in failing to install adequate air, water, and vapor barriers;
o. in failing to properly seal breaches in the wall sheathing;
p. in failing to install a weather-proof exterior building envelope;
q. in failing to properly seal exterior wall penetrations;
r. in failing to construct or repair the structure in accordance with due care and in accordance with standard building practices;
s. in failing to properly supervise the work and construction of the Building;
t. in failing to hire competent subcontractors and specialty contractors;
u. in failing to properly coordinate the subcontractors;
v. in covering up deficiencies;
w. in misrepresenting the condition of the structure to the Plaintiff;
x. in failing to properly observe and inspect work during construction;
y. in failing to provide proper construction administration duties
z. in failing to supply suitable materials with adequate instructions and warnings;
aa. in failing to act as reasonable persons would in the circumstances then and there prevailing; and
bb. in such other failures that will be shown during discovery and at trial.

125. As a direct and proximate result of such negligence, gross negligence, recklessness, carelessness, willfulness and wantonness the Plaintiffs and the Class have been damaged in an amount to be determined by the jury.

126. As said failures were committed with gross negligence and reckless disregard for the rights of others, Plaintiffs and the Class are entitled to an award of actual, consequential and punitive damages against the Developers, Designers, Contractors, Repair Contractors, the Manufacturers/Suppliers and the Repair Manufacturer/Supplier, as well as interest and attorneys' fees and costs.

FOR A FIFTH CAUSE OF ACTION
(Professional Negligence as to the Designers)

127. Plaintiffs repeat and reallege the above allegations contained in the above paragraphs as if set forth herein verbatim.

128. The Designers owed Plaintiffs and the Class a duty to perform and provide their architectural and engineering services in accordance with applicable rules, regulations and ethical requirements that relate to architects and engineers practicing in South Carolina, and with the appropriate standard of professional care and generally accepted standards for architects and engineers.

129. The Designers breached their duties in a manner that was negligent, negligent *per se*, grossly negligent and reckless in the following particulars, as well as those that will be set forth in the supplemental affidavits which will be filed in accordance with S.C. Code. § 15-36-100:

a. The design documents failed to provide sufficient information necessary to properly construct the building and facilities;

b. The design documents failed to meet the applicable building codes, regulations and industry standards for the building and facilities;

c. The design documents provided defective or improper materials, systems and/or equipment;

d. The designers failed to provide sufficient construction administration services;

e. The designers failed to observe defects and deficiencies during the construction of the building and facilities;

f. The designers failed to advise the Plaintiffs of the defects and deficiencies in the building and facilities;

g. The designers failed to recommend appropriate repairs for the defects and deficiencies in the building and facilities;

130. As a direct and proximate result of the Designers' breaches, errors and omissions, negligence, gross negligence, and reckless conduct, Plaintiffs and the Class have incurred actual, consequential and special damages, and will continue to incur such damages, including the cost of repair to the building, expert consultants' fees, legal fees and costs and attorneys' fees.

<u>FOR A SIXTH CAUSE OF ACTION</u>
(Breach of Warranties as to All Defendants)

131. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

132. By planning, developing, constructing, repairing and selling The Adesso, the Defendants expressly and impliedly warranted that the work would be performed in a careful, diligent, competent, and workmanlike manner and that the condominiums would be constructed

and repaired with suitable materials and components, and that the condominiums would be habitable and free from latent defects.

133. The design, construction, repair and sale of the condominiums, and the components used therein, came with express warranties and implied warranties of fitness for a particular purpose, merchantability, workmanship, and that the condominiums would be free of latent defects. The Developers expressly warranted the quality and condition of the Adesso Building and additionally owed Plaintiffs and the Class an implied warranty of habitability.

134. Through their acts and omissions, as set forth herein, the Defendants have breached their warranties to Plaintiffs and the Class.

135. As a direct and proximate result of the Defendants' breaches of the express and implied warranties, Plaintiffs and the Class have suffered actual and consequential damages.

<u>FOR A SEVENTH CAUSE OF ACTION</u>
(Breach of Implied Warranty of Sufficiency of Plans as to the Designers)

136. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

137. The Designers created and furnished plans and specifications for the construction and repair of The Adesso.

138. By furnishing plans and specifications, the Designers warranted their sufficiency for the purpose of constructing and repairing The Adesso in accordance with all applicable building codes and industry standards.

139. By furnishing plans and specifications that were deficient and not sufficient for the purpose intended, the Designers breached their warranties to the Plaintiffs and the Class.

140. As a direct and proximate result of the Defendants' breaches of the implied warranties, Plaintiffs and the Class have suffered actual and consequential damages.

FOR AN EIGHTH CAUSE OF ACTION
(Unfair Trade Practices as to the Developers)

141. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

142. At all times relevant herein, the Developers engaged in the business of developing, constructing, repairing, selling and managing condominiums to be placed into the stream of commerce.

143. The Developers were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.

144. The Developers' above-described activities, including repeatedly failing to timely and effectively honor warranty obligations, failing to adequately inspect and repair the condominiums, misrepresenting the quality of the condominiums through advertisements and marketing, placing condominiums with latent defects into the stream of commerce, tendering deficient common areas, creating conditions which are life and safety hazards to the residents, concealing defective conditions, failing to accurately disclose the condition of the condominiums, failing to immediately cure said latent defects when discovered, and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive practices in the conduct of the Developers' trade.

145. Further, in selling certain condominium units, the Developers failed to disclose material defects in the subject property and failed to make the disclosures required by the South Carolina Residential Property Condition Disclosure Act.

146. The Developers' above-described acts are capable of repetition and adversely affect the public interest.

147. The Developers' knew or should have known that their conduct was in violation of the S.C. Code Ann. §39-5-20.

148. As a direct, foreseeable, and proximate result of the Developers' unfair trade practices in South Carolina, the Plaintiffs and the Class have sustained actual, incidental, consequential, and special damages, as well as attorneys' fees and costs, and Plaintiffs and the Class are entitled to treble of these damages in accordance with the South Carolina Unfair Trade Practices Act.

FOR A NINTH CAUSE OF ACTION
(Civil Conspiracy as between Adesso/Columbia, LLC, Holder Properties, Inc. and the Developer HOA)

149. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

150. After construction was completed and while the Developers directed and controlled the property owners association, ADESSO/Columbia, LLC, Holder Properties, Inc. and the Developer HOA became aware of significant defects, deficiencies and damages to the condominium structure.

151. Upon information and belief, ADESSO/Columbia, Holder and the Developer HOA conspired to conceal the nature and extent of the defects and damages from both existing owners and prospective owners.

152. In addition, ADESSO/Columbia, Holder and the Developer HOA conspired to underfund the reserve account that could ultimately be used by Plaintiffs and the Class to fund repairs to the building.

153. Upon information and belief, ADESSO/Columbia, Holder and the Developer HOA sought to conceal the defects and damages for an extended period of time and underfund

the reserve account so that, ultimately, Plaintiffs and the Class would have to bear the financial responsibility of inspecting, investigating and repairing the damaged property, without the financial assistance of the Developers.

154. Further, upon information and belief, ADESSO/Columbia, Holder and the Developer HOA took affirmative actions to delay Plaintiffs and the Class from pursuing legal recourse in hopes that Plaintiffs claims against them would ultimately be time-barred under statutory law.

155. ADESSO/Columbia, Holder and the Developer HOA's acts were purposeful and were intended to injure Plaintiffs and the Class.

156. As a result of these defendants' actions, Plaintiffs and the Class have sustained, and will continue to sustain, special damages, including but not limited to, extensive engineering fees and costs to investigate and determine all of the defects and damages in the building, the increased costs of labor, materials and services for the repairs, as well as the attorneys' fees and costs associated with bringing these claims.

157. These special damages are the direct result of the civil conspiracy between these defendants and are separate and apart from the actual, incidental and consequential damages that Plaintiffs and the Class have sustained as a result of the actions and omissions of the Defendants in designing, constructing and repairing the building.

158. Plaintiffs and the Class would not have incurred these special damages if ADESSO/Columbia, Holder and the Developer HOA had performed adequate and complete investigations of the building structure and performed all necessary repairs prior to closing its last sale and turning over control of the property owners association to the Owners or fully

funded the reserve account to pay for the necessary investigations and repairs to the building prior to turning over control of the property.

159. Based on amalgamation, all of the Developers are jointly and severally liable for the damages incurred by Plaintiffs and the Class arising out of this civil conspiracy.

FOR A TENTH CAUSE OF ACTION
(Negligent Misrepresentation as to the Developers)

160. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

161. At the time of the sale of the condominiums and the turnover of the property owners association to the unit Owners, The Adesso contained significant latent defects, as well as defects and damages known by the Developers.

162. The Developers falsely represented to the Plaintiffs and the Class that The Adesso was in good repair, free of defects and deficiencies.

163. The Developers knew, or should have known, that The Adesso was suffering from significant and pervasive construction deficiencies and resulting damages, and, therefore, that their representations were false.

164. The Developers had significant pecuniary interests in making these false representations, in the form of profits from the sale of the condominium units, and the avoidance of having to incur the costs of investigating and repairing the deficiencies and damages.

165. Through its special relationship with Plaintiffs and the Class, the Developers owed a duty of care to communicate truthful information.

166. The Developers breached the duty by failing to exercise the due care required by a developer and property manager.

167. Plaintiffs and the Class justifiably relied on the Developers' false representations in purchasing the units and accepting control of the property owners association.

168. As a direct and proximate result of Plaintiffs' reliance on the Developers' false representations, Plaintiffs and the Class have suffered actual and consequential damages.

FOR AN ELEVENTH CAUSE OF ACTION
(Strict Liability in Tort: *S.C. Code Ann.* §15-73-10 *et seq.* as to Manufacturers/Suppliers and Repair Manufacturer/Supplier)

169. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if set forth herein verbatim.

170. The Manufacturers/Suppliers and Repair Manufacturer/Supplier engaged in the business of manufacturing and/or supplying construction products, e.g. framing system components, stucco, siding, window and door packages, roofing, tile, carport system, stair systems, concrete, etc. for the construction, maintenance and repair of the Adesso.

171. In manufacturing and/or supplying products for the construction and repair of The Adesso, the Manufacturers/Suppliers and Repair Manufacturer/Supplier placed products into the stream of commerce.

172. By introducing their products into the stream of commerce, the Manufacturers/Suppliers and Repair Manufacturer/Supplier represented that said products were safe and suitable for their forseeable use.

173. In the manufacture and/or supply of products to The Adesso, the Manufacturers/Suppliers and Repair Manufacturer/Supplier anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

174. The Manufacturers/Suppliers and Repair Manufacturer/Supplier have manufactured and/or supplied their products in a defective manner that has resulted in repeated water and/or air intrusion into and damage of the building components at The Adesso.

175. The Manufacturers/Suppliers and Repair Manufacturer/Supplier have marketed and/or sold their products for use as components in structures such as The Adesso. The components are in substantially the same condition as at the time the Manufacturers/Suppliers and Repair Manufacturer/Supplier sold them.

176. These products were unreasonably designed and manufactured and were defective at the time of sale.

177. The Plaintiffs could not have discovered the product defects in the Buildings nor perceived their defective and/or dangerous condition through the exercise of reasonable care.

178. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

179. The cost of altering the design, construction, and/or repair of the products supplied to The Adesso to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

180. The products are defective and unreasonably dangerous, causing Plaintiffs to have suffered damage.

181. The design and manufacture of the products supplied to The Adesso was inherently defective as sold was a direct and proximate cause of the damages suffered by Plaintiffs.

182. The Manufacturers/Suppliers and Repair Manufacturer/Supplier are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray for actual and consequential damages, special damages, treble damages, statutory damages, punitive damages, reasonable attorneys' fees, costs of suit, prejudgment interest and such further relief as this Court deems just and proper.

Respectfully submitted,

s/ Franklin J. Smith, Jr.

Franklin J. Smith, Jr., FED ID No. 3898
Jared H. Garraux, FED ID No. 10113
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November 17, 2016
Columbia, South Carolina

Exhibit 3

Addesso HOA Answer to Plaintiff Interrogatory No. 12

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended,	)
Plaintiff,	) **ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**
vs.	)
Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)
Defendants.	)

TO: CHARLES G. BLACKBURN, ESQ., COUNSEL FOR PLAINTIFF

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association ("Defendants") hereby answer Plaintiff's First Set of Interrogatories, reserving the right to amend and/or supplement, as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not a written or recorded statement has been taken from such witness and indicate who has possession of such statements.

ANSWER:

a) **Dr. Emad Tadros, MD**
c/o Allen & Newman, PLLC
Charles G. Blackburn, Esquire
200 Arbor Lake Dr. Ste. 125
Columbia, SC 29223

d. Individuals or entities currently responsible for maintenance of the property.

ANSWER: **Defendants object to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objection, please see documents being contemporaneously produced in response to Plaintiff's Requests for Production, bates-labeled "Adesso HOA 0509-0560, 0583-0631, 0661-0705, 0730-0761, 0795-0839, 0839-2684, 3147-3148, 3629, 3804-3811, 3816-3819."**

12. Identify the current property manager and all property managers since 2013 including names, addresses, telephone numbers and period of time spent by each property manager responsible for maintenance of the property.

ANSWER:

a) Current Property Manager: **CMM Realty, Inc**
c/o C. Michael Munson
1100 Wheat Street
Columbia, SC 29201
803-779-1844

CMM Realty, Inc. has managed the property since February, 2017.

b) Prior Property Manager: **Cedar Management Group**
9500 Statesville Rd.
Charlotte, NC 28269
704-644-8808

Cedar Management Group managed the property from May, 2016 until February, 2017.

c) Prior Property Manager: **Holder Properties, Inc.**
1221 Main Street, Suite 100
Columbia, SC 29201
803-451-4700

Holder Properties, Inc. managed the property from 2008 until May, 2016.

c. Accounts used for maintenance and repairs to the property; and

d. Any and all bank accounts or financial accounts held by Defendants including who holds signature authority for any and all such bank accounts.

ANSWER: **Defendants object to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the foregoing objections, please see documents bates-labeled "Adesso HOA 3216-3222, 3225-3226, 3229-3232, 3235-3250, 3293-3329, 3369-3410, 3449-3484, 3527-3566." The Association President and Treasurer, as well as Michael and Margaret Munson, have signatory authority on certain accounts.**

This 14th day of February, 2020.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: Michael Masciale

DOUGLAS W. MACKELCAN
State Bar No.: 76332
MICHAEL C. MASCIALE
State Bar No.: 103819
Counsel for Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
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Exhibit 4

Excerpts from Deposition of Emad Tadros

State of South Carolina) In the Court of Common Pleas
)
County of Richland) Case No: 2019-CP-40-00919

Emad Tadros, M.D., as Trustee of the Grace Living Trust dated October 12, 2010, as amended,

Plaintiff(s),

vs.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,

Defendant(s).

Remote Deposition of EMAD TADROS, M.D.

Deposition of EMAD TADROS, M.D., taken before Heather R. Landry, CVR, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 12:00 p.m. and commencing at the hour of 12:30 p.m., Wednesday, August 26, 2020, via remote communication.

Reported by:

Heather R. Landry, CVR

Beach.
Q So it was three residential properties that you sold?
A I take that back. I'm confused. For that very property I think it was a condo in downtown that I sold.
Q Okay.
A That's all I remember.
Q And that would've been sold for at least $1.7 million?
A No. It was much less than that. I think at that time I can add principal to it, and I took a big loan on it.
Q Okay. So I think you had said that a 1031 exchange is where you take the proceeds of one sale and buy another property of similar price. Is that correct?
A More or less, yes.
Q Okay. And do you know if you're permitted to take out a loan to cover the rest of the purchase price of the next property?
A That's what they allowed.
Q Okay. Well, let's move on. Obviously, we're here today about the purchase of real property there in Columbia at the ADESSO which took place in 2014.

Before that time, how many commercial properties had you invested in up to that point?
A Four.
Q Okay. So you invested in four commercial properties. Were those all like-kind exchanges? Or I'm sorry, 1031 exchanges?
A Yes.
Q Okay. And can you tell me a little bit more about those properties that you invested in. Where were they located, first of all?
A Two in North Carolina and one was in Georgia.
Q And where was the fourth? Is that the one in California?
A The office, yeah. The office in California, yes.
Q Okay. I know you said, obviously, the one in California was an office. What was the one in Georgia?
A It was a Hardee's.
Q Hardee's. And do you recall the amount it took to purchase that Hardee's?
A It was proceeds from a previous investment which was about -- I don't really know exactly -- maybe 5-, 600.
Q Okay. And the two in North Carolina, what were those?

A No.
Q Okay. So then you just -- would you say that you just relied on -- you would hire -- first of all, would you hire brokers to represent you in these transactions, or would you just get informal advice from them?
A I did this on each and every transaction.
Q So you hired brokers?
A Yes.
Q Okay. And how involved would you be in those transactions? Would you kind of let the broker just run with it, or would you, you know, provide input and kind of look over their shoulder, or somewhere in between?
A I basically relied heavily on the broker. I signed the forms. I trust whatever they tell me and I signed it.
Q Did you ever involve any attorneys or financial professionals in these transactions?
A Never once.
Q Never?
A Never legal problems once, but every transaction had a broker. I mean had an attorney to close the transaction.
Q Right. But did the attorney necessarily represent

Q Do you recall him telling you that there was no parking garage?

A No. I don't recall that he said that; no. I recall -- what I recall is one parking spot per unit.

Q Okay. I think you had testified in your prior deposition that he told you there was not a -- that part of the reason why this spot was so great was because it had a lot of foot traffic and didn't have to -- it didn't really have a parking garage or need a lot of drive-up traffic, something along those lines.

A That's two statements. You just made two statements.

Q Okay.

A So let me just respectfully tell you, he mentioned these two facts, but they were separate.

Q Okay.

A Regarding the parking, he said he believed I have one parking spot. But the advantage of the whole purchase, irrelevant of any other factors, because a lot of foot traffic.

Q Okay. And you never -- did you ever visit the property before you closed on it?

A No.

Q Why not?

A I'm a busy physician. I just -- you know, I never really questioned anybody. I always trust people.

Q Okay. So you just trusted what Jimmy told you and didn't --

A Yes.

Q -- do any other research?

A Absolutely.

Q Okay. Now with regard to your -- did you sign a non-exclusive listing agreement with Jimmy Weeks?

A A non-exclusive? Let me -- yeah. I don't think he was exclusive.

Q Okay. And so was this an agreement for him to potentially represent you in this transaction, this Adesso transaction, in 2014?

A Yes. To fully represent me.

Q Okay. And let me just pull this up because I'm not sure -- I may not have caught this one when I was marking exhibits. Okay. Let's see.

MR. MASCIALE: Kevin, can I just e-mail this to you? Would this be -- would that be fine? It's already been produced in discovery.

MR. BELL: The other thing you can do, Michael, is at the bottom of your Zoom window, you'll -- you see a little green thing that says Share Screen?

MR. MASCIALE: Yes. The only problem is, I'm having to -- like I said, I'm having to like switch

Q So are the attached -- so the attachments to this e-mail were parking space rental agreements?
A Please bear in mind, had I known that this is a violation of the Master Deed, I would have not signed it. I did not know that this very letter is actually a violation of the Master Deed, that does not allow rentals.
Q But you could have known; right?
MR. BLACKBURN: Which exhibit is it?
MR. MASCIALE: Adesso 7.
MR. BLACKBURN: 7?
MR. MASCIALE: Yeah.
MR. BLACKBURN: Thank you.
MR. MASCIALE: Yep.
BY MR. MASCIALE:
Q And what's this e-mail dated?
A It was dated March 4th, 2015.
Q And I think you just said if you had known it violated the Master Deed, you wouldn't have signed it; right?
A Had I known that this letter is a flat-out complete breach of the Master Deed, I would have not signed it; absolutely yes.
Q And I think we established earlier that the Master Deed and the amendments are all public record at

this time?

A I assume that the Master Deed and amendments are public records; yes. I have not examined them, at that time.

Q Okay. But you could have; right? If you had chosen to do so?

A I could have done a lot of things. I could have stopped the purchase from this whole property in the first place. Why I did not --

Q Okay.

A -- because I've been totally misinformed.

Q But so on March 4th, 2015, Lauren Smith with Holder, basically -- I don't want to say told you you had to, but was requiring you to sign a lease for three commercial parking spaces; correct?

A She said that she had to run a lottery, and the winner could be somebody else other than me. So I had to bid as high as possible, and, yes, must sign the agreement.

Q Okay. And the Master Deed prohibits what they did; correct?

A Absolutely.

Q Okay.

A Now I've discovered that.

Q And the Master Deed was recorded in 2008?

Q When I refer to the Master Deed, I am referring to the Master Deed as it was amended prior to your purchase of the retail units. Can we agree on that reference?

A Fine.

Q Okay. My understanding is, you took title to the commercial units in 2014.

A Yeah. In the name of Grace Living Trust, not my name.

Q Thank you for that clarification. That's good. And who was the property manager, at that time?

A I don't have a property manager because they are -- Adesso's the property -- Holder is the property manager.

Q That's it. That was my question. Okay.

A Yeah.

Q You didn't purchase your units from Holder, though; did you?

A No. I purchased them from Ford Elliott.

Q Did you talk with Holder prior to the purchase?

A No.

Q I realize you didn't do this, but you could have read the Master Deed prior to the purchase of the retail units; couldn't you?

realized that I was entitled to 19 commercial parking spots. And then, as I moved further and then I asked the City, Rachel Bailey, it was 38 parking spots.

Q Did you complain to the HOA about the parking situation, at that time?

A Oh, are you kidding me? I --

Q I'm not kidding you. I wasn't there.

A Okay. I complained, non-stop. I came to meet with them; they would not allow to talk to me. I called them on the phone; they hang up on me. They make meetings without having me around.

Q Did you complain to Holder about the parking?

A Holder at that time was not -- I complained. The only one that returned my phone call was Mike Munson who told me that he had -- that he had a similar situation to my situation in another building and that I will be getting nothing. That was early 2017. And he stood to his word: He gave me nothing.

Q Okay. And in early 2017, Holder had been removed as the property manager; correct?

A I believe they were removed in mid 2016.

Q Does May 2016 sound about right?

MR. BLACKBURN: Object to the form.

A I think. I'm not 100 percent sure.

BY MR. BELL:

Q -- navigate. Bear with me. You had indicated to Mr. Smith that you thought the release was too broad; correct?

A Yes.

Q And he said to you, the release is very broad at the Defendants' request. They want to make sure they are protected from any future claims from the HOA or any owners. Do you see that?

A Yes.

Q He told you that that release was to protect them from any future claims by any of the owners, of which --

A Yes.

Q -- you were one; correct?

A Yes. But you did not ask me the next question: How did I react to that?

Q A little further down --

A Well, a little further up. That was my response, saying that I'll be exempted if you exempt the report, number one and two on HR whatever, nine. It's all there.

Q Dr. Tadros, I am -- I know it's there, and we're getting there.

A Thank you. Thank you for not ignoring it.

Q It's highlighted.

When I make an Admission History, all I have to do is write the patient's name once. That's -- the rest, all the pages, relates to his name. You don't come back on page two and say we did not put his name down here and his social history; no. I am putting down his name on top. So you're talking to a physician.

As it relates to construction defects and design, period. It did not mention the word "parking."

Q You'd agree with me that Holder's work included management of the property and assigning out parking; correct?

A Yes, sir. And I'm not holding him for the management because I'm holding the current management responsible for what they are doing to me.

Q If there are allegations in the lawsuit that say Holder managed the property inappropriately, are you --

A Yes. In two thousand --

MR. BLACKBURN: Object to the form.

A He took HOA money from me. Which I don't know how much I was supposed to pay because after he left, it went up much higher. But he also charged me for parking, which were my parking spots.

BY MR. BELL:

Q The bottom of page five, sir, you said it is agreed and understood by the settling parties that they are not required to settle this matter at this time, but they voluntarily choose to finally resolve the matter at this time by entering the settlement agreement.

Do you see that?

A I see that. And behind it, I was threatened.

Q But you --

A A gun was held to my head. If I don't sign, I will be sued for everything I own.

Q We're going to talk --

A That's what I'm told.

Q We're going to talk about that, sir.

The document you signed says that you were doing it voluntarily; correct?

MR. BLACKBURN: Object to the form.

A I'm not doing it voluntarily. I was threatened.

BY MR. BELL:

Q The document says you were signing -- you were resolving this voluntarily?

A And I want to make sure that I make myself clear. I did not read every line exactly to that effect voluntarily, only to the construction defects; yes. Not voluntarily, to give up everything I have; no. And that's why I back it up by this -- by -- by the exhibits

A For construction defects. See, Mr. Bell, whoever made this, he kept skipping the word "construction defects." That's how my brain was reading it. Because he misled me with the first line -- with the first paragraph, and he had a reason to put that first paragraph, for construction defects. So you can imply that the whole understanding of this agreement, based upon construction defects.

But to come back and say, oh, by the way, I'm -- I'm making a different dance throughout the document, that's un -- that' unethical. I'm going back to my understanding. My understanding is, construction defects. You're welcome to read the e-mail that I sent Mr. Frank Smith.

Q This one?

A The one that I'm talking -- that the whole thing was about construction defects. And he responded back and he said your matter was totally irrelevant to that settlement. I have -- I'll be happy to read it for you.

Q Let's read this first.

A Okay.

Q This is where -- this is in the e-mail exchange where you have expressed your concerns about the scope of the release, that it's too broad.

A Yes.

Q And he's told you that it's intended to be broad and a complete release. And you ask him to accept some items from the settlement and you'd sign; correct?

A Which were not accepted. And I was told if you don't sign, we'll sue you.

Q And no claims against Holder were accepted from the settlement; were they?

MR. BLACKBURN: Object to the form.

A No. I'm sorry; I don't understand the question. I'm sorry; say that again. No accepted from Holder? No claims accepted from Holder?

BY MR. BELL:

Q Yeah. Nothing changed as a result of your request to leave certain things out of the settlement?

A I said that -- get me out of this agreement, if you give me these exemptions. He said, no; we're not gonna do that. And that one -- for that one, you will be sued if you don't sign.

Q And you signed?

A I had to sign, with the under -- you can see what was going on through my brain, at that time, that I'm talking about construction defects. I'm not talking about the parking, I'm not talking about -- I'm talking about construction defects. It's all about construction defects.

Q You're aware that Holder has filed a counterclaim against you, alleging that you are breaching the release in this settlement agreement we looked at earlier? Are you aware of that?

A I am -- I can't remember the paperwork that had -- maybe he signed -- maybe he filed one. I don't know.

Q Are you aware that he has made allegations that you have filed a frivolous lawsuit as it relates to Holder?

A Yes. I'm aware that he did this.

Q Okay. And in response to that counterclaim, you have asserted that you signed the settlement documents that we just went through, under duress, as described in your response to the Motion to Amend which referenced the affidavit that we looked at previously. You're aware of that; correct?

A Yes. Absolutely. One hundred percent under duress; right.

Q Very good. And you describe what was a threat of a lawsuit by Mr. Smith on behalf of the HOA; correct?

A Yes.

Q And Mr. Smith represented you and the HOA;

correct?

A Yes.

Q And we've already gone through. You described his actions in some detail in your affidavit. My question, sir, is, have you sued Mr. Smith?

A No.

Q Why not?

A I am too exhausted. I'm too exhausted. I'm too tired. I'm too exhausted. I'm too drained. I don't have money. I'm running out of money. I'm trying to protect the property. The loan is coming up in a few months; I don't have it. Would your client pay it for me so I can sue Mr. Smith? I mean how am I going to pay the loan? No bank wants this orphaned property.

Q Did anyone at the HOA personally threaten you?

A No one said that they will -- not that I know of. I -- I don't -- I don't recall anybody in the HOA personally stating that they will sue me.

Q And Mr. Smith, what he was you was he expected that the HOA would sue you; correct?

A Absolutely. He said if you refuse, that's what's going to happen. And that was after so many e-mails back and forth where the content of these e-mails, how come -- why are you rushing me? I need my time. Exempt me. Give me some time.

No time. Sign, or else. Cowboy.

Q And you may have already answered this but -- so bear with me. Other than Mr. Smith as the attorney for the HOA and you, did anyone else make a threat to you about what would happen if you didn't execute the settlement agreement?

A I don't -- my memory does not tell me anybody right now. But what I know was the HOA was going to sue me if I don't settle with your client.

Q And that threat came from Frank Smith; correct?

A Yes. And he actually made himself very clear, which the part that you're ignoring to mention, in his e-mail to me on 5/21/17, where he said that my matters regarding the parking and the HOA fees are unrelated to this very settlement matter.

Which I come back and I say, my settlement attorney himself is saying that. And the very settlement that you are presenting to me, on the very first page it says, "as it relates to" construction defects.

Q Did you speak with anyone at Holder about the threat by Mr. Smith?

A No.

Q Did you tell anyone associated with Holder

Q I'm only worried about -- I'm not asking you that, sir.

A Well, that's my job: To make it clear.

Q I just need for you to make it clear that the allegations in your Complaint as it relates to Holder about parking spaces, common area maintenance and assessments are talking about conduct of Holder that occurred prior to the settlement of the construction defect lawsuit, as you like to refer to it?

A Yes.

MR. BLACKBURN: Object to the form.

MR. BELL: What was wrong with the form of the question?

MR. BLACKBURN: It's calling for speculation before and after. The Complaint speaks for itself.

A And, Mr. Bell, if you'd kindly take it easy on me. I'm not a lawyer, so. When you make a question, try to make it simple because I can't -- I get entangled in too many details and I -- then, it becomes hard for me to answer.

BY MR. BELL:

Q Let's just break it down in baby steps.

A Good.

Q You set out a number of claims about parking places, common area maintenance and assessments, in the

Complaint; correct?

A Yes. Correct.

Q You were saying Holder did things wrong about parking spaces, common area maintenance and assessments; correct?

A Correct.

Q And the things you were saying that Holder did wrong in that regard would have been prior to their time being terminated as property manager; correct?

A Yes.

Q And Holder was terminated as property manager almost a year before you settled your prior lawsuit against Holder; correct?

A Correct.

MR. BLACKBURN: I'm going to object to that, too, Kevin. I'm not sure exactly what [unintelligible] in front of me and Holder left.

MR. BELL: That's fine. The change was in May of 2016.

BY MR. BELL:

Q If you'll give me just a minute, Dr. Tadros.

MR. BELL: Let me see if there's anything further I have for you. Why don't we take just two or three minutes? We can go off the record, and then I'll come right back.

that you were only signing the release because of the threats by the HOA or by Mr. Smith?

MR. BLACKBURN: Object to the form.

A I didn't know whom to contact. I did not call anybody. I'm a doctor. I have no time for this. I'm not standing there in a parking lot, harassing people. I'm just trying to get my job done and get my retirement done.

BY MR. BELL:

Q Okay. I'm just going to ask that question again. Did you tell anyone associated with Holder that you were only signing the release because of the threat by Mr. Smith?

MR. BLACKBURN: Object to the form.

A I -- I don't -- I don't recall doing that.

BY MR. BELL:

Q Did you tell anyone associated with Holder that your intention was to sign the release because of the threat by Mr. Smith, and you were then going to sue Holder over parking issues?

MR. BLACKBURN: Object to the form.

A Two questions. Let's first -- the first question, please.

BY MR. BELL:

Q But those things are joined together.

A The first question -- let's make it clear, please.

Q Did you tell anyone associated with Holder that you were going to sue Holder over parking issues, after you signed the release, because of threats?

A Not with Holder; no.

Q Did you speak with anyone at the HOA or affiliated with the HOA, about the threat by Mr. Smith?

A Yes. Yes.

Q Who?

A Darrell Terry. Who also told me that he attended a meeting and he witnessed that, that I'll be sued.

MR. BLACKBURN: In a meeting. I've got to have a meeting in about 15 minutes, too.

BY MR. BELL:

Q In your Amended Complaint, you set out a number of claims about additional parking spaces, common area maintenance, assessments. You're aware of that?

A Yes.

Q At least as it relates to Holder, those allegations would be referring to conduct that occurred prior to the settlement date; correct?

A Yes. That's not related to construction defects.

A [Unintelligible] for the other two units to use, and the other two units are kind of afraid of the building so they let other people from the building park without fighting with them, including the management itself.

Q Okay. But you would agree, there's nothing dividing up the amount of parking spaces each unit is allocated; correct? They all have access to the 17 and the garage and --

A Because --

Q -- several along the street; correct?

A Because -- currently; yes. It is much better now than it used to be, in all fairness, because they have more parking. But please bear in mind that 40 percent of the space is not used.

Q Okay. And Unit A, to this day, is still vacant; correct?

A Yes.

Q Okay. One last question. I think you had said earlier that you never visited Adesso until 2017. Is that correct?

A 2017 or '16. I'm not hundred percent sure.

Q Okay. So --

A '16. It would be late '16.

Q Okay. So by a conservative estimate, let's

just say two years, from 2014 until 2016. Is that fair?
A And a half.
Q Okay. During that time, whatever time period it was that you never visited, who was managing these properties?
A The property management.
Q Specifically for you?
A Okay. Every unit has their own management. I can't even tell them what to do because --
Q And each unit had their own?
A They have their own people. I -- if I went in and said do this and don't do this, they'll say get out; we do whatever we want to do. So they manage it their own --
Q I think --
A The outside, those -- the outside of the lights is managed by the building.
Q Okay. Let me try and clarify. I think that might have been maybe a slightly ambiguous question.
What I meant was, who -- did you have anybody who was kind of an intermediary between you, as the landlord, and them, as the tenants?
A No. I could not afford paying anybody.
Q Okay. So did you do all that yourself?
A Yeah. Except for -- because I'm not doing

Exhibit 5

Logo from Website www.EmadTadrosMD.com

Diplomate, American Board of Psychiatry and Neurology

EMAD TADROS, M.D.

DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

Exhibit 6

Date Stamped Caption of Initial 2016 Lawsuit Prior to Removal

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS) FOR THE FIFITH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)
ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013,* ADESSO Horizontal Property Regime, William Durkin and Sam Vause, Jr. individually and on behalf of all others similarly situated and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units Plaintiffs, -vs- Holder Properties, Inc.; ADESSO/Columbia, LLC; Drake/Adesso, LLC; Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC; John R. Holder, Individually; ADESSO Homeowners Association *as controlled by the Developers prior to April 23, 2013;* Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; and Carlisle Construction Materials Incorporated. Defendants.	) CASE NO.: 2016-CP-40-_____ RICHLAND COUNTY FILED 2016 FEB -9 PM 12:27 JEANETTE W. McBRIDE C.C.P. & G.S. **COMPLAINT** **(Jury Trial Demanded)**

Exhibit 7

2017 Commercial Claims Settlement Agreement and Release

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013*, ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units)

Plaintiffs,)

-vs-)

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems,)

Case No. 3:16-cv-710-JFA

COMMERCIAL CLAIMS SETTLEMENT AGREEMENT AND RELEASE

LLC., STO Corp., Isidro Meza and Towers Paint Contractors, Inc.,)

Defendants.)

Commercial Building Services, Inc.,)

Third-Party Plaintiff,)

vs.)

Capital Group, LLC and Will Whitaker,)

Third-Party Defendants.)

Artistic Enterprises, Inc.,)

Third-Party Plaintiff,)

vs.)

Benito Galicia,)

Third-Party Defendant.)

COMMERCIAL CLAIMS SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Agreement**" or the "**Settlement Agreement**") is made and entered into as of this ___ day of ________, 2017 by and between Plaintiff, Emad Tadros M.D, as Trustee of the Grace Living Trust as owner of all retail units (Tadros) and Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder; Drake/Adesso, LLC, Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC; Niles Bolton Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Commercial Building Services, Inc.; Flooring Services, Inc.; Gill Plumbing Company; Guardian

Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Carlisle Construction Materials Inc.; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC, STO Corp., Towers Paint Contractors, Inc., Capital Group, LLC and Will Whitaker (collectively, the "**Settling Defendants**"). Tadros and Defendants are hereinafter collectively referred to as "**Settling Parties**."

RECITALS

WHEREAS, Tadros owns all of the commercial units at the property known as the Adesso, located in Columbia, South Carolina ("**Property**");

WHEREAS, the Settling Defendants provided services or materials for the planning, design, development, construction, marketing, sale, management, control, maintenance and/or repair of the Property;

WHEREAS, this action relates to alleged improper design and construction defects and deficiencies, as well as alleged improper management, maintenance, sale and control of the retail units at the Property ("Commercial Claims") and is the subject of litigation now pending in the above styled action (the "**Action**");

WHEREAS, Tadros asserted the Commercial Claims against all Settling Defendants, except for Capital Group, LLC and Will Whitaker in the Action;

WHEREAS, the Settling Parties each deny any and all claims of liability, wrongdoing or impropriety in their actions in this matter;

WHEREAS, this Agreement, together with the Adesso HOA Settlement Agreement and Release and the Class Action Settlement Agreement and Release, are intended, collectively, to resolve all claims arising out of the captioned Action and are each dependent upon the execution and approval of the others;

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Adesso HOA Settlement Agreement and Release with the Adesso Homeowners' Association and the Adesso Horizontal Property Regime (collectively "Adesso");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Class Action Settlement Agreement and Release with Plaintiff William Durkin, individually and on behalf of all others similarly situated (the residential unit owners at Adesso); and

WHEREAS, the Settling Parties have agreed to enter into this Agreement to bring about the full, complete, and final resolution of all matters between them.

ARTICLE I
INCORPORATION OF RECITALS

1. The above Recitals are incorporated and made a part of this Settlement Agreement, provided, however, in the event of a conflict between the recitals and the provisions of the Articles below, the provisions of the Articles shall control.

ARTICLE II
PAYMENT

1. For and in consideration of the receipt of Two Thousand Dollars and 00/100 ($2,000.00) Dollars, and other good and valuable consideration (the "**Settlement Amount**") the sufficiency of which is hereby acknowledged, Tadros agrees to release all claims against Settling Defendants in the Action as set forth in Article III. The settlement amount is included in the global settlement amount described in the Adesso HOA Settlement Agreement and Release and

shall be paid to Tadros by counsel for the HOA within thirty (30) days after the Final Order approving the Class Action Settlement has been entered by the Court.

2. Tadros represents that he is the owner of all claims for loss of use, lost rents, interior damages, damages to contents, and any other personal damage claims, including all such claims as set forth in the Fourth Amended Complaint, flowing from or related to the retail or commercial units.

ARTICLE III
RELEASE BETWEEN TADROS AND SETTLING DEFENDANTS

1. Upon receipt of the Settlement Funds which have been paid by the Settling Defendants, and in consideration of the Settlement Amount and of the mutual promises and releases set forth herein, Tadros does fully and completely release and discharge the Settling Defendants--which term includes its employees, attorneys, agents, insurers, sureties, officers, directors, successors, heirs, assigns, affiliates and subsidiaries--from any and all claims, actions, causes of action, demands, payments, attorneys' fees, court or other costs, expenses, damages, and judgments whatsoever, whether known or unknown, including the claims made in the Action or could have been made in the Action, arising out of or relating to any work performed by or materials provided by the Settling Defendants, or materials otherwise installed or applied at the Property.

2. Tadros agrees to dismiss with prejudice all claims, against Settling Defendants in the Action.

ARTICLE IV
ACKNOWLEDGEMENT AND WAIVER

1. It is agreed and understood by the Settling Parties that they are not required to settle this matter at this time, but that they voluntarily choose to finally resolve the matter at this

time by entering into this Settlement Agreement. The Settling Parties, in deciding to enter into this Agreement, are not relying on any representations, statements, actions, disclosures of information, discovery responses, deposition testimony or failures to disclose information by any other Settling Party, its representatives, or attorneys.

2. Settling Parties expressly waive and assume the risk of any and all claims for damages and/or damages which exist as of this date, or which may arise in the future, but which they do not now know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time. These issues were considered in the course of negotiations leading to this Agreement, and Settling Parties determined this Agreement reflects fair and adequate compensation with due regard for such future possibilities.

3. Tadros warrants and represents that he is the owner of all claims for loss of use, lost rents, inconvenience, lost profits, interior damages, damages to contents and all other personal damage claims related to or associated with the retail or commercial units at Adesso and that such claims are released and cannot be asserted against the Settling Defendants.

ARTICLE V
ADDITIONAL CONDITIONS OF SETTLEMENT

1. It is the express purpose and intent of the Settling Parties that all claims in the Action be settled and resolved with finality. Therefore, this Agreement is conditioned on the final execution and approval of the Adesso HOA Settlement Agreement and Release and the Class Action Settlement Agreement and Release executed contemporaneously herewith. If the respective parties fail to execute the Adesso HOA Settlement Agreement and Release, or the

Class Action Settlement Agreement and Release, each Settling Defendant has the unilateral right to withdraw from this Agreement. Additionally, if the Class Action Settlement Agreement and Release is not finally approved by the Court, each Settling Defendant has the unilateral right to withdraw from this Agreement. Furthermore, if, pursuant to Article IV, Section 1.d. of the Class Action Settlement Agreement, any Settling Defendant acquires the right and option to withdraw from the Class Action Settlement Agreement, that Defendant further has the unilateral right to withdraw from this Agreement.

2. In connection with, and as a material inducement to the Settling Defendants for this Agreement, Tadros represents and warrants that he will provide notice to subsequent purchasers of the retail or commercial units at the property of this Settlement Agreement and the release of the Settling Defendants hereunder.

ARTICLE VI
MISCELLANEOUS

1. **Costs and Expenses**. Each party is responsible for its own attorneys' fees and costs associated with the Action, except to the extent paid by, or committed by, their respective insurance carriers.

2. **Construction**. This Settlement Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of this Agreement.

3. **Successors and Assigns**. All covenants and agreements contained in this Settlement Agreement shall bind and inure to the benefit of the parties hereto, their legal representatives, successors, and assigns.

4. **Further Assurances**. The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be executed and delivered, all such other

instruments, and will take all such other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions and purposes hereof.

5. **No Assignment**. Tadros warrants and represents that he has not assigned, conveyed, pledged, or transferred to any other natural person, firm, corporation or other legal entity any claim, demand, action or cause of action described in this Agreement.

6. **Modifications**. Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought and by any party who would be affected thereby.

7. **No Admissions**. This Agreement and the settlement of the Action do not constitute a concession or admission of wrongdoing or liability by the Settling Defendants and will not be used or construed as an admission of any fault, omission, liability or wrongdoing on the part of the Settling Defendants in any statement, release or written document or financial report issued, filed or made. Neither this Agreement, nor the exhibits hereto, nor the fact of settlement, nor any settlement negotiations or discussions, nor the judgments to be entered approving this Settlement Agreement, nor any related document will be deemed an admission, concession, presumption or inference against the Settling Defendants in a proceeding other than such a proceeding as may be necessary to consummate or enforce this Agreement and the settlement. To the contrary, Tadròs acknowledges that the Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

8. **Governing Law**. This Settlement Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party,

and will be deemed for those purposes to have been made, executed, and performed in South Carolina.

9. **Time of the Essence**. Time is of the essence in this Settlement Agreement and each provision of this Settlement Agreement.

10. **Legal Fees**. In the event of a breach by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith shall be entitled to recover from such other party its costs and expenses, including reasonable legal fees, expenses and associated court costs.

11. **Entire Agreement**. This instrument constitutes the entire and final agreement among the Settling Parties, and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Settlement Agreement. The parties hereto covenant that each shall not enter into an agreement or understanding with respect to this Settlement Agreement without the consent and agreement of all parties hereto.

12. **Invalidity**. If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision, consented to by all parties, as similar in terms to the original provision as is possible and which is legal, valid, and enforceable.

13. **Counterparts**. This Settlement Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will collectively constitute a single document. This document will not be binding on or constitute evidence of a contract

between the parties until such time as this document has been executed by each party and a copy thereof delivered to each other party to this Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 30 day of May, 2017.

Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units

____

Holder Properties, Inc.

By:______________________

Its:______________________

____

ADESSO/Columbia, LLC

By:______________________

Its:______________________

____

Drake/Adesso, LLC

By:______________________

Its:______________________

between the parties until such time as this document has been executed by each party and a copy thereof delivered to each other party to this Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this ___day of ___________, 2017.

____
Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units

____
Holder Properties, Inc.

By: John R. Holder

Its: Chairman & CEO

____
ADESSO/Columbia, LLC

By: John R. Holder

Its: Managing Member

____
Drake/Adesso, LLC

By: John R. Holder

Its: Managing Member

Holder Adesso, LLC

By: John R. Holder

Its: Managing Member

JRH Adesso, LLC

By: John R. Holder

Its: Managing Member

JRH, LLC

By: John R. Holder

Its: Managing Member

John R. Holder, Individually

Niles Bolton Associates, Inc.

By:____________________

Its:____________________

Holder Adesso, LLC

By:________________________

Its:________________________

JRH Adesso, LLC

By:________________________

Its:________________________

JRH, LLC

By:________________________

Its:________________________

John R. Holder, Individually

Niles Bolton Associates, Inc.

By: Allen W. Meadows

Its: PRINCIPAL

Steven C. Wohlfeil

Hussey, Gay, Bell & DeYoung, Inc.

By: STEVEN C. WOHLFEIL

Its: SR. VICE PRESIDENT

____

Jordan & Skala Engineers, Inc.

By:____________________________

Its:____________________________

____

Key Construction, Inc.

By:____________________________

Its:____________________________

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Ace Glass Company, Inc.

By:____________________________

Its:____________________________

____

Advanced Door Systems, Inc.

By:____________________________

Its:____________________________

Hussey, Gay, Bell & DeYoung, Inc.

By:________________________

Its:________________________

Jordan & Skala Engineers, Inc.

By:________________________

Its: President

Key Construction, Inc.

By:________________________

Its:________________________

Ace Glass Company, Inc.

By:________________________

Its:________________________

Advanced Door Systems, Inc.

By:________________________

Its:________________________

Hussey, Gay, Bell & DeYoung, Inc.

By:________________________

Its:________________________

Jordan & Skala Engineers, Inc.

By:________________________

Its:________________________

Key Construction, Inc.

By: Scott Casebolt

Its: Vice President

Ace Glass Company, Inc.

By:________________________

Its:________________________

Advanced Door Systems, Inc.

By:________________________

Its:________________________

Hüssey, Gay, Bell & DeYoung, Inc.

By:________________________

Its:________________________

Jordan & Skala Engineers, Inc.

By:________________________

Its:________________________

Key Construction, Inc.

By:________________________

Its:________________________

Ace Glass Company, Inc.

By: [signature]

Its: Attorney

Advanced Door Systems, Inc.

By:________________________

Its:________________________

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Hussey, Gay, Bell & DeYoung, Inc.

By:____________________________

Its:____________________________

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Jordan & Skala Engineers, Inc.

By:____________________________

Its:____________________________

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Key Construction, Inc.

By:____________________________

Its:____________________________

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Ace Glass Company, Inc.

By:____________________________

Its:____________________________

____

Advanced Door Systems, Inc.

By:____________________________

Its: Attorney

All-South Electrical Constructors, Inc.

By: ________________ III

Its: President

Aquarian Pools of Columbia, Inc.

By: ____________________

Its: ____________________

Artistic Enterprises, Inc.

By: ____________________

Its: ____________________

Commercial Building Services, Inc.

By: ____________________

Its: ____________________

Flooring Services, Inc.

By: ____________________

Its: ____________________

All-South Electrical Constructors, Inc.

By:__________________________

Its:__________________________

Aquarian Pools of Columbia, Inc.

By: [signature]

Its: President

Artistic Enterprises, Inc.

By:__________________________

Its:__________________________

Commercial Building Services, Inc.

By:__________________________

Its:__________________________

Flooring Services, Inc.

By:__________________________

Its:__________________________

All-South Electrical Constructors, Inc.

By:________________________

Its:________________________

Aquarian Pools of Columbia, Inc.

By:________________________

Its:________________________

Artistic Enterprises, Inc.

By: [signature]

Its: COUNSEL OF RECORD FOR THE CIVIL ACTION

Commercial Building Services, Inc.

By:________________________

Its:________________________

Flooring Services, Inc.

By:________________________

Its:________________________

All-South Electrical Constructors, Inc.

By:____________________

Its:____________________

Aquarian Pools of Columbia, Inc.

By:____________________

Its:____________________

Artistic Enterprises, Inc.

By:____________________

Its:____________________

Commercial Building Services, Inc.

By:____________________

Its: PRESIDENT

Flooring Services, Inc.

By:____________________

Its:____________________

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____

All-South Electrical Constructors, Inc.

By:____________________________

Its:____________________________

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Aquarian Pools of Columbia, Inc.

By:____________________________

Its:____________________________

____

Artistic Enterprises, Inc.

By:____________________________

Its:____________________________

____

Commercial Building Services, Inc.

By:____________________________

Its:____________________________

____

Flooring Services, Inc.

By: Michael Leech

Its: Atty

Gill Plumbing Company

By: [signature]

Its: President

Guardian Fence Suppliers of SC, Inc.

By:__________________________

Its:__________________________

Hester Drywall, Inc.

By:__________________________

Its:__________________________

Holland Roofing, Inc.

By:__________________________

Its:__________________________

Gill Plumbing Company

By:__________________________

Its:__________________________

Guardian Fence Suppliers of SC, Inc.

By: C. Reed Teague

Its: Attorney

Hester Drywall, Inc.

By:__________________________

Its:__________________________

Holland Roofing, Inc.

By:__________________________

Its:__________________________

Gill Plumbing Company

By:__________________________

Its:__________________________

Guardian Fence Suppliers of SC, Inc.

By:__________________________

Its:__________________________

Hester Drywall, Inc.

By: Jim Hester

Its: President 5/5/17

Holland Roofing, Inc.

By:__________________________

Its:__________________________

Gill Plumbing Company

By:________________________

Its:________________________

Guardian Fence Suppliers of SC, Inc.

By:________________________

Its:________________________

Hester Drywall, Inc.

By:________________________

Its:________________________

Holland Roofing, Inc.

By: Joel S M [illegible] w/ permission

Its: Counsel for this matter

JR Hobbs Co.

By: [signature]

Its: VP

Loveless Commercial Contracting, Inc.

By:____________________

Its:____________________

Reliance Interiors, Inc.

By:____________________

Its:____________________

Southern Fireproofing Company, Inc.

By:____________________

Its:____________________

Southern Vistas, Inc.

By:____________________

Its:____________________

____

JR Hobbs Co.

By:__________________________

Its:__________________________

____

Loveless Commercial Contracting, Inc.

By: J. A. Dela for ALR

Its: Attorney

____

Reliance Interiors, Inc.

By:__________________________

Its:__________________________

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Southern Fireproofing Company, Inc.

By:__________________________

Its:__________________________

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Southern Vistas, Inc.

By:__________________________

Its:__________________________

JR Hobbs Co.

By:____________________

Its:____________________

Loveless Commercial Contracting, Inc.

By:____________________

Its:____________________

Reliance Interiors, Inc.

By: JKettering

Its: PRESIDENT

Southern Fireproofing Company, Inc.

By:____________________

Its:____________________

Southern Vistas, Inc.

By:____________________

Its:____________________

JR Hobbs Co.

By:____________________

Its:____________________

Loveless Commercial Contracting, Inc.

By:____________________

Its:____________________

Reliance Interiors, Inc.

By:____________________

Its:____________________

Southern Fireproofing Company, Inc.

By: K Kitchens

Its: Kevin Kitchens President

Southern Vistas, Inc.

By:____________________

Its:____________________

____

JR Hobbs Co.

By:______________________________

Its:______________________________

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Loveless Commercial Contracting, Inc.

By:______________________________

Its:______________________________

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Reliance Interiors, Inc.

By:______________________________

Its:______________________________

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Southern Fireproofing Company, Inc.

By:______________________________

Its:______________________________

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Southern Vistas, Inc.

By:______________________________

Its:______________________________

SRS Concrete Finishing

By: E. Glen Elliott

Its: Attorney

Stafford Consulting Engineers, Inc.

By:__________________________

Its:__________________________

Carlisle Construction Materials Inc.

By:__________________________

Its:__________________________

GrayStone of Florida, Inc.

By:__________________________

Its:__________________________

Dryvit Systems, Inc.

By:__________________________

Its:__________________________

SRS Concrete Finishing

By:________________________

Its:________________________

Stafford Consulting Engineers, Inc.

By: Stuart W. Sutton

Its: President

Carlisle Construction Materials Inc.

By:________________________

Its:________________________

GrayStone of Florida, Inc.

By:________________________

Its:________________________

Dryvit Systems, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By:________________________

Its:________________________

Stafford Consulting Engineers, Inc.

By:________________________

Its:________________________

Carlisle Construction Materials Inc.

By: Ellis B. Drewitt

Its: Attorney

GrayStone of Florida, Inc.

By:________________________

Its:________________________

Dryvit Systems, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By:________________________

Its:________________________

Stafford Consulting Engineers, Inc.

By:________________________

Its:________________________

Carlisle Construction Materials Inc.

By:________________________

Its:________________________

GrayStone of Florida, Inc.

By: B. Boyd, by C. Majur, Esq.

Its: Attorney

Dryvit Systems, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By:______________________

Its:______________________

Stafford Consulting Engineers, Inc.

By:______________________

Its:______________________

Carlisle Construction Materials Inc.

By:______________________

Its:______________________

GrayStone of Florida, Inc.

By:______________________

Its:______________________

Dryvit Systems, Inc.

By: Walker Wakeman

Its: VP & GENERAL COUNSEL

Structural Preservation Systems, LLC

By: Jacqueline Phillips

Its: Attorney

STO Corp

By:

Its:

Towers Paint Contractors, Inc.

By:

Its:

Capital Group, LLC

By:

Its:

Structural Preservation Systems, LLC

By:________________________

Its:________________________

STO Corp

By: Lee Rin

Its: MANAGER, Product Claims

Towers Paint Contractors, Inc.

By:________________________

Its:________________________

Capital Group, LLC

By:________________________

Its:________________________

Structural Preservation Systems, LLC

By:____________________________

Its:____________________________

STO Corp

By:____________________________

Its:____________________________

Towers Paint Contractors, Inc.

By: [signature]

Its: Attorney

Capital Group, LLC

By:____________________________

Its:____________________________

Structural Preservation Systems, LLC

By:__________________________

Its:__________________________

STO Corp

By:__________________________

Its:__________________________

Towers Paint Contractors, Inc.

By:__________________________

Its:__________________________

Capital Group, LLC

By:__________________________

Its:__________________________

Exhibit 8

2017 Stipulation of Dismissal With Prejudice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013,* ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated, and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units,

Plaintiffs,

-vs-

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems,

Case No. 3:16-cv-710-JFA

STIPULATION OF DISMISSAL WITH PREJUDICE

LLC., STO Corp., Isidro Meza and Towers Paint Contractors, Inc.,

Defendants.

Commercial Building Services, Inc.,

Third-Party Plaintiff,

vs.

Capital Group, LLC and Will Whitaker,

Third-Party Defendants.

Artistic Enterprises, Inc.,

Third-Party Plaintiff,

vs.

Benito Galicia,

Third-Party Defendant.

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the parties, by and through their undersigned counsel, hereby stipulate and agree that all claims, cross-claims, counterclaims and third-party claims that were or could have been asserted by or between any or all of the parties in the referenced action are dismissed and forever ended with prejudice.

s/ Franklin J. Smith, Jr.
Franklin J. Smith, Jr., FED ID No. 3898
Jared H. Garraux, FED ID No. 10113
RICHARDSON PLOWDEN & ROBINSON, P.A.
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P.O. Drawer 7788
Columbia, South Carolina 29201
Attorneys for Plaintiffs

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Howard A. VanDine, III, FED ID No. 1046
Nelson Mullins Riley & Scarborough, LLP
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s/ Paul E. Sperry
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Paul E. Sperry, FED ID No. 7606
Tyler P. Winton, FED ID No. 10565
Carlock Copeland & Stair, LLP
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s/ Lawrence B. Orr
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Kathy Jane Price Elmore, FED ID No. 6593
Orr, Elmore & Ervin, LLC
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s/ Ellen S. Cheek
Michael B.T. Wilkes, FED ID No. 4658
Ellen S. Cheek, FED ID No. 9366
Wilkes Law Firm
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Attorneys for Jordan & Skala Engineers, Inc.

s/ James L. Werner
James Lynn Werner, FED ID No. 1079
Lawrence M. Hershon, FED ID No. 10404
Parker Poe Adams & Bernstein, LLC
P.O. Box 1509
Columbia, SC 29202-1509

And

s/ R. Davis Howser
R. Davis Howser, FED ID No. 1984
Howser, Newman & Besley, LLC
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Attorneys for Key Construction, Inc.

s/ John C. Bruton, Jr.
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S. Ross Shealy, FED ID No. 10733
Haynsworth Sinkler Boyd, PA
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Columbia, SC 29201
Attorneys for Ace Glass Company, Inc.

s/ R. Trippett Boineau, III
R. Trippett Boineau, III, FED ID No. 9936
Gregory B. Collins, FED ID No. 10350
McAngus, Goudelock & Courie, LLC
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s/ Joseph S. McCue
Joseph S. McCue, FED ID No. 6890
Collins & Lacy, PC
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Columbia, SC 29211
Attorneys for All-South Electrical Constructors, Inc., Aquarian Pools of Columbia, Inc., and Holland Roofing, Inc.

s/ Robert T. Strickland
Robert T. Strickland, FED ID No. 4344
Matthew G. Gerrald, FED ID No. 10055
Barnes Alford Stork & Johnson, L.L.P.
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Columbia, SC 29202
Attorneys for Commercial Building Services, Inc.

s/ John L. McCants
John L. McCants, FED ID No. 4870
Rogers Lewis Jackson Mann & Quinn, LLC
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Columbia, SC 29211
Attorneys for Artistic Enterprises, Inc.

s/ Lauren N. Vriesinga
David C. Cleveland, FED ID No. 5062
Lauren N. Vriesinga, FED ID No. 12188
Clawson & Staubes
126 Seven Farms Dr., Suite 200
Charleston, SC 29492
Attorneys for Flooring Services, Inc.

s/ Walter B. Todd, Jr.
Walter B. Todd, Jr., FED ID No. 3121
Walter B. Todd, Jr., P.C.
P. O. Box 1549
Columbia, SC 29202
And

s/ Joshua D. Shaw
Joshua D. Shaw, FED ID No. 10529
Turner Padgett Graham & Laney, P.A.
P. O. Box 1473
Columbia, SC 29202
Attorneys for Hester Drywall, Inc.

s/ John E. Rogers, II
John E. Rogers, II FED ID No. 10014
C. Reed Teague, FED ID No. 11221
Ward Law Firm
P.O. Box 5663
Spartanburg, SC 29304
Attorneys for Guardian Fence Suppliers of SC, Inc.

s/ Andrew L. Richardson, Jr.
Andrew L. Richardson, Jr., FED ID No. 10102
J. Adam Ribock, FED ID No. 12287
McAngus Goudelock & Courie, LLC
P.O. Box 12519
Columbia, SC 29211
Attorneys for Loveless Commercial Contracting, Inc.

s/ Christy E. Mahon
Mark S. Barrow, FED ID No. 1220
Christy E. Mahon, FED ID No. 7896
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, SC 29211
Attorneys for Reliance Interiors, Inc. and Gill Plumbing Company

s/ Dunn D. Hollingsworth
Dunn D. Hollingsworth, FED ID No. 5918
Jillian S. Barton, FED ID No. 11848
Robertson Hollingsworth Manos & Rahn, LLC
550 King Street, Suite 300
Charleston, SC 29403
Attorneys for Southern Fireproofing Company, Inc. and JR Hobbs Co.

S. Markey Stubbs
S. Markey Stubbs, FED ID No. 4362
Baker Ravenel Bender
P.O. Box 8057
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Attorneys for Southern Vistas, Inc.

s/ E. Glenn Elliott
E. Glenn Elliott, FED ID No. 700
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Attorneys for SRS Concrete Finishing

s/ Greg L. Horton
Greg L. Horton, FED ID No. 7103
Dana Woodrum Lang, FED ID No. 11999
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401
Attorneys for Andersen Windows, Inc. and Silver Line Building Products, LLC

s/ Ellis B. Drew, III
Ellis B. "Bo" Drew, III, FED ID No. 603
Craige Jenkins Liipfert & Walker LLP
110 Oakwood Drive, Suite 300
Winston-Salem, NC 27103
Attorneys for Carlisle Construction Materials Incorporated

s/ Brent M. Boyd
Brent M. Boyd, FED ID No. 6004
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
And

s/ M. Caroline Lindsey Trautman
M. Caroline Lindsey Trautman, FED ID No. 10571
Anderson Jones, PLLC
1305 Navaho Drive, Suite 303
Raleigh, NC 27609
And

s/ James P. Walsh
James P. Walsh, FED ID No. 5636
John D. Harjehausen, FED ID No. 9961
Clarkson, Walsh, Terrell & Coulter PA
1164A Woodruff Road
Greenville, SC 29607
Attorneys for GrayStone of Florida, Inc.

s/ Robert E. Fields, III
Robert E. Fields, III, FED ID No.
Oak City Law, LLP
702 N. Blount St.
Raleigh, NC 27604
Attorneys for Dryvit Systems, Inc.

s/ Derek M. Newberry
Derek M. Newberry FED ID No. 10631
Alan Belcher, FED ID No. 9342
Paul Trainor, FED ID No. 12071
Hall Booth Smith, PC
40 Calhoun Street, Suite 550
Charleston, SC 29401
Attorneys for Sto Corp.

s/ Jacqueline Dixon Phillips
Theodore Parker, III, FED ID No.
Jacqueline Dixon Phillips, FED ID No.
Parker Nelson & Associates, CHTD.
211 King Street, Suite 103
Charleston, SC 29401
Attorneys for Structural Preservation Systems, LLC

s/ Robert M. Kennedy, Jr.
Robert M. Kennedy, Jr., FED ID No. 12270
Phelps Dunbar, LLP
4140 Parklake Avenue, Suite 100
Raleigh, NC 27612-3723
Attorneys for Capital Group, LLC

s/ James C. Cox, III
James C. (Trey) Cox, III, FED ID No. 7496
Grier, Cox & Cranshaw, LLC
P.O. Box 2823
Columbia, SC 29202-2823
Attorneys for Towers Paint Contractors, Inc.

Exhibit 9

2017 Emails Between Plaintiff and Plaintiff's Counsel Regarding Release and Potential for Lawsuit by HOA

Sunday 5-21-17

Dear Mr. Smith and Mr Garraux,

I appreciate Adesso HOA emailing me, for the first time, the *ABS Applied Building Sciences INC. dated September 22, 2016.* I briefly surfed through that extensive report. I am very sorry that it obviously documents serious damages to the Adesso building throughout. I never realized such damage extent. Such damages are mostly to the building exterior, ground level *(where my Commercial Units are)*, the walls and ceilings. **The years to come potential consequences of such poor building construction defects are not outlined in that ABS Report.** No one ever outlined to me such extensive and serious construction defects.

ABS summarized that there are damages to my commercial windows and the cement flooring including high moisture level. There was also a mention about water leaks above my Commercial Units. According to my limited MD comprehension, in the upcoming years, that damage can easily extend to:

The eventual growth of Mold inside the wall interiors.

Damage to the Ceiling and its electrical wiring, lights etc.

Other unknown eventual damage findings, Yet To be Determined? that would be related to the current ABS Construction Defects and High Moisture.

I have already outlined Very Concerning Dishonest HOA acts(Previous Holder Properties) and emailed our new HOA requesting remedy of such HOA Dishonest and Master Deed Violations. None had taken place. That is a violation of the Master Deed towards my Commercial Ownership. Unfortunately my frustration has been falling on deaf ears and this building's Commercial Unit purchase has been a financial nightmare from day one. Yes, I am one good unhappy owner.

Due to the very concerning dishonest acts performed by the HOA (represented by the earlier Holder Properties) I need our well respected new Adesso HOA to reasonably:

1- Serve me in writing that Adesso HOA will timely repair all relevant damages to the satisfaction of the current and financially unhappy tenants. Such timely repairs will include any eventual unforeseen and unknown ABS Report complicating consequences that would include but not limited to potential Interior Wall Damages, Ceiling Damage, Wiring, Electrical and Floor Damage. ***I refer the HOA to review Photo***

 # 57 Floor and window damage and Photo #60 where water is directly leaking above the Commercial units ceilings and windows.

2- There is a potential Legal Action where Holder Properties might be named as a defendant for other Causes of Action. More so related to the false declaration upon COE which were made upon my Adesso Commercial Units purchase. **ABS report page 9 indicates Holder's repeated attempts to unprofessionally cover up and fix damages in the years 2009 and 2010. Such damages and their unprofessional cover-up were never declared in my COE on 12-5-2014. I only learn this very fact for the first time today! I ask you to please exempt the ABS page #9 - the two Stafford Consulting Engineer's 2009 Reports and the three 2010 HL2 engineering reports and all their findings from this settlement.**

Such exemption will not be used to ask for any additional monies. Such exemption would be only limited to be support the fraudulent sale evidence(s) if Holder was named in the pending lawsuit for Holder's Fraudulent COE sale of the December 2014 Adesso Commercial Units to my ownership. This exemption is needed so not to obstruct justice pending court proceeding. The pending lawsuit will name the major Def. Seller Owner Ford Elliott and others Y.T.D where Holder Properties might be one.

As you all can see, the 9-26-2016 ABS Report, Photos and current Settlement are not about income loss. **Only now I get it.** They are all about settlement of Serious Financial Damages and Repairs and as to who exactly is going to be responsible carrying the remedy from now forwards?

***If you provide me with this logical and reasonable satisfaction to items 1-2, I will respectfully sign your drafted Settlement pending a signed addendum from the HOA as outlined per 1-2 above. I am NOT asking for any extra monies. I am merely asking for reasonable eventual protection and pending my lawsuit proceedings.**

Mr. Smith, I am taking you seriously. I am responding to your today's lawsuit threats with haste but with logical expectations and requests. I exercise the reasonable man's approach where I was definitely lacking the needed detailed explanation from you that you only provided to me today. You replied to me earlier today with a lawsuit against me, if I do not allow you and the HOA to bend my arm. I am trying my best to cooperate with your sinking-ship. None of your tenants is going through what I am going through with the county and the courts as we speak.

I deserve recognition and understanding to my very difficult financial situation. No one can bend anyone's arm to sign misleading documents that can clearly result to my financial detriment and would definitely Obstruct Justice.

I respectfully expect that you and members of the HOA will act accordingly. Yes Mr. Smith you definitely ignored me, a major Plaintiff, whom you are asking to relief responsible parties from serious responsibilities. I hope my final decision here makes everyone happy and I apologize about this inconvenience.

Thank you,

Email Signed,

Emad Tadros M.D./ Trustee of the Grace Living Trust-Owner of Adesso Commercial units A-D.

On Sun, May 21, 2017 at 9:02 AM, Frank Smith <FSmith@richardsonplowden.com> wrote:

Dr. Tadros

It appears that I have failed clearly and adequately explain the nature of the pending lawsuit and it appears that you misunderstand your rights as it relates to the commercial units, the building, the responsibilities of the HOA and you as the owner of the commercial units. When you purchased the units you bought them pursuant to the Master Deed which contains restrictive covenants and rules and regulations regarding ownership rights. As owner of the commercial units you have common ownership of the building with all of the other unit owners. The building is considered a "common element". You own an undivided interest in the common elements but you do not control the common elements. The only element that you own as the owner of a unit is the space within the unit and whatever personal property you have put in the unit.

Pursuant to the Master Deed, the HOA is responsible for maintaining the building and the owners do not have the obligation nor the right to make repairs to the building or bring a lawsuit to seek damages for defective work relating to the common elements.

You should have received a copy of the Master Deed when you bought your units. I sent a copy of the Master Deed in an earlier email. It explains all of the obligations and rights that I described above. You are legally bound by the Master Deed and your rights as a commercial owner are set out in the Master Deed. I also provided a copy of the expert's reports and recommended scope of repairs. The expert's reports detail the defects in the building. The defects relate primarily to the exterior walls and roof.

In January 2016 the HOA hired our firm to bring an action for defects in the building. There had been numerous roof and wall leaks over the years. When we were contacted the statute of repose was going to expire on February 15 and we had to file an action quickly. All unit owners were notified of the lawsuit by the HOA prior to filing and we protected the rights of all owners by filing the action.

Pursuant to the Master Deed, the HOA is the proper entity to seek recover for defects in the common elements; i.e. the building. As a unit owner you cannot bring that action. you have no right to recover any damages for repairs to the building. The unit owners only own the space in their unit and the personal property in the units; i.e. furniture, equipment, etc. Therefore, the only damages that a unit owner could recover would be for damage to personal property or loss of use of the unit if you could not occupy the unit during repairs. When the lawsuit was filed the complaint sought these damages for the unit owners.

After the lawsuit was filed, our experts investigated the building. The only problem they found in the commercial units was a leak at one of the windows in Maddio's Pizza. The window frames are common elements and therefore, the HOA has the right to recover for this defect. Our expert indicated that the leak was actually caused by defects in the stucco above the window and not the window itself. As the unit owner you do not have any right to recover for this defect. Our experts also determined that all repairs to the buildings could be performed without any owner having to vacate their unit. Therefore, unit owners would have no damage unless they had damage to personal property. Since you own commercial units and the units are leased, potentially one of your tenants could argue that while they did not have to close during the repairs, the repairs caused their revenues to be less than they would have been. This is a potential damage that you would be entitled to recover. Since no one knows if or how much that damage will be, the HOA agreed to indemnify you for that potential loss. By agreeing to indemnify you, the HOA is protecting you from the only loss that you have a right to recover.

You seem to be worried about the extent of the release that you are being asked to sign. The release is very broad at the defendants' request. They want to make sure that they are protected from any future claims from the HOA or any owners. Regardless of the broad language of the release, as a unit owner, you do not have the right to recover any damages from the defendants other than for damage to personal property, loss of use or loss of revenue. The HOA has agreed to indemnify you from any potential loss relating to your tenants. The HOA is going to repair the building because that is its obligation. You are totally protected. The building will be repaired. You are protected from claims from your tenants. There is no other possible damage that you could sustain because of the repairs.

I am representing the HOA and all owners in this action. The HOA and the owners have a common interest in recovering for the defects in the building. The Master Deed sets out the ownership interests of the HOA and owners and each is allowed to recover only damages relating to their ownership interest. From the defendants' perspective they only see the total damages that may be recovered and do not care which entity may recover those damages. they only want to insure that they get a complete release. **I have a professional and ethical obligation to represent the interests of my clients. As my client, I am telling you that the settlement is in your best interest. you will never be in a better position. You have no risk in signing the settlement agreement. You have significant risk of future costs from attorney fees and special assessments if you do not sign the release. I encourage you to have a lawyer review your options. I am confident that they will give you the same advice.** I understand that you may other issues with the HOA that are unrelated to this lawsuit. I cannot represent you or the HOA in those matters and those issues should not be involved in the analysis of the benefits of this settlement.

If you refuse to sign the settlement agreement, I expect that the HOA will file an action against you for breach of the agreement that you are attempting to revoke. You signed that agreement and in return for the HOA indemnifying you against tenants' claims for loss of revenue, you agreed to sign the settlement agreement. the HOA performed its obligations but you did not when you refused to sign the agreement. Since I represent you and the HOA in the action against the defendants I cannot represent either you or the HOA in the dispute over the indemnity agreement. You will have to retain your own lawyer which will cause you to incur substantial costs with no benefit.

The HOA is being very fair in agreeing to indemnify you. I highly recommend that you take advantage of that protection and return the signature page of the attached settlement agreement.

Please call me if you have any questions.

Thanks

Frank

From: Dr. T [mailto:tadrosmd@gmail.com]
Sent: Saturday, May 20, 2017 7:37 PM
To: Frank Smith; Emad Tadros
Subject: Re: FW: Agreement with Adesso HOA

Please take a note of this agreement is cancelled by Tadros. -Tadros is NOT fully informed..

Thank you,

On Sat, May 20, 2017 at 3:53 PM, Dr. T <tadrosmd@gmail.com> wrote:

Emad Tadros, M.D.

Diplomate American Board of Psychiatry and Neurology

Exhibit 10

Affidavit of Emad Tadros (without exhibits)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO.: 2019-CP-40-00919
EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED PLAINTIFF, vs. HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION DEFENDANTS.	**AFFIDAVIT OF EMAD TADROS, M.D.**

PERSONALLY, APPEARED BEFORE ME, the undersigned, Emad Tadros, MD, who after being duly sworn, deposes and says:

1. My name is Emad Tadros, M.D.
2. I reside at 13349 Caminito Mar Villa, Del Mar, San Diego County, California.
3. I am above 18 years of age.
4. I make this affidavit based on my knowledge, observations and the facts that I have alleged as the Plaintiff in this matter.
5. I am the owner and landlord of four (4) commercial units (the "units") consisting of approximately 8,500 square feet located at 601 S. Main Street, Columbia, Richland County, South Carolina 29201.
6. The units are located within a five (5) story structure known as the ADESSO Horizontal Property Regime (the "ADESSO").
7. The ADESSO includes approximately one-hundred and ten (110) condominium units in addition to my units.
8. I purchased the units in December 2014.
9. By virtue of my ownership interest in the ADESSO, I am subject to the terms and conditions of the Master Deed that created the ADESSO.
10. I am also a member of the ADESSO Homeowners' Association (the "HOA").

11. The HOA filed a lawsuit (the "lawsuit") on February 9, 2016 on behalf of all unit owners related to construction defects from the original construction of the ADESSO.

12. I, by virtue of my ownership interest in my units, had to be a party in the lawsuit.

13. The lawsuit reached a settlement on or around March 2017.

14. I was required to execute Settlement Agreements and Releases as part of the settlement of the lawsuit in May 2017.

14. The attorney representing the HOA in the lawsuit forwarded me a copy of three (3) separate Settlement Agreements and Releases for my review and execution.

15. I am attaching one (1) of the Settlement Agreement and Release that references all three (3) Settlement Agreements and Releases to my Affidavit as **Exhibit A.**

16. I had several discussions and exchanges of emails with the HOA's attorney related to my execution of the proposed Settlement Agreements and Releases.

17. I refused to execute the Settlement Agreements and Releases due to my concerns I had about the liability of the original developer and contractor that developed and built the ADESSO.

18. I am attaching to my Affidavit as **Exhibit B** a copy an agreement I executed and subsequently withdrew as an example of my concerns and disagreement with the proposed settlement agreements and releases.

19. I was led to believe, under the assurances of the HOA attorney and threats of possible lawsuits against me by the other unit owners, that I could maintain my claims against the developer and contractor that developed and built the ADESSO.

20. I am attaching an email thread to my Affidavit as **Exhibit C** of what I believe to be an example of the threats and duress used by the HOA attorney to force me to execute the Settlement Agreements and Releases.

21. The attorney for the HOA was fully aware of the issues I had with parking spots that were allocated to the exclusive use of my units pursuant to the Master Deed.

22. Furthermore, my units are subject to compliance with the City of Columbia Commercial Planning and Zoning Regulations and Ordinances.

23. The HOA attorney repeatedly assured me that my execution of the Settlement Agreements and Releases would not preclude me from pursuing the claims I have against the developer and contractor that developed and built the ADESSO.

24. The HOA attorney became aware that I refused to sign the proposed Settlement Agreements and Release because of my concerns about the stolen commercial parking spots originating from the actions and inactions of Holder Properties, Inc. and its agents.

25. When I objected to the broadness of the Settlement Agreements and Releases, the HOA attorney repeatedly assured me that the Settlement Agreements and Releases was for known and unknown construction defects only.

26. The HOA attorney repeatedly assured me that the stolen commercial parking spots were a totally isolated and irrelevant issue to the subject of the Settlement Agreements and Releases which was concerned with construction defects only.

27. The HOA attorney also advised me that the HOA would take a legal action against me for recovery of the whole settlement amount if I refused to sign his prepared Settlement Agreements and Releases for construction defects only.

28. I reluctantly executed the Settlement Agreements and Releases with the understanding that my execution of the Settlement Agreements and Release would not prejudice my claims I have against the developer and builder of the ADESSO, namely the Holder defendants named in this lawsuit.

29. I only signed the Settlement Agreements and Releases when I was assured by the HOA attorney that I could pursue a separate legal action in regard to the stolen commercial parking spots which is the case at bar.

30. I felt that I had no other choice but to execute the Settlement Agreements and Releases.

FURTHER AFFIANT SAYETH NOT.

Emad Tadros, MD

Emad Tadros, MD

SWORN to before me this 12 day of November, 2019.

Notary Public for San Diego County
My Commission Expires: Oct 7, 2020

ALYSSA M. SARDINA
COMM. #2261754
Notary Public - California
San Diego County
My Comm. Expires Oct. 7, 2022

Exhibit 11

2017 Indemnity Agreement Between Plaintiff and Adesso HOA

STATE OF SOUTH CAROLINA)
) **AGREEMENT**
COUNTY OF RICHLAND)

WHEREAS, the Adesso Homeowners Association (HOA) brought an action against various parties relating to design and construction defects in the Adesso Condominiums such action being styled as *ADESSO Homeowners' Association et al. vs. Holder Properties, Inc. et al*, Civil Action No.: 3:16-cv-710-JFA (Lawsuit);

WHEREAS, Emad Tadros, M.D. as Trustee of the Grace Living Trust (Tadros) is the owner of all of the commercial units at Adesso and is a plaintiff in the Lawsuit;

WHEREAS, HOA and Tadros wish to finalize the settlement with all defendants in order to proceed with exterior repairs to the building;

WHEREAS, Tadros has concerns about the Settlement Agreement for the commercial units due to possible claims from the commercial tenants relating to the exterior repairs; and

WHEREAS, the parties have reached an agreement to address Tadros' concern so that Tadros will sign the Settlement Agreement for the commercial units; thereby allowing the settlement to be completed;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The parties agree that it is in the best interests of all commercial and residential unit owners and the HOA to finalize the settlement with the Defendants in the above matter.

2. In return for Tadros signing the proposed Settlement Agreement for the commercial retail units, the HOA agrees to indemnify, defend, and hold Tadros harmless from any claims by Adesso commercial tenants relating to loss of use, lost revenue, lost profits or other economic loss claims relating to the exterior repairs that may be performed at Adesso.

3. The parties agree to cooperate in minimizing the risk that the commercial tenants suffer any economic loss because of the repairs. Tadros agrees to take all reasonable efforts to avoid any claims by any of the commercial tenants and will not in any way encourage any tenant to bring an action relating to the repairs. HOA will give tenants advance notice of the repairs and will take all reasonable efforts in minimizing any impacts from the repairs on the commercial tenants.

4. Tadros agrees to provide copies of all commercial tenant leases to the HOA upon request. Tadros agrees to not disclose this agreement to any of the commercial tenants. Disclosure is exempted if there is a filed formal complaint or legal action taken against Tadros.

5. Tadros agrees to provide reasonable assistance to the HOA in defending against any tenant claims including but not limited to providing documentation, taking other actions that

require the consent, permission or action of the Landlord, meeting the Landlord's obligations under the lease.

6. The parties agree that the $2,000 provided to Tadros for the commercial unit Settlement Agreement shall be a credit against any amounts the HOA may incur in indemnifying, defending, and holding Tadros harmless of future tenant claims.

7. This indemnity is limited to tenant's economic loss claims arising from the exterior repairs recommended by HOA's experts in the Lawsuit.

Adesso Homeowners Association, Inc. and Adesso Horizontal Property Regime

By:

Michael Anastasion
Its: Adesso Board Secretary

MD
Emad Tadros, M.D, as Trustee of the Grace Living Trust

5/5/17.

Exhibit 12

2017 Class Action Settlement for Adesso Residential Units

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013*, ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units

Plaintiffs,

-vs-

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems,

Case No. 3:16-cv-710-JFA

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

LLC., STO Corp., Isidro Meza and Towers Paint Contractors, Inc.,

Defendants.

Commercial Building Services, Inc.,

Third-Party Plaintiff,

vs.

Capital Group, LLC and Will Whitaker,

Third-Party Defendants.

Artistic Enterprises, Inc.,

Third-Party Plaintiff,

vs.

Benito Galicia,

Third-Party Defendant.

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "**Agreement**" or the "**Settlement Agreement**") is made and entered into as of this 5th day of MAY, 2017 by and between Plaintiff William Durkin individually ("**Durkin**" or "**Class Representative**") and on behalf of all others similarly situated (collectively, "**Class**"), and Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder; Drake/Adesso, LLC, Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC; Niles Bolton Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Commercial Building Services, Inc.; Flooring

Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Carlisle Construction Materials Inc.; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC., STO Corp., Towers Paint Contractors, Inc., Capital Group, LLC and Will Whitaker (collectively, the "**Settling Defendants**"). The Class and Settling Defendants are hereinafter collectively referred to as "**Settling Parties**."

RECITALS

WHEREAS, the putative Class is comprised of its representative, William Durkin, and all others owning residential units at the property known as the Adesso, located in Columbia, South Carolina ("**Property**"), as more fully described in Plaintiff Durkin's Motion to Certify Settlement Class, Preliminarily Approve Settlement, Authorize Class Notice and Schedule Fairness Hearing ("**Motion**"). Plaintiff Durkin affirms that the putative Class is the sole, proper party to bring this class action and settle this matter as to all claims for loss of use, lost rent, interior damages, damages to contents, and any other personal damage claims;

WHEREAS, William Durkin is an owner of a residential unit at the Property and has served as the Class Representative in this lawsuit;

WHEREAS, the Settling Defendants provided services or materials for the planning, design, development, construction, marketing, sale, management, control, maintenance and/or repair of the Property;

WHEREAS, this action relates to alleged improper design and construction defects and deficiencies at the Property as well as alleged improper marketing, management, control and sale of the Property, which are the subject of litigation now pending in the above styled action (the "**Action**");

WHEREAS, the Class alleged claims against all Settling Defendants, with the exception of Capital Group, LLC and Will Whitaker, in the Action;

WHEREAS, this Agreement, together with the Adesso HOA Settlement Agreement and Release and the Commercial Claims Settlement Agreement and Release, are intended, collectively, to resolve all claims arising out of the captioned Action and are each dependent upon the execution and approval of the others;

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Adesso HOA Settlement Agreement and Release with the Adesso Homeowners' Association and the Adesso Horizontal Property Regime (collectively "Adesso");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Commercial Claims Settlement Agreement and Release with Plaintiff Emad Tadros, M.D., as Trustee of the Grace Living Trust as owner of all retail units at Adesso;

WHEREAS, the Settling Defendants deny any wrongdoing, liability, and damage of any kind;

WHEREAS, the Named Plaintiffs and the Settling Defendants have conducted a lengthy examination and investigation of the facts and law relating to the Named Plaintiffs' claims and the Settling Defendants' defenses;

WHEREAS, the Named Plaintiffs and the Settling Defendants have conducted arm's length, adversarial settlement negotiations over an extended period of time, including a lengthy mediation session mediated by William G. Lyles, during which they concluded that further adversarial litigation would be protracted and expensive, the result of which was uncertain, and therefore that settlement is in the best interests of the Settlement Class and the Settling Defendants;

WHEREAS, the Named Plaintiffs and their counsel are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Named Plaintiffs and the Settlement Class. The Named Plaintiffs seek the Court's approval of the Settlement Agreement;

WHEREAS, the Settling Defendants, without waiving their right to contest class certification if the Named Plaintiffs' allegations against them were further litigated, consent to the conditional certification of a settlement class, as set forth herein, solely for the purposes of settlement;

WHEREAS, Plaintiff Durkin, through his attorneys ("**Class Counsel**") will move the Court to certify the Class for purposes of this Settlement; and

WHEREAS, the Settling Parties have agreed to enter into this Agreement to bring about the full, complete, and final resolution of all matters between them, subject to certain conditions as set forth below and upon approval of the Court.

ARTICLE I
INCORPORATION OF RECITALS

1. The foregoing Recitals are incorporated and made a part of this Settlement Agreement, provided, however, in the event of a conflict between the recitals and the provisions of the Articles below, the provisions of the Articles shall control.

ARTICLE II
PRESENTATION AND NOTICE

1. No later than 10 business days after the Execution Date of this Settlement Agreement, the Parties will file with the Court a Joint Motion for Certification of Settlement Class, Preliminary Approval of Settlement, Approval of Notice of Plan and Notice Administrator and Appointment of Class Counsel that seeks entry of a Preliminary Approval Order substantially in a form reasonably approved by the Parties which would, for settlement purposes only: (i) certify a conditional settlement class under Federal Civil Rule 23(b)(3) composed of the Settlement Class Members; (ii) preliminarily approve this Settlement Agreement; (iii) approve the Notice and the plan for notification of the Settlement Class contained in the Settlement Agreement; (iv) appoint Class Counsel; and (v) schedule a fairness hearing.

2. For purposes of settlement only, and upon the terms and conditions set forth in this Settlement Agreement, the Parties agree to seek certification of a Settlement Class in the Action pursuant to Federal Civil Rule 23(b)(3).

3. Excluded from the Settlement Class are:

   i. All Persons who timely exercise their right to opt out of the Settlement;

   ii. Employees of the Settling Defendants; and

   iii. Employees of the Court.

4. The Settling Parties disagree as to whether class certification would be proper under Federal Civil Rule 23. The Settling Defendants contend that this Action could not be certified as class action under Federal Civil Rule 23(b)(3).

5. Nothing in this Settlement Agreement will be construed as an admission by the Settling Defendants that these Actions or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement will prevent the Settling Defendants from opposing or supporting class certification or seeking de-certification of a

conditionally certified class if a Final Order and Judgment is not obtained or not upheld on appeal for any reason.

ARTICLE III
GIVING NOTICE TO THE CLASS

1. Provided the Court has entered the Preliminary Approval Order, Class Counsel will, at its expense, mail to all persons on the Class list, via first class mail and electronic mail, a copy of a Notice in content substantially the same as set forth in the "**Notice**" referenced in and attached, as an Exhibit, to the Motion for Preliminary Approval of Settlement. Such Notice will be placed in the United States Mail within thirty (30) days of the Preliminary Order of Approval.

2. If Notices are returned as undeliverable, Class Counsel will update the addresses of all such returned Notices, using a credit reporting agency or other similar method Class Counsel deems necessary, and will reissue the Notices by mailing them to the updated addresses.

3. On or before the thirtieth (30th) day after the date Notices are mailed, as set forth in Article III.1 of this Agreement, Class Counsel will file with the Court and serve upon Settling Defendants' counsel an affidavit from Class Counsel confirming that Notice has been provided to Class members as set forth above.

ARTICLE IV
EXCLUSION REQUESTS AND OBJECTIONS

1. Each person within the Class shall be provided the individual right to exclude himself or herself from this Class Settlement Agreement, as follows:

   a. Persons within the Class may elect to exclude themselves from ("opt out" of) this Settlement Agreement, relinquishing their rights to benefits hereunder. The right to opt out, and the time requirements therefore, shall be described in the Notice, as approved by the Court. Persons who wish to opt out must complete the Opt-

Out Form included with the Notice to Class or send to Class Counsel a letter including their name, address, telephone number, unit number, statement of their alleged damages and a statement of their desire to be excluded from or opt out of the Class. Any request for exclusion must be postmarked on or before the opt-out deadline provided in the Court's Preliminary Approval Order and the Notice. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Persons within the Class who fail to submit a valid request for exclusion on or before the date specified in the Preliminary Approval Order and Notice shall be bound by all terms of the Settlement Agreement and the Final Order and Judgment. The decision to opt-out is a decision that must be made by the person within the Class and not by any representative other than a conservator, trustee, guardian and/or other court-ordered or court-approved representative acting within his or her authority.

b. Any person within the Class who submits a timely request for exclusion may not file an objection to the Settlement Agreement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

c. Within ten (10) days after the opt-out deadline, as set forth in the Notice, Class Counsel shall compile a list of those individuals who have excluded themselves from the Settlement Agreement, along with their unit numbers and a statement of their alleged damages and provide a copy of this list to counsel for the Settling Defendants.

d. If five (5) or more potential Class members opt out of the Settlement Agreement, each Settling Defendant, upon written notice to Class Counsel at least five (5) days prior to the Final Hearing, shall have the option to withdraw from this Settlement Agreement, as well as the Adesso HOA Settlement Agreement and Release and the Commercial Claims Settlement Agreement and Release, and declare all terms of such Agreements to be null and void. A Settling Defendant exercising the option to withdraw will return to its respective position before the proposed settlement, reserving all rights it had and obtaining no new rights that it did not have prior to the proposed settlement.

e. As set forth in detail in the Notice, any Settlement Class Member may appear at the Fairness Hearing in person or by counsel and may be heard, to the extent permitted by the Court, either in support of or in opposition to the fairness, reasonableness, or adequacy of the Settlement or to the terms of class certification; provided, however, that such Settlement Class Member does both of the following within 30 calendar days of the mailing of the Notice to that Settlement Class Member: (i) provides a written notice to the Clerk of Court indicating that he, she, or it intends to be heard at the Fairness Hearing and indicating the basis for such appearance along with a statement that indicates why he, she or it opposes or supports the Settlement or certification of the class on or before the date set forth in the Preliminary Approval Order and Notice; and (ii) provides a copy of such written notice and any related briefs, documentation, or other materials to the Court, Class Counsel, and counsel for the Settling Defendants. The written notice must contain i) the Settlement Class Member's name, ii) current mailing address, and, iii) the unit number.

f. Putative Settlement Class Members who fail to file and serve timely written notices in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

g. Each of the Settling Defendants will have the option to terminate and withdraw from this Settlement Agreement, in its sole discretion, if: (i) any objections to the Settlement are sustained by the Court or on appeal of any ruling by the Court; or (ii) if there are any material modifications to this Settlement Agreement by the Court, by any other court, or by any tribunal, agency, entity, or person.

ARTICLE V
BENEFITS AND PROCESSING OF BENEFITS TO CLASS MEMBERS

1. Class Counsel shall establish a settlement fund in the amount of $55,000.00 ("**Settlement Fund**") to be held in escrow pending Final Approval by the Court.

2. Payments shall be processed as follows:

   a. To be eligible for a payment, a person must be a member of the Class and must not opt out.

   b. Within forty-five (45) days of the Final Approval Date, Class Counsel shall begin the process of issuing payment in the amount of Five Hundred and 00/100 ($500.00) Dollars to each eligible Class members.

   c. A person or entity may make a claim to Class Counsel asserting that it is a member of the Class and eligible for payment ("**Claimant**"). Class Counsel shall notify, in writing, any Claimant whose claim has been denied, setting forth the reasons for the denial and informing the person of their right to dispute the denial.

d. If a Claimant wishes to dispute the denial of a claim, the Claimant must, within thirty (30) days after the date of mailing of the notice of the denial, notify Class Counsel, in writing, stating the Claimant's grounds for disputing the denial and including any documentation supporting the claim. If a dispute concerning a claim cannot be otherwise resolved by the Claimant, Settling Defendants, and Class Counsel, the disputed claim shall be presented to the Court, whose ruling shall be binding, final, and non-appealable. The Court shall resolve disputed claims on the basis of the Claimant's objection and supporting documentation and a written submission from Class Counsel and/or the Defendants responding to the objection (which shall be served by mail on the Claimant), as applicable. Any other submissions or proceeding shall be only as ordered by the Court.

e. **Cost of Administration.** Class Counsel shall pay the costs of providing Notice to the Class members and the mailing and processing of payments from the Settlement Fund.

ARTICLE VI
PAYMENT OF ATTORNEYS' FEES

1. No attorneys' fees or expenses will be paid from the Settlement Fund.

ARTICLE VII
TIMING OF PAYMENT

1. Within thirty (30) days of the Preliminary Order, Settling Defendants, shall pay, or cause to be paid, the Cash Settlement Amount in accordance with the Adesso HOA Settlement

Agreement and Release, from which total payment of the sum of Fifty-Five Thousand and 00/100 Dollars ($55,000.00) shall immediately be deposited by Class Counsel into a trust account in the name of the Class Counsel. Only payments to be disbursed to Class members and the Costs of Administration shall be made from the Settlement Fund to the Trust Account. Class Counsel shall maintain all statements and documents related to the transactions on the Settlement Fund account, subject to any future Court orders.

2. Within thirty (30) days after the last payment is mailed to Class Members, Class Counsel will cause an affidavit to be filed with the Clerk of Court attesting to the completion of the tasks relative to payment to Class members entitled to payments. At the time of filing, Class Counsel will serve a copy of the affidavit upon counsel for the Settling Defendants. Any amounts not claimed by Claimants shall be released to Adesso Homeowners Association ("**Adesso HOA**").

ARTICLE VIII
PAYMENT

1. For and in consideration of the receipt of Fifty Five Thousand Dollars and 00/100 ($55,000.00) Dollars, and other good and valuable consideration (the "**Settlement Amount**") the sufficiency of which is hereby acknowledged, the Class agrees to release all claims against Settling Defendants in the Action as set forth in Article X.

2. The Class Representative represents that the claims of the Class members, as described more fully in the Fourth Amended Complaint, include loss of use, lost rents, interior damages, damage to contents and any other personal damage claims from the residential units, and no such claims shall be asserted in the future against Settling Defendants.

ARTICLE IX
APPROVAL BY THE COURT

1. **Preliminary Approval.** The Parties will submit this Agreement to the Court for preliminary approval of the Agreement, Notice, and other procedures set forth herein within 10 (10) days after it is executed. The Court will determine whether the proposed settlement, on the terms and conditions provided for in this Agreement, is fair, reasonable, and adequate, and whether a Preliminary Approval Order as provided for in this Agreement should be entered.

2. **Final Approval.** The Parties will jointly seek entry by the Court of a Final Approval Order and Final Judgment as soon as is practical that include provisions:

   a. Granting final approval of the Settlement Agreement and directing its implementation pursuant to its terms and conditions;

   b. Determining that the Notice and the Publication Notice, as approved by the Preliminary Approval Order, constitute reasonable and the best practicable notice reasonably calculated under the circumstances to apprise the Settlement Class Members of the pendency of the Action, the terms of the Settlement Agreement, the right to opt out, the right to appear at the Fairness Hearing, the claims process, that the Notice and the Publication Notice are adequate and sufficient to all persons entitled to receive notice and meets the requirement of due process and other applicable rules or laws;

   c. Ruling on any Fee and Expense Award, any request for Notice and Administration Expenses, and Representative Plaintiff Awards;

   d. Discharging and releasing the Settling Defendants, and each of them, from the Settled Claims;

   e. Permanently barring and enjoining the Class from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Settled Claims;

f. Directing that the Action, including all third party claims, be dismissed with prejudice; and

g. Reserving to the Court continuing and exclusive jurisdiction over the Settling Parties with respect to the Settlement Agreement and the Final Approval Order.

ARTICLE X
RELEASE BETWEEN CLASS AND SETTLING DEFENDANTS

1. Upon receipt of the Settlement Fund from the Settling Defendants and upon final approval by the Court, and in consideration of the Settlement Amount and of the mutual promises and releases set forth herein, the Class and each of its members do fully and completely release and discharge the Settling Defendants—which for purposes of this release provision includes their respective employees, attorneys, agents, insurers, sureties, officers, directors, successors, heirs, assigns, affiliates and subsidiaries--from any and all claims, actions, causes of action, demands, payments, attorneys' fees, court or other costs, expenses, damages, and judgments whatsoever, whether known or unknown, including the claims made in the Action or which could have been made in the Action, in connection with, arising out of or relating to:

a. any work performed by or on behalf of the Settling Defendants in connection with, arising out of, or in any manner relating to the Property;

b. any materials provided by or on behalf of the Settling Defendants or any materials installed or otherwise applied at the Property;

c. the Action and any all claims and allegations, setoffs or cross-claims or counterclaims that were or could have been asserted therein; and

d. except as set forth in Article XII.12 herein, costs, expenses, attorney's fees incurred by the Class in connection with or relating in any manner to the Action or Property, this Agreement, or in any way related to the claims asserted by the Class.

2. Plaintiffs agree to dismiss with prejudice all claims against Settling Defendants in the Action.

ARTICLE XI
ACKNOWLEDGEMENT AND WAIVER

1. It is agreed and understood by the Settling Parties that they are not required to settle this matter at this time, but that they voluntarily choose to finally resolve the matter at this time by entering into this Settlement Agreement. The Settling Parties, in deciding to enter into this Agreement, are not relying on any representations, statements, actions, disclosures of information, discovery responses, deposition testimony or failures to disclose information by any other Settling Party, its representatives, or attorneys.

2. Settling Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, or which may arise in the future, but which they do not now know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. Settling Parties each acknowledge and understand that they may have suffered damages, or may suffer damages, that are unknown to them at the present time. These issues were considered in the course of negotiations leading to this Agreement, and Settling Parties determined this Agreement to reflect fair and adequate compensation with due regard for such future possibilities.

3. Durkin and the Class, on behalf of all Class members, warrant and represent that all claims asserted in this Action related to alleged defective construction, design, materials, repairs, management, sale, maintenance or damage to the common elements and limited common elements belong to the Adesso HOA and are the responsibility of the Adesso HOA, and, further that Class members will provide notice to subsequent purchasers of the residential units at the property of this Settlement Agreement and the release of the Settling Defendants hereunder. All claims for loss of use, inconvenience, lost rents, lost profits, interior damages to units, damage to contents, or other such claims relating to personal damage belong to the individual unit owners and are hereby released.

ARTICLE XII
MISCELLANEOUS

1. **Court approval.** The Settling Parties agree and understand that this Agreement is valid only upon approval by the Court.

2. **Costs and Expenses**. Each party is responsible for its own attorneys' fees and costs associated with the Action.

3. **Construction**. This Settlement Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of this Agreement.

4. **Successors and Assigns**. All covenants and agreements contained in this Settlement Agreement shall bind and inure to the benefit of the parties hereto, their legal representatives, successors, and assigns.

5. **Further Assurances**. The parties hereto agree that they will cooperate with each other and will execute and deliver, or cause to be executed and delivered, all such other

instruments, and will take all such other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions and purposes hereof.

6. No Assignment. The Plaintiffs, on their own behalf and on behalf of all Class members, warrant and represent that they have not assigned, conveyed, pledged, or transferred to any other natural person, firm, corporation or other legal entity any claim, demand, action or cause of action described in this Agreement.

7. Opinion of Class Counsel. Class Counsel is of the opinion that the terms and conditions of the Settlement described in this Agreement are fair, reasonable, and in the best interests of the Class members as a whole when all of the circumstances are given due consideration.

8. Modifications. Neither this Settlement Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought and by any party who would be affected thereby.

9. No Admissions. This Agreement and the settlement of the Action do not constitute a concession or admission of wrongdoing or liability by the Settling Defendants and will not be used or construed as an admission of any fault, omission, liability or wrongdoing on the part of the Settling Defendants in any statement, release or written document or financial report issued, filed or made. Also, this Agreement and Settlement of the Action do not constitute a concession or admission by the Defendants or Settling Defendants that the elements required to certify a Class under Rule 23, FRCP., exist or could be proven by Plaintiffs. Neither this Agreement, nor the exhibits hereto, nor the fact of settlement, nor any settlement negotiations or discussions, nor the orders to be entered approving this Settlement Agreement, nor any related

document will be deemed an admission, concession, presumption or inference against the Settling Defendants in a proceeding other than such a proceeding as may be necessary to consummate or enforce this Agreement and the settlement. To the contrary, Plaintiffs, on their own behalf and on behalf of all Class members, by and through their Class Counsel, acknowledge that the Settling Defendants specifically disclaim and deny any liability or wrongdoing whatsoever and have entered into this Agreement solely to avoid future inconvenience and protracted, costly litigation.

10. **Governing Law**. This Settlement Agreement will be interpreted and construed under the internal laws of the State of South Carolina, regardless of the domicile of any party, and will be deemed for those purposes to have been made, executed, and performed in South Carolina.

11. **Time of the Essence**. Time is of the essence in this Settlement Agreement and each provision of this Settlement Agreement.

12. **Legal Fees**. In the event of a breach by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith shall be entitled to recover from such other party its costs and expenses, including reasonable legal fees, expenses and associated court costs.

13. **Entire Agreement**. This instrument constitutes the entire and final agreement among the Settling Parties, and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Settlement Agreement and the other binding settlement agreements. The parties hereto covenant that each shall not enter into an agreement or understanding with respect to this Settlement Agreement without the consent and agreement of all parties hereto.

14. **Invalidity.** If any clause or provision of this Settlement Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by the final judgment of a court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision, consented to by all parties, as similar in terms to the original provision as is possible and which is legal, valid, and enforceable.

15. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will collectively constitute a single document. This document will not be binding on or constitute evidence of a contract between the parties until such time as this document has been executed by each party and a copy thereof delivered to each other party to this Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this ____day of ___________, 2017.

____
William Durkin, Class Representative

____
Holder Properties, Inc.

By:__________________________

Its:__________________________

____

ADESSO/Columbia, LLC

By:__________________________

Its:__________________________

court of competent jurisdiction, the remainder of this Settlement Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu thereof a provision, consented to by all parties, as similar in terms to the original provision as is possible and which is legal, valid, and enforceable.

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 5th day of May, 2017.

William Durkin

William Durkin, Class Representative

____

Holder Properties, Inc.

By:__________________________

Its:__________________________

____

ADESSO/Columbia, LLC

By:__________________________

Its:__________________________

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IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this ____day of ___________, 2017.

____
William Durkin, Class Representative

____

Holder Properties, Inc.

By: ______________________________

Its: John R. Holder
Chairman & CEO

____

ADESSO/Columbia, LLC

By: ______________________________

Its: John R. Holder
Managing Member

Drake/Adesso, LLC

By: [signature]

Its: **John R. Holder**
Managing Member

Holder Adesso, LLC

By: [signature]

Its: **John R. Holder**
Managing Member

[signature]

JRH Adesso, LLC

By: **John R. Holder**
Managing Member

Its:

[signature]

JRH, LLC

By: **John R. Holder**
Managing Member

Its:

[signature]

John R. Holder, Individually

Niles Bolton Associates, Inc.

By: David W. Meadows

Its: Principal

Hussey, Gay, Bell & DeYoung, Inc.

By:____________________

Its:____________________

Jordan & Skala Engineers, Inc.

By:____________________

Its:____________________

Key Construction, Inc.

By:____________________

Its:____________________

Ace Glass Company, Inc.

By:____________________

Its:____________________

Niles Bolton Associates, Inc.

By:__________________________

Its:__________________________

Steven C. Wohlfeil

Hussey, Gay, Bell & DeYoung, Inc.

By: STEVEN C. WOHLFEIL

Its: SR. VICE PRESIDENT

Jordan & Skala Engineers, Inc.

By:__________________________

Its:__________________________

Key Construction, Inc.

By:__________________________

Its:__________________________

Ace Glass Company, Inc.

By:__________________________

Its:__________________________

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Niles Bolton Associates, Inc.

By:______________________________

Its:______________________________

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Hussey, Gay, Bell & DeYoung, Inc.

By:______________________________

Its:______________________________

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Jordan & Skala Engineers, Inc.

By:______________________________

Its: President

____

Key Construction, Inc.

By:______________________________

Its:______________________________

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Ace Glass Company, Inc.

By:______________________________

Its:______________________________

Niles Bolton Associates, Inc.

By:____________________________

Its:____________________________

Hussey, Gay, Bell & DeYoung, Inc.

By:____________________________

Its:____________________________

Jordan & Skala Engineers, Inc.

By:____________________________

Its:____________________________

Key Construction, Inc.

By: Scott Casebolt

Its: Vice President

Ace Glass Company, Inc.

By:____________________________

Its:____________________________

Niles Bolton Associates, Inc.

By:________________________

Its:________________________

Hussey, Gay, Bell & DeYoung, Inc.

By:________________________

Its:________________________

Jordan & Skala Engineers, Inc.

By:________________________

Its:________________________

Key Construction, Inc.

By:________________________

Its:________________________

Ace Glass Company, Inc.

By: JC Burton Jr

Its: Attorney

Advanced Door Systems, Inc.

By: [signature]

Its: [illegible]

All-South Electrical Constructors, Inc.

By:________________________

Its:________________________

Aquarian Pools of Columbia, Inc.

By:________________________

Its:________________________

Artistic Enterprises, Inc.

By:________________________

Its:________________________

Commercial Building Services, Inc.

By:________________________

Its:________________________

Advanced Door Systems, Inc.

By:________________________

Its:________________________

All-South Electrical Constructors, Inc.

By: [signature]

Its: President

Aquarian Pools of Columbia, Inc.

By:________________________

Its:________________________

Artistic Enterprises, Inc.

By:________________________

Its:________________________

Commercial Building Services, Inc.

By:________________________

Its:________________________

Advanced Door Systems, Inc.

By:______________________

Its:______________________

All-South Electrical Constructors, Inc.

By:______________________

Its:______________________

Aquarian Pools of Columbia, Inc.

By: W.O.D. K

Its: President

Artistic Enterprises, Inc.

By:______________________

Its:______________________

Commercial Building Services, Inc.

By:______________________

Its:______________________

Advanced Door Systems, Inc.

By:________________________

Its:________________________

All-South Electrical Constructors, Inc.

By:________________________

Its:________________________

Aquarian Pools of Columbia, Inc.

By:________________________

Its:________________________

Artistic Enterprises, Inc.

By: [signature]

Its: COUNSEL OF RECORD FOR THE CIVIL ACTION

Commercial Building Services, Inc.

By:________________________

Its:________________________

____

Advanced Door Systems, Inc.

By:______________________________

Its:______________________________

____

All-South Electrical Constructors, Inc.

By:______________________________

Its:______________________________

____

Aquarian Pools of Columbia, Inc.

By:______________________________

Its:______________________________

____

Artistic Enterprises, Inc.

By:______________________________

Its:______________________________

____

Commercial Building Services, Inc.

By:______________________________

Its: PRESIDENT

Flooring Services, Inc.

By: Michael Cwch

Its: Attorney

Gill Plumbing Company

By:____________________

Its:____________________

Guardian Fence Suppliers of SC, Inc.

By:____________________

Its:____________________

Hester Drywall, Inc.

By:____________________

Its:____________________

Flooring Services, Inc.

By:________________________

Its:________________________

Gill Plumbing Company

By:________________________

Its: President

Guardian Fence Suppliers of SC, Inc.

By:________________________

Its:________________________

Hester Drywall, Inc.

By:________________________

Its:________________________

Flooring Services, Inc.

By:____________________

Its:____________________

Gill Plumbing Company

By:____________________

Its:____________________

C. Reed Teague

Guardian Fence Suppliers of SC, Inc.

By: C. Reed Teague

Its: Attorney

Hester Drywall, Inc.

By:____________________

Its:____________________

Flooring Services, Inc.

By:______________________

Its:______________________

Gill Plumbing Company

By:______________________

Its:______________________

Guardian Fence Suppliers of SC, Inc.

By:______________________

Its:______________________

Hester Drywall, Inc.

By: Jim Hester

Its: President 5/5/17

Holland Roofing, Inc.

By: SMZ w/ PERMISSION

Its: COUNSEL FOR THIS MATTER

JR Hobbs Co.

By:____________________

Its:____________________

Loveless Commercial Contracting, Inc.

By:____________________

Its:____________________

Reliance Interiors, Inc.

By:____________________

Its:____________________

Holland Roofing, Inc.

By:____________________

Its:____________________

JR Hobbs Co.

By: [signature]

Its: VP

Loveless Commercial Contracting, Inc.

By:____________________

Its:____________________

Reliance Interiors, Inc.

By:____________________

Its:____________________

Holland Roofing, Inc.

By:______________________

Its:______________________

JR Hobbs Co.

By:______________________

Its:______________________

Loveless Commercial Contracting, Inc.

By: J. A. Delany for ACR

Its: Attorney

Reliance Interiors, Inc.

By:______________________

Its:______________________

Holland Roofing, Inc.

By:__________________________

Its:__________________________

JR Hobbs Co.

By:__________________________

Its:__________________________

Loveless Commercial Contracting, Inc.

By:__________________________

Its:__________________________

Reliance Interiors, Inc.

By: J Kettering

Its: PRESIDENT

Southern Fireproofing Company, Inc.

By: ____________________

Its: Kevin Kitchens
President

Southern Vistas, Inc.

By: ____________________

Its: ____________________

SRS Concrete Finishing

By: ____________________

Its: ____________________

Stafford Consulting Engineers, Inc.

By: ____________________

Its: ____________________

Carlisle Construction Materials Inc.

By: ____________________

Its: ____________________

Southern Fireproofing Company, Inc.

By:________________________

Its:________________________

Southern Vistas, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By:________________________

Its:________________________

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By:________________________

Its:________________________

Carlisle Construction Materials Inc.

By:________________________

Its:________________________

Southern Fireproofing Company, Inc.

By:________________________

Its:________________________

Southern Vistas, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By: E. Glenn Elliott

Its: Attorney

Stafford Consulting Engineers, Inc.

By:________________________

Its:________________________

Carlisle Construction Materials Inc.

By:________________________

Its:________________________

Southern Fireproofing Company, Inc.

By:_______________________

Its:_______________________

Southern Vistas, Inc.

By:_______________________

Its:_______________________

SRS Concrete Finishing

By:_______________________

Its:_______________________

Stafford Consulting Engineers, Inc.

By: Stuart W Sutton

Its: President

Carlisle Construction Materials Inc.

By:_______________________

Its:_______________________

Southern Fireproofing Company, Inc.

By:________________________

Its:________________________

Southern Vistas, Inc.

By:________________________

Its:________________________

SRS Concrete Finishing

By:________________________

Its:________________________

Stafford Consulting Engineers, Inc.

By:________________________

Its:________________________

Carlisle Construction Materials Inc.

By: Elliott B. Pratt

Its: Attorney

GrayStone of Florida, Inc.

By: B. Boyd, by C. Majin, Esq.

Its: Attorney

Dryvit Systems, Inc.

By:________________________

Its:________________________

Structural Preservation Systems, LLC

By:________________________

Its:________________________

STO Corp

By:________________________

Its:________________________

Towers Paint Contractors, Inc.

By:________________________

Its:________________________

GrayStone of Florida, Inc.

By:________________________

Its:________________________

Dryvit Systems, Inc.

By:

Its: VP & GENERAL COUNSEL

Structural Preservation Systems, LLC

By:________________________

Its:________________________

STO Corp

By:________________________

Its:________________________

Towers Paint Contractors, Inc.

By:________________________

Its:________________________

GrayStone of Florida, Inc.

By:_________________________

Its:_________________________

Dryvit Systems, Inc.

By:_________________________

Its:_________________________

Structural Preservation Systems, LLC

By: Jacqueline Phillips

Its: Attorney

STO Corp

By:_________________________

Its:_________________________

Towers Paint Contractors, Inc.

By:_________________________

Its:_________________________

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GrayStone of Florida, Inc.

By:______________________________

Its:______________________________

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Dryvit Systems, Inc.

By:______________________________

Its:______________________________

____

Structural Preservation Systems, LLC

By:______________________________

Its:______________________________

____

STO Corp

By:______________________________

Its: Manager, Product Claims

____

Towers Paint Contractors, Inc.

By:______________________________

Its:______________________________

GrayStone of Florida, Inc.

By:_________________________

Its:_________________________

Dryvit Systems, Inc.

By:_________________________

Its:_________________________

Structural Preservation Systems, LLC

By:_________________________

Its:_________________________

STO Corp

By:_________________________

Its:_________________________

Towers Paint Contractors, Inc.

By: [signature]

Its: Attorney

Capital Group, LLC

By: [signature]

Its: Atty

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	) CASE NO.: 2019-CP-40-00919
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended, Plaintiff, vs. Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association, Defendants.	**DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT**

TO: CHARLES G. BLACKBURN, ESQ., ATTORNEY FOR PLAINTIFF;
KEVIN K. BELL, ESQ., AND PAUL H. HOEFER, ESQ., ATTORNEYS FOR DEFENDANTS HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, AND ADESSO/COLUMBIA, LLC

YOU WILL PLEASE TAKE NOTICE, that Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association, ("Defendants"), by and through their undersigned counsel, at a hearing scheduled for January 7, 2021 at 9:30 a.m., will move this Honorable Court for an order granting summary judgment in favor of Defendants as to all claims asserted herein by Plaintiff and dismissing such claims with prejudice, pursuant to Rule 56, SCRCP. This Court should grant this Motion because there are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law.

This Motion seeks the dismissal with prejudice of all causes of action for the following reasons: (1) Plaintiff failed to file this action within the three (3) year statute of limitations period provided by S.C. Code Ann. § 15-3-530; (2) Defendants complied with the terms of the Adesso governing documents and any applicable law in charging assessments to Plaintiff's commercial units located at the Adesso; (3) Defendants did not make false representations to Plaintiff in connection with Plaintiff's purchase of the Adesso commercial units; (4) Parking spaces in and around the Adesso, currently available for the use of Plaintiff's commercial units and their tenants, comply with both the Adesso Master Deed and the applicable City of Columbia Zoning Ordinance; and (5) Plaintiff has agreed to withdraw his South Carolina Unfair Trade Practices ("SCUTPA") claim as to Defendants.

Based on the foregoing, a Memorandum in Support to be submitted at a later date, all pleadings and evidence, all applicable statutory and case law, the South Carolina Rules of Civil Procedure, and the Affidavit of C. Michael Munson attached hereto, Defendants seek an Order granting their Motion for Summary Judgment. Defendants further seek any additional relief this Court deems just and proper.

This 28th day of December, 2020.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: _s/ Douglas W. MacKelcan_
DOUGLAS W. MACKELCAN
State Bar No.: 76332
MICHAEL C. MASCIALE
State Bar No.: 103819
Counsel for Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) IN THE COURT OF COMMON PLEAS) FIFTH JUDICIAL CIRCUIT) CASE NO.: 2019-CP-40-00919
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COMES NOW before the undersigned officer duly authorized to administer oaths, C. MICHAEL MUNSON, who, after being duly sworn, states as follows:

1. My name is C. Michael Munson. I am over the age of eighteen (18) years, and I give this affidavit based upon my personal knowledge of the facts contained herein, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

2. I graduated from the University of South Carolina, with degrees in Marketing and Finance (emphasis in Real Estate), in 1980.

3. I have thirty-five (35) years of experience involving, among other things, real estate development, sales, marketing, and management.

4. I founded CMM Realty, Inc. ("CMM") in 1986.

5. CMM is a full-service real estate firm handling sales, property management, leasing, and development matters.

6. CMM has served as the property management company for the Adesso Horizontal Property Regime ("Regime") and the Adesso Homeowners' Association ("Association") (collectively, the "Adesso") since February, 2017.

7. I am the President and Broker-in-Charge of CMM, and as part of my job, I am involved in various matters relating to the management of the Adesso, including the formulation of annual budgets and the presentation thereof to the Association's Board of Directors ("Board") for review and approval.

8. The Adesso governing documents authorize the Board to levy assessments against each unit owner to pay for the operation, management, and maintenance of the Adesso, including the Regime's General and Limited Common Elements.

9. I am familiar with the requirements of the Bylaws of Adesso Homeowners' Association ("Bylaws"), attached hereto as Exhibit "A," with regard to the preparation of the Association's annual budgets and assessments charged to each unit owner.

10. Specifically, the Bylaws state:

> "All assessments (except for special assessments which may be assessed to specific Unit(s) and its/their Co-Owner(s) as determined by the Board) levied against the co-owners of Units and said Units shall be uniform and, unless specifically otherwise provided for in these By-Laws, the assessments made by the Board shall be in such proportion that the amount of assessment levied against each co-owner of an Unit and his Unit shall bear the same ratio to the total assessment made against all co-owners of Units and their Units as does the undivided interest in General Common Elements appurtenant to each Unit to the total undivided interest in the Regime."

Ex. A, "Bylaws," § 9(a).

11. Pursuant to the First Amendment to the Master Deed of Adesso Horizontal Property Regime ("Master Deed"), attached hereto as Exhibit "B," the Plaintiff's Commercial Units 1 and 2 comprise a total 8.54279% interest in the total undivided interest in the Regime.

12. I am familiar with the requirements of the Master Deed concerning the allocation of annual Association costs, expenses, and budget items between residential and commercial units.

13. Specifically, the Master Deed states:

> "[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units..."

14. Section V(A)(3) of the Master Deed sets forth examples of Limited Common Elements benefitting both Commercial and Residential Units. Such Limited Common elements include: (1) "Sidewalks, Plantings, and Lighting along Main and Blossom and all appurtenances thereof;" (2) "Trash Chute;" (3) "Trash Compactor;" (4) "Service Elevator;" (5) "Loading Dock and all appurtenances thereof;" (6) Exterior security cameras and all appurtenances thereof;" and (7) "Roof."

15. Section V(A)(3) of the Master Deed also designates the "retail sign placard and all appurtenances thereof," as well as the "Retail Colonnade" as "Limited Common Elements that Benefit Commercial Units only."

16. Further, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole.

17. The list of examples set forth in the Master Deed is not exhaustive. Any budget items for Adesso Common Elements, whether Limited or General, which affect both Residential and Commercial Units are properly chargeable to the owner of the Commercial Units, in proportion to his or her use of such Common Elements.

18. I have reviewed the Operating Budgets for the Adesso from 2018-2020 ("Budgets"), attached hereto as Exhibit "C," and to the best of my knowledge and information,

such Budgets are true and correct statements of the amounts charged to the Plaintiff's Commercial Units from 2018 through 2020.

19. Regarding the 2018 Budget, the Association budgeted for a total of $705,396.00 in expenses. If the Master Deed did not allocate expenses for budget items between Commercial and Residential Units, the formula for calculating Plaintiff's total annual assessment would be to multiply the total percentage of Plaintiff's Commercial Units' interest of the total undivided interest in the Regime by the total amount of expenses.

20. Pursuant to the calculation set forth in Paragraph 19, Plaintiff's annual assessment for 2018 would have been $60,260.50 ($705,396.00 x 8.54279%).

21. However, because the Master Deed requires the allocation of budget items between Residential and Commercial Units, Plaintiff's annual assessment is reduced by the amount of budget items for costs and expenses specifically attributable only to Residential Units.

22. Plaintiff's annual assessment is then further reduced in proportion to the anticipated use by Plaintiff's Commercial Units of the General or Limited Common Elements associated with each budget item, cost, or expense. For example, in 2018, a total of $71,000 was budgeted for Electricity and Gas. Utilizing the calculation in Paragraph 19, Plaintiff would have been charged $6,065.38 for the Commercial Units' share of this expense ($71,000 x 8.54279%). However, because the Master Deed requires appropriate allocation of budget items, costs, or expenses based upon use, Plaintiff was only charged $2,598.00—or 3.66% of the total budgeted Electricity and Gas costs.

23. In total, based upon the 2018 Budget, Plaintiff was assessed $19,574.61 in 2018. This amount represents approximately 2.77% of the total amount of costs and expenses budgeted by the Association for 2018.

24. The same calculation applies to the 2019 and 2020 Budgets. In 2019, Plaintiff was assessed \$19,223.20, which represents approximately 2.85% of the total amount of costs and expenses budgeted by the Association for 2019. In 2020, Plaintiff was assessed \$21,368.38, representing approximately 3.11% of the total amount of costs and expenses budgeted by the Association for 2020.

25. The above percentages for the years 2018-2020 are far less than the 8.54279% interest Plaintiff's Commercial Units bear in the total undivided interest of the Regime, and upon information and belief, such percentages are the result of a proper application of the Master Deed's provisions regarding cost, expense, and budget item allocation between the Commercial Units and Residential Units of the Adesso.

26. Upon information and belief, each budget item, cost, or expense contained in the 2018, 2019, and 2020 Budgets, for which there is a charge to the Plaintiff's Commercial Units ("Retail 1 & 2"), is not specifically attributable to the Adesso Residential Units, and is therefore, properly includable in Plaintiff's annual assessment amount.

FURTHER AFFIANT SAYETH NOT.

C. Michael Munson

C. Michael Munson

SWORN TO and subscribed before me,
this 28th day of December, 2020

Notary Public for the State of S. C.
My Commission Expires: 8/13/2023

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THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

BYLAWS
OF
ADESSO HOMEOWNERS' ASSOCIATION

A corporation not for profit organized under the laws of the State of South Carolina

[redacted]

BYLAWS
ADESSO Homeowners' Association

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BY-LAWS

OF

ADESSO HOMEOWNERS' ASSOCIATION

1. IDENTITY

These are the By-Laws of the ADESSO Homeowners' Association, a non-profit corporation existing under the laws of the State of South Carolina (hereinafter called "the Association"), which has been organized for the purpose of administering the ADESSO Horizontal Property Regime, a horizontal property regime established pursuant to S.C. Code Ann. §27-31-10 et seq. (1976) (hereinafter called "the Regime"). The Regime is identified by the name ADESSO and is located upon the real property in the City of Columbia, Richland County, South Carolina, described on Exhibit "A" attached hereto and made a part hereof by reference.

(a) The provisions of these By-Laws are applicable to the Regime, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Articles of Incorporation and which may be contained in the formal Master Deed which will be recorded in the public records of Richland County, South Carolina, at the time said property and the improvements now or thereafter situate thereon are submitted to the plan of condominium ownership, the terms and provisions of said Articles and Master Deed to be controlling whenever the same may be in conflict herewith.

(b) All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the Regime or any of the facilities thereof in any manner are subject to the regulations set forth in these By-Laws and in said Charter and Master Deed.

(c) The office of the Association shall be at 601 Main Street, Columbia, South Carolina or such other place as the Board of Directors of the Association may designate from time to time;

(d) The fiscal year of the Association shall be the calendar year;

(e) The seal of the Association shall bear the name of the Association and the words "South Carolina."

2. MEMBERSHIP, VOTING, QUORUM, PROXIES

(a) The qualification of members, the manner of their admission to membership and termination of such membership, and voting by members, shall be as set forth in the Articles of Incorporation of the Association, the provisions of which Articles are incorporated herein by reference.

(b) The quorum at members' meetings shall consist of persons entitled to cast a

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majority (51% of the value of the property) of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining quorum.

(c) The vote of the co-owners of a Unit owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the co-owners of the Unit and filed with the Secretary of the Association. Such certificate shall be valid until revoked by subsequent certificate. If such a certificate is not on file, the vote of such co-owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.

(d) Votes may be cast in person or by proxy. Proxies must be filed with the secretary before the appointed time of the meeting for which the use is sought.

(e) Approval or disapproval of a Unit co-owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such co-owner in an Association meeting.

(f) Except where otherwise required under the provisions of the Articles of Incorporation of the Association, these By-Laws, the Master Deed, or where the same may otherwise be required by law, the affirmative vote of the co-owners of a majority of the Units represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(a) The annual members' meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, at 6:00 P.M., Eastern Daylight Time, on the last Tuesday in April, of each year, or at such other date and time as set by the Board of Directors after proper notice for the purpose of electing directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Tuesday. The first annual meeting shall be held in 2008.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the Units.

(c) Notice of all members' meetings, regular or special, shall be given by the President, Vice President, or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived, in writing. Such notice is to be written or printed and shall include a description of any matter as required by §33-31-705, of the Code of Laws of South Carolina (1976), as amended, and shall state the time and place of the member's meeting and shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting. Notice shall be mailed first class or

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registered mail or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed properly given five (5) days after being deposited in the United States Mail, addressed to the member at his post office address as it appears in the records of the Association, the postage thereon prepaid or where otherwise provided by Section 33-31-141 of the Code of Laws of South Carolina (1976), as amended from time to time. Proof of such mailing shall be given by Affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance greater than a quorum, is present.

(d) At meetings of membership, the President shall preside or, in the absence of him, the membership present shall select a chairman.

(e) The order of business at annual members' meeting, and, as far as practical, at any other members' meeting, shall be:

i) Calling of the roll and certifying proxies;
ii) Proof of notice of meeting or waiver of notice;
iii) Reading of Minutes;
iv) Reports of officers, president and chief financial officer;
v) Reports of committees;
vi) Appointment by chairman of inspectors of election;
vii) Election of directors;
viii) Unfinished business;
ix) New business; and
x) Adjournment.

4. <u>BOARD OF DIRECTORS</u>

(a) The initial Board of Directors of the Association (hereinafter sometimes referred to as the "Board") shall be comprised of three (3) directors until the first members' meeting, at which time five (5) directors will be elected. The three (3) Grantor-appointed directors shall serve at the discretion of Grantor; however, should Grantor not choose to terminate such directors, such directors' initial terms are as follows: the first (1st) appointee shall serve for five (5) years; the second (2nd) appointee shall serve for four (4) years, and the third (3rd) appointee shall serve for three (3) years. Thereafter, the Board shall consist of five (5) directors. Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board for a period not exceeding five (5) years from the date of the first conveyance of a Unit to a person other than the Grantor. The period of Grantor control terminates no later than sixty (60) days after conveyance of one hundred (100%) percent of the Units to Unit owners other than the Grantor. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period.

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association and Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Grantor need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate five (5) years from the recording date hereof.

Any representative of Grantor serving on the Board shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest. This provision does not limit or restrict the requirement of Section 33-31-831, Code of Laws of South Carolina (1976), as amended.

An individual Co-owner other than Grantor engaged by the Regime in a commercial operation or otherwise earning monies from servicing the premises, i.e. rental company, contractor, hardware store, painter, or property manager may not serve on the Board as long as the individual is engaged in a business performing a service in connection with the Regime without the unanimous consent of all remaining members of the Board.

(b) Election of directors shall be conducted in the following manner:

i) Grantor, as Sponsor of the Regime, shall, at the beginning of the election of the Board designate and select that number of the members of the Board which it should be entitled to designate and select in accordance with the provisions of these By-Laws, and upon such designation and selection by Grantor by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by Grantor shall be deemed and considered for all purposes directors of the Association, and shall thenceforth perform the duties of such directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws;

ii) All members of the Board whom Grantor shall not be entitled to designate and select under the terms and provisions of these By-Laws shall be elected by a plurality of the votes cast at the annual meeting of the members of the Association immediately following the designation and selection of the members of the Board whom Grantor shall be entitled to designate and select;

iii) Vacancies in the Board may be filled until the date of the next annual meeting by the remaining directors, except that should any vacancy in the Board be created in any directorship previously filled by a person designated and selected by Grantor, such vacancy shall be filled by Grantor designating and selecting, by written instrument delivered to any officer of the Association, the successor director to fill the vacated directorship for the unexpired term thereof;

iv) At the first annual meeting of the members held after the property identified herein has been submitted to the plan of condominium ownership, the Master Deed has been recorded in the public records of Richland County, South Carolina, and the termination of Grantor control as contemplated in Paragraph (a) and this Paragraph (b) of this Section 4, the term of office of the three (3) directors receiving the highest plurality of votes shall be established as two (2) years, and the terms of office of the other two (2) directors shall be established as one (1) year. Thereafter, as many directors of the Association shall be elected at the annual meeting as there are regular terms of office of directors expiring at such time, and the term of the directors so elected at the annual meeting of the members each year shall be for two (2) years expiring at the second annual meeting following their election, and thereafter until their successors are duly elected and qualified or until removed in the manner elsewhere provided or as may be provided by law for the removal of directors of South Carolina Nonprofit Corporation Act. If, at the time of such annual meeting, Grantor still has the right to appoint directors, then Grantor shall have the right to designate and select two (2) directors whose term of office shall be established at two (2) years, and one (1) director whose term of office shall be established at one year;

v) In the election of directors, there shall be appurtenant to each Unit as many votes for directors as there are directors to be elected, provided, however, that no member or co-owner of any Unit may cast more than one vote for any person nominated as director, it being the intent hereof that voting for directors shall be non-cumulative;

vi) In the event that Grantor, in accordance with the privilege granted unto it, selects any person or persons to serve on any Board, the said Grantor shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or persons to serve on said Board. Replacement of any person or persons designated by Grantor to serve on any Board shall be made by written instrument delivered to the President or Secretary of the Association or to the presiding officer of the Board, which instrument shall specify the name or names of the person or persons designated as successor or successors to the person or persons so removed from said Board. The removal of any director and designation of his successor shall be effective immediately upon delivery of such written instrument by Grantor to such officer of the Association and the director;

(c) The organizational meeting of the newly elected Board shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary provided a quorum shall be present;

(d) Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by a majority of the directors; such meetings shall not be public but open only to members of the Association;

(e) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board or upon written petition signed by the Co-owners of one-third (1/3) of the Units. Not less than two (2) days notice of a meeting shall be given to each director personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting;

(f) Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice;

(g) A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board, except as specifically otherwise provided in the Articles of Incorporation, these By-Laws, or the Master Deed. If any director's meeting cannot be organized because a quorum has not attended or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum;

(h) The presiding officer of directors' meetings shall be the President. In the absence of the President, the directors present shall designate one of their number to preside;

(i) Directors' fees, if any, shall be determined by the members of the Association;

(j) The Board shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws, may exercise all of the powers of the Association subject only to approval by the members when such is specifically required of these By-Laws. The Board shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Master Deed, or these By-Laws, as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

i) To make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

 [redacted]

ii) To carry out the maintenance, care, upkeep, repair, replacements, operation, surveillance, and the management of the general and limited elements, services, and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members;

iii) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;

iv) To make and amend regulations, after Notice and Consent; governing the use of the property, real and personal, in the Regime, to make, enforce and modify from time to time regulations regarding rental use of Units within the Regime and rental licenses as such term is contemplated in the Master Deed, and to establish fines for the violation of same, so long as such regulations or amendments thereto and fines do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles of Incorporation and Master Deed;

v) To acquire, operate, lease, manage, and otherwise trade and deal with property, real and personal, including Units in the Regime, as may be necessary or convenient in the operation and management of the Regime, and in accomplishing the purposes set forth in the Master Deed; provided, however, that any agreement for professional management of the Regime, or any other contract providing for services of the Grantor, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice; provided, further, that any contract entered into prior to passage of control of the Association from the Grantor may be terminated by the Association without cause and without penalty at any time after the transfer of control upon not more than ninety (90) days' notice to the other party thereto unless ratified by a majority of the Board after passage of control;

vi) By competitive bidding, to contract for the management of the common areas and facilities in the Regime and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Master Deed to have approval of the Board or membership of the Association;

vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the Master Deed, and the regulations and fines hereinafter promulgated governing use of the property in the Regime;

viii) To pay all taxes and assessments which are liens against any property of the Regime, other than Units and the appurtenances thereto, and to assess the same against the members and their respective Units subject to such liens;

ix) To carry insurance for the protection of the members and the Association against casualty and liability;

x) To pay all costs of power, water, sewer, and other utility services rendered to the condominium and not billed to the owners of the separate Units; and

xi) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, as well as to dismiss said personnel; and

xii) To assign, reassign, or designate parking spaces for exclusive use to such Co-Owners as it shall decide and to revoke such assignment or designation from time to time.

(k) The first Board shall be comprised of three (3) persons designated to act and serve as directors in the Articles of Incorporation. Said persons shall serve until their successors are elected or appointed at the first meeting of the members of the Association called after the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Richland County, South Carolina, and the termination of the Grantor control as contemplated in Paragraphs (a) and (b) of this Section 4. Should any member, which was not appointed by the Grantor, of said first Board be unable to serve for any reason, a majority of the remaining members of the Board shall have the right to select and designate a party to act and serve as a director for the unexpired term of said director who is unable to serve;

(l) The undertakings and contracts authorized by said first Board shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board duly elected by the membership after the property identified herein has been submitted to the plan of condominium ownership and said Master Deed has been recorded in the Richland County public records, so long as any undertakings and contracts are within the scope of powers and duties which may be exercised by the Board in accordance with all applicable Regime Documents;

(m) Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina nonprofit corporations.

5. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS

(a) Notwithstanding anything contained in these By-Laws to the contrary, any meeting of members or Board may be held at any place within or without the State of South Carolina or by telephone conference.

(b) To the extent now or from time to time hereafter permitted by the laws of South Carolina, the Board may take any action which they might take at a meeting of directors without a meeting. One or more written consents of any such action so taken, signed by each director, is to be retained in the Association's minute book and given equal dignity by all persons to the minutes of meetings duly called and held.

(c) Any action of the members may be taken by written ballot in accordance with

 [redacted]

§33-31-704, Code of Laws of South Carolina (1976), as amended, or by written consent in accordance with §33-31-704 of said Code.

6. <u>OFFICERS</u>

(a) The executive officers of the Association shall be a President, who shall be a director, a Vice President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. No person may hold more than two (2) offices. The Board, shall from time to time, elect such other officers or committees and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

(b) The President shall be the principal executive officer of the Corporation and subject to the control of the Board. He shall, in general, supervise and control all of the business and affairs of the Corporation. He shall preside at all meetings of the shareholders and of the Board. He may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board.

(c) The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(d) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, perform all other duties incident to the office of Secretary of any association, and as may be required by the directors or President.

(e) The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls, the accounts of members, and the books of the Association in accordance with good accounting practices. He shall perform all other duties incident to the office of Treasurer.

(f) The compensation (if applicable) of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing the Grantor as an employee of the Association, nor preclude the contracting with the Grantor for management of the Regime. Officers need not be Unit owners.

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7. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Master Deed and Articles of Incorporation shall be supplemented by the following provisions:

(a) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such an account shall designate the name and address of the Co-owner or Co-owners, the amount of each assessment against the amounts paid upon the account and, the balance due upon assessments;

(b) The initial Board shall adopt a budget for the period commencing upon submission of the property to Horizontal Property Regime, continuing through the end of the following calendar year, and shall establish assessments for that period;

(c) The Board shall adopt a budget for each calendar year, which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:

i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of General Common Elements, landscaping, street and walkways, office expenses, swimming pool, utility services, casualty insurance, liability insurance, administration, and reserves (operating and replacement); and

ii) Proposed assessments against each member. Copies of the budget and proposed assessments shall be given to each member at each annual meeting. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each concerned member. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget of amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board, at any time, in their sole discretion to levy an additional assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

(d) The Board shall determine the method of payment of such assessments and the due dates thereof and shall notify the members thereof. The assessments will initially be on a monthly-in-advance basis unless changed by a vote of the majority of the Board;

(e) The depository of the Association shall be such bank, savings and loan, or other Federally Insured depositories as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.

(f) The Board shall require fidelity bonds from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual estimated operating expense and revenues. Likewise, the Board shall maintain for each officer of the Association and each director on the Board a policy of insurance covering the errors and omissions of such insured parties. The premiums on such bonds and policies shall be paid by the Association as a common expense.

8. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the statutes of the State of South Carolina.

9. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Board, as and for the co-owners, is given the authority to administer the operation and management of the Regime, it being recognized that the delegation of such duties to one entity is in the best interests of the co-owners of all Units. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the co-owners of Units, costs and expenses which will be continuing or non-recurring costs, as the case may be, which costs and expenses are sometimes herein referred to as "common expense." To provide the funds necessary for such proper operation and management, the said Board is hereby granted the right to make, levy, and collect assessments against the co-owners of all Units and said Units. In furtherance of said grant of authority to the Board to make, levy, and collect assessments to pay the costs and expenses for the operation and management of the Regime, the following provisions shall be operative and binding upon the co-owners of all Units, to wit:

(a) All assessments (except for special assessments which may be assessed to specific Unit(s) and its/their Co-Owner(s) as determined by the Board) levied against the co-owners of Units and said Units shall be uniform and, unless specifically otherwise provided for in these By-Laws, the assessments made by the Board shall be in such proportion that the amount of assessment levied against each co-owner of an Unit and his Unit shall bear the same ratio to the total assessment made against all co-owners of Units and their Units as does the undivided interest in General Common Elements appurtenant to each Unit bear to the total undivided interest in the Regime;

(b) The Board, in establishing said annual budget for operation, management, and maintenance of the project shall include therein a sum to be collected and maintained as reserve fund for replacement of General Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the General Common Elements as well as the replacement of personal property which may constitute a portion of the General Common Elements held for the joint use and benefit of all the co-owners of all Units. The amount to be allocated to such reserve fund for replacements shall be established by said Board so as to accrue and maintain at all

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times a sum reasonably necessary to anticipate the need for replacements of said General Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by the Association, although nothing herein contained shall prohibit the Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the project in the event of emergencies or in the event the sums collected from the co-owners of Units are insufficient to meet the then fiscal financial requirements of the Association, but it shall not be a requirement that these monies be used for such latter purposes, as a separate assessment may be levied therefor if deemed to be preferable by the Board in the sole discretion of said Board;

(c) Additionally, the Board shall establish an initial budget for operating expenses and reserves from the date of closing of the first unit to the end of the calendar year. This budget shall include income from a working capital fund, assessments, each Unit's pro-rata share of the first year insurance premium and expenses incurred in start-up and operation of the Association, including, but not limited to; additional personnel, additional equipment, interest incurred in financing the Association's insurance premium, utility deposits and other one-time costs associated with the start-up of the Association. A working capital fund must be established for the initial months of the project operation equal to at least a two months' estimated common area charge for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Unit estate and maintained for the use and benefit of the Association. The contribution to the working capital fund for each unsold Unit shall be paid to the Association within sixty (60) days after the date of the conveyance of the first Unit in the project. The purpose of the fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessment. The Grantor shall not use the working capital funds to pay any of its expenses, reserve contributions, construction costs, or to make up any budget deficits while it is in control of the Association. However, when unsold Units are sold, the Grantor may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at Closing when the Unit is sold;

(d) The Board, in establishing said annual budget for operation, management, and maintenance of the project, shall include therein a sum to be collected as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies existing from time to time as a result of delinquent payment of assessments by co-owners of Units, emergencies, or other reasons placing financial stress upon the Association;

(e) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the said Association to the payment of any expense of operating and managing the Regime or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws and the Articles of Incorporation and Master Deed of the said Association. As the monies for any assessment are paid unto the Association by any co-owner of an Unit the same may be commingled with the monies paid to

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the Association by the other Co-owners of Units. All funds and other assets of the Association, and any increments thereto or profits derived therefrom, or from the collection of rental license fees, or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, who shall own any common surplus in the proportions of their percentage of undivided interest in the Regime. No member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer this interest therein, except as an appurtenance to his Unit;

(f) The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto the Association on or before the due dates for such payment. When in default, the Board may accelerate the remaining installments of the annual assessment upon notice thereof to the Unit co-owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within twenty (20) days after their due date, the Association, through its Board, may proceed to enforce and collect the said assessments against the Unit co-owner owing the same in any manner provided for by the Act, including the right of foreclosure and sale. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the highest rate allowed by law until such delinquent assessment or installment thereof and all interest due thereon has been paid to the Association. If any assessment or installment thereof is not paid when due, the Board may assess such late fees and interest as it deems appropriate from time to time;

(g) The co-owner or co-owners of each Unit shall be personally liable to the Association for the payment of all assessments, regular or special, which may be levied by the Association while such party or parties are co-owner or co-owners of an Unit in the Regime. In the event that any co-owner or co-owners are in default in payment of any assessment or installment thereof owed to the Association, such co-owner or co-owners of any Unit shall be personally liable for interest or fees on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit is brought or not.

(h) No co-owner may exempt himself from liability for any assessment levied against such co-owner and his Unit by waiver of the use or enjoyment of any of the General Common Elements, by abandonment, or in any other manner.

(i) Recognizing that the necessity for providing proper operation and management of the project entails the continuing payment of costs and expenses therefor which results in benefit to all of the co-owners of Units and that the payment of such common expense represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of the co-owner of each Unit, the Association is hereby granted a lien upon such Unit and its appurtenant undivided interest in General Common Elements, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the co-owner of each Unit, such lien shall also secure interest or fees, if any, which may be due on the amount of any delinquent assessments owing to the

Association and all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the General Common Elements. The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina. In any suit for the foreclosure of said lien, the Association shall be entitled to rental income or payments from the co-owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Unit The rental required to be paid shall be equal to the rental payment charged on comparable type of Units in Columbia, South Carolina. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. The Association shall further be entitled to interest at the highest rate allowed by law on any such advance made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, are hereby placed on notice of the lien granted to Association and shall acquire such interest in any Unit expressly subject to such lien. The lien shall be subordinate to all mortgages or other liens duly recorded prior to the filing of the lien encumbering the Unit;

(j) The lien herein granted unto the Association shall be effective from and after the time of recording in the public records of Richland County, South Carolina, a claim of lien stating the description of the Unit encumbered thereby, the name of the record co-owner, the amount, and the date when due. The lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, fees, costs, attorney fees, advances to pay taxes and prior encumbrances, and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record;

(k) In the event that any person, firm, or corporation shall acquire title to any Unit and its appurtenant undivided interest in General Common Elements by virtue of any foreclosure, judicial sale, or deed in lieu of foreclosure, such person, firm, or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in General Common Elements subsequent to the date of acquisition of such title and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquires such title. In the event of the acquisition of title to a Unit by foreclosure, judicial sale, or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all co-owners of all Units as part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure;

(l) Whenever any Unit may be sold or mortgaged by the co-owner thereof, which sale shall be concluded only upon compliance with other provisions of these By-Laws, the Association, upon written request of the co-owner of such Unit, and a transfer fee ("Transfer Fee") of $750 (which amount may be modified by the Board, in its discretion) from such co-owner, shall furnish a statement verifying the status of payment of any assessment which shall

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be due and payable to Association by the owner of such Unit to the proposed purchaser or mortgagee. Such statement shall be executed by an officer of the Association and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, as Association shall be bound by such statement Any holder of any mortgage on any Unit shall have the right at all reasonable times and frequency to inquire as to the past due status of any assessment payments. The Association shall, upon request, promptly notify any such mortgagee when any assessment payment becomes more than sixty (60) days past due or when any default in the performance of any obligation required by the Master Deed or these By-Laws as to such Unit is not cured within sixty (60) days;

(m) In the event that an Unit is to be sold or mortgaged at the time when payment of any assessment against the co-owner of said Unit is due to the Association such Unit shall be in default, whether or not a claim of lien has been recorded by the Association. Then the proceeds of such purchase or mortgage shall be applied by the purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase or mortgage proceeds to the co-owner of any Unit who is responsible for payment of such delinquent assessment;

(n) Institution of a suit at law to attempt to effect the collection of payment of delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing it; and

(o) Notwithstanding anything in these By-Laws to the contrary and to the fullest extent allowed by law, it is declared that until December 31, 2008, but no later than sixty (60) days after conveyance by Grantor of the first Unit to a co-owner, each Unit shall be exempt from the assessment created herein until such time as the Unit is conveyed by the Grantor to a Co-owner. Except as expressly provided herein, no Unit and its appurtenant percentage interest shall be exempt from said assessment.

10. MANAGER

(a) Employment. The Board may employ a professional Manager to assist in or take charge of the administration of the Council and the Property. The Board shall solicit competitive bids for such management.

(b) Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board and shall report to the Board or to the President, as the Board may determine.

(c) Compensation. The Manager shall receive such compensation as the Board may determine.

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11. DEFINITIONS

The definitions contained in § 27-31-20 S.C. Code Ann. (1976), are hereby incorporated herein and made a part hereof by reference. The word "Unit" shall have the same meaning as "Unit".

12. CONFLICTS

In the event of any conflict between the provisions of the Master Deed and the provisions of these By-Laws, the provisions of the Master Deed shall control.

13. SEVERABILITY

The provisions of these By-Laws are severable, and the invalidity of one or more provisions thereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

14. CAPTIONS

The captions herein are inserted only as a matter of convenience and or reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

15. GENDER AND NUMBER

All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, as well as and the singular and the plural whenever the context requires or permits.

16. AMENDMENT TO BY-LAWS

Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board acting upon vote of the majority of the directors, or by members of the Association owning a majority of the total value of the property in the Regime, whether meeting as members or by instrument in writing signed by them;

(b) Upon any amendment or amendments to these By-Laws being proposed by said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as set forth herein;

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(c) In order for amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the total value of the property in the Regime and the vote of any Mortgagees as required by the Master Deed. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof recorded in the public records of Richland County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members;

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting; and

(e) Notwithstanding the foregoing provisions of this Article 16, no amendment to these By-Laws which shall suspend, remove, abridge, amend or alter the rights of the Grantor to (i) designate and select members of the Board, as provided in Article 4 hereof, or (ii) sell the Units in Grantor's ordinary course of business and in Grantor's reasonable discretion, may be adopted or become effective without the prior written consent of the Grantor. No amendment shall be effective until all the requirements of the Master Deed have been met.

17. <u>RIGHT TO NOTICE AND COMMENT</u>. Before the Board adopts or amends Rules, whenever the Master Deed or By Laws or Articles of Incorporation require that an action be taken after "Notice and Comment," and at any other time the Board determines, the Co-owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Co-owner in writing and shall be delivered personally or by mail to all Co-owners at such address as appears in the records of the Association or published in a newsletter or similar publication routinely circulated to all Co-owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Co-owner to be heard at a formally constituted meeting.

18. <u>RIGHT TO NOTICE AND HEARING</u>. Whenever the Master Deed or By Laws or Articles of Incorporation require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Co-owners or Occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right., personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidenced shall be considered in making the decision, but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given. Failure to provide such notice shall not invalidate any action taken.

19. APPEALS. Any person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal 'with the Board within ten (10) days after being notified of the decision. The Board of shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

The foregoing is the original set of By-Laws adopted this 11th day of January.

Secretary of ADESSO Homeowners' Association

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 [redacted]

EXHIBIT

B

<u>THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT</u>

MASTER DEED

OF

ADESSO
HORIZONTAL PROPERTY REGIME

Columbia, South Carolina

Owner:

ADESSO/Columbia, LLC

Developer:

Holder Properties, Inc.

Book 1392-855
2008002778 01/14/2008 11:33:25:250 Master Deed
Fee:$122.00 County Tax:$0.00 State Tax:$0.00
2008002778 Richard W. Rodden Richland County ROD

Prepared by:

Glen Paul Caulk, Esquire

Law Offices of
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070
(803) 799-2000

<u>THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION UNDER THE SOUTH CAROLINA ARBITRATION ACT</u>

[redacted]

MASTER DEED
OF
ADESSO
HORIZONTAL PROPERTY REGIME

Richland County, Columbia, South Carolina

* * * * * * * * * *

ADESSO/Columbia, LLC, having its principal office at 3333 Riverwood Pkwy., Suite 500, Atlanta, GA 30339, hereinafter referred to as the "Grantor", as the sole owner of the land and improvements hereinafter described, does hereby make, declare, and publish its intention and desire to submit, and does hereby submit, the lands and buildings herein described, together with all other improvements thereon, including all easements, rights, and appurtenances thereto belonging, to a Horizontal Property Regime (to be known as ADESSO Horizontal Property Regime, hereinafter called the "Regime") in the manner provided for by the South Carolina Horizontal Property Act, as amended, S. C. Code Ann. §27-31-10 et seq. (1976). In conformity with § 27-31-30 and § 27-31-100 of said Act, the Grantor sets forth the following particulars:

I. LEGAL DESCRIPTION

The lands (the "Real Property") which are hereby submitted to the Regime are described on Exhibit "A" attached hereto and made a part hereof by reference. The Real Property as so described has an area set forth on the survey referenced in said Exhibit "A".

II. SURVEY AND DESCRIPTION OF IMPROVEMENTS

Incorporated herein by reference, as is set forth in full herein, is a plat of survey, referred to in Exhibit "A", showing the Real Property (a copy of said plat is attached hereto as Exhibit "B"). A Plot Plan of the building showing the location of the building and other improvements to be constructed (hereinafter "Plot Plans") consisting of a Site Plan, parking facility, Building Plans, Building Roof Plan, Elevations of the buildings on the Real Property and a set of floor plans (hereinafter "floor plans") for each type of Apartment (as such term is defined in S.C. Code Ann. §27-31-10 et seq. (1976) and referred to hereinafter as "Unit") and its respective unit number (hereinafter collectively, the "Plot Plans") which show graphically the dimensions, area, and location of each Unit in the buildings to be constructed on the Real Property and General Common Elements to be constructed on the Real Property affording access to each Unit. Each Unit is identified thereon by specific number and no Unit bears the same designation as any other Unit. Said Plot Plans and Floor Plans are attached hereto as Exhibit "C". The building containing the Units has an aggregate area set forth thereon.

III. NOTICE OF RESTRICTIONS

The Regime is subject to all restrictions, easements, assessments, conditions and limitations now of record affecting the Real Property and the improvements thereon, including without limitation the following below-listed restrictions and easements. ADESSO Homeowners' Association, Inc. (the "Association") as a whole and each Condominium Co-Owner individually is subject to the terms and conditions of said restrictions and easements, including without limitation assessment and maintenance obligations as specified by the terms and conditions of the respective recorded documents listed below and all other restrictive documents and easements of record at the time this Master Deed is recorded:

A. Existing title exceptions:

1. Taxes and assessments for the year 2008, and subsequent years, which are a lien but are not yet due and payable.

2. Easement granted to South Carolina Electric & Gas Company recorded November 14, 2007 in Record Book 1375, page 2529.

3. Easements for ingress and egress granted to adjoining property owners in the following deeds: Deed Book Vol. 50, at page 300; Deed Book Vol. 113, at page 80; Deed Book Vol. 165, at page 227; Deed Book Vol. 283, at page 67; Deed Book Vol. 320, at page 317; Deed Book Vol. 320, at page 319; Deed Book D-99, at page 342, and Deed Book D-456, at page 70.

4. Matters of survey shown on ALTA/ACSM Land Title Survey prepared for ADESSO/COLUMBIA, LLC, a Georgia limited liability company, The National Bank of South Carolina, Fidelity National Title Insurance Company & Holder Properties, Inc., prepared by Hussey, Gay, Bell & DeYoung, Inc., dated January 9, 2008 (the "Survey") attached as Exhibit "B":

(a) Gas valves;

(b) Drains;

(c) Overhead power lines and power poles;

(d) Manholes, sewer line, and 18" RCP; and

(e) Transformers.

5. Projection of steps, appurtenant to the Real Property, onto portions of rights of way of Main Street and Blossom Street (U.S. Hwy. 21 & 76) as shown on the Survey.

 [redacted]

B. Various easements of record or to be recorded as the Real Property is developed.

IV. WARRANTY

GRANTOR ASSIGNS TO THE ASSOCIATION ALL ITS RIGHTS UNDER THE LIMITED WARRANTY AS RECEIVED FROM ITS CONTRACTOR, KEY CONSTRUCTION, INC. ("CONTRACTOR"), AND MORE FULLY DESCRIBED THEREIN AND WITHIN THE PLANS AND SPECIFICATIONS FOR ADESSO, PREPARED BY NILES BOLTON ASSOCIATES, ARCHITECTS, ENGINEERS, AND CONSULTANTS ("ARCHITECT"). THIS WARRANTY IS LIMITED TO THE WORK PERFORMED BY THE CONTRACTOR OR ITS SUBCONTRACTORS PURSUANT TO THE PLANS.

FURTHERMORE, ANY AND ALL WARRANTIES, ASSURANCES, INDEMNITIES, GUARANTIES AND INSURANCE OF ARCHITECT IS ASSIGNED BY GRANTOR TO THE ASSOCIATION.

GRANTOR'S, CONTRACTOR'S, AND ARCHITECT'S SOLE OBLIGATION, TO THE EXCLUSION OF ALL OTHER REMEDIES, INCLUDING WITHOUT LIMITATION NEGLIGENCE, BREACH OF CONTRACT, OR ANY OTHER THEORY AT LAW OR IN EQUITY, IS LIMITED TO THE REPAIR OR REPLACEMENT, AT GRANTOR'S, CONTRACTOR'S, AND ARCHITECT'S OPTION, OF THE DEFECTIVE CONDITION OF THE WORK PURSUANT TO THE PLANS ("WORK") RELATING SOLELY TO THE GENERAL AND LIMITED COMMON ELEMENTS.

FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF ISSUANCE BY THE CITY OF COLUMBIA OF THE CERTIFICATE OF OCCUPANCY (TO THE EXTENT A PARTIAL CERTIFICATE OF OCCUPANCY IS ISSUED, SUCH AREAS AFFECTED BY SUCH PARTIAL CERTIFICATE OF OCCUPANCY) FOR THE REGIME, CONTRACTOR WILL, AT NO COST TO REGIME, REPAIR OR REPLACE ANY PORTION OF THE GENERAL AND LIMITED COMMON ELEMENTS, EXCEPT FIXTURES, FURNITURE, ACCESSORIES AND APPLIANCES COVERED BY A WARRANTY OF MANUFACTURERS AND DEALERS, WHICH ARE DEFECTIVE AS TO MATERIAL OR WORKMANSHIP. THE WARRANTY PROVIDED HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE ASSOCIATION AND ASSOCIATION AGREES ON ITS OWN BEHALF AND ON BEHALF OF ALL OF ITS CO-OWNERS THAT THEY SHALL SEEK SUCH REMEDIES DIRECTLY AGAINST ARCHITECT AND CONTRACTOR. THE LIABILITY OF THE GRANTOR IS EXPRESSLY LIMITED TO SUCH REPAIRS OR REPLACEMENT AND GRANTOR MAKES NO OTHER WARRANTIES EXPRESSED OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, WORKMANSHIP, SOUNDNESS, QUALITY, WORKMANLIKE SERVICE, VALUE, SUITABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE).

THIS LIMITED WARRANTY IS NONTRANSFERABLE AND IS PERSONAL ONLY TO

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THE ASSOCIATION.

AS TO ANY PERSONAL PROPERTY (INCLUDING WITHOUT LIMITATION, MOTORIZED DAMPERS, AND HEATING, VENTILATING AND COOLING ELEMENTS CONVEYED BY THE GRANTOR TO THE ASSOCIATION, AND AS TO ANY "CONSUMER PRODUCT" OR GOOD (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL LAW OR IMPLEMENTING REGULATIONS, THE UNIFORM COMMERCIAL CODE OR AS A TERM OF SIMILAR MEANING MAY BE DEFINED UNDER STATE, OR LOCAL LAWS, OR THEIR IMPLEMENTING REGULATIONS) WHICH MAY BE CONTAINED IN THE COMMON ELEMENTS, GRANTOR NEITHER MAKES NOR ADOPTS ANY WARRANTY WHATSOEVER AND SPECIFICALLY EXCLUDES EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, THE GRANTOR EXCLUDES ALL WARRANTIES OF SOUNDNESS, QUALITY, WORKMANLIKE SERVICE, VALUE, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF HABITABILITY.

Additional Warranty Exclusions.

A. Nail or screw pops or cracks in the walls and ceilings of the General and Limited Common Elements which do not result from faulty workmanship or defective materials but are the result of natural shrinkage and drying of building materials, or of normal settlement of the building, wind loads or other normal movement of the building components. To the extent that the Grantor may elect at its sole discretion to perform repairs for the above conditions, provided that notice of such conditions in writing is received by Grantor, Contractor and Architect during the Warranty period, Grantor, Contractor and Architect will not be liable for repainting, wallpapering or refinishing any repaired areas.

B. Ordinary wear and tear, or damage due to misuse or neglect, negligence, or the Association's failure to provide proper maintenance to the General and Limited Common Elements or the Association's failure to perform maintenance as required by the manufacturer.

C. This Limited Warranty does not cover the individual commercial and residential Units.

D. This Limited Warranty does not cover consequential damages, loss of use, or any costs to repair negligently performed repair work performed by the Association or other parties.

E. Any item which has been modified or repaired by the Association, or any items which are installed or constructed pursuant to a separate contract or agreement between the Association and any party other than Grantor.

F. No steps taken by Grantor, Contractor and Architect to correct defects shall act to extend the scope of duration of this Limited Warranty beyond the Warranty period.

G. No representative of the Grantor, Contractor and Architect has the authority to expand or extend the scope of this Limited Warranty or to make verbal agreements with respect thereto.

H. All requests for correction pursuant to this Limited Warranty must be in written form and delivered to the Contractor and Architect, or their designated representatives, with a copy to Grantor.

ARBITRATION AGREEMENT.

EACH AND EVERY CLAIM AND CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO THE DESIGN, CONSTRUCTION, SALE, MAINTENANCE, HABITABILITY OF, OR CONDITION OF ANY UNIT OR ANY COMMON AREA THAT IS ASSERTED BY (i) ANY PERSON OR ENTITY THAT NOW HAS OR HEREAFTER ACQUIRES ANY INTEREST IN A UNIT, (ii) THE GRANTOR OR DEVELOPER, (iii) THE UNIT OWNERS' ASSOCIATION (INCLUDING ANY CORPORATION OR OTHER ENTITY FORMED TO SERVE AS UNIT OWNERS' ASSOCIATION), (iv) ANY PERSON OR ENTITY THAT HAS PREVIOUSLY OR HEREAFTER SUPPLIES (DIRECTLY OR INDIRECTLY) LABOR, MATERIALS, DESIGN SERVICES, EQUIPMENT OR OTHER THINGS OF VALUE IN CONNECTION WITH THE CONSTRUCTION OR MAINTENANCE OF ANY UNIT OR THE COMMON AREA, OR (v) ANY HEIR, SUCCESSOR, DELEGATE OR ASSIGNEE OF ANY SUCH PERSONS OR ENTITIES, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION BEFORE A PANEL OF THREE ARBITRATORS PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AS MODIFIED HEREIN. THE ARBITRATION HEARING SHALL BE CONDUCTED IN RICHLAND COUNTY, SOUTH CAROLINA. ALL CLAIMS AND CAUSES OF ACTION OF ALL PERSONS AND ENTITIES ENTITLED TO ENFORCE (OR BOUND BY) THIS ARBITRATION PROVISION SHALL BE ASSERTED IN A SINGLE ARBITRATION PROCEEDING, AND MULTIPLE PARTIES MAY BE JOINED IN THE ARBITRATION PROCEEDING SO THAT ALL DISPUTES MAY BE RESOLVED IN ONE FORUM. NO CLAIM OR CAUSE OF ACTION MAY BE ASSERTED THAT WOULD BE BARRED BY THE STATUTE OF LIMITATIONS OR THE STATUTE OF RESPONSE.

IN ANY ARBITRATION PROCEEDING, REQUESTS FOR PRODUCTION OF DOCUMENTS MAY BE SERVED BY EACH PARTY, AND NON-PRIVILEGED, RESPONSIVE DOCUMENTS THAT WOULD BE DISCOVERABLE UNDER RULE 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE (WERE THE CLAIMS AND CAUSES OF ACTION BEING ASSERTED IN UNITED STATES DISTRICT COURT) SHALL BE PRODUCED. DEPOSITIONS MAY BE TAKEN AS ALLOWED BY THE ARBITRATION PANEL, WHICH PANEL SHALL REASONABLY LIMIT THE NUMBER OF DEPOSITIONS IN ORDER TO AVOID UNNECESSARY OR EXCESSIVE EXPENSE, DELAY, OR HARASSMENT.

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THE ARBITRATION PANEL SHALL ISSUE A WRITTEN DECISION IDENTIFYING WITH SPECIFICITY EACH CLAIM OR CAUSE OF ACTION ASSERTED OR RESOLVED IN ANY ARBITRATION, AND THE LEGAL PRINCIPLES OF RES JUDICATA AND COLLATERAL ESTOPPEL SHALL BE APPLICABLE TO ANY ARBITRATION AWARD. ANY ARBITRATION AWARD MAY BE CONFIRMED AND ENFORCED IN ANY COURT OF JURISDICTION.

THIS ARBITRATION PROVISION IS EXPRESSLY INTENDED TO BENEFIT AND BE ENFORCEABLE BY EACH PERSON AND ENTITY REFERENCED IN SUBPARAGRAPHS (i)-(v) ABOVE WHETHER OR NOT SUCH PERSON OR ENTITY IS BOUND BY THIS ARBITRATION PROVISION. ANY ATTEMPT BY ANY SUCH PERSON OR ENTITY TO ENFORCE THIS ARBITRATION PROVISION SHALL CONSTITUTE CONCLUSIVE CONSENT TO BE BOUND HEREBY.

THE GRANTOR, DEVELOPER, CONTRACTOR, ARCHITECT, THE ASSOCIATION, AND THE INDIVIDUAL UNIT OWNERS EXPRESSLY WAIVE ALL RESORT TO TRIAL BY JURY OF ANY AND ALL ISSUES OTHERWISE SO TRIABLE.

V. UNITS AND GENERAL AND LIMITED COMMON ELEMENTS

The Regime consists of Units and General and Limited Common Elements and any other Stages hereinafter submitted to the Regime, at the sole discretion of the Grantor with no obligation to do so, as said terms are hereinafter defined.

A. **Units.**

1. **Residential Units**. Residential Units, as the term is used herein, shall mean and comprise the one hundred ten (110) Residential Units which are separately designated by number as indicated in Exhibit "C" to this Master Deed, including but not limited to the space, interior partitions or interior walls, fixtures and appliances therein, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings and floors of each Residential Unit, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surface of all interior load-bearing columns, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to other Units and Limited and General Common Elements. The general description and number of each Residential Unit in the building on the Real Property, expressing its area, general location, and any other data necessary for its identification, also appears in Exhibit "C". The Residential Units include living room, kitchen area, including appliances therein, bathrooms, bedrooms, closets and the HVAC System excluding the central air-conditioning unit(s) located on the exterior of the building. Any drawings contained in Exhibit "C" showing furniture is intended to reflect suggested furnishings and is not intended to suggest that any Unit is furnished. Grantor has no responsibility to furnish any Unit. The Residential Units are generally described as follows:

Residential Units 121, 221, 321, 421 and 521 (also known as Unit Type A1-a): These Residential Units contain approximately 792 square feet in heated space. These Residential Units have one (1) bedroom, one (1) bath, kitchen, living/dining area, and foyer. These Residential Units have the bedroom and bath on the left and kitchen on your right as you enter from the hallway. Each of these Residential Units has a Limited Common Element balcony of approximately 41 square feet.

Residential Units 105, 205, 305, 405 and 505 (also known as Unit Type A1-d): These Residential Units contain approximately 792 square feet in heated space. These Residential Units have one (1) bedroom, one (1) bath, kitchen, living/dining area, and foyer. These Residential Units have the bedroom and bath on your right and kitchen on your left as you enter from the hallway. Each of these Residential Units has a Limited Common Element balcony of approximately 41 square feet.

Residential Units 112, 212, 312, 412 and 512 (also known as Unity Type A1-e): These Residential Units contain approximately 792 square feet in heated space. These Residential Units have one (1) bedroom, one (1) bath, kitchen, living/dining area and foyer. These Residential Units have the bedroom and bath on your left and kitchen on your right as you enter from the hallway. Each of these Units has a Limited Common Element balcony of approximately 41 square feet.

Residential Units 104, 204, 304, 404 and 504 (also known as Unity Type A1-f): These Residential Units contain approximately 797 square feet in heated space. These Residential Units have one (1) bedroom, one (1) bath, kitchen, living/dining area and foyer. These Residential Units have the bedroom and bath on your left and kitchen on your right as you enter from the hallway. Each of these Units has a Limited Common Element balcony of approximately 46 square feet.

Residential Units 128, 228, 328, 428 and 528 (also known as Unity Type A1-g): These Residential Units contain approximately 792 square feet in heated space. These Residential Units have one (1) bedroom, one (1) bath, kitchen, living/dining area and foyer. These Residential Units have the bedroom and bath on your right and kitchen on your left as you enter from the hallway. Each of these Units has a Limited Common Element balcony of approximately 41 square feet.

Residential Units 111, 211, 311, 411 and 511 (also known as Unit Type B1-a): These Residential Units contain approximately 1094 square feet in heated space. These Residential Units have one (1) bedroom, a den, one (1) bath, kitchen, living/dining area, and foyer. Each of these Residential Units has a limited Common Element balcony of approximately 31 square feet. The kitchen and living/dining area are to your left and the den, bedroom and bathroom are on your right as you enter from the hallway.

Residential Units 102, 202, 302, 402 and 502 (also known as Unit Type B1-b): This Residential Unit contains approximately 1085 square feet in heated space. This Residential Unit has one (1) bedroom, one (1) bath, kitchen, den, living/dining area, and foyer. This

Residential Unit has a Limited Common Element balcony of approximately 40 square feet. The kitchen and living/dining area are to your right and the den, bedroom and bathroom are on your left as you enter from the hallway.

Residential Units 107, 207, 307, 407 and 507 (also known as Unit Type B2-a): These Residential Units contain approximately 1233 square feet in heated space. These Residential Units have two (2) bedrooms, two (2) baths, kitchen, living/dining area, and foyer. These Residential Units have a Limited Common Element balcony of approximately 224 square feet. The kitchen and master bedroom/bath are to your left as you enter from the hallway.

Residential Units 115, 215, 315, 415 and 515 (also known as Unit Type B2-b): These Residential Units contain approximately 1233 square feet in heated space. These Residential Units have two (2) bedrooms, two (2) baths, kitchen, living/dining area, and foyer. These Residential Units have a Limited Common Element balcony of approximately 224 square feet. The kitchen and master bedroom/bath are to your right as you enter from the hallway.

Residential Units 116, 216, 316, 416 and 516 (also known as Unit Type B3-a): These Residential Units contain approximately 1472 square feet in heated space, comprised of two (2) bedrooms, two (2) baths, a laundry room, kitchen, living/dining area, foyer and an approximately 44 square foot Limited Common Element balcony. These Residential Units have a bathroom, bedroom and kitchen on your right and the laundry room to your left as you enter from the hallway.

Residential Units 130, 230, 330, 430 and 530 (also known as Unit Type B3-b): These Residential Units contain approximately 1497 square feet in heated space, comprised of two (2) bedrooms, two (2) baths, a laundry room, kitchen, living/dining area, foyer and an approximately 59 square foot Limited Common Element balcony. These Residential Units have a bathroom, bedroom and kitchen on your left and the laundry room to your right as you enter from the hallway.

Residential Units 101, 201, 301, 401 and 501 (also known as Unit Type B4-a): These Residential Units contain approximately 1412 square feet in heated space, contain two (2) bedrooms, two (2) baths, a laundry closet, dining area, living area, kitchen, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have a bathroom and bedroom to your left and the kitchen and living area to your right as you enter from the hallway.

Residential Units 103, 203, 303, 403 and 503 (also known as Unit Type B4-b): These Residential Units contain approximately 1412 square feet in heated space, contain two (2) bedrooms, two (2) baths, a laundry closet, dining area, living area, kitchen, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have a bathroom and bedroom to your left and the kitchen and living area to your right as you enter from the hallway.

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Residential Units 109, 209, 309, 409 and 509 (also known as Unit Type B4-c): These Residential Units contain approximately 1412 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, laundry closet, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have bedroom and bath to your right and kitchen to your left as you enter from the hallway.

Residential Units 118, 218, 318, 418 and 518 (also known as Unit Type B4-d): These Residential Units contain approximately 1412 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, laundry closet, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have bedroom and bath to your right and kitchen to your left as you enter from the hallway.

Residential Units 127, 227, 327, 427 and 527 (also known as Unit Type B4-e): These Residential Units contain approximately 1412 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, laundry closet, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have bedroom and bath to your left and kitchen to your right as you enter from the hallway.

Residential Units 125, 225, 325, 425 and 525 (also known as Unit Type B4-f): These Residential Units contain approximately 1412 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, laundry closet, foyer and an approximately 39 square foot Limited Common Element balcony. These Residential Units have bedroom and bath to your right and kitchen to your left as you enter from the hallway.

Residential Units 123, 223, 323, 423 and 523 (also known as Unit Type B5): These Residential Units contain approximately 1473 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, foyer, and a 54 square foot Limited Common Element balcony. These Residential Units have the kitchen on your left as you enter from the hallway.

Residential Units 110, 210, 310, 410 and 510 (also known as Unit Type B6-a): These Residential Units contain approximately 1443 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, foyer, and a 41 square foot Limited Common Element balcony. These Residential Units have the kitchen on your left as you enter from the hallway.

Residential Units 126, 226, 326, 426 and 526 (also known as Unit Type B6-b): These Residential Units contain approximately 1443 square feet in heated space comprised of two (2) bedrooms, two (2) baths, kitchen, living area, dining area, foyer, and a 41 square foot Limited Common Element balcony. These Residential Units have the kitchen on your right as you enter from the hallway.

Residential Units 117, 217, 317, 417 and 517 (also known as Unit Type B7): These Residential Units contain approximately 1587 square feet in heated space. These Residential Units have two (2) bedrooms and two (2) baths, kitchen, laundry closet, living room, dining

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area and foyer. These Residential Units have the kitchen and one (1) bedroom and bath on your left and the living room and dining area on your right as you enter from the hallway. Each of these Residential Units has a Limited Common Element balcony of approximately 82 square feet.

Residential Units 129, 229, 329, 429 and 529 (also known as Unit Type C1): These Residential Units contain approximately 1782 square feet in heated space comprised of three (3) bedrooms, three (3) baths, laundry closet, living area, dining area, kitchen, foyer, and a 55 square foot Limited Common Element balcony. These Residential Units have the kitchen and dining area on your right as you enter from the hallway.

2. **Commercial Units.** Commercial Units, as the term is used herein, shall mean and comprise two (2) Commercial Units identified in Exhibit "C" to this Master Deed as "Retail #1" containing approximately 6913 square feet and "Retail #2" containing approximately 1226 square feet, each of which is distinct from the Residential Units and requires no numerical or lettered designation, including but not limited to the space, interior partitions or interior walls (whether original or subsequently installed by the Owner of the Commercial Unit), fixtures and appliances therein, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings and floors of the Commercial Units, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surface of all interior load-bearing columns, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition (unless subsequently installed by the Owner of the either Commercial Unit) for the furnishing of utility services to any Units and Limited and General Common Elements. The Commercial Units each includes appliances therein, bathrooms, and the HVAC System excluding the central air-conditioning unit(s) located on the exterior of the building.

3. **Storage Units.** Storage Unit, as the term is used herein, shall mean and comprise the fifty-three (53) storage units of varying sizes and dimensions which are separately designated by number as indicated in Exhibit "C" to this Master Deed including the space within the walls of such storage unit but excluding spaces lying beneath the wall of the perimeter wall, floor and ceiling of each storage unit, load bearing columns, pipes, ducts, wires, conduits and other facilities running through any walls which furnish services to any other Units and Limited and General Common Elements. The general description and number of each Storage Unit in the building on the Real Property, expressing its general location and any other data for its identification, also appears in Exhibit "C". The Storage Units are generally described as follows:

Storage Units S1, S2, S3, S4, S5, S6, S7 and S8 are located in the Southwest corner of the building on Parking Level One.

Storage Units S9, S10, S11, S12, S13 and S14 are located in the Southeast corner of the building on Parking Level One.

[redacted]

Storage Units S15, S16, S17, S18, S19, S20, S21, S22, S23, S24 and S25 are located on the Northern side of the building on Parking Level One.

Storage Units S26, S27, S28, S29, S30, S31, S32 and S33 are located on the Southwest corner of the building on Parking Level Two.

Storage Units S34, S35, S36 and S37 are located on the Northwestern interior corner of the Living Level 1.

Storage Units S38, S39, S40 and S41 are located on the Northwestern interior corner of Living Level 2.

Storage Units S42, S43, S44 and S45 are located on the Northwestern interior corner of Living Level 3.

Storage Units S46, S47, S48 and S49 are located on the Northwestern interior corner of Living Level 4.

Storage Units S50, S51, S52 and S53 are located on the Northwestern interior corner of Living Level 5.

Notwithstanding anything herein to the contrary, and to the fullest extent allowed by law: (i) the Commercial Unit Owner shall not have rights to use certain common elements which are residential in nature such as (for example and not by way of limitation) the swimming pool, fitness center; lobby area; (ii) the value of the Commercial Unit has a corresponding value as set forth in the Table of Values on Exhibit "D"; (iii) separate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units, for purposes of example but not limitation:

Limited Common Elements that benefit Commercial and Residential Units:

1. Retail/Guest Parking; specifically, parking spaces 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217
2. Sidewalks, Plantings, & Lighting along Main and Blossom and all appurtenances thereof
3. Trash Chute
4. Trash Compactor
5. Service Elevator
6. Loading Dock and all appurtenances thereof
7. Overhead entry and exit devices to the secure parking area and all appurtenances thereof

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8. Exterior security cameras and all appurtenances thereof
9. Roof
10. Retail Service Corridor

Limited Common Elements that Benefit Commercial Units only:
1. Retail sign placard and all appurtenances thereof
2. Retail Colonnade;

(iv) the foregoing budget considerations shall not be modified unless seventy-five (75%) percent of the voting interests of the Owners of Residential Units and a majority of the voting rights of the Owners of Commercial Units are obtained approving such modification.

3. The term "Unit" shall mean either a Commercial Unit and/or a Residential Unit and/or a Storage Unit(s) and the term "Units" may mean any or all of either Commercial Unit(s) and/or Residential Unit(s) and/or a Storage Unit(s).

B. **General Common Elements means and includes:**

(1) The land on which the building and parking area stand, more fully described above, together with all of the other real property described in Exhibit "A";

(2) The foundations, main walls, roofs, halls, corridors, lobbies, stairways, elevators, and communication ways of the building and the garage;

(3) The sprinkler system, yards, swimming pool, pool house, pool deck, all rooms and closets depicted in Exhibit "C" as Janitor's Closet, Machine Room, Electricity and Phone Rooms, Data Closets, Elevator Shafts, Cars and Vestibules, fitness center, balcony, shrubs, planter boxes, exterior lights, fire alarms, fire hoses, signs, and storm drainage system, except as otherwise provided or stipulated;

(4) The compartments or installations of central services such as power, light, telephone, television, cold and hot water, surveillance cameras and screens, refrigeration, generator, fuel tank, and water pump, and the like;

(5) Other than Designated Parking Spaces and Retail Parking (defined below), the parking areas and all appurtenances thereto;

(6) In general, all devices or installations existing for common use;

(7) The area designated on Exhibit "C" as the "Club House" which also contains two restrooms. This area is located on Level 2 and may be used for the operation of on-premises meetings, social functions, snack bar, or such other uses as allowed by the City of Columbia and approved by the Board of Directors of the Association.

(8) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety; and

(9) The common area containing such areas as are shown on said plat and shown on Exhibit "C".

C. **Limited Common Elements means and includes:**

(1) Any mailboxes, porches, balconies, patios, entrance or exit ways, and all exterior doors and windows or other fixtures designed to serve one or more but less than all Units, are Limited Common Elements allocated exclusively to such Unit or Units.

(2) If any flue, duct, wire, conduit, load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Element allocated solely to that Unit. Insofar as possible, the Limited Common Elements are shown graphically and described in detail in words and figures in the plat and plot plans.

(3) The air-conditioning units/compressors as indicated in Exhibit "C" shall be Limited Common Elements, limited to the use of the Unit it serves.

(4) Designated Parking Spaces as identified in Exhibit "C" shall be Limited Common Elements, limited to the use of the Unit it/they serve and marked with a corresponding Unit number to identify such. As set forth in Section VII hereinbelow, Designated Parking Spaces may not be assigned and shall remain a Limited Common Element relating to a specific Unit and may not be reassigned, swapped or otherwise transferred to non-owners nor with other Co-Owners.

(5) Retail Parking Spaces as identified in Exhibit "C" shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such. As set forth in Section VII hereinbelow, Retail Parking Spaces may not be re-assigned and shall remain a Limited Common Element relating to the Commercial Unit. The Owner of the Commercial Unit, insofar as it partitions the Commercial Unit for rental to different vendors, stores, restaurants, etc. may designate certain Retail Parking Spaces to each lessee of a portion of the Commercial Unit in the Commercial Unit Owner's reasonable discretion.

The buildings and other Common Elements are in accordance with plans and specifications prepared by Niles Bolton Associates, 3060 Peachtree Road, NW, Suite 600, Atlanta, GA 30305, for ADESSO-Mixed Use Development, 601 Main Street, Columbia, South Carolina, and are incorporated herein by reference.

VI. OWNERSHIP OF UNITS AND APPURTENANT INTEREST IN GENERAL COMMON ELEMENTS

A Unit in the Regime may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale, and of all types of juridic acts, inter vivos or mortis causa, as if it were sole and entirely independent of the other Units in the Regime of which it forms a part, and the corresponding individual titles and interests are recordable.

Any Unit may be held and owned by more than one person as tenants in common or in any other form of real property ownership recognized in this State.

A Unit owner shall have the exclusive ownership of his Unit and shall have a common right to a share, with the other Co-Owners, in the common elements of the Regime, equivalent to the percentage representing the value of the individual Unit, with relation to the value of the whole Regime. This percentage, which is set forth on Exhibit "D" attached hereto and made a part hereof by reference, shall have a permanent character, and shall not be altered without the acquiescence of the Co-Owners representing all the Units of the Regime.

The basic value, which shall be fixed for the sole purpose of this Master Deed and irrespectively of the actual value, shall not prevent each Co-Owner from fixing a different circumstantial value to his Unit in all types of acts and contracts.

VII. RESTRICTION AGAINST FURTHER SUBDIVIDING OF UNITS AND SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS, ETC.

Except as set forth herein to the contrary, a Unit may not be divided or subdivided into a smaller Unit or smaller Units than as described in Exhibit "C" attached hereto, nor shall any Unit, or portion thereof, be added to or incorporated into any other Unit. The undivided interest in the General and Limited Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said Unit and the undivided interest in General and Limited Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered, or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Unit. Any conveyance, mortgage, or other instrument which purports to effect the conveyance, devise, or encumbrance, or which purports to grant any right, interest or lien in, to, or upon a Unit, shall be null, void, and of no effect insofar as the same purports to effect any interest in a Unit and its appurtenant undivided interest in General and Limited Common Elements, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit which describes said Unit by the Unit Number assigned thereto in Exhibit "C" without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the General and Limited Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit, residential or commercial, and its appurtenant undivided interest in the General and Limited Common Elements by more than one person or entity as tenants in common, joint tenants, or any other form of real property ownership recognized in this State or preventing the leasing of the Sales Office to one or more real estate sales and/or property management companies. All Common Elements, including but not limited to parking and recreational facilities, shall be owned by the Regime and may not be subject to a lease between the Unit owners (or the Association) and another party.

VIII. HORIZONTAL PROPERTY REGIME SUBJECT TO RESTRICTIONS, ETC.

In addition to that set forth in Section III hereinabove, each and every Unit and the General and Limited Common Elements shall be, and is hereby declared to be, subject to the restrictions, easements, conditions, and covenants prescribed and established herein, governing the use of said Unit and General and Limited Common Elements, and setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the General and Common Elements. Said Units and General and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Unit.

IX. PERPETUAL NON-EXCLUSIVE EASEMENTS IN GENERAL COMMON ELEMENTS

The General Common Elements shall be, and are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Co-Owners of Units in the Horizontal Property Regime for their use and the use of their immediate family, guests, and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, or the enjoyment of said Co-Owners of Units. Notwithstanding anything above provided in this article, the Association shall have the right to establish the rules and regulations pursuant to which the Co-Owner or Co-Owners of any Unit may be entitled to the exclusive use of any parking space or spaces.

The Grantor reserves unto itself and its successors or assigns an easement, including a construction easement, through all General and Limited Common Elements as may be reasonably necessary for the purpose of discharging Grantor's rights or obligations of exercising special Grantor rights reserved in this Master Deed.

As part of the right of Grantor to construct the General and Limited Common Elements of this Regime, Grantor reserves unto itself, and its successors and assigns, easements for ingress and egress over, under and across all Units, all Common Elements, Limited and General and such other reasonable right of access to and use of all Units, the Common Elements, Limited and General, subject to this Regime as may be necessary for the construction, maintenance and marketing of the Units and the General and Limited Common Elements.

X. PERPETUAL EXCLUSIVE EASEMENT TO USE LIMITED COMMON ELEMENTS

Subject to Grantor's rights reserved herein, each Co-Owner shall have the exclusive right to use the Limited Common Elements allocated to such Co-Owner's Unit for his use and the use of his immediate family, guests, and invitees for all proper and normal purposes. Such right to use shall be a perpetual exclusive easement in favor of such Co-Owner.

XI. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS

In the event that any portion of the General and Limited Common Elements now or hereafter encroaches upon any Unit, or vice versa, or in the event that any portion of one Unit now or hereafter encroaches upon another Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, does and shall exist.

XII. RESTRAINT UPON SEPARATION AND PARTITION OF GENERAL AND LIMITED COMMON ELEMENTS

The Common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the Co-Ownership. Any covenant to the contrary shall be void.

All of the Co-Owners or the sole owner of the Regime may waive the Regime and regroup or merge the records of the individual Units with the Real Property, provided that the individual Units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Subject to the other provisions of Article V, Section A, Paragraph 2, this Article XII and Article XIII, unless all of the first mortgagees (based upon one vote for each first mortgage owned) or all owners of the Units have given their prior written approval, the Association shall not be entitled to:

A. by act or omission, seek to abandon or terminate the Regime or legal status of the project as a condominium;

B. change the pro rata interest or obligations of any Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Unit in the General and Limited Common Elements;

C. partition or subdivide any Residential Unit; or

D. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Regime or Association shall not be deemed a transfer within the meaning of this subparagraph D.

The Co-Owners representing two-thirds of the total value of the property shall be required to modify the system of administration of the Association. These provisions shall not apply to amendments to the constituent documents or termination of the Condominium Regime made as a result of destruction, damage, or condemnation pursuant to the provisions of this Master Deed or the other constituent documents.

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XIII. RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND ELIGIBLE INSURERS OR GUARANTORS

A. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the Unit number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss which affects a material portion of the Regime or any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(2) Any delinquency in the payment of assessments or charges owed by a Co-Owner of a Unit subject to a first mortgage held, insured, or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(3) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Master Deed.

B. Other Provisions for Eligible Mortgage Holders. To the extent permitted by applicable law, eligible mortgage holders shall also be afforded the following rights:

(1) Any restoration or repair of the Regime, after a partial condemnation or damage, due to an insurable hazard, shall be performed substantially in accordance with this declaration (Master Deed) and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible mortgage holders;

(2) Any election to terminate the legal status of the Regime after substantial destruction or a substantial taking in condemnation of the Regime property must require the approval of eligible holders holding mortgages on Units which have one hundred percent (100%) of the votes of Units subject to eligible holder mortgages;

(3) No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a Regime may be effected without the prior approval of eligible holders holding mortgages on all remaining Units, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Units subject to eligible holder mortgages; and

(4) When professional management has been previously required by any eligible mortgage holder, insurer, or guarantor, whether such entity became an eligible

mortgage holder, insurer or, guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Co-Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible mortgage holders.

C. Non-Material Amendments to Master Deed. An addition or amendment to this Master Deed, By-Laws, or other exhibits shall not be considered material if it is for the purpose of correcting typographical, technical, scrivener's or errors or for clarification.

D. Material Amendments to Master Deed. In addition to the foregoing requirements, Amendments of a material nature must be agreed to by Unit owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by eligible mortgage holders who represent at least fifty-one percent (51%) of the votes that are subject to mortgages held by eligible holders. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. A change to any of the provisions governing the following would be considered as material:

(1) voting rights;

(2) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of the assessment liens;

(3) reductions in reserves of greater than ten percent (10%) of its then-current balance for maintenance, repair, and replacement of common elements;

(4) responsibility for maintenance and repairs;

(5) reallocation of interests in the general or Limited Common Elements, or rights to their use other than the addition of Stages as set forth in Paragraph V hereof;

(6) redefinition of any Unit boundaries;

(7) convertibility of Units into common elements, or vice versa;

(8) expansion or contraction of the Regime, or the addition, annexation, or withdrawal of property to or from the Regime;

(9) hazard or fidelity insurance requirements;

(10) alteration of any restrictions on the leasing of the Residential Units;

(11) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit; and

(12) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

XIV. RESIDENTIAL USE RESTRICTION APPLICABLE TO RESIDENTIAL UNITS AND COMMERCIAL USE RESTRICTIONS APPLICABLE TO COMMERCIAL UNITS

Each Residential Unit is hereby restricted to residential use by the Co-Owner or Co-Owners thereof, their immediate families, guests, tenants, lessees, licensees, and invitees; provided, however, that so long as the Grantor shall retain any interest in the Regime, it may utilize a Unit or Units of its choice owned or leased by Grantor from time to time, for a sales office, model, or other usage for the purpose of selling or closing the sale of Units in said Regime or outside of the Regime. Grantor may assign this commercial usage right to such other persons or entities as it may choose; provided, however, that when all Units have been sold this right of commercial usage shall immediately cease. No "For Sale" or "For Rent" signs or the like shall be permitted on any General or Limited Common Element or any Unit so as to be visible from any General or Limited Common Element or public street or area, other than any sign placed upon the Unit, Office Unit, sales office or model by Grantor. Nothing herein shall prevent the Association from leasing portions of the Common Elements to management companies for use as an office, model or other purpose connected with the management of the Regime or to grant licenses and easements over the common areas for utilities, roads, and other purposes reasonably necessary or usable for the proper maintenance and operation of the Regime. Any lease or rental agreement concerning the use of the Unit must be in writing and subject to the requirements of the Master Deed and the rules and regulations of the Association.

XV. USE OF GENERAL COMMON ELEMENTS SUBJECT TO RULES OF ASSOCIATION

The use of General Common Elements by the Co-Owner or Co-Owners of all Units, and all other parties authorized to use the same shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such or which may hereafter be prescribed and established by the Association.

XVI. HORIZONTAL PROPERTY REGIME TO BE USED FOR LAWFUL PURPOSES, RESTRICTION AGAINST NUISANCES, ETC.

A. No immoral, improper, offensive, or unlawful use shall be made of any Unit or of the General and Limited Common Elements, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction over the Regime shall be observed. No Co-Owner of any Unit shall permit a pet or pets which weigh(s) in excess of forty (40) pounds to enter the Property or be kept in his Unit, or on the General or

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Limited Common Elements. No Co-Owner of any Unit shall permit or suffer anything to be done or kept in his Unit, or on the General or Limited Common Elements, which will increase the rate of insurance on the Regime, or which will obstruct or interfere with the rights of other occupants of the building or annoy them by unreasonable noises, nor shall any such Co-Owner undertake any use or practice which shall create and constitute a nuisance to any other Co-Owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit or the General or Limited Common Elements.

B. Limitation on Rental Units. Notwithstanding anything contained herein to the contrary, no more than twenty (20%) percent of all Residential Units in the Regime may be rented. It is the express intention of the Grantor herein to preserve the values of the Regime and the Units therein, and each Co-Owner's long-term enjoyment of his/her respective Unit. Accordingly, at the time when Grantor is conveying the Units within the Regime, Grantor may sell a license to such Co-Owner allowing that Co-Owner the privilege to rent out his/her Unit. In consideration for such license, such Co-Owner licensee shall pay to the Association (in addition to such other sums required within this Master Deed and the By-Laws) the sum of Three Hundred ($300.00) Dollars per quarter, in advance. Failure to pay such license fee shall terminate the license which may be reassigned by the Association as requested and in the Association's reasonable discretion, if at all. The Grantor's intention in providing the foregoing limitation on rental use of Units in the Regime is to provide protection to the Co-Owners' Unit values and wear and tear on the Common Elements. It is understood and agreed by the Co-Owner (as evidenced by such Co-Owner's acceptance of a deed to a Residential Unit subjected to this Master Deed) that the damage to the other Co-Owners in the Association arising from a violation of the Limitation on Rental Units, would be difficult to calculate. Accordingly, and not as a penalty, any Co-Owner who/which leases his Residential Unit without a license to do so shall be charged $1,000 per month payable to the Association as liquidated damages for so long as the unlicensed rental continues. Furthermore, the Association shall have any and all other rights available to it to enforce this provision including obtaining injunctive relief.

C. No Co-Owner shall allow the use of his/her Unit (except as set forth in XVI.B. next-above) to be occupied by anyone other than the Co-Owner and his/her family members, provided that whether a Unit is rented or owner-occupied, no more than two (2) persons per bedroom shall occupy the Unit overnight. Further, no more than two (2) unrelated persons may occupy any Unit.

XVII. RIGHT OF ENTRY INTO UNITS IN EMERGENCIES

In case of any emergency originating in or threatening any Unit, regardless of whether the Co-Owner is present at the time of such emergency, the Board of Directors of the Association or any other person or firm authorized by it, or the building superintendent or managing agent, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Co-Owner of each Unit, if required by the Association, shall deposit under the control of the Association a key to such Unit.

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XVIII. RIGHT OF ENTRY FOR MAINTENANCE OF GENERAL COMMON ELEMENTS

Whenever it is necessary to enter any Unit for the purpose of performing any maintenance, alteration, or repair to any portion of the Common Elements, the Co-Owner of each Unit shall permit other Co-Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Unit, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XIX. LIMITATION UPON RIGHT OF CO-OWNERS TO ALTER AND MODIFY UNITS

No Co-Owner of a residential Unit shall permit any structural modification or alterations to be made therein without first obtaining the written consent of the Association, whose consent may be withheld if a majority of the Board of Directors of said Association determine, in their sole discretion, that such structural modifications or alterations would affect or in any manner endanger the building in part or in its entirety. If the modification or alteration desired by the Co-Owner of any residential Unit involves the removal of any permanent interior partition, the Association shall have the right to permit such removal so long as such Co-Owner receives written certification by a licensed and insured/bonded structural engineer to the effect that the permanent interior partition to be removed is not a load-bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting General Common Elements or Limited Common Elements located therein. No Co-Owner shall cause the balcony abutting his Unit to be enclosed, or cause any improvements or changes to be made on the exterior of the building, the balconies, or railings, including painting or other decoration, or the installation of electrical wiring, wire, screening, any railing cover, television antenna, machines or air-conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of any portion of the building, including balconies and railings not within the walls of such Unit. No storm panels or awnings shall be affixed to any Unit without first obtaining the written consent of the Association. Furthermore, no Co-Owner of Unit Nos. 102, 104, 110, 112, 116, 118, 126, 128, and 130 shall engage in performing or allowing the performance of modifications or alterations to General Common Elements or Limited Common Elements appurtenant to such Units, particularly access gates to and from the General Common Element Swimming Pool without written permission to do so from the Association, provided the Association must have received from the South Carolina Department of Health and Environmental Control ("DHEC") written authorization to perform such modifications or alteration.

XX. RIGHT OF THE ASSOCIATION TO ALTER AND IMPROVE GENERAL AND LIMITED COMMON ELEMENTS AND ASSESSMENT THEREFOR

The Association shall have the right to make or cause to be made alterations, modifications, and improvements to the General and Limited Common Elements, provided such alterations, modifications, or improvements are first approved in writing by the Board of Directors of the Association and also by the Co-Owners of sixty-seven percent (67%) or more of the Units in the entire Regime; provided, however, the Board of Directors of the Association shall not grant such written approval to a Unit owner (or allow the Association to engage in its own modifications or alterations to General Common Elements or Limited Common Elements) if such modifications or alterations affect the patio fence gates which provide access to the pool for Unit Nos. 102, 104, 110, 112, 116, 118, 126, 128, and 130 without having first received written permission to do so from the South Carolina Department of Health and Environmental Control ("DHEC"). The cost of such alterations, modifications, or improvements shall be assessed as common expenses and collected from the Co-Owners of all Units according to their percentage of ownership of the General and Limited Common Elements.

XXI. MAINTENANCE AND REPAIR BY CO-OWNERS OF UNITS

Every Co-Owner must perform promptly all maintenance and repair work within his Unit which, if omitted, would adversely affect the Regime in its entirety or in a part belonging to other Co-Owners, and is expressly responsible for the damages and liability which his failure to do so may engender. The Co-Owner of each Unit shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air-conditioning and heating equipment located within the Unit, hot water heaters, stoves, refrigerators, garbage disposals, dishwashers, fans, or other appliances or equipment, including any fixtures and/or their connections or receptacles required to provide water, light, power, telephone, television, and sewerage and sanitary service to his Unit and which may now or hereafter be situated in his Unit including toilets, lavatories, sinks, tubs, and showers. Such Co-Owner shall further be responsible and liable for maintenance, repair, and replacement of any and all window glass, glass doors, wall, ceiling and floor surfaces or coverings, painting, decorating and furnishings, and all other accessories which such Co-Owner may desire to place or maintain in his Unit. Whenever the maintenance, repair, and replacement of any items for which the Co-Owner of a Unit is obligated to maintain, repair, or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee (as defined in the Code Section mentioned below) hereinafter designated, shall be used for the purpose of making such maintenance, repair, and replacement. Any cost of maintenance, repair, or replacement, by reason of the applicability of any deductibility provision of such insurance which is not paid by the insurance of the Association, shall be paid by such Co-Owner. Reference is made to S. C. Code Ann. §27-31-250 (1976) as amended, which defines the terms referenced above and is controlling of insurance proceeds use when said Code Section is applicable by its terms.

XXII. MAINTENANCE AND REPAIR OF GENERAL AND LIMITED COMMON ELEMENTS BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of all of the General and Limited Common Elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring, and other facilities located in the General or Limited Common Elements for the furnishing of utility services to the Units and said General and Limited Common Elements. Should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any

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General or Limited Common Elements, the Association shall, at its expense, repair such incidental damage. Excepted herefrom, however, are the maintenance of the floor and interior walls of the balcony, balconies or patio attached to the Unit, which shall be maintained by the Co-Owner at his expense. Also excepted therefrom is the air-conditioning compressor which shall be maintained, repaired, and replaced by the Unit Co-Owner, unless such maintenance, repair, replacement is covered by the insurance maintained by the Association. To the extent that a Co-Owner must cross a Common Element area to effectuate such maintenance, repair or replacement, the Co-Owner and his agents and contractors have an easement across any such Common Elements in order to access and perform such work on such air-conditioning compressor.

XXIII. CO-OWNERS' AND ASSOCIATION'S RESPONSIBILITIES REGARDING MOLD AND MILDEW

Mold and/or mildew can grow in any portion of the Regime that is exposed to elevated levels of moisture. The Association and each Co-Owner agree to: (i) regularly inspect the parts of the Regime that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Regime that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Regime that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Regime that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Units' Co-Owners, and each Co-Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Regime that they respectively maintain.

Notwithstanding anything to the contrary herein, Developer shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Master Deed, and shall not be held liable for any loss or damage caused by the failure of the Association or a Co-Owner to perform their obligations herein.

XXIV. PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER AND UNIT AND SEPARATE INSURANCE COVERAGE, ETC.

The Co-Owner of each Unit may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other personal property belonging to such Co-Owner and may, at his own expense and option, obtain insurance coverage against personal liability or injury to the person or property of another while within such Co-Owner's Unit or upon the General or Limited Common Elements. All such insurance obtained by the Co-Owner of each Unit shall, where available, provide that the insurer waives its right of subrogation as to any claims against other Co-Owners of Units, the Association, and the respective servants, agents and guests of said other Co-Owners and the Association. Risk of loss or, damage to any furniture, furnishings, personal effects, and other personal property (other than such furniture, furnishings, and personal property constituting a portion of the General or Limited Common Elements or which is insured by the Association) belonging to a Co-Owner or carried on the person of the Co-Owner of each such Unit or carried by such Co-Owner in, to, or upon General or Limited Common Elements shall be borne by the Co-Owner of each such Unit. All furniture, furnishings, and personal property constituting a portion of the General or Limited Common Elements and held for the joint use and benefit of all Co-Owners of all Units shall be covered by such insurance as shall be maintained in force and effect by Association as hereinafter provided. The Co-Owner of a Unit shall have no personal liability for any damages caused by the Association or in connection with the use of the General or Limited Common Elements. The Co-Owner of a Unit shall be liable for injuries or damage resulting from an accident in his own Unit, to the same extent and degree that the Co-Owner of a house would be liable for an accident occurring within the house.

XXV. CONDEMNATION

A. Units Acquired. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain, leaving the Unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Master Deed, the award must compensate the Unit owner for his Unit and its General and Limited Common Element interest, whether or not any General or Limited Common Element interest is acquired. Upon acquisition, unless the decree otherwise provides, that Unit's entire General and Limited Common Element interest, votes in the Association, and common expense liability are automatically reallocated to the remaining Units in proportion to the respective interests and votes, and the Association shall promptly prepare, execute, and record an amendment to this Master Deed reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a General and Limited Common Element.

B. Part of Unit Acquired. Except as provided above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit owner for the reduction of value of the Unit and its common element interest. Upon acquisition, (1) that Unit's Limited and General Common Element percentage interest, votes in the Association, and common expense liability are reduced in proportion to the reduction in size of the Unit, and (2) the portion of Limited and General Common Element interest, votes, and common expense liability divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in the percentages set out in Exhibit "D".

C. Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the owners all claims arising from condemnation of any portion or all of the Units or General or Limited Common Elements and the owners hereby appoint the Board of Directors as their attorney in fact for this purpose. Any proceeds from such condemnation shall be distributed in accordance with the provisions of Article XXVI.F.

XXVI. INSURANCE

A. Hazard Insurance. The Association shall insure all Units and all General and Limited Common Elements against all hazards and risks normally covered by a standard hazard policy, including fire and lightning, the hazards and risks covered by "extended coverage," vandalism, and malicious mischief, and by hazards or risks covered by the National Flood Insurance Act, windstorm and hail policies and all other coverage commonly required by lending institutions in the area. All Units and all General and Limited Common Elements shall be insured for the full replacement cost thereof, and where possible, the policy of insurance shall have a full replacement cost rider. Each year the Association shall update the replacement value cost rider. Such insurance shall cover only the Units and General and Limited Common Elements. The Association shall have no obligation to obtain insurance for the contents of any Unit (other than the standard fixtures originally installed therein by Grantor and being a part of such Unit). The hazard insurance obtained by the Association may provide that any amount not to exceed Five Thousand Dollars ($5,000.00) shall be deductible from any indemnity payable on account of a single loss, but any such deductible portion, subject to the terms of Paragraph XXI hereinabove, shall be borne by the Association as a Common Expense regardless of the number of Co-Owners directly affected by the loss.

B. Liability Insurance. The Association shall also obtain premises liability insurance on all Units and General and Limited Common Elements and the policy shall provide for a single limit indemnity of not less than One Million Dollars ($1,000,000.00) and cover bodily and personal injury and property damage. Such liability insurance shall cover claims of one or more Co-Owners against one or more Co-Owners as well as claims of third parties against one or more Co-Owners. The Association shall not be required however, to obtain public liability insurance covering accidents occurring within the limits of a Unit or off the Regime Property. If available at a reasonable cost, the Association shall cause premises medical payment coverage to be included within the policy of liability insurance.

C. General Provisions. All insurance obtained on the Units and General and Limited Common Elements by the Association shall be written in the name of the Association as trustee for the Owners, and the cost of such insurance shall be a common expense. All such insurance shall be obtained from a company of companies licensed to do business in the State of South Carolina and currently rated "A" or better by Best's Insurance Ratings. No such insurance shall be permitted to expire except upon resolution of sixty-seven percent (67%) of the Co-Owners to that effect and all mortgagees. Duplicate originals of all policies of hazard insurance obtained on the Property by the Board of Directors, together with proof of payment of the premiums thereon, shall be delivered upon request to any Co-Owner or to any person holding a security interest in a Unit.

D. Hazard Policy Provisions. All policies of hazard insurance on the Units and General and Limited Common Elements obtained by the Board of Directors shall provide as follows:

(1) The indemnity payable on account of any damage to or destruction of the Units or General and Limited Common Elements shall be payable to the owner and/or

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to any persons holding security interests in any damaged Units as their interests may appear;

(2) The policy shall not be canceled without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Unit who is named in the policy or an endorsement thereto;

(3) No Co-Owner shall be prohibited from insuring his own Unit for his own benefit;

(4) No insurance obtained by a Co-Owner on his own Unit shall be brought into contribution with the insurance obtained by the Board of Directors;

(5) If the Board of Directors determines that it is possible to obtain such a provision, no right to subrogation shall exist against any owner or members of his household or his social guests;

(6) If possible, the policy should provide that the insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the owners determine, in the manner provided in the Master Deed, not to repair or restore the damaged property; and

(7) The policy shall not be canceled on account of the actions of one or more of the Co-Owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by resolution of a sixty-seven percent (67%) of the Co-Owners and fifty-one percent (51%) of the mortgagees of Units.

E. Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors except to the extent institutional mortgagees are granted such rights by Co-Owners. In the event of damage to or destruction of any portion of the Units or General or Limited Common Elements, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any security interest in the Property who may be entitled to participate in such claim of the filing of same.

F. Insurance Proceeds. If the insurance proceeds exceed Five Thousand ($5,000.00) Dollars, the net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors shall promptly be paid by the Board of Directors to an Insurance Trustee as trustee for the Co-Owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank or savings and loan association selected by the Board of Directors and having trust powers and capital and surplus of Five Million Dollars ($5,000,000.00) or more or a Professional Property Management Company with a like amount of Fidelity insurance

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coverage. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

(1) If the Co-Owners determine, in the manner provided in the Master Deed, not to reconstruct the damaged property, the Insurance Trustee shall distribute the insurance proceeds among all the owners and/or mortgagees with liens upon the Units, as their respective interests may appear, in proportion to their respective undivided interests in the portion or portions of the property damaged or destroyed.

(2) If the Board of Directors is required to provide for the reconstruction of the damaged property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the Co-Owners and their mortgagees in proportion to their interests in the portion or portions of the property repaired or restored.

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely upon the written authorization submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided without further inquiry. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance, or filing claims for any payments due under any such insurance.

G. Insurance by Owners. Each Co-Owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

(1) Hazard insurance on his Unit for his own benefit;

(2) Hazard insurance on the contents of his Unit and on improvements made to his Unit; and

(3) Liability insurance covering accidents occurring within the boundaries of his Unit.

To the extent that the Regime's insurance provider requires such, any owner who obtains hazard insurance on his dwelling for his own benefit shall within thirty (30) days of obtaining the same deliver to the Board of Directors a copy of the policy of insurance, should the Board request.

XXVII. APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT IF LEVIED AND ASSESSED AGAINST THE REGIME AS A WHOLE

In the event that any taxing authority having jurisdiction over the Regime shall levy or assess any tax or special assessment against the Regime as a whole, as opposed to levying and assessing such tax or special assessment against each Unit and its appurtenant undivided interest in General and Limited Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a common expense by the Association, and any taxes or special assessments which are to be levied shall be included wherever possible, in the estimated annual budget of Association, or shall be separately levied and collected as an assessment by the Association, against all of the Co-Owners of Units and said Units if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by the Association in the event that such tax or special assessment is levied against the Regime, as a whole, instead of against each separate Unit and its appurtenant undivided interest in General and Limited Common Elements shall be apportioned among the Co-Owners of all Units so that the amount of such tax or special assessment so paid or to be paid by the Association and attributable to and to be paid by the Co-Owner or Co-Owners of each Unit shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in General and Limited Common Elements appurtenant to each Unit bears to the total undivided interest in General and Limited Common Elements appurtenant to all Units. In the event that any tax or special assessment shall be levied against the Regime in its entirety, without apportionment by the taxing authority of the Regime and appurtenant undivided interests in General and Limited Common Elements, then the assessment by the Association, which shall include the proportionate share of such tax or special assessment attributable to each Unit and its appurtenant undivided interest in General and Limited Common Elements, shall separately specify and identify the amount of such assessment attributable to such tax or special assessments and the amount of such tax or special assessment so designated shall be a lien prior to all mortgages and encumbrances upon any Unit and its appurtenant undivided interest in General and Limited Common Elements, regardless of the date of the attachment and/or recording of such mortgage or encumbrance, to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Unit and its appurtenant undivided interest in General and Limited Common Elements.

XXVIII. AMENDMENT OF MASTER DEED

Neither this Master Deed nor any of its provisions shall be revoked or amended without the acquiescence of the Co-Owners owning at least two-thirds of the Units and at least two-thirds of the total interest in the General and Limited Common Elements and the record holders of encumbrances affecting at least two-thirds of the Units and at least two-thirds of the total interest in the General and Limited Common Elements, except that the system of administration as set forth in the Articles of Incorporation and By-Laws may be amended and modified from time to time in accordance with the provisions of the South Carolina Horizontal Property Act and other applicable provisions of the Code of Laws of South Carolina. No amendment shall change the use of, or otherwise affect the operation of the Sales Office or

Management Office Units without the consent of the Co-Owner of the Sales Office or Management Office Unit. Any such amendment or revocation shall be executed and subscribed with the same formalities required in South Carolina for the making of deeds, and recorded in the public records of Richland County.

Without limiting the foregoing, the Grantor, its successors or assigns, "acting alone" shall have the power, but not the obligation, at any time (and from time to time), to amend the Master Deed to correct typographical or scrivener's errors, to effectuate conformance with as-built drawings which may be produced at any time and from time to time within one hundred twenty (120) days following the filing of this Master Deed, to cause the same to conform to the requirements of the South Carolina Horizontal Property Act, the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and "Seller's Guide to Conventional Mortgages," as the same may be amended from time to time, and prior to conveying any Units to reaffirm the Regime as deemed necessary.

XXIX. REMEDIES IN EVENT OF DEFAULT

The Co-Owner or Co-Owners of each Unit shall be governed by and shall comply with the provisions of this Master Deed, the Articles and the By-Laws of the Association, and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. A default by the Co-Owner or Co-Owners of any Unit shall entitle the Association or the Co-Owner or Co-Owners of other Unit or Units to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of the Association, its rules and regulations, or decisions made pursuant thereto shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof. Relief may be sought by the Association, or if appropriate, by an aggrieved Co-Owner of a Unit or both;

B. The Co-Owner or Co-Owners of each Unit shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member of his family, or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation;

C. In any proceeding arising because of an alleged default by the Co-Owner of any Unit, the Association, if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court, and the Co-Owner of any Unit shall be entitled to such attorney's fees and costs if successful in such action;

 [redacted]

D. The failure of the Association or of the Co-Owner of a Unit to enforce any right, provision, covenant, or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of the Association or of the Co-Owner of a Unit to enforce such right, provision, covenant, or condition in the future;

E. All rights, remedies, and privileges granted to Association or the Co-Owner or Co-Owners of a Unit pursuant to any terms, provisions, covenants; or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies, or privileges as may be available to such party at law or in equity; and

F. The failure of the Grantor or the lender to enforce any right, privilege, covenant, or condition which may be granted to them, or either of them, by this Master Deed or other above mentioned document shall not constitute waiver of the right of either of said parties to thereafter enforce such right, provision, covenant, or condition in the future.

XXX. USE OR ACQUISITION OF INTEREST IN THE REGIME TO RENDER USER OR ACQUIRER SUBJECT TO PROVISIONS OF MASTER DEED RULES AND REGULATIONS, BYLAWS AND BINDING ARBITRATION

All present or future Co-Owners, tenants, or any other person who might use the facilities of the Regime in any manner are subject to the provisions of this Master Deed and all documents appurtenant thereto and incorporated herewith. The acquisition or rental of any Unit, or the mere act of occupancy of any Unit, shall signify that the provisions of this Master Deed, By-laws, and Rules and Regulations of the Association are accepted and ratified in all respects. **Such owner or occupant agrees that any dispute arising out of use, ownership or occupancy of a Unit or the Common Elements in Regime and any complaint against the Grantor or Grantor's agent or employees shall be settled by binding arbitration pursuant to the South Carolina Arbitration Act. Any and all disputes between/among any buyer of a Unit, the Owner(s) or Co-Owner(s), the Grantor, Contractor, or the Architect, or any of their respective heirs, successors, assigns, agents, employees, subcontractors, invitees, or guests regarding the sale, design or construction of ADESSO or any Unit therein, the Limited Warranty, limitation of remedies, disclaimers and exclusion of all other warranties, any and all of which are contained within this Master Deed, Exhibits hereto and documents incorporated within this Master Deed by reference or any provision contained (t)herein, shall, at Grantor's option, be subject to arbitration in the State of South Carolina, pursuant to the Commercial Arbitration Rules of the American Arbitration Association as modified herein and in the Limited Warranty.**

XXXI. COUNCIL OF CO-OWNERS ASSOCIATION, CONTROL OF BOARD OF DIRECTORS

Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board of Directors of the Association of the Co-Owners ("Board") for a period not exceeding five (5) years from the date of the first conveyance of any Unit to a person other than the Grantor. This period of Grantor control terminates as is set forth in the By-Laws. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period. After termination of the Grantor's control, any or all of the Board of Directors may be removed or replaced by written petition signed by the Co-Owners having more than fifty percent (50%) of the votes of the Association. The petition shall state the name(s) of the Board of Directors being removed and the name(s), address(es) and telephone number(s) of the replacement Director(s).

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles and/or By-Laws of the Association. Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed from the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Grantor need not be an owner or a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate five (5) years from the date of recording of the Master Deed.

Any representative of Grantor serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest.

Transfer of Rights. All rights, duties and obligations of the Grantor herein may be experienced or performed by the Grantor, its successors and assigns.

XXXII. ANNUAL REPORTS TO BE PROVIDED TO LENDER

So long as any institutional lender is the Co-Owner or holder of a mortgage encumbering a Unit in the Regime, the Association shall furnish said lender upon request with at least one copy of the annual financial statement and report of the Association audited satisfactorily, setting forth such details as the said lender may reasonably require, including a detailed statement of annual carrying charges or income collected and operating expense, with such financial statement and report to be furnished within ninety (90) days following the end of each fiscal year.

Such statement shall be prepared in accordance with generally accepted accounting principles and shall contain the certificate of the accountant or accounting firm to that effect. Further, the accountant or accounting firm shall include as a special item(s) any information to which a reasonable man would attach importance in the management of his own financial affairs, should said information not appear readily from the face of the statement.

The Association shall make available to Unit owners, lenders, lienholders, insurers, or guarantors of any first mortgage current copies of the Master Deed, By-Laws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Any holder, insurer, or guarantor of a first mortgage shall be entitled, upon written request, to a financial statement of the immediately preceding fiscal year, free of charge to the party so requesting.

Any financial statement requested pursuant to this section shall be furnished within a reasonable time following such request.

XXXIII. SEVERABILITY

In the event that any of the terms, provisions, or covenants of this Master Deed are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

XXXIV. MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSOR AND ASSIGNS, AND SUBSEQUENT CO- OWNERS

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in General and Limited Common Elements. This Master Deed and all easements reserved herein shall be binding upon Grantor, its successors and assigns, and upon all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representative, and successors and assigns.

XXXV. DEFINITIONS

The definitions contained in S. C. Code Ann., § 27-31-10 et seq. (1976), are hereby incorporated herein and made a part hereof by reference. The words "Unit" and "Units" shall have the same meaning as "Apartment" as defined in S. C. Code Ann. § 27-31-20 (1976).

XXXVI. MISCELLANEOUS

A. Attached hereto as Exhibit "E" and made a part hereof by reference is the Architect's Certificate required by S. C. Code Ann., §27-31-110 (1976).

B. Attached hereto as an Appendix and made a part hereof by reference is a copy of the By-Laws of the Association, as required by S. C. Code Ann., §27-31-150 (1976).

C. By acceptance of a deed to any Unit or other property hereunder, Owner(s) hereby submit(s) to in personam jurisdiction of the state of the state of South Carolina and agree(s) that any action concerning the matters set forth herein regardless of by whom such action is brought, shall be determined by an Arbitrator as provided hereinabove in the state of South Carolina and hereby waive(s) all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of South Carolina and agree(s) that any service of process may be accomplished by certified mail return receipt requested at the Owner's last known home address or any other method allowed in the state of South Carolina or Owner's home state.

D. BY ACCEPTANCE OF A DEED TO ANY UNIT OR OTHER PROPERTY HEREUNDER OWNER(S) HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREE, THAT:

(1) NEITHER OWNER NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF OWNER OR GRANTOR, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE MATTERS SET FORTH HEREUNDER, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(2) NEITHER OWNER NOR GRANTOR WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(3) NEITHER OWNER NOR GRANTOR HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(4) THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTOR TO MAKE THE DECLARATIONS SET FORTH HEREIN.

IN WITNESS WHEREOF, the Grantor has executed this Master Deed this 11th day of January, 2007.

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Signed, sealed and delivered
in the presence of:

ADESSO/COLUMBIA, LLC, a Georgia limited liability company

By: Drake/Adesso, LLC, a Georgia limited liability company, its manager

By: Holder Adesso, LLC, a Georgia limited liability company, its manager

By: JRH Adesso, LLC, a Georgia limited liability company, its manager

By: JRH, LLC, a Georgia limited liability company, its manager

(SEAL)

Ashley Bosse

By: ______________________
John R. Holder, its sole member

STATE OF Georgia)
COUNTY OF Cherokee) ACKNOWLEDGMENT

I, Emily D. Nixon, Notary Public for the State of South Carolina, do hereby certify that the above-named John R. Holder as the sole member of JRH, LLC, a Georgia limited liability company, in its capacity as manager for JRH Adesso, LLC, a Georgia limited liability company, in its capacity as manager for Holder Adesso, LLC, a Georgia limited liability company, in its capacity as manager for Drake/Adesso, LLC, a Georgia limited liability company, in its capacity as manager for ADESSO/COLUMBIA, LLC, a Georgia limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 11th day of January, 2008.

Emily D. Nixon
Notary Public for ~~South Carolina~~ Georgia
My commission expires: Feb 22, 2010

(NOTARY SEAL)

 [redacted]

EXHIBITS

A	Property Description
B	Plat
C	Plot Plans consisting of Site Plan, Building Plans, Elevations and Floor Plans of Building
D	Table of Values
E	Architect's Certificate
F	Articles of Incorporation of Association (as amended)
G	By-Laws of the Association

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EXHIBIT

C

Adesso

12/13/2017 3:14 PM

2018 Operating Budget

Account #	Description	2017	2018	Variance	Variance	Retail 1 & 2
4000-0000	**INCOME**					
4100-0000	**HOA INCOME**					
4200-0000	Regime Fees	$ 633,444.00	$ 636,396.00	$ 2,952.00	0.47%	
4201-0000	Rental Licenses	$ 36,000.00	$ 36,000.00	$ -	0.00%	
4225-0000	Other HOA Income	$ -	$ 33,000.00	$ 33,000.00	#DIV/0!	
4280-0000	**TOTAL HOA INCOME**	**$ 669,444.00**	**$ 705,396.00**	**$ 35,952.00**	**5.37%**	
5600-0000	**OTHER INCOME**					
5720-0000	Interest on Bank Accounts	$ -	$ -	$ -	#DIV/0!	
5890-0000	**TOTAL OTHER INCOME**	**$ -**	**$ -**	**$ -**	**#DIV/0!**	
5900-0000	**TOTAL INCOME**	**$ 669,444.00**	**$ 705,396.00**	**$ 35,952.00**	**5.37%**	
6000-0000	**EXPENSES**					
6200-0000	**PERSONNEL EXPENSE**					
6205-0000	HOA Manager	$ 40,000.00	$ 45,000.00	$ 5,000.00	12.50%	
6212-0000	Doorman Salaries	$ -	$ 96,300.00	$ 96,300.00	#DIV/0!	
6215-0000	Uniforms for Personnel	$ 96.00	$ 4,800.00	$ 4,704.00	4900.00%	
6262-0000	Employee Taxes & Benefits	$ 11,926.00	$ 43,465.00	$ 31,539.00	264.46%	
6265-0000	**TOTAL PERSONNEL EXP**	**$ 52,022.00**	**$ 189,565.00**	**$ 137,543.00**	**264.39%**	0
6266-0000	**UTILITIES**					
6270-0000	Electricity & Gas	$ 70,656.00	$ 71,000.00	$ 344.00	0.49%	$ 2,598.60
6275-0000	Water & Sewer	$ 33,840.00	$ 37,000.00	$ 3,160.00	9.34%	$ 1,354.20
6280-0000	Irrigation	$ 852.00	$ 1,000.00	$ 148.00	17.37%	$ 36.50
6285-0000	Cable TV	$ 48,012.00	$ 35,900.00	$ (12,112.00)	-25.23%	$ 107.70
6286-0000	Internet	$ 41,520.00	$ 35,500.00	$ (6,020.00)	-14.50%	$ 106.50
6287-0000	Internet Termination Fee	$ -	$ 10,000.00	$ 10,000.00	#DIV/0!	$ 30.000
6295-0000	Phone/Communications	$ 14,160.00	$ 15,000.00	$ 840.00	5.93%	$ 549.00
6300-0000	Trash Disposal	$ 11,400.00	$ 15,000.00	$ 3,600.00	31.58%	$ 831.00
6320-0000	**TOTAL UTILITIES**	**$ 220,440.00**	**$ 220,400.00**	**$ (40.00)**	**-0.02%**	$ 5,613.50
6325-0000	**OPERATING EXPENSES**					
6331-0000	Electrical Repairs	$ 5,616.00	$ 5,600.00	$ (16.00)	-0.28%	$ 399.84
6333-0000	Security Contract	$ 84,528.00	$ -	$ (84,528.00)	-100.00%	
6336-0000	Janitorial Contract	$ 29,520.00	$ 31,500.00	$ 1,980.00	6.71%	$ 1,515.15
6344-0000	HVAC	$ 1,872.00	$ 2,500.00	$ 628.00	33.55%	
6346-0000	Contracted Maintenance	$ 65,044.00	$ 65,000.00	$ (44.00)	-0.07%	$ 4,641.00
6348-0000	Elevator	$ 9,624.00	$ 11,700.00	$ 2,076.00	21.57%	$ 521.82
6352-0000	Landscape Maint. Contract	$ 8,376.00	$ 8,400.00	$ 24.00	0.29%	$ 306.60
6362-0000	Pest Control	$ 4,548.00	$ 1,150.00	$ (3,398.00)	-74.71%	$ 63.71
6364-0000	Pool Maint & Repair	$ 7,296.00	$ 7,800.00	$ 504.00	6.91%	
6368-0000	Plumbing	$ 1,776.00	$ 3,000.00	$ 1,224.00	68.92%	$ 214.20
6370-0000	Management	$ 27,500.00	$ 30,000.00	$ 2,500.00	9.09%	$ 1,662.00
6372-0000	Cleaning Supplies	$ 1,200.00	$ 1,500.00	$ 300.00	25.00%	$ 107.10
6380-0000	Fire Protection	$ 6,996.00	$ 7,000.00	$ 4.00	0.06%	$ 312.20
6406-0000	Roof Repairs	$ 1,200.00	$ 1,200.00	$ -	0.00%	$ 85.68
6408-0000	Insurance	$ 42,000.00	$ 42,000.00	$ -	0.00%	$ 2,326.80
6464-0000	Office Supplies	$ 5,136.00	$ 5,000.00	$ (136.00)	-2.65%	
6476-0000	Accounting/Audit	$ 4,992.00	$ 5,000.00	$ 8.00	0.16%	$ 15.000
6514-0000	Legal	$ -	$ 3,500.00	$ 3,500.00	#DIV/0!	$ 10.50
6558-0000	Reserve Fund Transfer	$ 89,758.00	$ 63,581.00	$ (26,177.00)	-29.16%	
6560-0000	**TOTAL OPERATING EXPENSES**	**$ 396,982.00**	**$ 295,431.00**	**$ (101,551.00)**	**-25.58%**	$ 12,181.60
8990-0000	**TOTAL EXPENSES**	**$ 669,444.00**	**$ 705,396.00**	**$ 35,952.00**	**5.37%**	$ 17,795.10
9090-0000	**NET INCOME**	**$ -**	**$ -**	**$ -**	**#DIV/0!**	
					Retail 1&2 Total expenses +10% reserves	$ 19,574.61
					Retail 1 & 2 2018 Monthly Regime fee	$ 1,631.22

Adesso

2019 Operating Budget

Account #	Description	2018	2019	Variance	% Variance	Retail 1 & 2
4000-0000	INCOME					
4100-0000	HOA INCOME					
4200-0000	Regime Fees	$ 636,396.00	$ 637,540.00	$ 1,144.00	0.18%	
4201-0000	Rental Licenses	$ 36,000.00	$ 36,000.00	$ -	0.00%	
4225-0000	Other HOA Income	$ 33,000.00	$ -	$ (33,000.00)	-100.00%	
4280-0000	TOTAL HOA INCOME	$ 705,396.00	$ 673,540.00	$ (31,856.00)	-4.52%	
5900-0000	TOTAL INCOME	$ 705,396.00	$ 673,540.00	$ (31,856.00)	-4.52%	
6000-0000	EXPENSES					
6200-0000	PERSONNEL EXPENSE					
6205-0000	HOA Manager	$ 45,000.00	$ 45,000.00	$ -	0.00%	
6212-0000	Doorman Salaries	$ 96,300.00	$ 100,900.00	$ 4,600.00	4.78%	
6215-0000	Uniforms for Personnel	$ 4,800.00	$ 4,800.00	$ -	0.00%	
6262-0000	Employee Taxes & Benefits	$ 43,465.00	$ 33,465.00	$ (10,000.00)	-23.01%	
6265-0000	TOTAL PERSONNEL EXP	$ 189,565.00	$ 184,165.00	$ (5,400.00)	-2.85%	
6266-0000	UTILITIES					
6270-0000	Electricity & Gas	$ 71,000.00	$ 71,000.00	$ -	0.00%	$2,598.60
6275-0000	Water & Sewer	$ 37,000.00	$ 39,000.00	$ 2,000.00	5.41%	$1,427.40
6280-0000	Irrigation	$ 1,000.00	$ 1,000.00	$ -	0.00%	$36.50
6285-0000	Cable TV	$ 35,900.00	$ 14,000.00	$ (21,900.00)	-61.00%	$42.00
6286-0000	Internet	$ 35,500.00	$ 41,850.00	$ 6,350.00	17.89%	$125.55
6287-0000	Internet Termination Fee	$ 10,000.00	$ -	$ (10,000.00)	-100.00%	$ -
6295-0000	Phone/Communications	$ 15,000.00	$ 15,000.00	$ -	0.00%	$549.00
6300-0000	Trash Disposal	$ 15,000.00	$ 15,000.00	$ -	0.00%	$831.00
6320-0000	TOTAL UTILITIES	$ 220,400.00	$ 196,850.00	$ (23,550.00)	-10.69%	$5,610.05
6325-0000	OTHER EXPENSES					
6327-0000	HOA Income Tax	$ -	$ 5,000.00	$ 5,000.00	#DIV/0!	
6331-0000	Electrical Repairs	$ 5,600.00	$ 4,600.00	$ (1,000.00)	-17.86%	$323.44
6336-0000	Janitorial Contract	$ 31,500.00	$ 31,500.00	$ -	0.00%	$1,515.15
6344-0000	HVAC	$ 2,500.00	$ 4,400.00	$ 1,900.00	76.00%	$195.24
6346-0000	Contracted Maintenance	$ 65,000.00	$ 62,100.00	$ (2,900.00)	-4.46%	$4,433.94
6348-0000	Elevator	$ 11,700.00	$ 11,700.00	$ -	0.00%	$521.82
6352-0000	Landscape Maint. Contract	$ 8,400.00	$ 6,400.00	$ (2,000.00)	-23.81%	$233.60
6362-0000	Pest Control	$ 1,150.00	$ 1,150.00	$ -	0.00%	$63.71
6364-0000	Pool Maint & Repair	$ 7,800.00	$ 7,800.00	$ -	0.00%	
6368-0000	Plumbing	$ 3,000.00	$ 3,000.00	$ -	0.00%	$214.20
6370-0000	Management	$ 30,000.00	$ 30,000.00	$ -	0.00%	$1,662.00
6372-0000	Cleaning Supplies	$ 1,500.00	$ 1,500.00	$ -	0.00%	$107.10
6380-0000	Fire Protection	$ 7,000.00	$ 7,000.00	$ -	0.00%	$312.20
6406-0000	Roof Repairs	$ 1,200.00	$ 1,200.00	$ -	0.00%	$85.68
6408-0000	Insurance	$ 42,000.00	$ 38,950.00	$ (3,050.00)	-7.26%	$2,157.83
6464-0000	Office Supplies	$ 5,000.00	$ 5,000.00	$ -	0.00%	
6476-0000	Accounting/Audit	$ 5,000.00	$ 5,000.00	$ -	0.00%	$15.00
6514-0000	Legal	$ 3,500.00	$ 6,225.00	$ 2,725.00	77.86%	$18.68
6558-0000	Reserve Fund Transfer	$ 63,581.00	$ 60,000.00	$ (3,581.00)	-5.63%	
6560-0000	TOTAL OTHER EXPENSES	$ 295,431.00	$ 292,525.00	$ (2,906.00)	-0.98%	$11,865.59
8990-0000	TOTAL EXPENSES	$ 705,396.00	$ 673,540.00	$ (31,856.00)	-4.52%	$17,475.64
9090-0000	NET INCOME	$ -	$ -	$ -	#DIV/0!	
					Total	$19,223.20
					Monthly	$1,601.93

Adesso

2020 Operating Budget

CMM REALTY, INC.

Account #	Description	2019	2020	Variance	% Variance	Retail 1 &
4000-0000	**INCOME**					
4100-0000	**HOA INCOME**					
4200-0000	Regime Fees	$ 637,540.00	$ 651,601.00	$ 14,061.00	2.21%	
4201-0000	Rental Licenses	$ 36,000.00	$ 36,000.00	$ -	0.00%	
4280-0000	**TOTAL HOA INCOME**	**$ 673,540.00**	**$ 687,601.00**	**$ 14,061.00**	**2.09%**	
5900-0000	**TOTAL INCOME**	**$ 673,540.00**	**$ 687,601.00**	**$ 14,061.00**	**2.09%**	
6000-0000	**EXPENSES**					
6200-0000	**PERSONNEL EXPENSE**					
6205-0000	HOA Manager	$ 45,000.00	$ 46,350.00	$ 1,350.00	3.00%	
6212-0000	Doorman Salaries	$ 100,900.00	$ 103,927.00	$ 3,027.00	3.00%	
6215-0000	Uniforms for Personnel	$ 4,800.00	$ 4,200.00	$ (600.00)	-12.50%	
6262-0000	Employee Taxes & Ben.	$ 33,465.00	$ 34,470.00	$ 1,005.00	3.00%	
6265-0000	**TOTAL PERSONNEL EXP**	**$ 184,165.00**	**$ 188,947.00**	**$ 4,782.00**	**2.60%**	
6266-0000	**UTILITIES**					
6270-0000	Electricity & Gas	$ 71,000.00	$ 65,000.00	$ (6,000.00)	-8.45%	$2,379.[illegible]
6275-0000	Water & Sewer	$ 39,000.00	$ 43,000.00	$ 4,000.00	10.26%	$1,573.[illegible]
6280-0000	Irrigation	$ 1,000.00	$ 2,000.00	$ 1,000.00	100.00%	$73.[illegible]
6285-0000	Cable TV	$ 14,000.00	$ 14,560.00	$ 560.00	4.00%	$43.[illegible]
6286-0000	Internet	$ 41,850.00	$ 43,524.00	$ 1,674.00	4.00%	$130.[illegible]
6295-0000	Phone/Communications	$ 15,000.00	$ 18,500.00	$ 3,500.00	23.33%	$677.10
6300-0000	Trash Disposal	$ 15,000.00	$ 17,000.00	$ 2,000.00	13.33%	$941.80
6320-0000	**TOTAL UTILITIES**	**$ 196,850.00**	**$ 203,584.00**	**$ 6,734.00**	**3.42%**	$5,818.95
6325-0000	**OTHER EXPENSES**					
6327-0000	HOA Income Tax	$ 5,000.00	$ -	$ (5,000.00)	-100.00%	$ -
6329-0000	Retail Repairs and Maint	$ -	$ 1,500.00	$ 1,500.00	#DIV/0!	$ 1,500.00
6331-0000	Electrical Repairs	$ 4,600.00	$ 2,000.00	$ (2,600.00)	-56.52%	$142.80
6336-0000	Janitorial Contract	$ 31,500.00	$ 32,760.00	$ 1,260.00	4.00%	$1,575.76
6344-0000	HVAC	$ 4,400.00	$ 4,400.00	$ -	0.00%	$196.24
6346-0000	Contracted Maintenance	$ 62,100.00	$ 62,100.00	$ -	0.00%	$4,433.94
6348-0000	Elevator	$ 11,700.00	$ 12,285.00	$ 585.00	5.00%	$547.91

Account #	Description		2019		2020		Variance	% Variance	
6352-0000	Landscape Maint.	$	6,400.00	$	7,300.00	$	900.00	14.06%	$266.4[illegible]
6362-0000	Pest Control	$	1,150.00	$	1,150.00	$	-	0.00%	$63.7[illegible]
6364-0000	Pool Maint & Repair	$	7,800.00	$	7,800.00	$	-	0.00%	
6368-0000	Plumbing	$	3,000.00	$	2,800.00	$	(200.00)	-6.67%	
6370-0000	Management	$	30,000.00	$	30,000.00	$	-	0.00%	$199.9[illegible]
6372-0000	Cleaning Supplies	$	1,500.00	$	1,500.00	$	-	0.00%	$1,662.0[illegible]
6380-0000	Fire Protection	$	7,000.00	$	7,000.00	$	-	0.00%	$107.[illegible]
6406-0000	Roof Repairs	$	1,200.00	$	1,000.00	$	(200.00)	-16.67%	$312.[illegible]
6408-0000	Insurance	$	38,950.00	$	45,000.00	$	6,050.00	15.53%	$71.4[illegible]
6464-0000	Office Supplies	$	5,000.00	$	5,000.00	$	-	0.00%	$2,493.0[illegible]
6476-0000	Accounting/Audit	$	5,000.00	$	5,250.00	$	250.00	5.00%	$15.7[illegible]
6514-0000	Legal	$	6,225.00	$	6,225.00	$	-	0.00%	$18.6[illegible]
6558-0000	Reserve Fund Transfer	$	60,000.00	$	60,000.00	$	-	0.00%	
6560-0000	**TOTAL OTHER EXPENSES**	**$**	**292,525.00**	**$**	**295,070.00**	**$**	**2,545.00**	**0.87%**	$13,606.8[illegible]
8990-0000	**TOTAL OPERATING EXPENSES**	**$**	**673,540.00**	**$**	**687,601.00**	**$**	**14,061.00**	**2.09%**	$19,425.8[illegible]
9090-0000	**NET OPERATING INCOME**	$	-	$	-	$	-	#DIV/0!	
								Total	$21,368.3[illegible]
								Monthly	$1,780.[illegible]

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 2, 2010, as amended

Plaintiff,

vs.

Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime and ADESSO Homeowner's Association

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2019-CP-40-00919

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO HOLDER DEFENDANTS' AND DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNER'S ASSOCIATION'S MOTIONS FOR SUMMARY JUDGMENT

The Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended (hereinafter "Plaintiff"), by and through his undersigned attorney, respectfully submits this Memorandum in Opposition to the motions for summary judgment filed by the Holder Defendants and the ADESSO Horizontal Property Regime and ADESSO Homeowner's Association. For the reasons stated within this memorandum, the Holder Defendants' and the ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment should be denied.

STATEMENT OF FACTS

Plaintiff owns real property located at 601 S. Main Street, Suites A, B, C and D, Columbia, South Carolina. Suites A, B, C and D (the "units") are located in the ADESSO Horizontal Property Regime (the "ADESSO"). Plaintiff purchased the units on December 5, 2014.

The ADESSO was created by the recording of a Master Deed (the "Master Deed") on January14, 2008 with the Richland County, South Carolina Register of Deeds. The Master Deed was filed in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §27-31-10 *et seq.* (1976).

The Master Deed identified ADESSO/Columbia, LLC as the Owner and Holder Properties, Inc. as the Developer of the ADESSO.

The ADESSO consists of one hundred and ten (110) residential units in five (5) stories with ground level commercial units consisting of approximately eight thousand one hundred thirty-nine (8,139) square feet.

The ADESSO is built over a ground level parking area for residential unit owners and the owner of the commercial units.

Each residential unit owner and commercial owner is subject to the ADESSO governing documents including the recorded Master Deed and By-Laws governing the ADESSO.

The Master Deed includes an arbitration provision on the first page of the Master Deed:

"THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT."

Furthermore, **Article XXXIV** mandates the **"MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSOR AND ASSIGNS, AND SUBSEQUENT CO-OWNER:"**

"The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in General and Limited Common Elements. This Master Deed and all easements reserved herein shall be binding upon Grantor, its successors and

assigns, and upon all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representative, and successors and assigns."

Article XXXVI of the Master Deed under **"MISCELLANEOUS:"**

D. BY ACCEPTANCE OF A DEED TO ANY UNIT OR OTHER PROPERTY HEREUNDER OWNER(S) HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALY HEREBY AGREE, THAT

- **(D)(1): NEITHER OWNER NOR GRANTOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF OWNER OR GRANTOR, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE MATTERS SET FORTH HEREUNDER, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;**
- **(D)(2): NEITHER OWNER NOR GRANTOR WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;**
- **(D)(3): NEITHER OWNER NOR GRANTOR HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES;**
- **(D)(4): THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTOR TO MAKE THE DECLARATIONS SET FORTH HEREIN.**

John R. Holder executed the Master Deed on **January 11, 2008** on behalf of the **grantor ADESSO/COLUMBIA, LLC** as its sole member. **(emphasis added).**

Chapter 31 (The South Carolina Horizontal Property Act), Section 27-31-170 requires *"Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same maybe lawfully amended from time to time and with the covenants, conditions and restrictions set forth in the* *master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified by the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner."* S.C. Code Ann. §27-31-10 *et seq.* (1976)

Defendant Holder Properties, Inc. ("HPI") was the original property manager at the ADESSO and remained the property manager at ADESSO through May 2016. (***Memorandum in Support of Motion for Summary Judgment by Holder Defendants*, page 3).**

On August 11, 2015, Applied Building Sciences, Inc. ("ABS") performed a Preliminary Visual Assessment of the ADESSO on behalf of then board president Mrs. Patricia Durkin. ABS issued a Preliminary Visual Evaluation and on January 25, 2016 **(Exhibit A at page 1).**

Mrs. Durkin was concerned about construction deficiencies related to the original construction of the ADESSO by the developer HPI and with the condition of the ADESSO prior to the turnover to a homeowner-controlled board **(Exhibit A at page 1).**

In spite of the arbitration provision contained in the Master Deed, on **February 9, 2016**, the ADESSO Homeowner's Association filed a **lawsuit** (the "**2016 lawsuit**") on behalf of the owners at the ADESSO against the grantor and the developer and 38 other defendants involved in the development, construction, and management of the ADESSO project. (***Memorandum in Support of Motion for Summary Judgment by Holder Defendants*, page 4, Exhibits 5 (sic) and Exhibit 2). (Emphasis added).**

Furthermore, the Plaintiff, although named as a Plaintiff in the **2016 lawsuit**, was not given notice of the 2016 lawsuit until **May 2017. (<u>Exhibit B</u> "Affidavit of Emad Tadros, M.D."). (Emphasis added).**

The Plaintiff first learned of the lawsuit on or around **May 21, 2017** where counsel representing the Plaintiffs in the 2016 lawsuit attempted to obtain Plaintiff's signature on a Commercial Claims Settlement Agreement and Release. **(<u>Exhibit B</u> "Affidavit of Emad Tadros, M.D.," particularly Exhibit C to Affidavit of Emad Tadros, M.D.)**

Exhibit C to the Affidavit of Emad Tadros, M.D. contains a series of emails between the Plaintiffs' attorney in the 2016 lawsuit and the Plaintiff showing the Plaintiff first became aware of the 2016 lawsuit in May 2017 and that Plaintiff's counsel in the 2016 lawsuit was threatening Dr. Tadros that he would have a suit brought against him if he did not execute the Commercial Claims Settlement Agreement.

Furthermore, the Affidavit of Emad Tadros, M.D. is evidence of the duress exerted and promises made to the Plaintiff that the Plaintiff would not be barred from asserting claims against the developer and grantor of the ADESSO related to the issues Plaintiff had with the grantor/developer.

Plaintiff filed this suit on February 14, 2019 against Holder Properties, Inc., ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association and filed an Amended Complaint on May 9, 2019 against Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association alleging:

1. Negligence/Gross Negligence;
2. Breach of Master Deed;

3. Declaratory Judgment;
4. Injunctive Relief;
5. Violation of South Carolina Unfair Trade Practices Act (subsequently withdraw);
6. Negligent Misrepresentation; and
7. Constructive Fraud.

STANDARD OF REVIEW

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); *See also* Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing and Regulation, 337 S.C. 476, 523 S.E2d 795 (S.C. App. 1999).

In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (S.C. App. 1999).

If triable issues exist, those issues must go to the jury. Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Carolina Alliance, supra.*

At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a factfinder for summary judgment to be denied Hill v. York County Sheriff's Dept. 313 S.C. 303, 413 S.E.2d 179 (S.C. App. 1993); *See also* Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009) (holding the non-moving party is only required to submit a scintilla of evidence in order to withstand a motion for summary judgment).

ARGUMENT

The executed Commercial Settlement Agreement and Release is at the crux of the Holder Defendants' argument for its Motion for Summary Judgment.

Defendants ADESSO Horizontal Property Regime and ADESSO Homeowners' Association (collectively hereinafter the "HOA"). The HOA's Motion for Summary Judgment seeks Motion for Summary Judgment on: **1)** Plaintiff failed to file this action within the three (3) year statute of limitations period provided by S.C. Code Ann. §15-3-530; **2)** Defendants complied with the terms of the ADESSO governing documents and any applicable law charging assessments to Plaintiff's commercial units located at the ADESSO; **3)** Defendants did not make any false representations to Plaintiff in connection with Plaintiff's purchase of the ADESSO commercial units; and **4)** Parking spaces in and around the ADESSO, currently available for the use of Plaintiff's commercial units and their tenants, comply with both the ADESSO Master Deed and the applicable City of Columbia Zoning Ordinance.

For the reasons set forth below this Honorable Court should deny Holder Defendants' and the HOA's Motions for Summary Judgment.

1. **Summary Judgment should be denied because the 2016 lawsuit violated the arbitration provisions contained in the Master Deed.**

Plaintiff's case is directly on point with the holding in The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated v. DDC Construction, Inc. et al, 418 S.C. 282, 792 S.E.2d 240 (S.C. App. 2016).[1]

In *Gates*, the developer (DDC Construction, Inc. "DDC") contended the circuit court erred in failing to enforce the written jury trial and class action waivers in the master deed for the *Gates*. On appeal, the South Carolina Court of Appeals reversed the circuit court finding. The Court of Appeals in *Gates* found the homeowners knowingly, voluntarily, and intelligently waived their rights to a **jury trial** and to a class action when they signed the deeds to their condominiums. *Id. at p. 297* **(Emphasis added).**

Similarly, the Holder Defendants in the 2016 lawsuit demanded a **trial by jury**. (*Memorandum in Support of Motion for Summary Judgment by Holder Defendants*, Exhibit 2 at page 34) **(Emphasis Added).**

Furthermore, in *Gates*, the court reversed the circuit court and found the homeowners knowingly and voluntarily waived the rights to a jury trial, and these rights were conspicuously and unambiguously set forth in the Master Deed. *Id at page 251; See Wachovia Bank, Nat. Ass'n v. Blackburn,* 407 S.C. 321, 775 S.E.2d 437 (2014) (finding jury trial wavers were conspicuous and unambiguous when waivers were printed in all capital, had a bold heading titled "WAIVER OF JURY TRIAL," and were located at the end of a six-page document).

Similar to the holding in *Gates* and *Blackburn*, the ADESSO Master Deed included a conspicuous arbitration provision on the first page of the Master Deed and on page 6 of the Master Deed:

"Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto . . . Failure to comply with any of the same shall be

grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by . . . an aggrieved co-owner." **(Emphasis added).**

S.C. Code Ann. §27-31-10 *et seq.* (1976)

The Plaintiff as a co-owner at ADESSO is entitled for relief under Section 27-31-170 based, inter alia, the violations of the Master Deed by the Holder Defendants and the HOA Defendants.

2. **Summary Judgment should be denied because the 2016 lawsuit was initiated by way of fraudulent and ultra vires actions taken by the Holder Defendants and the HOA.**

Plaintiff's expert Michael Parades believes that all the Settlement Agreements in the 2016 lawsuit are invalid because filing the 2016 is an illegal ultra vires act by the ADESSO board of directors (**Exhibit C**, at page 7).

Even more incredulous, in Mr. Parades' opinion, is that the Holder Defendants knew the ADESS HOA could not bring a lawsuit seeking a jury trial because the Holder Defendants wrote the Master Deed and John R. Holder executed the Master Deed as the sole member of each of the Holder Defendants (**Exhibit C, page 9**).

Mr. Parades also believes the Commercial Claims Settlement Agreement and Release should be vacated as it was obtained fraudulently and by ultra vires actions taken by the HOA.

The first time the Plaintiff learned about the 2016 lawsuit was during the time Class counsel was attempting to obtain the signature of the Plaintiff on the Commercial Claims Settlement and Release Agreement (**Exhibit C to the Affidavit of Emad Tadros, M.D.**). This raises the question of whether Class counsel ever sent out the required notice of the 2016 lawsuit. (**Exhibit C: Affidavit of Michael Parades, page 9**).

After reading all of the minutes produced by the HOA Defendants, Mr. Parades believes the ADESSO HOA board was trying to keep owners from knowing what was going on until the very end of the 2016 lawsuit. Several of the major actions do not have appeared to have been properly approved as evidenced in the board meeting minutes. (**Exhibit C: Affidavit of Michael Parades, page 9**).

The major actions taken by the HOA Defendants include:

1. Hiring ABS sometime in August 2015 to conduct a Preliminary Visual Inspection that resulted in a report dated January 25, 2016 presented to presumably the board. There is no mention of a report being received in the meeting minutes.
2. Engaging attorney Frank Smith to represent the ADESSO HOA and file a lawsuit against Holder Properties, et al.;
3. Authorizing Frank Smith to proceed with filing a lawsuit against Holder Properties, et al.;
4. Approving mediation in early 2017; and
5. Approving the proposed settlement in March 2017.

The Affidavit of Michael Parades contains significant questions of fact involving the breaches of the Master Deed by the Holder Defendants and the ultra vires actions taken by the HOA.

3. The Affidavit of Darrell A. Terry, PhD identifies the undue influence and ultra vires acts used in the 2016 lawsuit.

In addition to the opinions by Mike Parades of the ultra vires actions taken by the HOA, the Affidavit of Dr. Darrell Terry attached hereto as **Exhibit D** filed with Court on December 16, 2019, a board member during the time of the 2016 lawsuit, sets forth his concerns regarding the actions taken by the HOA Defendants in obtaining the Plaintiff's executed Settlement Agreements and Releases but also the undue influence exerted upon the Plaintiff to execute the Commercial Claims Settlement Agreement.

In fact, Dr. Terry's Affidavit recounts the attorney representing the Plaintiffs in the 2016 construction defect lawsuit was frustrated that Dr. Tadros would not execute the necessary Settlement Agreements and Releases to fully settle the construction defect lawsuit. **(Exhibit D, page 2)**.

Dr. Terry's Affidavit recounts that Mr. Smith recommended the board retain an attorney file suit against Dr. Tadros if Dr. Tadros did not sign the Settlement Agreements and Releases. **(Exhibit D, page 2)**.

Furthermore, Dr. Terry recounted in his Affidavit that Mr. Smith assured the board that Dr. Tadros' execution of the Settlement Agreements and Releases would not preclude Dr. Tadros from pursuing the claims he had against the developer and contractor that developed and built the ADESSO.

4. Fact issues preclude the HOA Defendants' and the HOA's Motion for Summary.

The HOA argues that the Plaintiff's claim should be dismissed based on the Statute of Limitations. This argument fails because the Statute of Limitations does not apply in this case.

It has long been settled in South Carolina that where there is any conflicting evidence as to whether a claimant knew or should have known whether he has a cause of action, the question is one for the jury and not the court. Arant v. Kressler, 327 S.C. 225, 489 S.E.2d 206 (1997); *See also* Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (the discovery rule to a claim is a question of fact for the jury.)

The Plaintiff first became aware of the violations of the Master Deed in approximately February 2017. The Plaintiff filed this action on February 14, 2019, within the time allowed to file this claim.

The HOA next argues that the HOA complied with the terms of the ADESSO governing documents and any applicable law in charging assessments to Plaintiff's commercial units at the ADESSO. This argument also fails.

Mike Parades, in his Affidavit, calls into question the tactics used by the Holder Defendants and the HOA Defendants related to Plaintiff's parking spaces. (**Exhibit C, at page 8**).

Specifically, the Holder Defendants scheme of varying commercial space when negotiating with the City of Columbia zoning authorities to change parking space requirement for commercial spaces, changing signage to imply the spaces were for Guest parking and NOT restricted to commercial/retail parking and requiring the Plaintiff to pay rent for his parking spaces. (**Exhibit C, at page 8**).

The HOA argues that the HOA did not make any false representations to Plaintiff in connection with Plaintiff's purchase of the ADESSO commercial units. This argument is fails because Plaintiff did not purchase the units from the HOA. However, the HOA continued the perpetuation of the parking spaces dedicated to the exclusive use of the commercial units by leaving incorrect signage in place until 2018 when the Plaintiff complained to the City of Columbia Zoning Administration. The City of Columbia Zoning Administration conducted an inspection of the parking area and demanded the HOA remove and replace the incorrect and improper signage designating the commercial parking spaces.

Furthermore, the Affidavit of Michael Parades calls into question the City of Columbia Zoning Administration's final determination in March 13, 2019. Mr. Parades questions the basis for the final determination that the commercial parking spaces complied with the City of Columbia Zoning Administration's determination. (**Affidavit of Michael Parades at page 8**)

Mr. Parades and the Plaintiff also take exception to the HOA's argument that the HOA's monthly assessments were proper or accurate. (See Affidavit of Michael Parades, at p. 13). "Based on my experience of over 30 years there are several line items are not appropriate to be included in the commercial budget and other line items that appear high." (**Affidavit of Mike Parades, at page 13**).

CONCLUSION

The questions of fact contained in this Memorandum in Opposition to Defendants' Motions for Summary Judgment include factual issues that should be left to a jury to decide. In particular, the Affidavits of the Plaintiff, Michael Parades and Darrell A. Terry present questions of fact that meet the standard of the scintilla of evidence found in the holding of Hancock ("a mere scintilla of evidence in order to withstand a motion for summary judgment"). Therefore, this Honorable Court should deny the Motions for Summary Judgment filed by both the Holder Defendants and the HOA consistent with the holding in Hancock.

For the reasons stated herein and as will be more fully shown at the hearing of this matter, this Honorable Court should deny the Holder Defendants' and the HOA's Motion for Summary Judgment and grant such other relief as this Honorable Court deems just and proper.

Signature on Following Page

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

By: */s/ Charles G. Blackburn*
Charles G. Blackburn
SC BAR #: 69458
1401 Main Street, Suite 655
Columbia, South Carolina 29201
Tel: (803) 234-5416
Fax: (803) 978-6246
Email: cblackburn@scarolina-law.com
ATTORNEYS FOR THE PLAINTIFF

January 5, 2021

Exhibit A

Applied Building Sciences' January 25, 2016 Report

APPLIED BUILDING SCIENCES INC.
ENGINEERS, ARCHITECTS AND
ENVIRONMENTAL CONSULTANTS

Submitted via email: pcdurk@gmail.com

25 January 2016

Adesso Condominiums
c/o Patricia Durkin, Association President
601 Main Street
Columbia, SC 29201

Re: Preliminary Visual Evaluation Services
Adesso Condominiums
Columbia, South Carolina
ABS Job No. 800.1549

Dear Ms. Durkin:

Thank you for contacting us regarding Adesso Condominiums. Pursuant to your request, Applied Building Sciences, Inc. (ABS) performed a visual survey in general accordance with our *Visual Evaluation Services Contract: Preliminary Visual Assessment* phase dated August 11, 2015. The purpose of our survey was to gain a cursory, overall understanding of the building's windows, doors, stucco cladding, roof, pool deck and interior shower pans. The following report is a summary of our preliminary findings.

Description

The subject building is comprised of 110 residential condominium units situated overtop of commercial retail space and a parking deck in downtown Columbia, South Carolina. The five story building is constructed with concrete and metal stud framing, clad with hard coat stucco, and covered with a thermoplastic polyolefin (TPO) single-ply roofing membrane. The building was reportedly permitted for construction in or around 2006 by Holder Construction Company; however, it is unknown to ABS who the architect of record was for the project. The building is currently managed by Holder Properties, Inc. (Holder), seemingly an affiliate of Holder Construction Company. For orientation purposes the front shall be considered the elevation facing Main Street.

Background

ABS was contacted in the summer of 2015 by the former Association president, Mr. Taylor Bell. He expressed concerns with regards to the building enclosure and asked that we survey the property in advance of the Association's transitioning to a unit owner controlled board from a

1890 Milford Street – Charleston, South Carolina 29405 – Tel 843.724.1456 – Fax 843.724.1458
1416 Chapin Road – Chapin, South Carolina 29036 – Tel 803.345.3833 – Fax 803.345.2823
5601 Seventy-Seven Center Drive, Suite 225 – Charlotte, NC 28277 – Tel 704.634.7276
email info@appliedbuildingsciences.com web www.appliedbuildingsciences.com

developer controlled board (ABS has not reviewed the Master Deed). Based on the information relayed to us by Mr. Bell, Mr. Rick Arkell, and yourself, repairs to the building in effort to mitigate water intrusion have been ongoing for years. Based on a letter to the Association, Holder appears to have been aware of construction deficiencies and/or evidence of bulk water intrusion since at least 2010. Repairs to the building reportedly included, but may not be limited to, partial removal and replacement of stucco, exterior wall sheathing, and flashing components. The remedial work was allegedly performed under the direction of Holder; however, the exact timeframe, extent, and details of the repairs are unclear to ABS at this time.

A portion of Holder's Monthly Operations Status Reports, from the summer of 2015, were provided for ABS' review along with schematic floor plans and elevations of the building. No other maintenance records, design documents, construction permits, etc. have been provided for ABS's review to date.

Observations

ABS's Scott A. Harvey met briefly with Mr. Taylor Bell, Mr. Rick Arkell, and yourself on August 5, 2015. A visual survey of ten unit interiors, the roof, the parking garage, the terrace courtyard and limited common areas was performed by Whitney E. Okon, AIA and Scott A. Harvey on December 16, 2015 in the presence of you and Mr. Arkell. A summary of our most significant observations are listed below.

I. Exterior Elevations Observations

Cursory visual observations were made of the windows, doors and stucco cladding from the ground and via isolated balconies.

1. Undulations in the stucco cladding were visible under direct sunlight conditions. The undulations were most prevalent on the curved, corner portions of the building **(Photo 1)**.

2. No head flashing was visible above the windows or doors. The stucco cladding appeared to have been sealed tight to the window and door frames **(Photos 2 & 3)**. In many instances the window frames appeared to sit slightly proud of the adjacent stucco cladding.

3. Sealant, or some form of remedial coating, had been employed at the intersection of the stucco's control joints **(Photo 4)**.

4. No through-wall flashing was visible at floor lines or at the stucco's interface with balconies, penetrations (such as exhaust vents), etc. The stucco appeared to have been sealed directly to the balcony and courtyard terrace waterproofing, and close-up survey of the subject condition revealed corrosion to a portion of the stucco's metal accessories **(Photo 5 - 8)**.

5. Corrosion was visible along the outboard edge of the concrete balconies and courtyard terrace in proximity to guardrail post base attachments **(Photos 9 & 10)**.

6. Separation of the stucco, and white powdery deposits consistent with efflorescence, was noted along the outboard edge of the concrete balconies (**Photo 11**).

7. Drainage of the first floor unit balconies located along Blossom and Main Streets appeared to be limited to surface drainage via small through-wall scuppers

8. White powdery deposits, consistent with efflorescence, were readily visible along the parking garage's stair tower (**Photos 12 & 13**).

9. No weep holes were visible along the bottom of the fitness center's metal storefront windows (as seen from within the courtyard terrace) (**Photo 14**).

10. No weep holes, or evidence of through wall flashing, was identified in the masonry cladding above the main entrance's metal storefront assembly (**Photo 15**).

11. Cracking, discoloration, and partial delamination of the stucco, was seen above the first floor's retail space (at the corner of Blossom and Main Streets) (**Photos 16 & 17**).

II. <u>Courtyard Terrace Level / Pool Deck Observations</u>:

Cursory visual observations were made at the building's courtyard terrace and pool deck level with the purpose of identifying areas exhibiting deterioration and/or promoting bulk water intrusion into the garage or habitable space.

12. Private balconies along the first floor's courtyard terrace level were enclosed by stucco clad knee walls, planters, and metal guardrails. White powdery deposits, consistent with efflorescence, and blistering of the stucco were readily visible along the walls and planters (**Photos 18 & 19**). In some locations, staining consistent with moderate to severe corrosion, was visible along the outboard side of the planter walls (**Photos 20 & 21**).

13. Concrete coping caps, along the top of the courtyard terrace knee walls and planters, exhibited cracking and separation at guardrail attachments (**Photos 22 & 23**).

14. Observations made inside the planters revealed a gray product had been installed on at least the vertical portion of the walls (**Photos 24 & 25**). It was unclear what type of product had been used or if the product was continuous within the beds. Repairs to some of the planting beds, adjacent to habitable space, were observed (**Photos 26 & 27**).

III. <u>Parking Garage Observations</u>

Cursory visual observations were made within the building's parking garage with the purpose of identifying areas exhibiting and/or promoting bulk water intrusion.

15. Survey along the ceiling of the parking garage revealed isolated areas of water intrusion. The areas were highlighted by stalactite-like deposits hanging from the concrete (**Photos 28 & 29**). Speculation has been made that the deposits are located below courtyard terrace level planting beds; however, further effort would be required to verify the beds' locations in relation to the garage's water intrusion.

16. Isolated delamination of the garage's traffic coating was observed (**Photo 30**).

IV. Roof Observations

Cursory visual observations were made on the roof with the purpose of identifying its general, overall condition as well as areas exhibiting and/or promoting bulk water intrusion. The roof is constructed in low slope configurations and covered with a fully adhered thermoplastic polyolefin (TPO) membrane. The interiors of the parapet walls are covered with TPO membrane and the coping caps are made out of interlocking metal panels. No documentation has been provided to or reviewed by ABS indicating active roof related water intrusion; however, water intrusion via the roof has been previously reported by you and some of the residents interviewed during ABS's visit. Limited observations of the exterior cladding were also made from the roof decks.

17. Ponding water was noted in multiple locations throughout the roof (local weather data reported 0.05 inches of rain fell approximately 48 hours prior to ABS's site visit) (**Photo 31**).

18. Evidence of prior patching to the roof membrane was apparent in a plethora of locations (**Photo 32**). Some of the patches were marked by date labels and annotations regarding the condition of the insulation and roof deck at the time of the patching.

19. Undulations in the roof deck's insulation boards were readily visible throughout the field of the roof (**Photo 33**). In several areas the insulation boards were loose and moved underfoot. The loose areas were highlighted by stress fractures in the membrane itself (**Photo 34 & 35**).

20. The rooftop's steel stairs were corroding and leaving deposits on (and staining) the adjacent roof membrane (**Photos 36 & 37**).

21. Isolated sleeves, used to integrate the roof membrane at service penetrations, had "collapsed" and partially sunken down into the roof assembly (**Photo 38**).

22. Voids and deterioration to the condensing units' refrigerant line were systemic throughout the areas surveyed (**Photo 39**).

V. Interior Observations

Cursory visual observations were made on the interior of ten units (116, 123, 126, 130, 212, 329, 418, 501, 515, and 527) as well as in some of the common area lobbies, hallways and stairwells. You and the Association chose the units and provided access.

23. Evidence of prior destructive testing, inboard of the courtyard terrace planters, was observed in Unit 130. Minor corrosion to portions of the metal stud framing's sill track and stud flanges was noted along with staining on the inboard side of the exterior gypsum (**Photos 40 & 41**).

24. Minor blistering and staining of the baseboard trim paint was noted in some locations (**Photos 42 & 43**). The areas appeared limited to stucco clad walls at the courtyard terrace level. Survey on the outside of the subject walls revealed the stucco was sealed directly to the to the terrace floor (**Photo 8**).

25. Minor cracking and separation of the interior gypsum was noted at the jamb-to-sill interface of some windows in isolated units (**Photos 44 & 45**).

26. Separation of the interior wood trim and blistering of the paint was documented near the balcony doors in isolated units (**Photo 46**). At some of the locations surveyed, daylight was visible between the door frame and the door when the door was viewed in the closed position.

27. Small pairs of pinholes, consistent with penetrations made by moisture meters, were observed near several window jambs (**Photo 47**). According to the Association, Holder has been monitoring moisture content of the interior gypsum in proximity to windows.

28. Staining was observed along the window jambs of Unit 329 (**Photo 48**). Similarly, blistering of the paint at the interior sill of the windows was noted in Unit 130 (**Photo 49**).

29. Staining was noted along the interior head of the windows in Unit 130 (**Photo 50**) and Unit 116.

30. Staining was observed along the bathroom ceilings in multiple units (**Photo 51**). Reports of prior shower pan leaks were mentioned to ABS; however, it is unclear at this time if the staining observed is below pans that have reportedly been repaired by Holder.

31. Deterioration of an interior wood window stool was noted inside Unit 123 (**Photo 52**).

Conclusions & Preliminary Recommendations

Based on our survey, the information provided to us, and our experience with similar problems, it appears that portions of Adesso Condominiums may be suffering from long-term bulk water intrusion via the building enclosure. In addition to our visual survey, ABS personnel endeavored to gain insight into the history, maintenance, etc. in effort to glean a general, holistic understanding of the building. ABS personnel visually surveyed the stucco cladding and roof, as well as limited common areas, parking garage and ten unit interiors. While a reasonable degree of care was taken during this work, it was not the intent of the survey to identify every defect related to original construction, subsequent repairs, and/or maintenance.

It is evident based on our survey, and the information relayed to us verbally, that bulk water intrusion has been a longstanding issue at Adesso Condominiums. ABS's visual observations revealed that the stucco cladding appears to be unable to drain incidental moisture. Stucco is inherently not waterproof. Therefore, the lack of observed drainage suggests that water which is able to enter inboard of the stucco via cracks in the stucco itself, via penetrations such as at windows, doors, and guardrail attachments, and via discontinuous stucco accessories, is unable to effectively drain out of the cladding system. Instead, water appears to have been trapped inboard of the stucco due to the lack of weeps and flashing components. These basic water management concepts are not readily apparent at Adesso Condominiums and therefore appear to have resulted in corrosion to the stucco accessories and bulk water intrusion into portions of the building. Destructive testing would be required to substantiate the intricacies and extent of this condition. ABS would advocate, at minimum, removal of stucco along the base of walls, at the heads of windows, and in proximity to control joints at floor lines to allow for further investigation of the stucco system and overall condition of the concealed portions of the building enclosure.

In addition to the stucco cladding, other areas of the building warrant additional investigation. ABS recommends the following:

a. Full roof survey, including destructive testing due to concerns surrounding the attachment of the rigid insulation, the stress fractures in the TPO membrane and the obvious plethora of membrane patching.
b. Survey of the courtyard terrace level planters, including removal of dirt and mapping planter locations with respect to water intrusion at the garage level.
c. Review of the pipe sizing used to drain the courtyard terrace level via the parking garage.

ABS trusts that the aforementioned report and general recommendations for destructive testing provide the Association with a better understanding of the overall condition of the building enclosures as well as some causes of the water intrusion and damage reported. ABS would welcome the opportunity to expand upon our current scope and thus move forward in general accordance with our *Visual Evaluation Services Contract: Testing* Services phase in effort to gain a more accurate and holistic understanding of aforementioned conditions. Please note that this report has been prepared based on information available at the time. ABS reserves the right to make revisions should additional information become available that affects our observations, conclusions and/or recommendations.

If you have any questions regarding this report please feel free to call us.

Sincerely,
APPLIED BUILDING SCIENCES, INC.

STATE OF SOUTH CAROLINA
WHITNEY E. OKON
01.25.16
CHARLESTON, SC
9005
REGISTERED ARCHITECTS

Whitney E. Okon, AIA

STATE OF SOUTH CAROLINA
SCOTT A. HARVEY
01.25.2016
Charleston, SC
6555
REGISTERED ARCHITECT

STATE OF SOUTH CAROLINA
APPLIED BUILDING SCIENCES, Inc.
Charleston, SC
100129
REGISTERED ARCHITECTS

Scott A. Harvey, AIA, RWC, ~~LEED AP~~

Enclosures

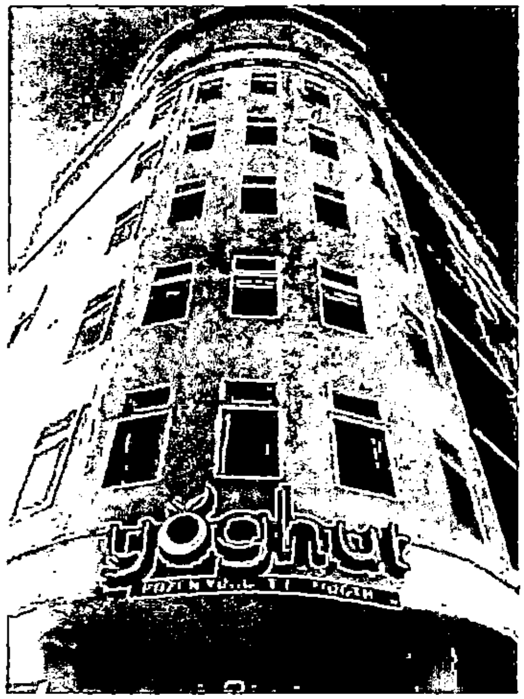
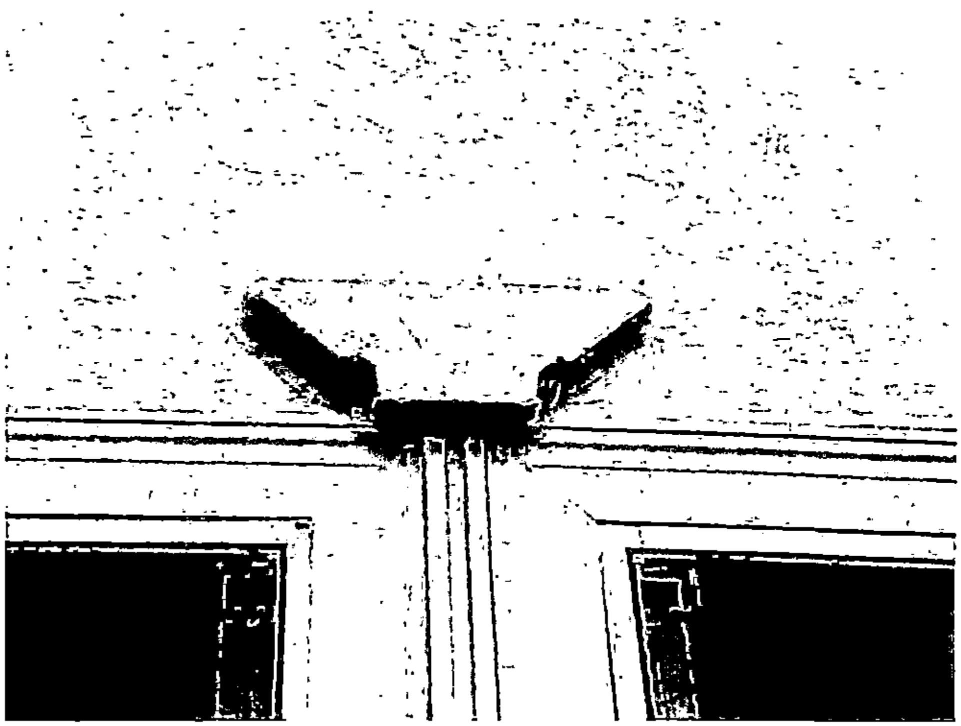


Photo 1: Overview of a portion of the Adesso building as seen looking upward from the corner of Blossom and Main Streets (above Yoghut restaurant). Note the undulations in the stucco toward the left side of the photograph.

Photo 2: No head flashing was visible above the windows. The stucco cladding appeared to have been sealed tight to the frames.



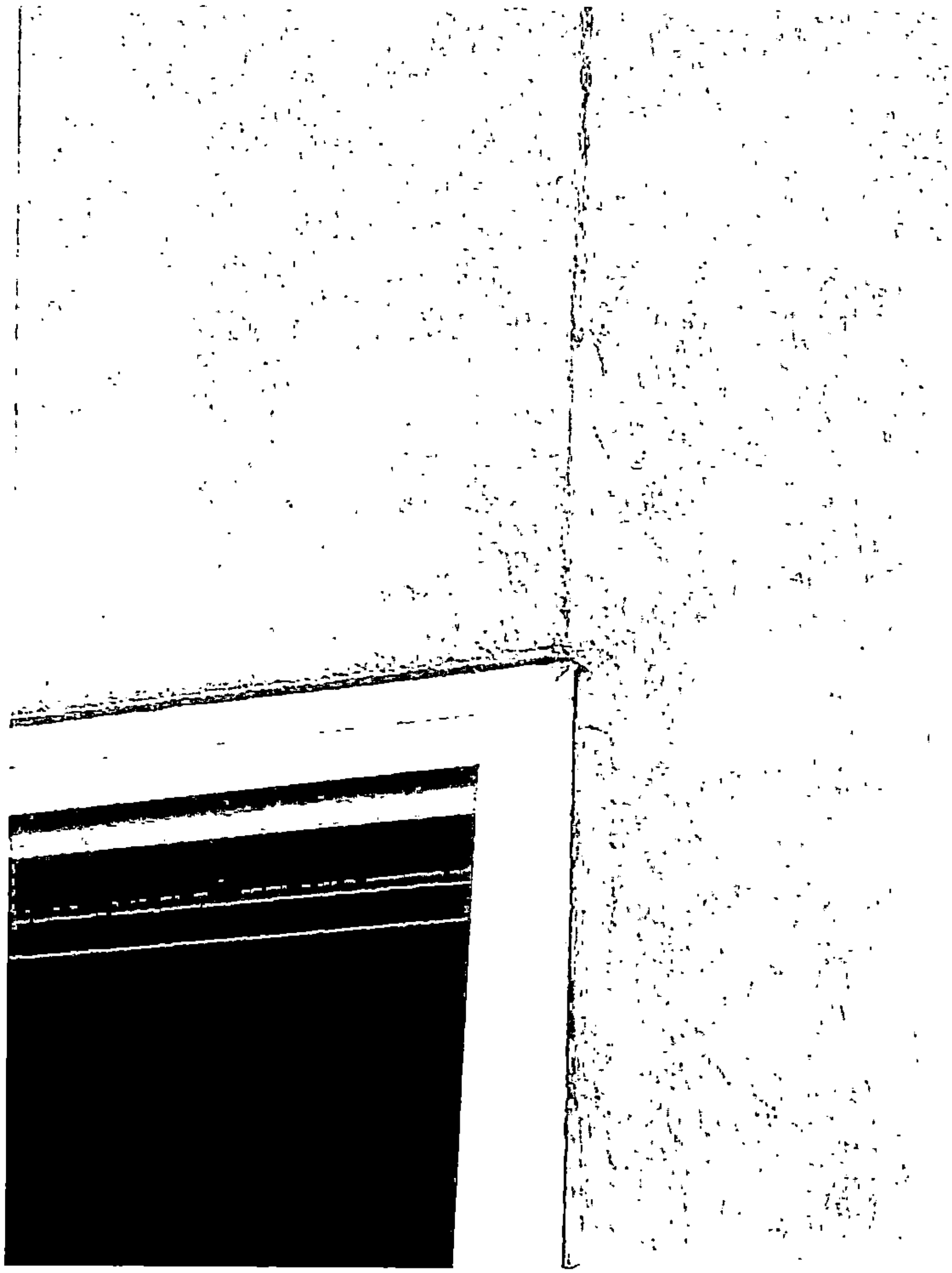


Photo 3: No head flashing was visible above the doors. The stucco cladding appeared to have been sealed tight to the frames.

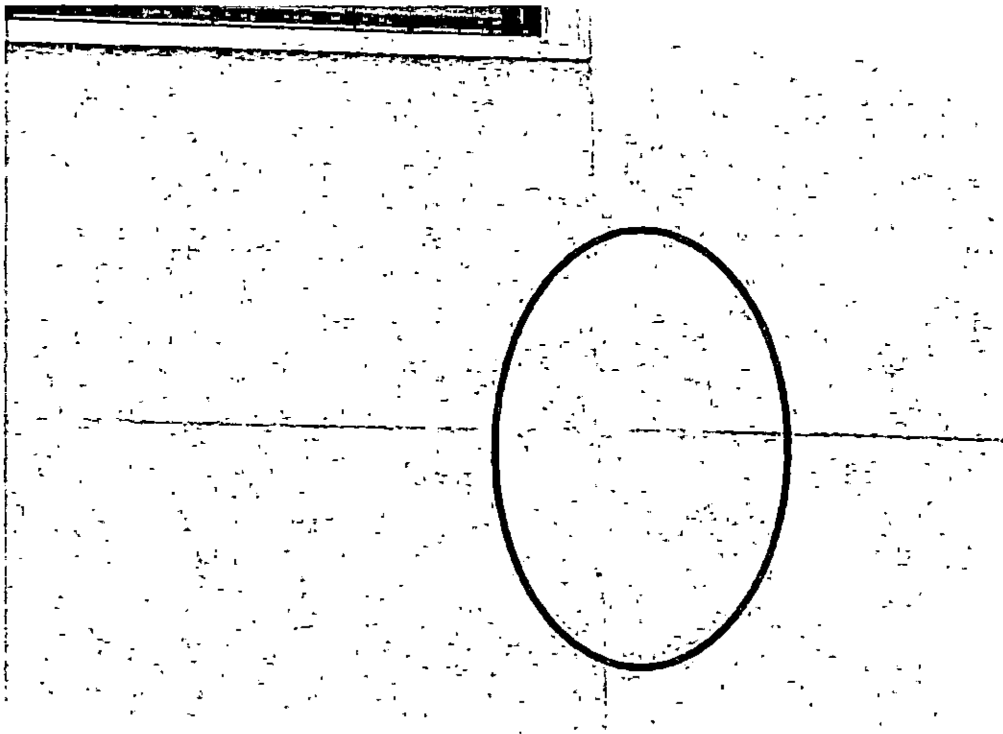
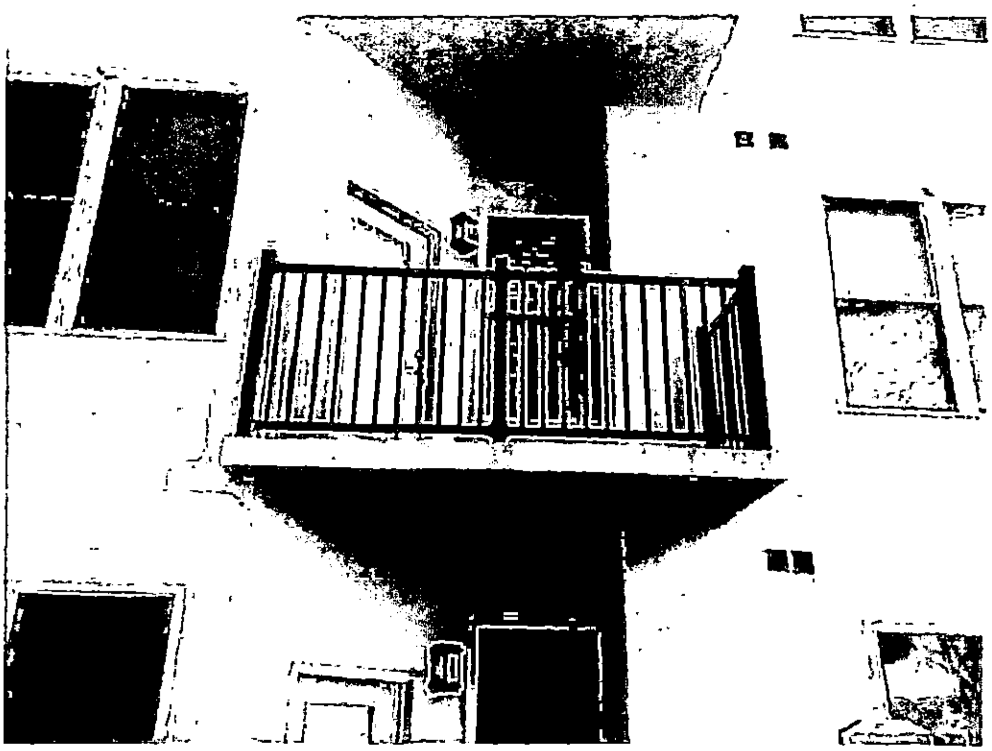
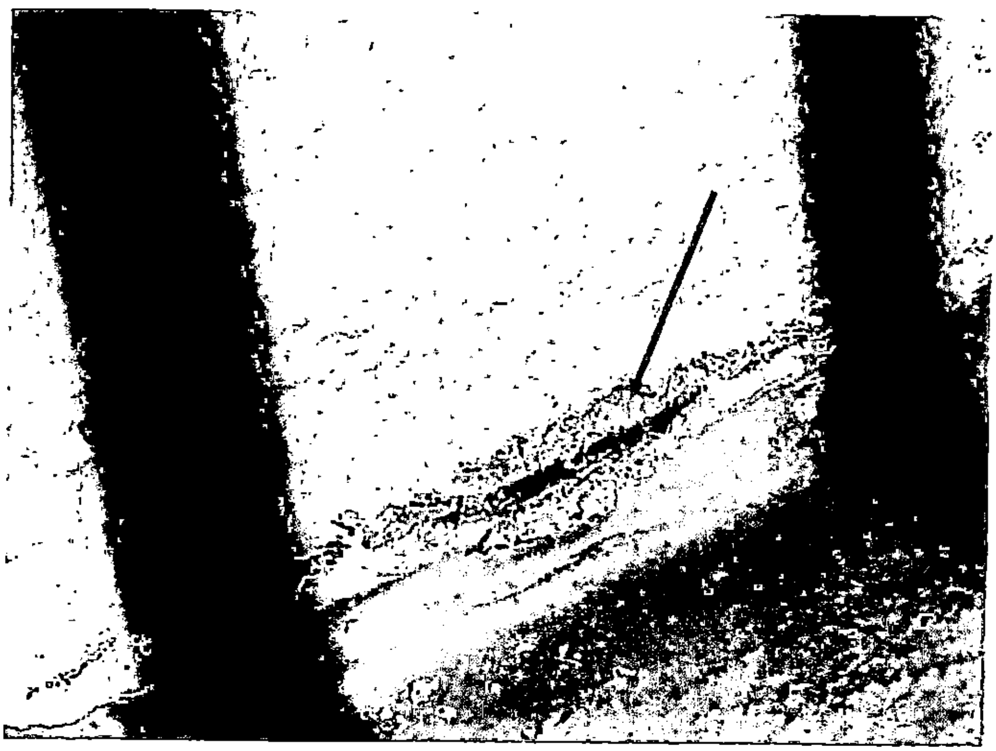


Photo 4: Sealant, or some form of remedial coating, had been employed at the intersection of the stucco's control joints.
Photo 5: No through-wall flashing was visible at floor lines or at the stucco's interface with the balconies.



APPLIED BUILDING SCIENCES, INC. PROJECT: Adesso Condominiums	Job Number: 800.1549	Page 4 of 28

Photo 6: The stucco appeared to have been sealed directly to the balcony waterproofing.
Photo 7: Close-up view of the Photo 6 revealed corrosion to the stucco's metal accessories.



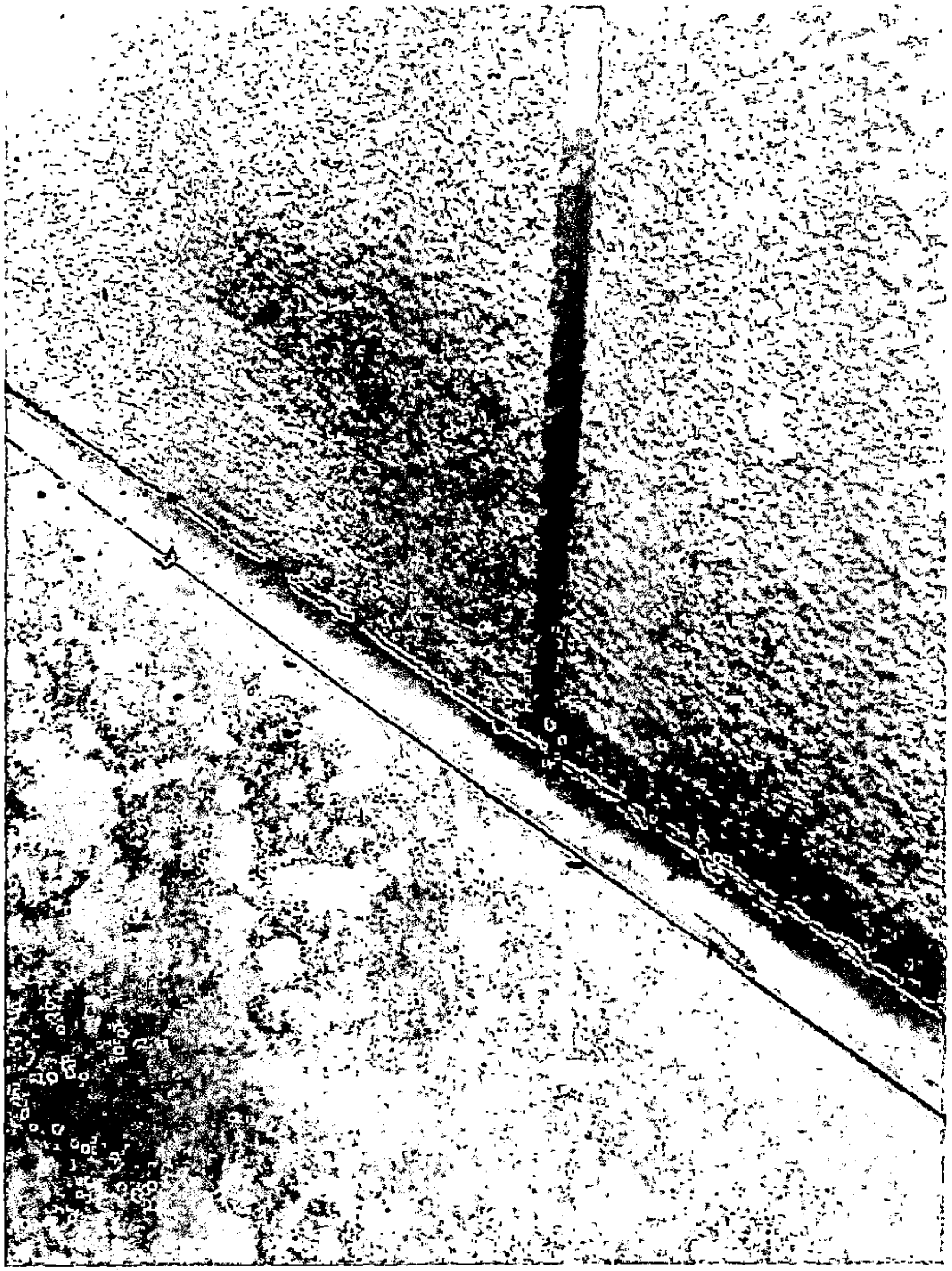
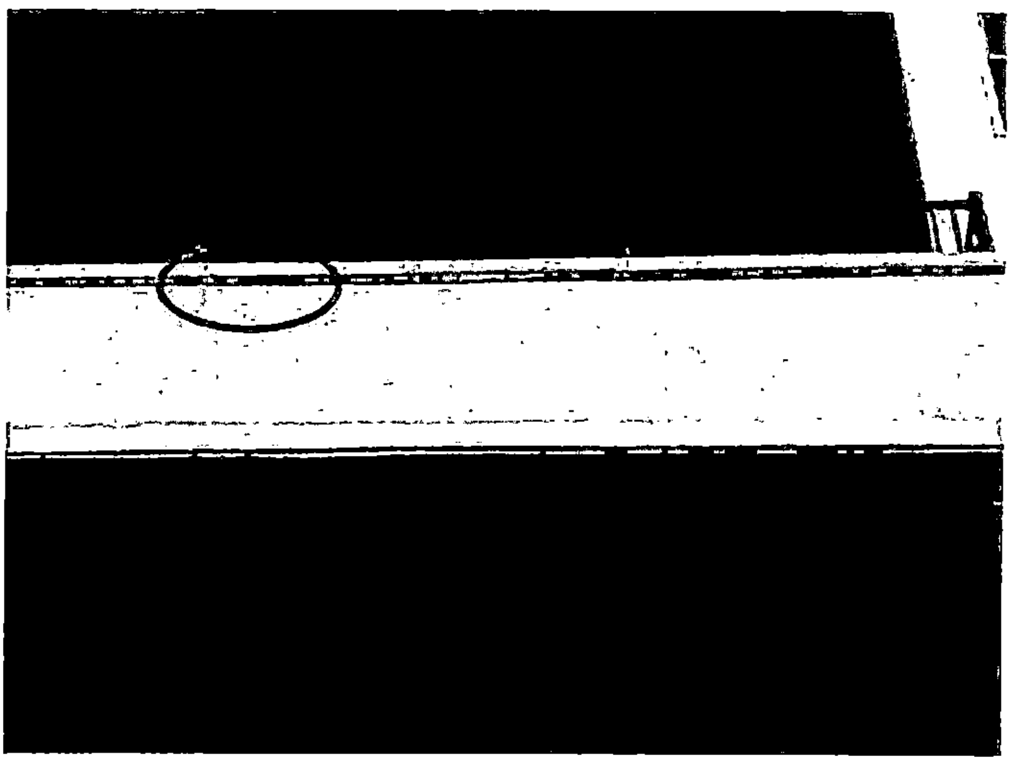


Photo 8: The stucco appeared to have been sealed directly to the courtyard terrace waterproofing.

Photos 9 & 10: Corrosion was visible along the outboard edge of the concrete balconies and courtyard terrace in proximity to guardrail post base attachments.



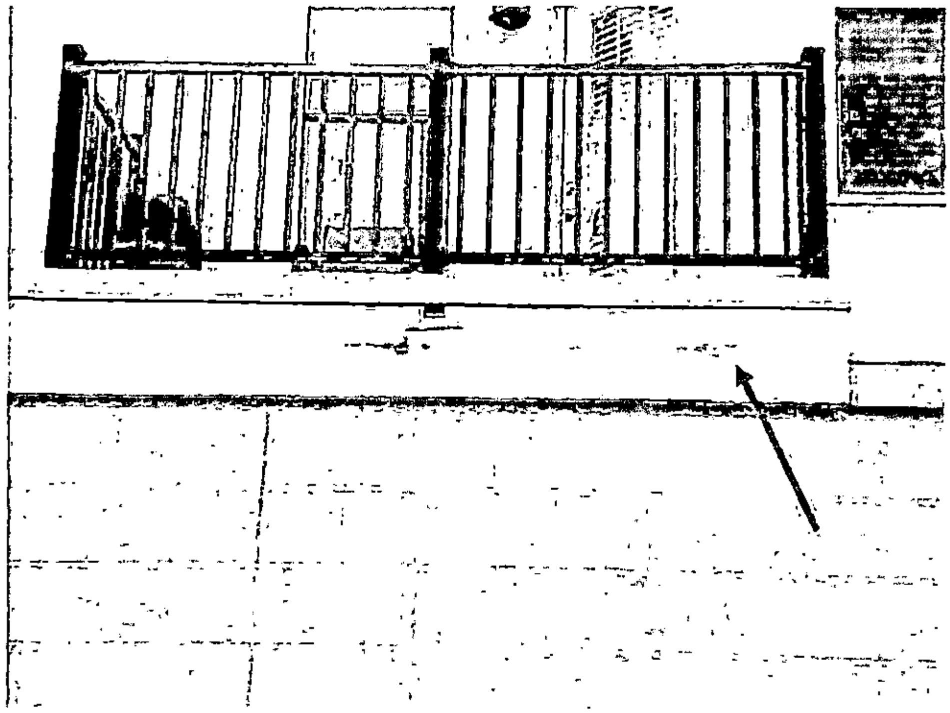


Photo 11: Separation of the stucco, and white powdery deposits consistent with efflorescence, were noted along the outboard edge of the concrete balconies.
Photo 12: White powdery deposits, consistent with efflorescence, were noted along the outboard edge of the parking garage's stair tower.

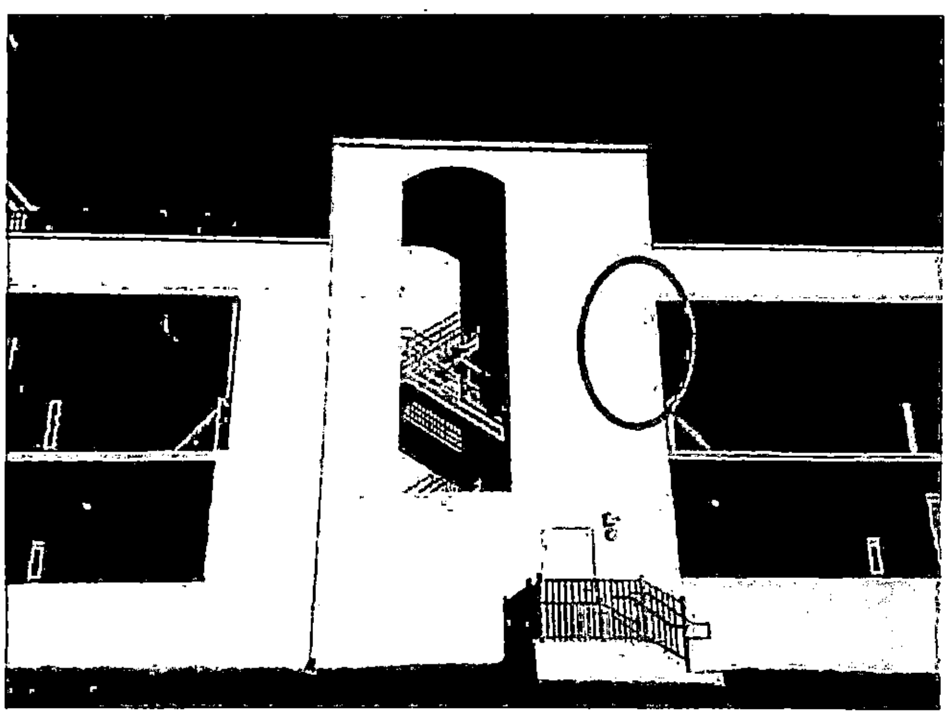


Photo 13: Close-up view of the efflorescence seen on the parking garage's stair tower.
Photo 14: No weep holes were visible along the bottom of the fitness center's metal storefront windows (as seen from within the courtyard terrace).

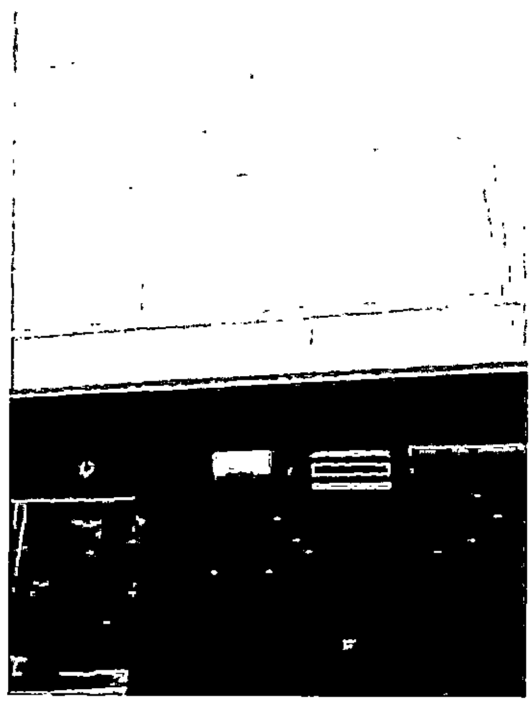
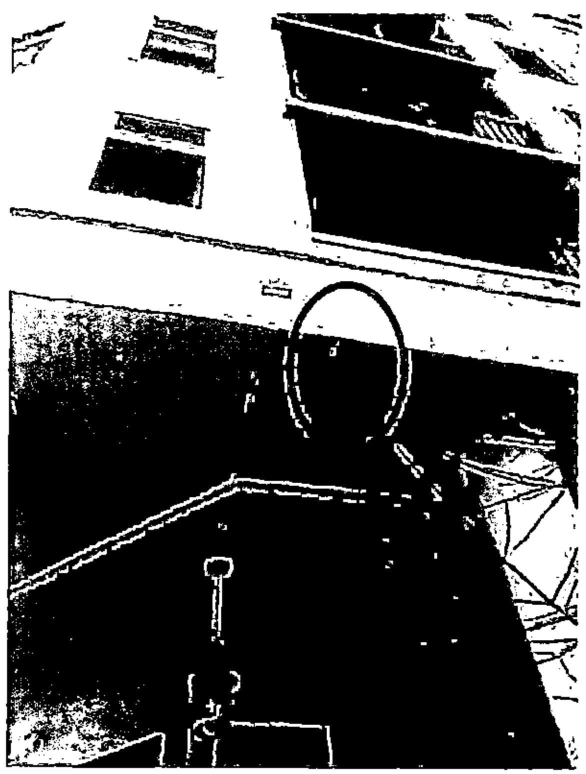


Photo 15: No weep holes, or evidence of through wall flashing, was identified in the masonry cladding above the main entrance's (i.e.: lobby) metal storefront assembly.
Photo 16: Cracking, discoloration, and partial delamination of the stucco, was seen above the first floor's retail space (at the corner of Blossom and Main Streets).



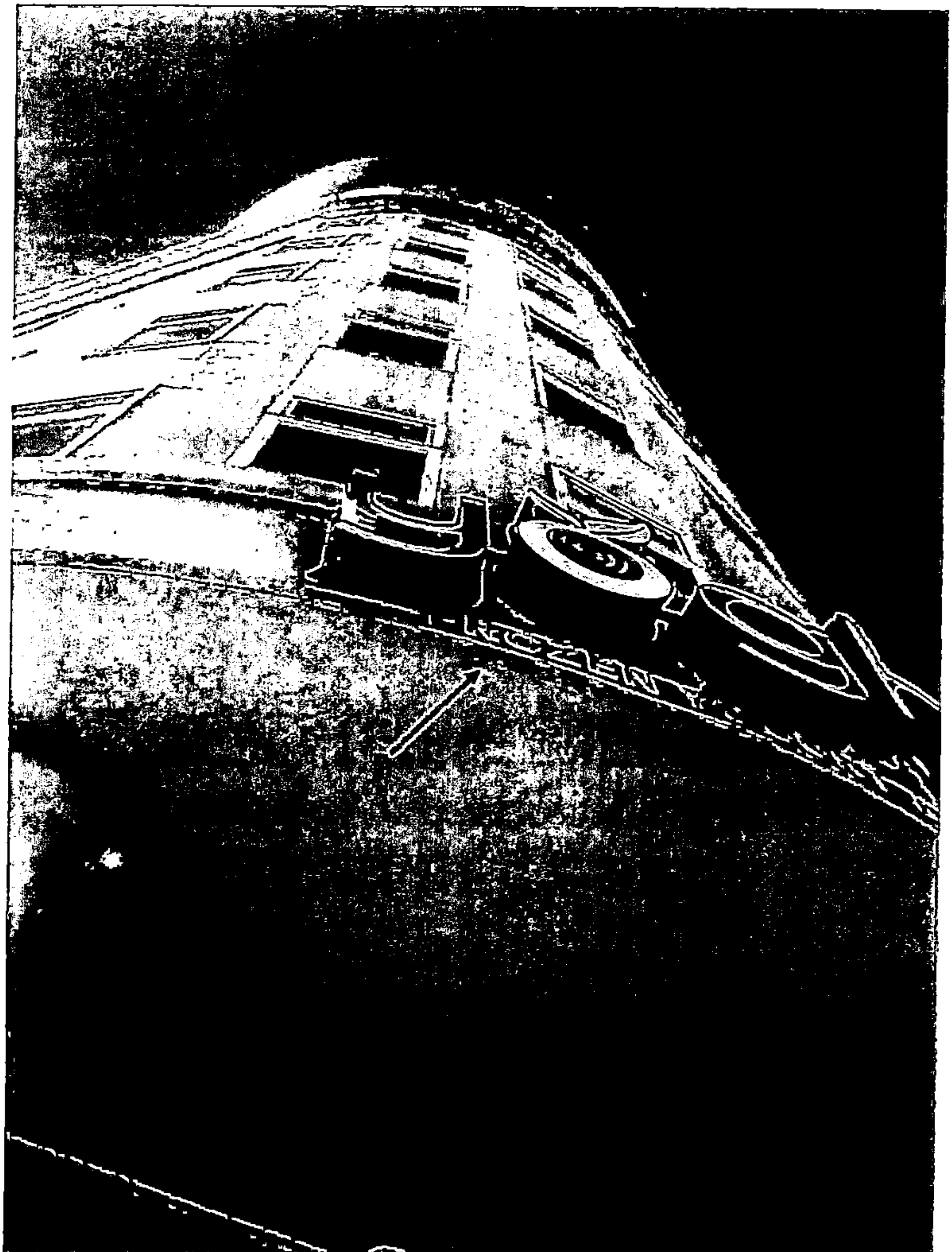
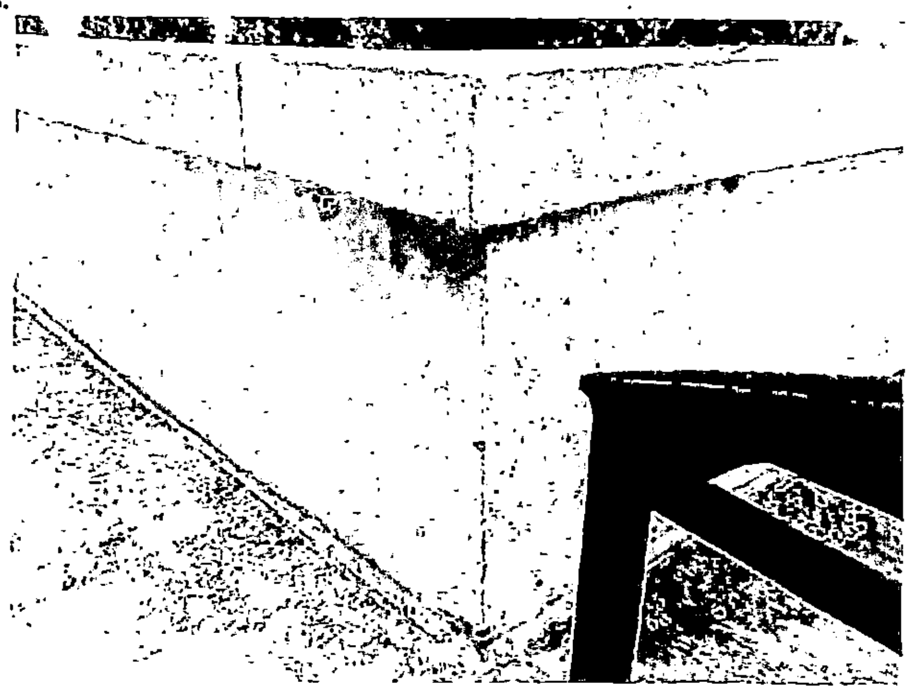
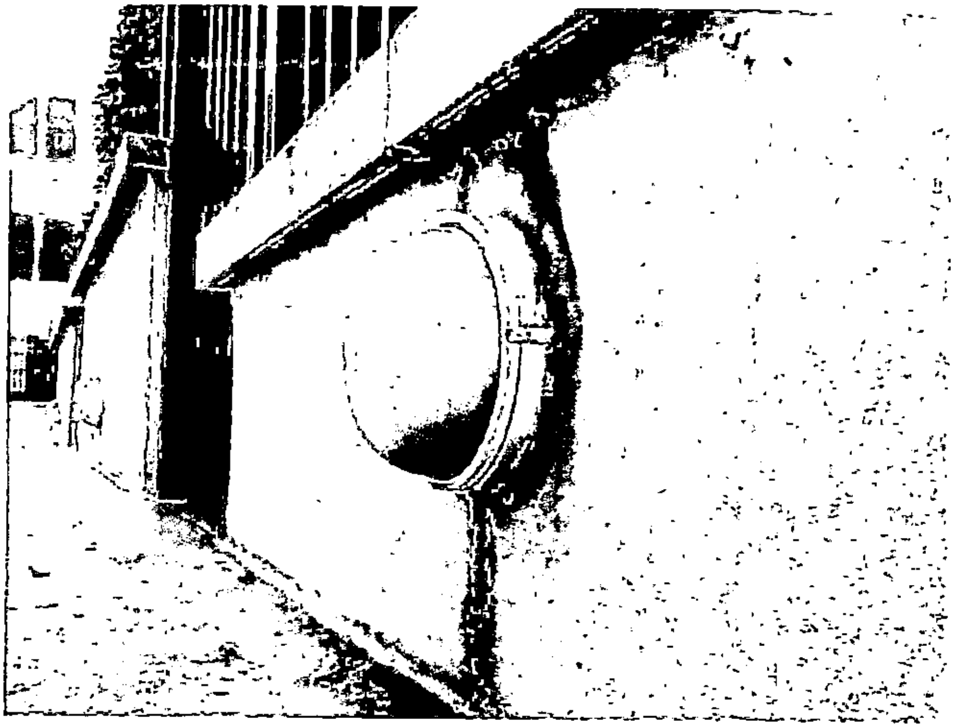


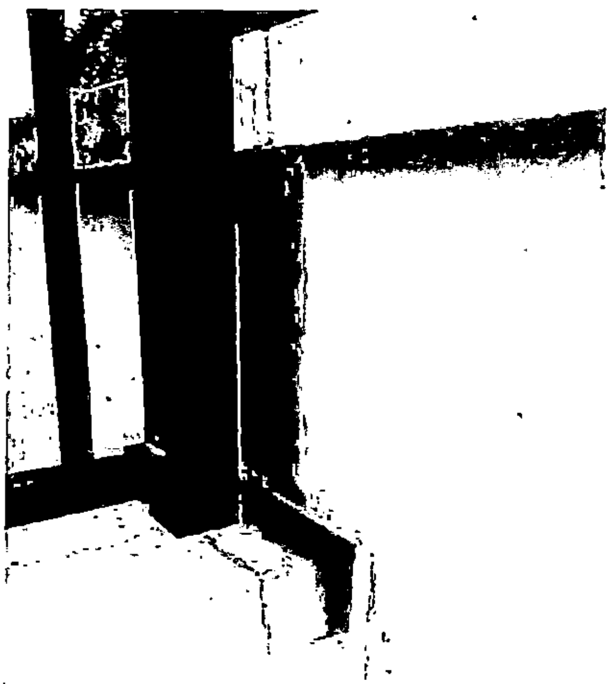
Photo 17: Staining, consistent with corrosion, was seen above the first floor's retail space (at the corner of Blossom and Main Streets).

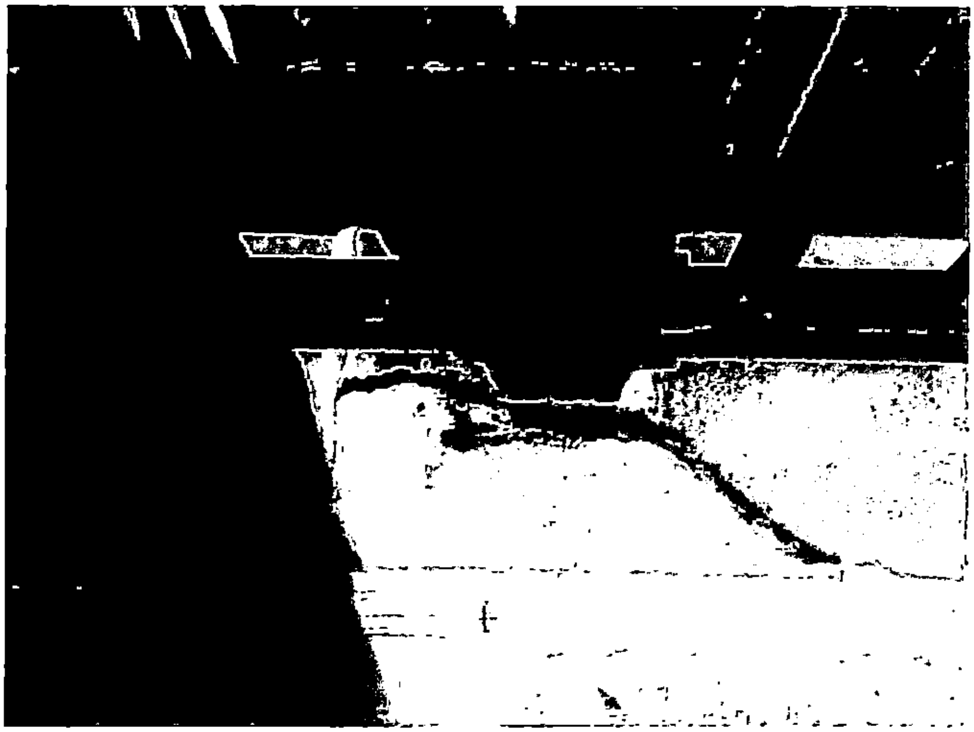
Photos 18 & 19: Blistering of the stucco was readily visible along the planter beds and walls enclosing the first floor units' patios.



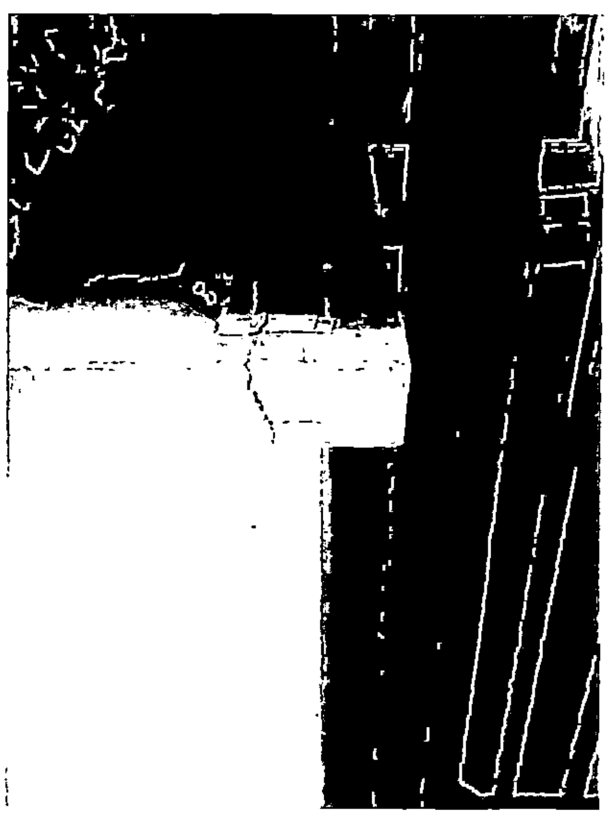


Photos 20 & 21: Staining consistent with moderate to severe corrosion visibly stained the outboard side of the planter walls at the courtyard terrace.

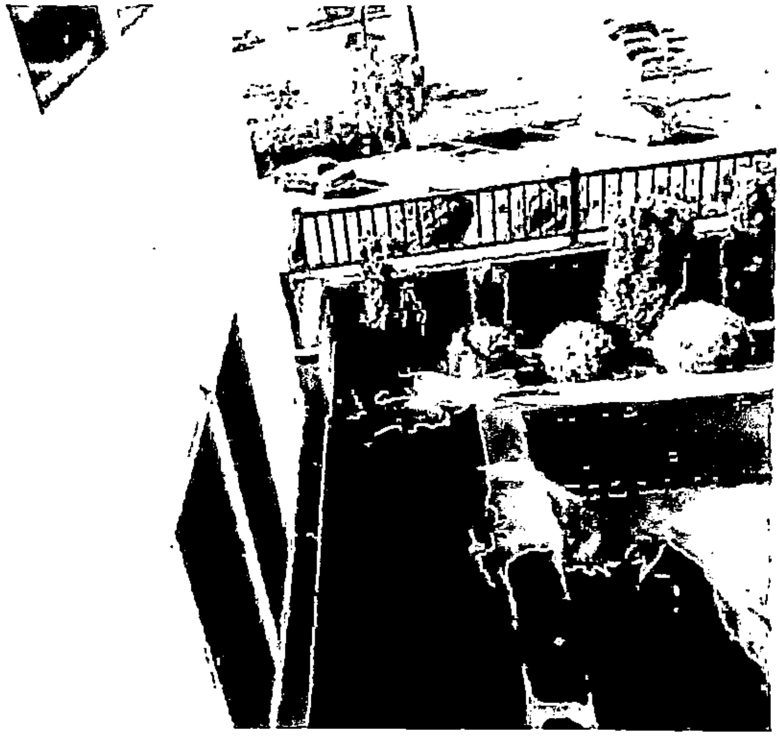




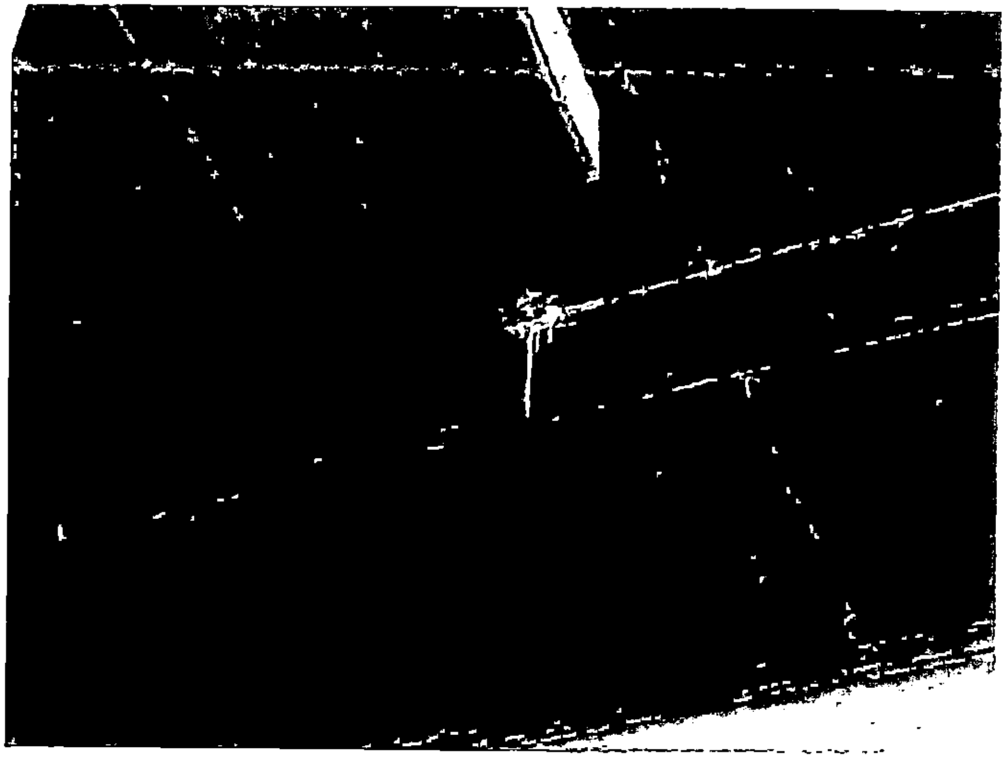
Photos 22 & 23: Concrete coping caps, along the top of the courtyard terrace knee walls and planters, exhibited cracking and separation at guardrail attachments.



Photos 24 & 25: Gray product, presumably installed as waterproofing, was visible inside the courtyard terrace's planters.



Photos 26 & 27: Remedial waterproofing efforts were being made within some of the planting beds adjacent to habitable space.



Photos 28 & 29: Isolated areas of water intrusion were visible along the ceiling of the parking garage. The areas were highlighted by stalactite-like deposits hanging from the concrete.

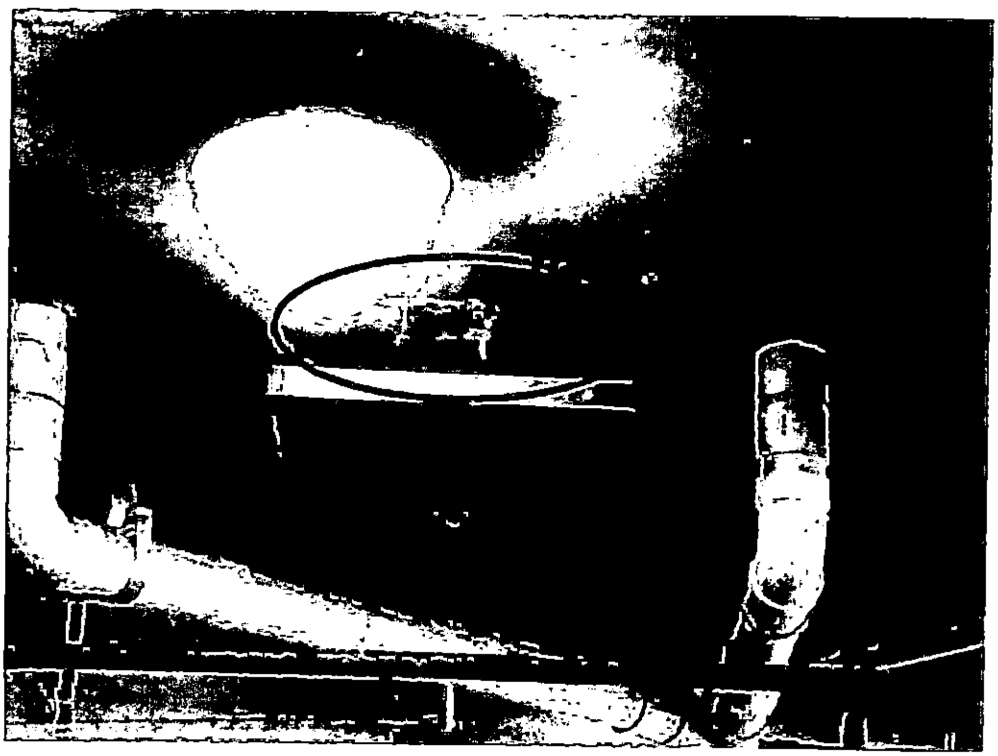


Photo 30: Isolated delamination of the garage's traffic coating was observed.
Photo 31: Evidence of ponding water were readily visible on the roof despite minor rainfall within the previous days.

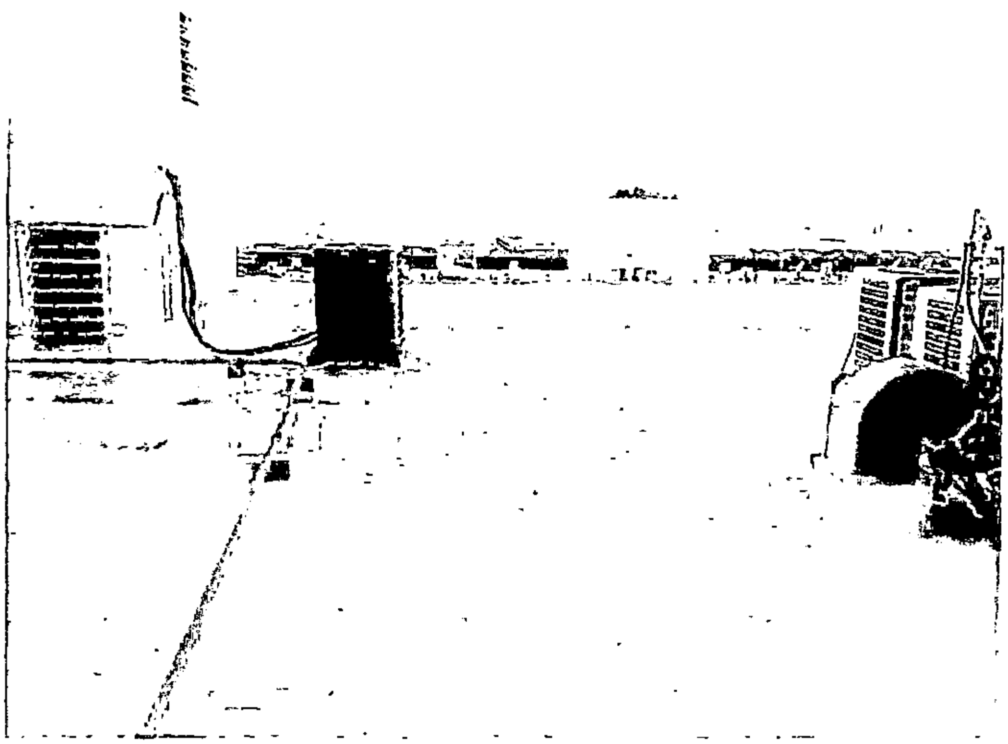


Photo 32: Evidence of prior patching to the roof membrane was apparent in a plethora of locations.
Photo 33: Undulations in the roof deck's insulation boards were readily visible throughout the field of the roof.

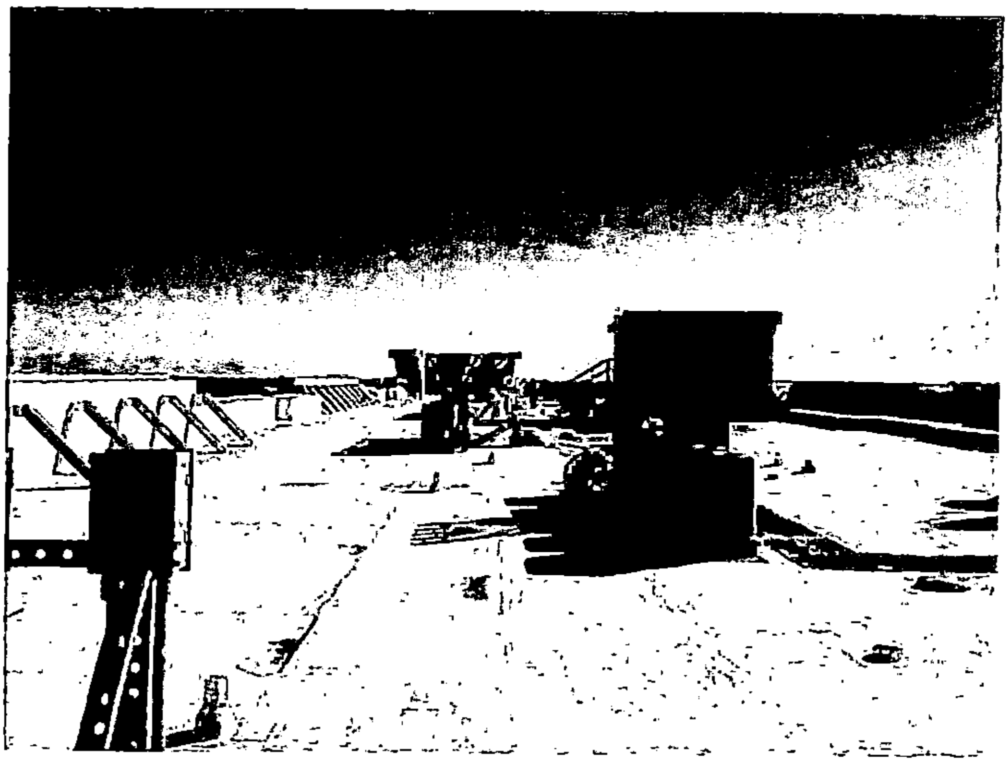
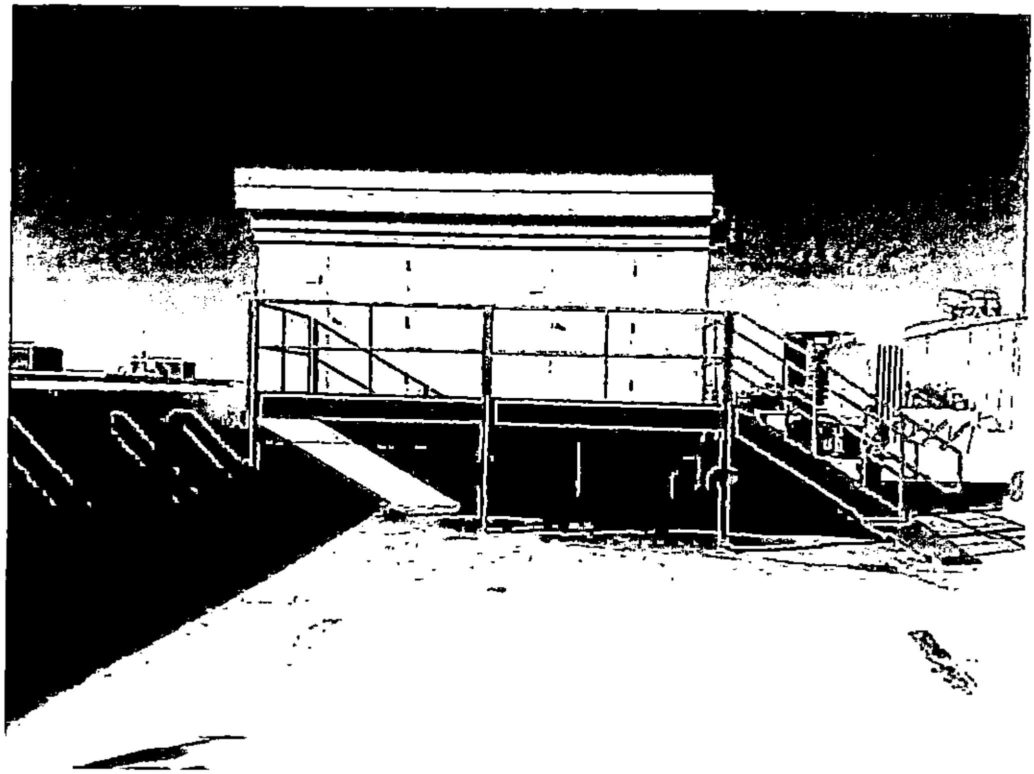


Photo 34: Loose areas in the roof deck's insulation were highlighted by stress fractures in the membrane itself.
Photo 35: Close-up view of the stress fractures seen along the TPO membrane.



Photos 36 & 37: Corrosion from the rooftop stair deposits onto (and stains) the adjacent roof membrane.

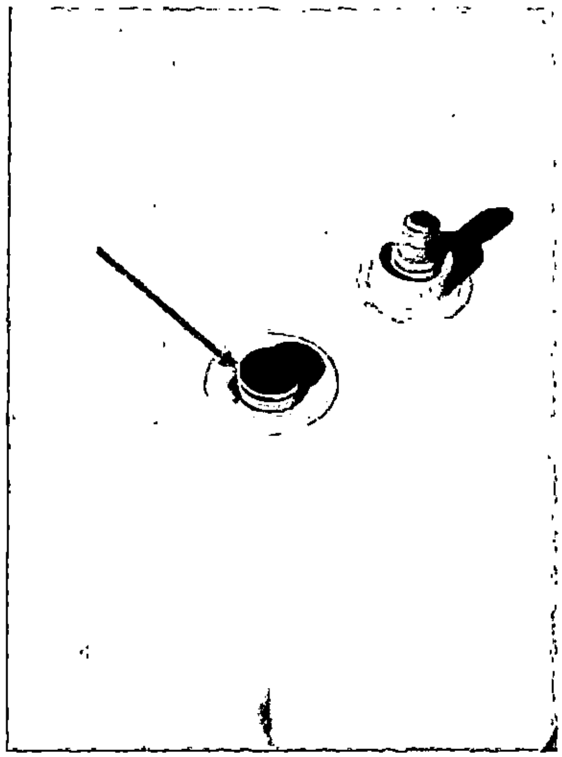
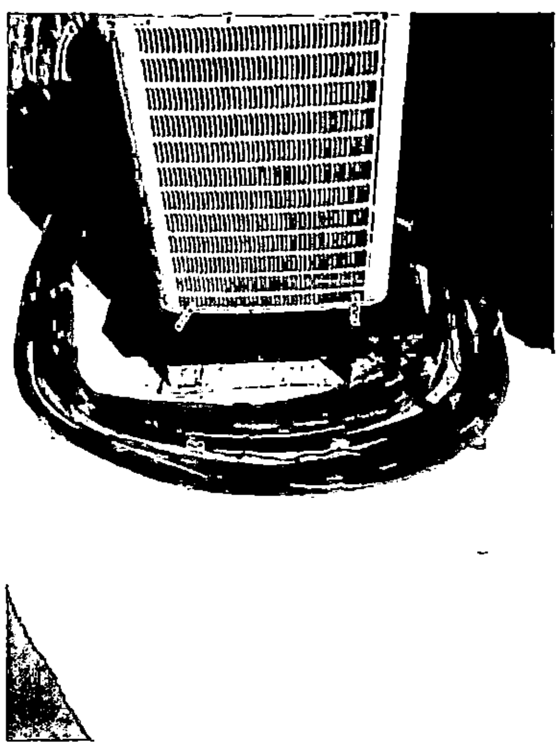


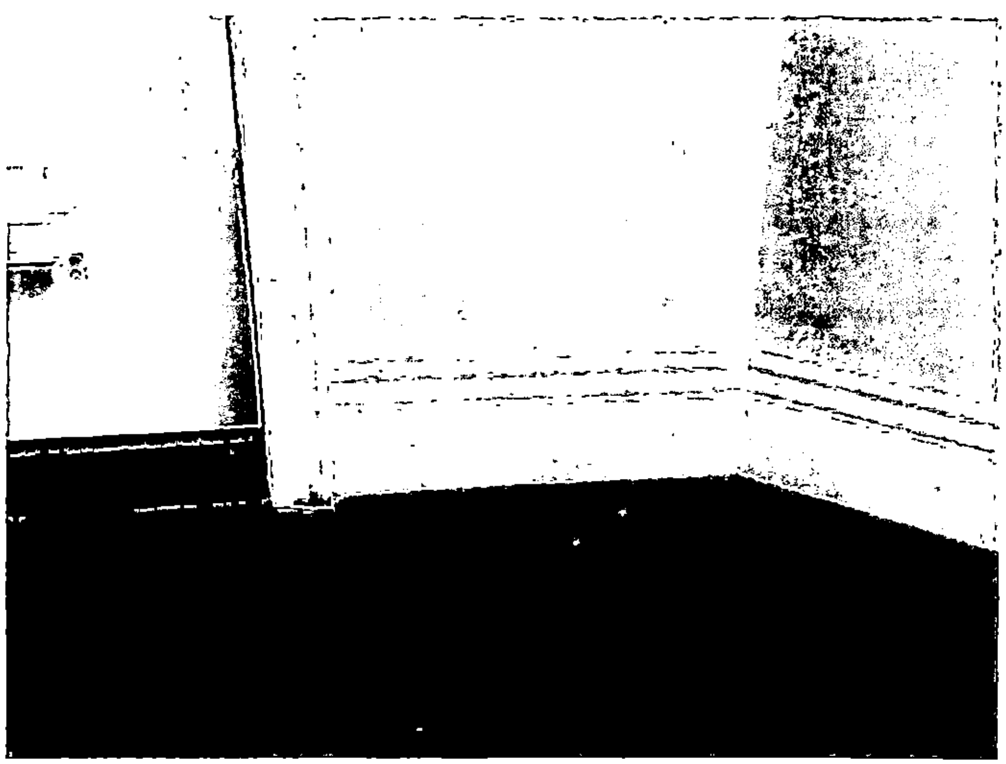
Photo 38: Isolated sleeves, used to integrate the roof membrane at service penetrations, had "collapsed" and partially sunken down into the roof assembly.

Photo 39: Voids and deterioration to the condensing units' refrigerant line were systemic throughout the areas surveyed.



Photos 40 & 41: Evidence of prior destructive testing, inboard of the courtyard terrace planters, was observed in Unit 130. Minor corrosion to portions of the metal stud framing's sill track and stud flanges was noted along with staining on the inboard side of the exterior gypsum.

Photos 42 & 43: Minor blistering and staining of the baseboard trim paint was noted inboard of some stucco clad walls at the courtyard terrace level.



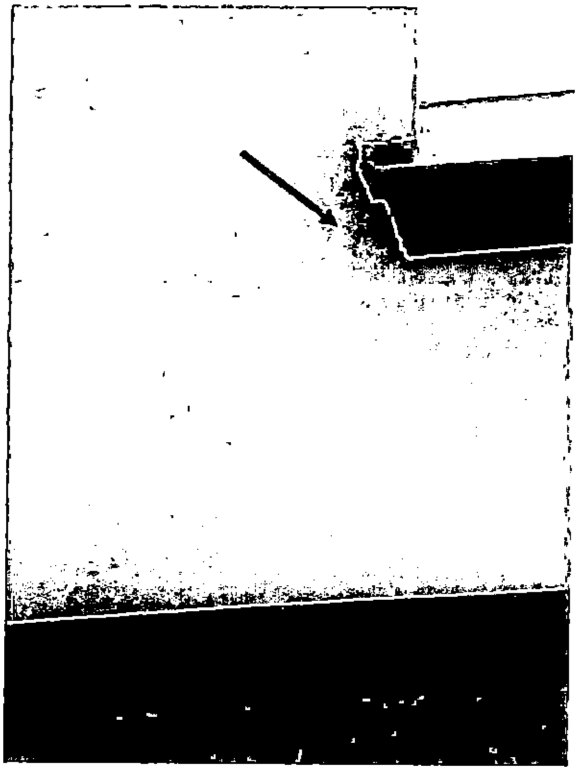


Photo 44: Example of minor cracking and separation of the interior gypsum was noted at the jamb-to-sill interface of some windows in Unit 123.

Photo 45: Example of minor cracking and separation of the interior gypsum was noted at the jamb-to-sill interface of some windows in Unit 329.

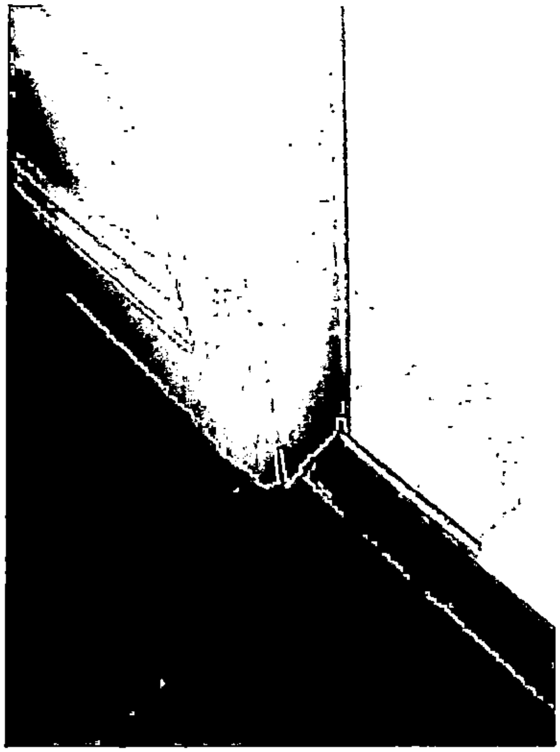
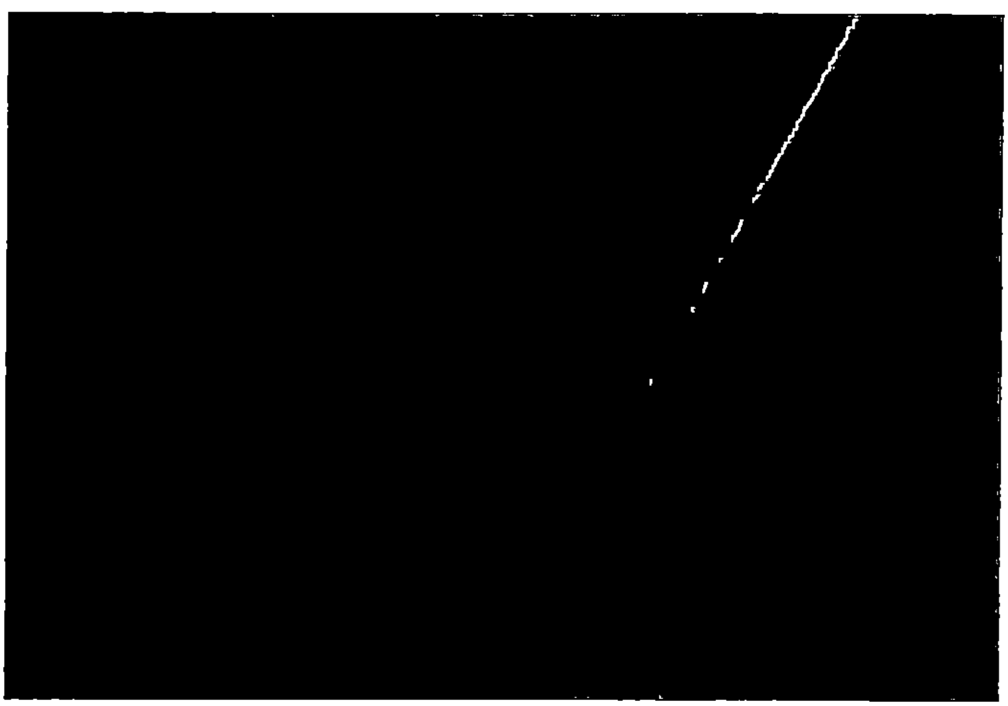


Photo 46: Example of separation of the interior wood trim and blistering of the paint near the balcony door in Unit 515.
Photo 47: Example of the small pairs of pinholes, consistent with penetrations made by moisture meters, observed along the window jambs in Unit 123. Similar conditions were noted in Unit 329.

Photo 48: Example of the staining observed along the window jambs in Unit 329.
Photo 49: Example of blistering paint at the interior sill of the window in Unit 130.

Photo 50: Example of staining observed along the interior head of the windows in Unit 130.
Photo 51: Example of staining observed along the bathroom ceiling, above the tub, in Unit 123.



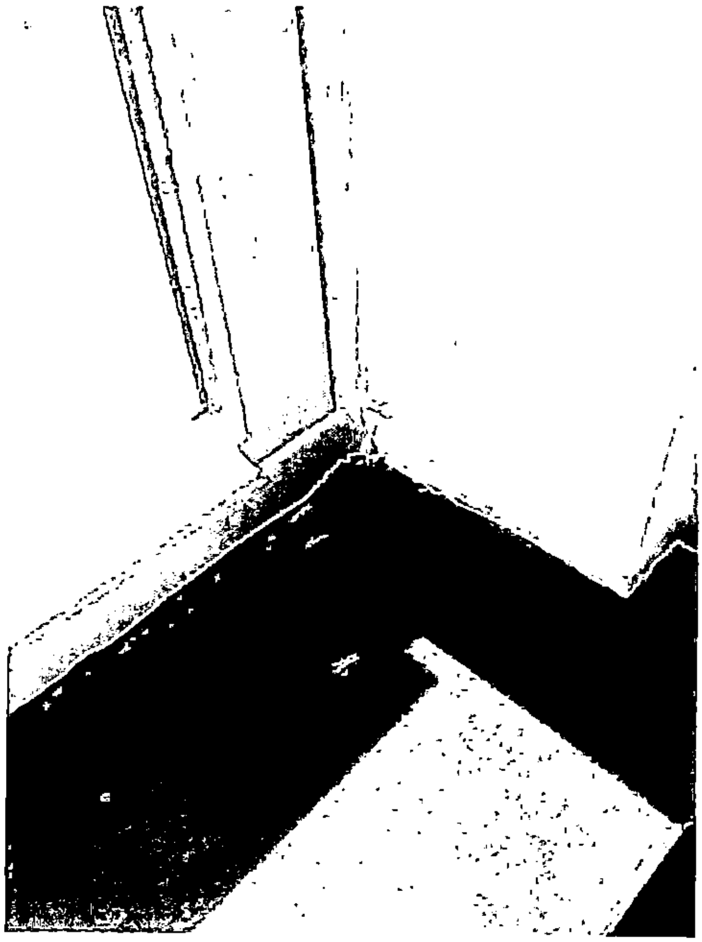


Photo 52: Deterioration of the interior wood window stool was noted inside Unit 123.

Exhibit B:

Affidavit of Emad Tadros, M.D. including:

Exhibit A:

ADESSO HOA Settlement and Release Agreement

Exhibit B:

Rescinded/Crossed out Agreement

Exhibit C:

Email thread between Plaintiff and Frank Smith

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2019-CP-40-00919

EMAD TADROS, M.D. AS TRUSTEE OF THE GRACE LIVING TRUST DATED OCTOBER 12, 2010 AS AMENDED

PLAINTIFF,

vs.

HOLDER PROPERTIES, INC., JOHN R. HOLDER, INDIVIDUALLY, ADESSO/COLUMBIA, LLC, ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION

DEFENDANTS.

AFFIDAVIT OF EMAD TADROS, M.D.

PERSONALLY, APPEARED BEFORE ME, the undersigned, Emad Tadros, MD, who after being duly sworn, deposes and says:

1. My name is Emad Tadros, M.D.
2. I reside at 13349 Caminito Mar Villa, Del Mar, San Diego County, California.
3. I am above 18 years of age.
4. I make this affidavit based on my knowledge, observations and the facts that I have alleged as the Plaintiff in this matter.
5. I am the owner and landlord of four (4) commercial units (the "units") consisting of approximately 8,500 square feet located at 601 S. Main Street, Columbia, Richland County, South Carolina 29201.
6. The units are located within a five (5) story structure known as the ADESSO Horizontal Property Regime (the "ADESSO").
7. The ADESSO includes approximately one-hundred and ten (110) condominium units in addition to my units.
8. I purchased the units in December 2014.
9. By virtue of my ownership interest in the ADESSO, I am subject to the terms and conditions of the Master Deed that created the ADESSO.
10. I am also a member of the ADESSO Homeowners' Association (the "HOA").

11. The HOA filed a lawsuit (the "lawsuit") on February 9, 2016 on behalf of all unit owners related to construction defects from the original construction of the ADESSO.

12. I, by virtue of my ownership interest in my units, had to be a party in the lawsuit.

13. The lawsuit reached a settlement on or around March 2017.

14. I was required to execute Settlement Agreements and Releases as part of the settlement of the lawsuit in May 2017.

14. The attorney representing the HOA in the lawsuit forwarded me a copy of three (3) separate Settlement Agreements and Releases for my review and execution.

15. I am attaching one (1) of the Settlement Agreement and Release that references all three (3) Settlement Agreements and Releases to my Affidavit as **Exhibit A**.

16. I had several discussions and exchanges of emails with the HOA's attorney related to my execution of the proposed Settlement Agreements and Releases.

17. I refused to execute the Settlement Agreements and Releases due to my concerns I had about the liability of the original developer and contractor that developed and built the ADESSO.

18. I am attaching to my Affidavit as **Exhibit B** a copy an agreement I executed and subsequently withdrew as an example of my concerns and disagreement with the proposed settlement agreements and releases.

19. I was led to believe, under the assurances of the HOA attorney and threats of possible lawsuits against me by the other unit owners, that I could maintain my claims against the developer and contractor that developed and built the ADESSO.

20. I am attaching an email thread to my Affidavit as **Exhibit C** of what I believe to be an example of the threats and duress used by the HOA attorney to force me to execute the Settlement Agreements and Releases.

21. The attorney for the HOA was fully aware of the issues I had with parking spots that were allocated to the exclusive use of my units pursuant to the Master Deed.

22. Furthermore, my units are subject to compliance with the City of Columbia Commercial Planning and Zoning Regulations and Ordinances.

23. The HOA attorney repeatedly assured me that my execution of the Settlement Agreements and Releases would not preclude me from pursuing the claims I have against the developer and contractor that developed and built the ADESSO.

24. The HOA attorney became aware that I refused to sign the proposed Settlement Agreements and Release because of my concerns about the stolen commercial parking spots originating from the actions and inactions of Holder Properties, Inc. and its agents.

25. When I objected to the broadness of the Settlement Agreements and Releases, the HOA attorney repeatedly assured me that the Settlement Agreements and Releases was for known and unknown construction defects only.

26. The HOA attorney repeatedly assured me that the stolen commercial parking spots were a totally isolated and irrelevant issue to the subject of the Settlement Agreements and Releases which was concerned with construction defects only.

27. The HOA attorney also advised me that the HOA would take a legal action against me for recovery of the whole settlement amount if I refused to sign his prepared Settlement Agreements and Releases for construction defects only.

28. I reluctantly executed the Settlement Agreements and Releases with the understanding that my execution of the Settlement Agreements and Release would not prejudice my claims I have against the developer and builder of the ADESSO, namely the Holder defendants named in this lawsuit.

29. I only signed the Settlement Agreements and Releases when I was assured by the HOA attorney that I could pursue a separate legal action in regard to the stolen commercial parking spots which is the case at bar.

30. I felt that I had no other choice but to execute the Settlement Agreements and Releases.

FURTHER AFFIANT SAYETH NOT.

Emad Tadros, MD

Emad Tadros, MD

SWORN to before me this 12 day of November, 2019.

Notary Public for San Diego County
My Commission Expires: Oct 7, 2020

ALYSSA M. SARDINA
COMM. #2261754
Notary Public - California
San Diego County
My Comm. Expires Oct. 7, 2022

EXHIBIT A:

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

BATES LABELED "HOLDER_000160 TO HOLDER_000182"

PRODUCED JULY 24, 2019

THIS AGREEMENT IS TO BE INDEXED IN THE GRANTEE AND GRANTOR INDICES AS RELATED TO MASTER DEED OF ADESSO HORIZONTAL PROPERTY REGIME RECORDED IN **RECORD BOOK 1392, AT PAGE 855**, AS THE SAME MAY HAVE BEEN AMENDED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ADESSO Homeowners' Association, *as controlled by the Owners since April 23, 2013*, ADESSO Horizontal Property Regime, William Durkin, individually and on behalf of all others similarly situated and Emad Tadros, M.D, as Trustee of the Grace Living Trust as owner of all retail units)

Plaintiffs,)

-vs-)

Holder Properties, Inc.; ADESSO/Columbia, LLC; ADESSO Homeowners Association, *as controlled by the Developers prior to April 23, 2013*; Niles Bolton Associates, Inc.; Browder + LeGuizamon and Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic Enterprises, Inc.; Fernandez Contractors International, Inc. d/b/a Benzach, Inc.; Commercial Building Services, Inc.; Capitol City Custom Iron Works & Fence, LLC; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; SDI Solutions, LLC d/b/a I-Sys Corporation; Jamco Doors; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Taylor Brothers Construction Company, Inc.; Winston Steel LLC d/b/a Winston Steel & Stair Co.; Andersen Windows, Inc.; Carlisle Construction Materials Incorporated; Silver Line Building Products, LLC; GrayStone of)

Case No. 3:16-cv-710-JFA

Book 2245-496
2017069754 09/20/2017 10:52:55:923 Notice
Fee: $58.00 County Tax: $0.00 State Tax: $0.00
2017069754 John T. Hopkins II Richland County R.O.D

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC., STO Corp., Isidro Meza and Towers Paint Contractors, Inc.,

Defendants.

Commercial Building Services, Inc.,

Third-Party Plaintiff,

vs.

Capital Group, LLC and Will Whitaker,

Third-Party Defendants.

Artistic Enterprises, Inc.,

Third-Party Plaintiff,

vs.

Benito Galicia,

Third-Party Defendant.

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "<u>Agreement</u>" or the "<u>Settlement Agreement</u>") is made and entered into as of this ___ day of _______, 2017 by and between Plaintiffs Adesso Homeowners Association, Inc. and Adesso Horizontal Property Regime (collectively, "<u>Adesso</u>"), and Defendants, Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder; Drake/Adesso, LLC, Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC; Niles Bolton Associates, Inc.; Hussey, Gay, Bell & DeYoung, Inc., Consulting Engineers; Jordan & Skala Engineers, Inc.; Key Construction, Inc.; Ace Glass Company, Inc.; Advanced Door Systems, Inc.; All-South Electrical Constructors, Inc.; Aquarian Pools of Columbia, Inc.; Artistic

Enterprises, Inc.; Commercial Building Services, Inc.; Flooring Services, Inc.; Gill Plumbing Company; Guardian Fence Suppliers of SC, Inc.; Hester Drywall, Inc.; Holland Roofing, Inc.; JR Hobbs Co.; Loveless Commercial Contracting, Inc.; Reliance Interiors, Inc.; Southern Fireproofing Company, Inc.; Southern Vistas, Inc.; SRS Concrete Finishing; Stafford Consulting Engineers, Inc.; Andersen Windows, Inc.; Carlisle Construction Materials Inc.; Silver Line Building Products, LLC; GrayStone of Florida, Inc.; Dryvit Systems, Inc., Structural Preservation Systems, LLC, STO Corp., Towers Paint Contractors, Inc., Capital Group, LLC and Will Whitaker (collectively, the "**Settling Defendants**"). Adesso and Settling Defendants are hereinafter collectively referred to as "**Settling Parties.**"

RECITALS

WHEREAS, Adesso is a corporation lawfully doing business in the State of South Carolina and is the entity charged with and responsible for maintenance, repair, and upkeep of the common areas and limited common areas, as well as exterior and related elements of the residential and commercial units known as Adesso, located at 601 Main Street in Columbia, South Carolina ("**Property**"); and

WHEREAS, Adesso affirms it is the sole, proper party to settle this matter as to all claims for damages to the common or limited common areas of the Property or arising from defective conditions in the common or limited common areas and, additionally, to resolve all other claims that have been or could be made by Adesso against the Settling Defendants; and

WHEREAS, the Settling Defendants provided services or materials for the planning, design, development, construction, marketing, sale, management, control, maintenance and/or repair of the Property; and

WHEREAS, this action relates to alleged improper design and construction defects and deficiencies at the Property as well as alleged improper marketing, management, control and sale of the Property, which are the subject of litigation now pending in the above styled action (the "**<u>Action</u>**"); and

WHEREAS, Adesso stated claims against all Settling Defendants in the Action, except for Capital Group, LLC and Will Whitaker; and

WHEREAS, William Durkin has asserted claims against Settling Defendants, except for Capital Group, LLC and Will Whitaker, on behalf of himself and other similarly situated residents at the Property (the "Putative Class Action Claims");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are executing that specific Class Action Settlement Agreement and Release with Plaintiff William Durkin, individually, and on behalf of all others similarly situated (the residential unit owners at Adesso);

WHEREAS, Emad Tadros, M.D asserted claims against Settling Defendants, except for Capital Group, LLC and Will Whitaker, as Trustee of the Grace Living Trust as owner of all retail units at the Property (the "Commercial Claims");

WHEREAS, contemporaneous with the execution of this Agreement, the Settling Defendants are also executing that particular Commercial Claims Settlement Agreement and Release with Emad Tadros, M.D., as Trustee of the Grace Living Trust, as owner of all retail units at Adesso; and

WHEREAS, this Agreement, together with the Commercial Claims Settlement Agreement and Release and the Class Action Settlement Agreement and Release are intended, collectively, to resolve all claims arising out of the captioned action and are each dependent upon the execution and approval of the others; such that if any one of the three Agreements is not executed, or not approved, or if a Settling Defendant requires the right to withdraw from the Class Action Settlement because of the opt-out provisions, then each Settling Defendant has the unilateral right to withdraw from any or all of the Agreements.

WHEREAS, some of the Settling Defendants stated claims against some of the other Settling Defendants in the Action; and

WHEREAS, the Settling Parties each deny any and all claims of liability, wrongdoing or impropriety in any way connected with this matter; and

WHEREAS, the Settling Parties have agreed to enter this Agreement to bring about the full, complete, and final resolution of all matters between them regarding the Property.

NOW, THEREFORE, in consideration of the performance of the covenants and agreements herein recited and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Settling Parties agree as follows:

ARTICLE I
INCORPORATION OF RECITALS

1. The above Recitals are incorporated and made a part of this Settlement Agreement; provided, however, in the event of a conflict between the recitals and the provisions of the following Articles, the provisions of the Articles shall control.

ARTICLE II
PAYMENT

1. In consideration of the mutual releases, the dismissal described herein, and the other obligations set forth herein, the total settlement amount of $7,505,000.00 shall be paid to Adesso, which sum shall be comprised as follows: a) a cash amount of $7,305,000.00; and b) roofing materials from Carlisle Construction Materials, Inc. (Carlisle) valued at $200,000.00 to

be supplied to Adesso (collectively the "**Settlement Amount**"). Of the foregoing cash amount, $55,000.00 has been allocated to fund the settlement of the Putative Class Action Claims and $2,000.00 has been allocated to fund the settlement of the Commercial Claims. These settlements will be entered contemporaneously with this Agreement.

2. Payments to Adesso comprising the above cash amount of $7,305,000.00 shall be made payable to "Richardson Plowden & Robinson Escrow Account," and delivered to Franklin J. Smith Jr., Esq. at PO Drawer 7788 Columbia, SC 29202, within thirty (30) days of the Preliminary Order of Approval regarding the Putative Class. Payments shall be paid by or on behalf of the Settling Defendants in the following amounts on a several basis, each such Settling Defendant being responsible only for its own respective payment as set forth below and not jointly or one for the other. Further, these payments shall be the total amounts which shall ever be required as payment by or on behalf of the Settling Defendants in connection with the releases herein, and regardless of whether Adesso fulfills its obligation to indemnify and hold harmless the Settling Defendants as provided for in Paragraph V of this Agreement.

a. By Illinois Union Insurance Company ("ILU") under its primary and excess wrap policies (Policy Nos. G22025880001 (Primary); G22026057001 (Excess)), on behalf of itself, Adesso/Columbia, Inc., Key Construction, Inc., Holder Properties, Inc., and all other insureds/enrollees in said policies, including but not limited to Reliance Interiors, Inc. and Gill Plumbing Company: $4,100,000.00.

b. On behalf of Holder Properties, Inc. and all other insureds - by Hartford Underwriters Insurance Co. - $775,000.00; by Liberty Mutual Insurance- $75,000.00; by Sussex Insurance- $100,000.00.

c. By Holder Properties, Inc.; ADESSO/Columbia, LLC; John R. Holder;

Drake/Adesso, LLC; Holder Adesso, LLC; JRH Adesso, LLC; JRH, LLC and their respective affiliates, subsidiaries, owners, agents, officers, directors, heirs, successors and assigns - $25,000.00.

d. On behalf of Key Construction – by XL Catlin - $825,000.00.

e. Structural Preservation Systems - $125,000.00.

f. Tower Paint Contractors - $25,000.00.

g. On behalf of Commercial Building Services, Inc. – by the Hartford Fire Insurance Company - $6,456.00; American Southern Insurance Company - $20,680.00; Main Street America Group - $8,112.00; and Peerless Indemnity Insurance Company (Liberty Mutual) - $44,752.00.

h. On behalf of Capital Group, LLC – by Certain Underwriters at Lloyd's, London, Subscribing to Certificate No. ART002217 - $40,000.00.

i. On behalf of Will Whitaker – by American Southern Insurance Company - $5,000.00.

j. Andersen Windows, Inc. and Silver Line Building Products LLC - $75,000.00.

k. Niles Bolton Associates, Inc. - $500,000.00.

l. Hussey, Gay, Bell & DeYoung, Inc. - $5,000.00.

m. Jordan & Skala Engineers, Inc. - $95,000.00.

n. Ace Glass Company, Inc. - $25,000.00.

o. Advanced Door Systems, Inc. - $35,000.00.

p. Artistic Enterprises, Inc. - $45,000.00.

q. Flooring Services, Inc. - $45,000.00.

r. Guardian Fence - $25,000.00.

s. Hester Drywall, Inc. - $45,000.00 by its insurers: Berkeley Southeast Insurance Group; Selective Insurance Company of America; Liberty Mutual Commercial Insurance; and Penn National Insurance.

t. Loveless Commercial Contracting, Inc. - $25,000.00 by its insurers: Westfield Insurance; Berkley Insurance; and BITCO.

u. Southern Vistas, Inc. - $60,000.00 by its insurers: Penn National Insurance; State Auto Insurance; and Harleysville Insurance.

v. SRS Concrete Finishing - $40,000.00.

w. Stafford Consulting Engineers, Inc. - $10,000.00.

x. Graystone of Florida, Inc. - $50,000.00.

y. Dryvit Systems, Inc. - $25,000.00.

z. STO Corp. - $25,000.00.

aa. Defendant, Carlisle shall provide all roofing related materials necessary to perform the Roof scope of work in Section IV of Applied Building Sciences' September 22, 2016 Scope of Repair document including but not limited to all roof membrane, insulation, edge metal and protection walk pad materials, at no cost to Adesso. And, Carlisle agrees to deliver all materials to the site upon request of Adesso or its designated representative, at no cost to Adesso. For settlement purposes, these materials are valued at $200,000.00.

<u>ARTICLE III</u>
RELEASE BETWEEN ADESSO and SETTLING DEFENDANTS

1. In consideration of the Settlement Amount, and the obligations and releases set forth herein, the receipt and sufficiency of which is hereby acknowledged, Adesso does for itself, its successors, heirs, assigns, subsidiary organizations, affiliates, members, purchasers,

subsequent purchasers, partners, attorneys, agents, and any other entity or person who could claim by or through them, hereby, knowingly and voluntarily, remise, release, acquit, satisfy, and forever discharge Settling Defendants--which term for purposes of this release provision includes any related entities or persons, and all of Settling Defendants' respective owners, subsequent purchasers, family members, spouses, employees, employers, partners, joint venturers, representatives, administrators, heirs, beneficiaries, executors, lenders, creditors, mortgagors, experts, attorneys, insurers, sureties, and their predecessors, successors, assigns, sureties, past, present and future parent companies, divisions, subsidiaries, affiliates, related corporations, surviving corporations, dissolved corporations, stockholders, directors, and officers--from any and all manner of debts, accounting, bonds, express or implied warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, cross claims, counterclaims, demands, and causes of action of any nature whatsoever, whether at law, in equity or by statute, either now accrued or hereafter maturing and whether known or unknown, which Adesso now has or hereafter can, shall, or may have by reason of any matter, cause or thing, in connection with, arising out of, or relating in any manner to:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or otherwise installed or applied at the Property;

c. the Action and any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted therein; and

d. except as set forth in Paragraph VII.8 below, any and all costs, expenses and attorney's fees incurred by Adesso in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

2. Adesso agrees to execute all appropriate documents and to file, or cause to be executed and filed, all such pleadings and will take all such action, as Settling Defendants may reasonably request from time to time in order to effectuate this full and complete settlement agreement and release.

3. Adesso agrees to dismiss with prejudice all claims against Settling Defendants in the Action within 10 days of the execution of this Agreement and receipt of all settlement funds and the entry of a final order by the Court approving the class action settlement.

<u>ARTICLE IV</u>
ADDITIONAL RELEASES

1. <u>As Between the Settling Defendants</u>. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Settling Defendants do hereby release, acquit and forever discharge each other and their respective present, former and future owners, members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, predecessors, successors, administrators, executors, heirs, trustees, assigns, associated, subsidiary and affiliated entities, insurers, sureties, and any and all other related persons or entities from any and all manner of debts, accounting, bonds, express or implied warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, cross claims, counterclaims, demands, and causes of action of any nature whatsoever, whether at law, in equity or by statute, whether known or

unknown, asserted or unasserted, that each of them may have, ever had, or now have against any other Settling Defendant and that were or could have been asserted in the Action concerning, arising out of, or relating in any manner to:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or any materials installed or otherwise applied at the Property; and

c. except as set forth in Paragraph VII.8. below, any and all costs, expenses and attorney's fees incurred by any Settling Defendant in connection with or relating in any manner to the Action, the Property, this Agreement, the Putative Class Action, or the Commercial Claims.

2. <u>As Between Settling Parties and Contributing Insurers</u>. In consideration of the Settlement Amount and the obligations and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged, and effective immediately upon the payment by each contributing insurer identified in Article II above of its respective settlement contribution as set forth in Article II above, and its payment of all litigation fees and expenses to which it is or was previously obligated or committed on behalf of its insured or additional insureds in connection with the captioned action, the Settling Parties, on their own behalf and on behalf of their respective present, former and future owners, members, partners, managers, directors, officers, shareholders, names, investors, employees, agents, attorneys, predecessors, successors, administrators, executors, heirs, trustees, assigns, associated, subsidiary and affiliated entities, insurers, and any and all other persons or entities on behalf of whom they are empowered to

release claims, hereby forever release and discharge each such contributing insurer, and each of their respective present, former and future members, personal representatives, partners, managers, directors, officers, shareholders, employees, agents, successors, predecessors, administrators, executors, trustees, assigns, attorneys, and associated, subsidiary and affiliated entities (hereinafter, collectively referred to as the "Insurer Releasees") from and against any and all causes of action, disputes, suits, debts, liabilities, dues, sums of money, accounts, bonds, reckonings, specialties, covenants, contracts, agreements, judgments, controversies, promises, claims (including, but not limited to claims for compensatory, punitive, exemplary, extra-contractual or statutory damages based upon any allegations of bad faith, unfair claims practices, unfair settlement practices, or other act or failure to act in connection with the investigation, handling, adjustment, litigation or settlement of any claim released hereunder), assessments and demands of any nature whatsoever, in law or equity, whether contractual, common law, statutory, federal, state, local or otherwise, whether known or unknown, asserted or unasserted, that the Settling Parties, and each of them had or now have against the Insurer Releasees, and each of them, relating to or arising from the Action and:

a. any work or services performed by or on behalf of the Settling Defendants, or any of them, in connection with, arising out of, or relating in any manner to the Property;

b. any materials provided by or on behalf of the Settling Defendants, or any of them, or any materials otherwise installed or applied at the Property;

c. any and all claims and allegations, setoffs or cross claims or counterclaims that were or could have been asserted in the Action; and