IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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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. II

T. JEFF GOODWYN, JR. (SC Bar #:73789)
GOODWYN LAW FIRM, LLC
2309 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
JGoodwyn@Goodwynlaw.com
(803) 251-4517
(803) 251-4527 FACSIMILE
Attorney for Appellant

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EXHIBIT A (part B):

ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE

BATES LABELED "HOLDER_000160 TO HOLDER_000182"

PRODUCED JULY 24, 2019

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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

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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,

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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

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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

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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: _____

Its: Board Member

Darrell A Terry

Holder Properties, Inc.

By: _____

Its: _____

ADESSO/Columbia, LLC

By: _____

Its: _____

Drake/Adesso, LLC

By: _____

Its: _____

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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

Memo in Opposition 000064
HOLDER_000181

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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: _____

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EXHIBIT B:

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: 503-925-0156 **Pages:** 1+2

Phone: 503-779-0016 **Date:**

Re: **cc:**

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

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Please Cancel

I do agree with this agreement

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT

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

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Please Cancel
Disagree with this agreement
Thank you

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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:

Its: Michael Anastasion
Adesso Board Secretary

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

5/5/17.

EXHIBIT C:

EMAIL THREAD

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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."**

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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>

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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.**

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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

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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

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Exhibit C:

Affidavit of Michael Parades including:

Exhibit A:

Parades' Resume

Exhibit B:

ADESSO Master Deed

Exhibit C:

Notice provision of Settlement Agreement

Exhibit D:

Extracts of HOA Meeting minutes and Plaintiff's February 15, 2017 letter to HOA Board and Management

Exhibit E:

Emails between Frank Smith and Plaintiff

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STATE OF SOUTH CAROLINA	}	**IN THE COURT OF COMMON PLEASE**
	}	**FIFTH JUDICIAL CIRCUIT**
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	}	**AFFIDAVIT OF MICHAEL R. PARADES, PCAM**
	}	
v.	}	
	}	
Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, And ADESSO Homeowners' Association,	}	
	}	
Defendants.	}	

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn, deposes and states:

1. My name is Michael R. Parades. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience, training and expertise in the field of community association governance, community association management and affirmative duties of a Board of Directors with regard to the operation and management of a community association and the maintenance, repair and replacement of common components of the General and Limited Common Elements. A copy of my Resume, marked as **Exhibit A** is attached hereto and incorporated by reference as part of this Affidavit.

2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S in Business Administration, Summa Cum Laude, 1979.

3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of a Community Association Board of Directors. I have been qualified by the South Carolina State courts

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as an expert witness in the field of community association management, community association governance and affirmative duties of Community Association Boards of Directors. Based on my work experience and the fact that I am a retired Certified Public Accountant (CPA) with over 30 years of accounting experience related to community associations, I could also be qualified as an expert forensic accountant.

4. I am not a party to the above entitled action, nor am I related to any of the above captioned parties.

5. This Affidavit is submitted in support of the Plaintiffs Opposition to Defendant's Motion for Summary Judgment by Holder Defendants.

PROPERTY DESCRIPTION

The Adesso Horizontal Property Regime, the Regime, was created by the recordation of the Master Deed January 11, 2008 in accordance with the South Carolina Horizontal Property Regime Act, as amended, marked as **Exhibit B.** The Adesso HOA was also incorporated in accordance with the SC Non-Profit Corporation Act on January 11, 2008.

The Adesso HOA is located at 601 N. Main St and consists of 110 residential units in five stories over ground level commercial space consisting of 8,139 sf and a parking area with 225 parking spaces, of which 17 are exclusive for the Commercial space.

The Master Deed identified defendants ADESSO/Columbia, LLC as the Owner and Holder Properties, Inc. as the Developer of the ADESSO and was signed by John R. Holder as the sole member of each.

As noted in Article XXXIV MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSOR AND ASSIGNS, AND SUBSEQUENT 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 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 all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representative and successors and assigns.***

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DOCUMENTS REVIEWED

1. Master Deed with all Exhibits
2. Amendments #1 through #4 to the Master Deed
3. Management Agreements:
    a. Between Adesso HOA and Holder Properties Inc (HPI): 2/1/08 to 4/29/16
    b. I have been advised McCabe Trotter & Beverly provided Management from 4/29/16 to 6/1/16 but have not seen a management agreement between Adesso HOA and McCabe Trotter & Beverly.
    c. Between Adesso HOA and Cedar Management Group: 6/1/16 to 12/31/16 as reflected in Board meeting minutes. I have not seen the management agreement.
    d. Between Adesso HOA and CMM Realty, Inc. from 2/1/17 to present (series of one year contracts)
4. Budgets for 2016, through 2020 FYs reflecting Residential Costs and Commercial Costs.
5. Appraisal Report by George Knight of REAC as of December 5, 2014.
6. Complaint filed July 16, 2020 in State of South Carolina, County of Richland titled

    Darrell Terry, individually, on behalf of all others similarly situated, and derivatively on behalf of Adesso Homeowners Association a/k/a Adesso Horizontal Property Regime,
    Plaintiff

    vs.

    Adesso Homeowners Association a/k/a Adesso Horizontal Property Regime, CMM Realty, Inc., CMM Real Estate LLC, Michael Munson, Margaret Munson, Synovus Bank, Berry Campbell, W. Scott Barnes, Lite Nartey, Sharon von Fange, and Victoria Porter
    Defendants

7. Memo in Support of Motion for Summary Judgment by Holder Defendants.

8. Amended Complaint **Civil Action No. 2019-CP-40-00919** titled:

    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

Holder Properties, Inc.; ADESSO Columbia, LLC et al., Defendant(s)

This case was subsequently transferred to

The United States District Court
For the State of South Carolina
Columbia Division
Case No.3:16-cv-710-JFA

It should be noted that the owner of the Commercial units, Emad Tadros, M.D., was included as a named plaintiff without his permission or knowledge.

10. Plaintiff's responses to Request for Production and Interrogatories

11. **ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE**, signed May 5, 2017; **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**, signed May 5, 2017; **COMMERCIAL CLAIMS SETTLEMENT AGREEMENT AND RELEASE**, signed May 30, 2017;
INDEMNIFICATION AGREEMENT BETWEEN Adesso HOA, Inc and Adesso Regime and Emad Tadros, M.D., signed May 30, 2017

12. Preliminary Visual Evaluation Adesso Condominiums performed by Applied Building Sciences, Inc. (ABS). Observation performed August 11, 2015 with report dated January 26, 2016.

13. Forensic Investigation Adesso Condominiums performed by ABS, report dated September 26, 2016.

14. Estimate for Repairs needed at Adesso Condominiums prepared by Cooper River Contracting (CRC) based on scope of work prepared by ABS. Estimate dated September 26, 2016

15. All Board and Annual Meeting minutes produced from April 24, 2012 Annual Meeting through Board meeting December 9, 2019.

16. Defendant's Motion for Support of its Motion for Summary Judgment.

17. Defendant's production of 3,824 pages of documents which included meeting minutes from 2012 through 12/31/19.

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9. Original Construction Complaint filed February 9, 2016 in State of South Carolina, County of Richland, Civil Action **2016-CP-40-00844 titled**

ADESSO Homeowners' Association, et al, Plaintiff(s)
vs.

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18. Deposition of Darrell A. Terry, PHD, Owner and former Board Member

19. Deposition of Rachel Bailey, City of Columbia Zoning Administrator

20. Various correspondence and Commercial Leases.

RELEVANT ISSUES

Plaintiff purchased the Commercial Units on December 5, 2014, which specifically included 17 parking spaces that were, in accordance with the Master Deed, exclusively controlled by the Commercial Unit owner. The **HOLDER DEFENDANTS** through deceptive and fraudulent actions have worked to control the number of spaces available to the Commercial Owner. The tactics used are outlined in the complaint and include varying Commercial space when negotiating with City of Columbia zoning authorities to change parking space requirement for the commercial spaces, changing signage to imply the spaces were for Guest parking and NOT restricted to commercial/retail parking, and requiring the Commercial Owner to pay rent for his parking spaces, etc.

In addition, due to the serious deficiencies in the building, the Commercial Owner has had difficulty keeping the retail spaces occupied due to water intrusion that continues to present. Plaintiff's complaints regarding lack of parking and water intrusion into retail spaces leading to lost rentals and other costs have fallen on deaf ears.

During my review of the various documents listed above, it became obvious that the building deficiencies have existed from the time the Developer (**HOLDER DEFENDANTS**) began construction and continue to present. In addition to being responsible for the planning, design, development, construction, marketing and sales of the ADESSO units, the **HOLDER DEFENDANTS** also include a wholly owned subsidiary company (**HPI**) that was engaged as the management company for ADESSO HOA. This entity was responsible for the management, control, maintenance and repair of the ADESSO HOA in accordance with the provisions of the Master Deed under the direction of the Board, which was controlled by the **HOLDER DEFENDANTS.**

In April 2013, Holder turned over control of ADESSO HOA to the Unit owners. While Holder turned over control of the Board, he still effectively controlled the ADESSO HOA by virtue of being the management agent through his wholly owned subsidiary **Holder Properties, Inc. (HPI).** At the April 12, 2016 Board Meeting it was reported that HPI in response to a termination letter from ADESSO HOA counsel had announced it was terminating the management contract April 29, 2016. Further, it was

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announced that Cedar Management Group (CPG) was in the process of taking over the management function June 1, 2016.

As background for the likely reason the management agreement was being terminated by HPI, the building was still experiencing significant water intrusion. While there are no Board minutes documenting the decision at some point in mid 2015 the ADESSO HOA Owner Board engaged Applied Building Sciences (ABS) to perform a visual inspection of the building. The inspection was done in August 2015 and ABS issued their report January 2016. There is no doubt the management agent, HPI, provided a copy of the report to **HOLDER**. The ABS report no doubt led to the termination letter and resignation of HPI as noted above. Management responsibilities were temporarily assumed by the ADESSO HOA legal counsel, McCabe Trotter and Beverly, until the new Management Company, Cedar Management Group (CMG) started June 1, 2016.

Based on the Visual Inspection Report, the ADESSO HOA Board engaged ABS to do a forensic inspection of the building. Again, there is NO Board meeting minutes wherein the Board authorized engaging ABS to perform a forensic inspection. ABS performed the forensic inspection and issued their report in September 2016, which included a scope of work that could be used to solicit a bid for the necessary repairs.

The ABS scope of repairs was provided to Cooper River Contracting (CRC), a well respected General Contractor. **CRC's estimate to complete all repairs set forth in the ABS scope of work was $16,442,059.**

Based on the documents reviewed, it appears the ADESSO HOA Board made the decision, in early 2016, to take legal action against the **HOLDER DEFENDANTS** and engaged Frank Smith, Jr. Esq to proceed with legal action. As with the decision to engage ABS for the preliminary inspection, there is no Board meeting minutes reflecting approval by the Board to engage Mr. Smith. It is interesting that a lawsuit was filed by Mr. Smith on February 9, 2016 five months before it was announced to the HOA members he had been hired. Again there is no Board meeting minutes reflecting Board approval to file a lawsuit. Based on information in the ABS Forensic Investigation Report dated September 22, 2016, it appears the Board approved engaging ABS but there are NO Board meeting minutes authorizing such action.

It is unclear why Mr. Smith and the Board chose to file a Civil Action in Richland County that was ultimately moved to SC Federal District Court. A cursory review of the Master Deed very clearly

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provides that should there be a dispute such as exists, the dispute **MUST and CAN ONLY be resolved through BINDING ARBITRATION; see annotated portions of Exhibit B.**

It should be noted that based on the provisions of the Master Deed, the Board does **NOT** have the authority to file a construction defect lawsuit, more on this later under Opinions.

At the January 23, 2017 Board meeting, Frank Smith was present and explained the mediation process. **There are no minutes of a Board meeting wherein the Board formally approved mediation.** At the March 13, 2017 Board meeting, Frank Smith announced a Settlement had been reached whereby the **HOLDER DEFENDANTS** would pay $7,505,000. After payment of attorney fees and legal costs, the ADESSO HOA netted approximately $4,800,000. **Again, there are NO Board minutes reflecting Board approval to mediate the claim or approving a settlement.**

At the April 10, 2017 Board Meeting, a bid from HOA counsel Walt Todd to research the questions and concerns of Dr. Tadros was approved, see **Exhibit D**.

At the May 8, 2017 Board meeting, it was noted that Class Action Settlement Agreement and Release had been signed on May 5, 2017 by William Durkin on behalf of the class and the Adesso HOA Settlement Agreement and Release had been sighed on May 5, 2017 by Darrell Terry, Board Member. Mrs. Page, Board President noted there was no motion needed to approve signing the Settlement as it had already been approved. **NO minutes evidencing approval have been produced.**

Also at the May 8th meeting," **Mr. Munson read an email from Walt Todd (HOA Attorney) regarding his initial research into Dr. Tadros' stated concerns which he listed in an email to the board, dated February 15, 2017. The board agreed that prior to moving forward with Mr. Todd's thoughts/suggestions, the HOA first needed to address the more pressing matter at hand; Mr. Tadros signature on the final litigation documents."** See **Exhibit D**;

This can only be called extortion. I will address further under Opinions.

I am further advised that four years later **ESSENTIALLY NO REPAIR WORK HAS BEEN DONE.**

Recently an owner meeting was held to vote on a special assessment of $11,000,000 to combine with the lawsuit proceeds and move forward with repairs. The proposed assessment was not approved. It is interesting to note that had the $11,000,000 been approved and combined with cash on hand there would

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be $16,000,000 available for repair work. As noted earlier, the quote in 2017 from Cooper River Construction to make all repairs was $16,442,000.

In summary, Plaintiff still is missing parking spaces that in accordance with the Master Deed he controls as well as additional on street parking mandated by the City of Columbia. The lack of parking impacts the business of Plaintiff's lessees. Having read the deposition of Rachel Bailey, City of Columbia Zoning Administrator, it is very clear that the **HOLDER DEFENDANTS** misstated the square footage of the commercial property in order to impact the number of spaces required in the parking garage and surrounding streets needed to satisfy zoning requirements. Even though they clearly knew the square footage of the commercial property was 8,139 sf, they told the zoning department it was only 4,675sf. There is also confusion as to how many handicap spaces are required and where those spaces should be located. Presently, the only three handicap spaces are part of the 17 commercial spaces in the garage. This creates another restriction on commercial parking.

In her letter to Plaintiff's counsel dated March 13, 2018, Ms. Bailey states there are NO zoning violations even though it is unclear how many should have been provided per code and where handicap spaces should be located.

Plaintiff still has a large unleasable space due to severe water intrusion and two other spaces that are rented but continue to have water intrusion. Finally, Plaintiff's monthly assessments appear to be too high based on provisions of the Master Deed. The Plaintiff has made numerous efforts to get his issues addressed since early 2015 with little success. His last resort was to file the current action.
In response to his suit against Defendants, the Defendants have filed a Motion for Summary Judgment alleging Plaintiff signed a release absolving Defendants of any liability.

FACTUAL OPINIONS

Defendant argues in their Memo that because Plaintiff signed the Commercial Claims Settlement and Release related to the Construction Defect Lawsuit, Defendant is barred from any further claims against Defendant. **It is my professional opinion is the problem with Defendant's argument is that all of the Settlement Agreements are invalid because filing the lawsuit was an ILLEGAL ULTRA VIRES act by the Board of Directors.**

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The Master Deed, **Exhibit B** is the controlling document the ADESSO HOA. It sets forth the duties, rights and obligations for all parties including the Developer, the HOA, the Board and the Owners. The Bylaws set forth how the HOA will operate

Exhibit B addresses in several sections the issue of Mandatory Arbitration in lieu of litigation. Specifically:

1. The Cover Sheet of the Master Deed has the following language in all caps and bold at the top and bottom of the cover sheet:

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT.

2. Section IV Arbitration Agreement of the Master Deed reads as follows:

> **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 of assignee of any such persons or entities, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION BEFORE A PANEL OF THREE ARBITRATORS PUSUANT 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 on one forum. NO CLAIM OR CAUSE OF ACTION MAY BE ASSERTED THAT WOULD BE BARRED BY THE STATUTE OF LIMITATIONS OR THE STATUTE OF REPOSE.**

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The last paragraph of this section reads as follows:

THE GRANTOR, DEVELOPER, CONTRACTOR, ARCHITECT, THE ASSOCIATION AND THE INDIVIDUA UNIT OWNERS EXPRESSLY WAIVE ALL RESORT TO TRIAL BY JURY OF ANY AND ALL ISSUES OTHERWISE TO TRIABLE.

3. Section XXXVI.C Reads:

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 South Carolina and agree(s) that any action concerning 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....**

4. Section XXXVI.D Reads:

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

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(4) THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTOR TO MAKE THE DECLARATIONS SET FORTH HEREIN.

PROFESSIONAL OPINIONS

1. There is no question that the legal action resulting in a settlement should be **VACATED** due to the Board having no authority to initiate legal action. It was an **ULTRA VIRES** action. The SC Supreme Court ruled in Fisher, etal vs. Shipyard Village Council of Co-Owners, Inc. **"409 SC164 2nd 121 S.C. App. 2014"**

   "A corporation's actions taken within the scope of the powers granted it are considered intra vires acts; acts beyond the scope of its powers, however, are ultra vires acts. The business judgment rule applies to intra vires acts of the corporation, but not to ultra vires acts. In other words, while the business judgment rule protects a corporation's exercise of its best judgment when deciding between viable options in a given business-related situation, the business judgment rule is not a cloak that protects a corporation from a violation of its own bylaws."

2. Defendant's Motion for Summary Judgment should be **VACATED** as it is based on Settlement Agreements that should be **VACATED** due to being obtained through **ULTRA VIRES** action by the ADESSO HOA Board and its legal counsel.

3. The Commercial Claims Settlement Agreement and Release should also be **VACATED** as it was obtained fraudulently. The Class counsel should have known that Plaintiff always had the right to opt out of the proposed settlement see **Exhibit C**. Per Plaintiff, the time he heard about a lawsuit and settlement was when he was presented with the Claims Settlement Agreement and Release in early May 2017. This raises the question of whether Class Counsel ever sent the required **Notice** to persons on the Class list. The question is answered by the deposition of Darrell A. Terry, PHD on December 10, 2019, item #20.. It should be noted that Dr. Terry was the Board Member who signed the Adesso HOA Settlement Agreement and Release.

4. Even more incredulous, **DEFENDANT HOLDER** knew the HOA could not sue because he wrote the Master Deed and signed it as the sole member of each of the **HOLDER DEFENDANTS**, see signature page **Exhibit B** yet said nothing.

Article XXXIV " MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSORS AND ASSIGNS, AND SUBSEQUENT CO-OWNER" creates an affirmative obligation that

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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, it successors and assigns, and upon all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representatives, and successors and assigns.

5. Having read all of the minutes produced by ADESSO HOA, it appears the Board was trying to keep owners from knowing what was going on until the very end. Several major actions do not have appeared to have been properly approved as evidenced in the Board meeting minutes. The major actions included:
    a) 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. No mention of a report being received.
    b) Engaging Frank Smith to represent ADESSO HOA and file a lawsuit against Holder Properties, etal
    c) Authorizing Frank Smith to proceed with filing a lawsuit against Holder Properties, etal
    d) Hiring ABS to perform a forensic investigation to identify all deficiencies in the building for the lawsuit. ABS report was issued in September 5 months after the lawsuit was filed.
    e) Approving mediation in early 2017.
    f) Approving proposed settlement in March 2017.

While reading the minutes, I noted occasional reference to Executive session minutes around the same time frame as actions noted above. I suspect the Board was discussing and approving the above actions in Executive session to keep owners in the dark about what was going on.

6. Having participated in a number of construction defect claims/lawsuits, this case is highly suspicious for the following reasons:
    a) The claims were supported by a very thorough forensic examination and cost estimate
    b) I was very surprised to learn there were no discovery/depositions/interviews done
    c) I now know the case was mediated. It is unclear who was involved with mediation but given the difference between the repair cost estimate and the actual mediated value an explanation should be sought. I am reasonably sure that had the case been arbitrated, as required, the award would have been substantially higher.

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d) Having personally been involved with 15 construction defect lawsuits, I have never seen one resolved in less than 2 years. This case was settled in a little more than thirteen months.

7. It should also be noted that Defendant's Motion for Summary Judgment disputes Plaintiff's assertion of being forced to sign the illegal Settlement Agreement and Release is untrue. After many months of trying to get the HOA's attention, Plaintiff stopped paying assessments he felt were wrong. HOA Counsel, Walt Todd, then started a dialogue with Plaintiff to understand concerns and get Plaintiff/s accounts brought current. HOA Counsel also threatened the HOA would file a lien against Plaintiff's properties.

At the 5/8/17 Board meeting, HOA Manager Munson read an email from Todd regarding his research into Plaintiff's concerns. The Board response was prior to moving forward with Counsel Todd's thoughts/suggestions: HOA first needed to address the more pressing matter at hand: Plaintiff's signature on the final litigation documents, see **Exhibit D** second page extract from meeting minutes.

Finally, Attorney Smith had an exchange of emails with Plaintiff regarding the need for Plaintiff to sign the Commercial Settlement Agreement and Release, see **Exhibit E**, and read from back to front. The emails are self explanatory; Plaintiff would not agree to sign and Attorney Smith threatened that HOA could sue Plaintiff, even though Plaintiff always had the right to opt out of the settlement. Ultimately, Plaintiff signed the Commercial Settlement Agreement and Release on May 30, 2017.

8. A final long standing complaint of Plaintiff relates to the monthly assessment he is being charged by ADESSO HOA. He has asked repeatedly for an explanation of how the commercial property budget is determined and never gotten a response until the Affidavit from C. Michael Munson dated December 28, 2020 was filed as part of Defendant Motion for Summary Judgment. I have reviewed the Affidavit and explanations provided. Sadly, there is NO explanation of the methodology used to establish the various line item fees only a statement that they are consistent year to year. 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.

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SUMMARY

The one overriding issue is the fact that the Master Deed provides that any dispute **MUST** be resolved via Mandatory Arbitration. **This requirement is an Affirmative Obligation of the Board and Adesso HOA. It was an ULTRA VIRES act for the Board to file a lawsuit.** As such, the lawsuit, mediation and settlement must be vacated and the claim by the HOA against the **HOLDER DEFENDANTS** must be submitted to Mandatory Arbitration as **REQUIRED** by the Master Deed.

Chapter 31, The Horizontal Property Act, Section 27-31-170: **"Compliance with bylaws, rules, and regulations; remedy for noncompliance:" Each owner SHALL comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto...Failute 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."**

AS SUCH, THE MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED AND THE SETTLEMENT AGREEMENTS AND RELEASES SHOULD BE VACATED.

I affirm that the foregoing is true to the best of my personal knowledge, information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same. I reserve the right to modify my opinions based on any new information that may be provided subsequent to this Affidavit.

FURTHER AFFIANT SAYETH NOT

Michael R. Parades, PCAM

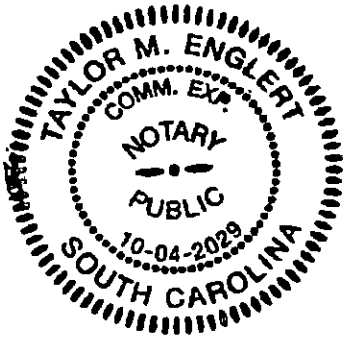
SWORN to and subscribed before me this

4th day of January, 2020

Taylor M. Englert

Notary Public for

My Commission Expires: 10/04/2029



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EXHIBIT

A

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MICHAEL R. PARADES, PCAM
9 Harrill Ct., Charleston, SC 29412
Phone: 843-364-6962 Email: paradesm@gmail.com

EXPERIENCE

7/09-Present Community Association Consulting:

Provide consulting services to community associations in primary areas of governance, management and fiduciary duty. Services as expert witness in litigation involving community associations. Other services available upon request.

11/13-12/17 General Manager, I'On Assembly, Inc.

Provide management services including financial management, operations management and assist Board of Trustees in governance of 762 home community.

7/09-6/12 **Realtor-Dunes Properties:** Real estate sales

12/05-6/09 **DISTRICT MANAGER-SC**-Sentry Management, Inc. Supervise and manage delivery of professional management services for Community Association clients in South Carolina.

1/88-12/05 **PRESIDENT/CEO** - CCM Management, Inc. AAMC, Charleston, S.C. Supervise and manage delivery of professional management services for Community Association clients. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight; supervision of all financial operations for each Community including monthly billings, collections, payments for services and financial statement preparation. Provide other specialized services such as assistance in drafting amendments to governing documents: insurance claim negotiations; services as insurance trustee; construction project management coordination of litigation by Communities and services as expert witness for Community management.

6/87-12/87 **REGIME ADMINISTRATION MANAGER** - Seabrook Island Ocean Club Incorporated, Charleston, S.C. Manage property operations for 22 Property Owner Associations totaling 827 units. Responsibilities include preparation of bid specifications, contract negotiations and contractor oversight: supervision of all financial statement preparation.

1985-4/87 **CONTROLLER** - Seabrook Island Ocean Club Incorporated, Charleston, S.C. Managed all financial matters for the resort corporation, the real estate limited partnership and for the wholly owned utility company; prepared and coordinated all work required by external auditors for tax returns, SEC filings and annual audits; originated corporate policies and procedures; formulated 20 million dollar operating

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and capital budget forecasts; supervised preparation and analysis of financial statements cash management; scheduled work flow prioritization of 26 people in three departments and preparation of biweekly payroll for over 400 people; organized and participated in 15 million dollar asset purchase by new owners; and prepared for initial stock offering. Supervised and scheduled all data processing systems including complete hardware replacement and software upgrades, resulting in an improved information processing system which increased operations efficiency and reduced costs.

1983 - 1985 **ACCOUNTING MANAGER** -Support Systems International Incorporated, Charleston, S.C. Managed and systematized monthly financial statements for 125 cost centers, including consolidated financial statements for parent manufacturing corporation and sales and service subsidiaries; supervised, prepared and executed financial data reviews, budget variance reports, multi-state tax filings, and annual detailed analysis for external auditors; assessed corporate policies and procedures; developed and recommended changes to perpetuate an efficient organization and reduce costs; and organized and supervised transition period after 50 million dollar purchase of primary competitor.

1979 - 1983 **SENIOR ACCOUNTANT** - Deloitte Haskins & Sells, Columbia, S.C. In charge of various audits with primary emphasis in Real Estate Development, Hospitality, Health Care Industries, and Governmental Accounting.

1978 - 1979 **BOOKKEEPER** - Addlestone International Corporation, Charleston S.C. Responsible for payroll, inventory, accounts payable, and associated records of parent corporation and subsidiaries.

1967 - 1976 **UNITED STATES NAVY** - Nuclear trained Machinist's Mate, submarine qualified. Attained qualifications as Engineering Officer of the Watch and Engineering Watch Supervisor. Honorably discharged.

EDUCATION

1977 - 1979 COLLEGE OF CHARLESTON, Charleston, S.C., Bachelor of Science, Business Administration, Summa Cum Laude. Honors include awarded Alumni Medal in 1979 and Wall Street Journal Award in 1980.

PROFESSIONAL DESIGNATIONS

1981 Certified Public Accountant(CPA) by South Carolina, retired 2005

1998 Professional Community Association Manager (PCAM) by National Board of Certification for Community Association Managers (NBC-CAM).

2003-2006 Accredited Association Management Company (AAMC) by National Board of Certification for Community Association Managers (NBC-CAM)

2005 Qualified as Expert Witness in SC State Court in matters related to Community Association Management, Community Association Governance and Board Fiduciary Duties

2009-2011 Licensed as Real Estate Salesman by SC Real Estate Commission

2010-2012 Qualified by SC Real Estate Commission as Instructor for classes related to Homeowner Associations.

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MEMBERSHIPS

Community Associations Institute (CAI)
Association of Professional Community Managers
CAI-PMDP National Faculty, Retired
Community Associations Institute of South Carolina (CAI-SC)-Past President
Past Vice chair CAI-SC Legislative Action Committee
SC Association of Realtors and National Association of Realtors-past member

Updated 5/15/2020

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EXHIBIT

B

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

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

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION UNDER THE SOUTH CAROLINA ARBITRATION ACT

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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.

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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.

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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

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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.

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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.

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(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

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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,

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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.

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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;

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(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

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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.

special assessment authority

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

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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

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.

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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

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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;

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

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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 Certificare required by S. C. Code Ann., §27-31-110 (1976).

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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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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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)

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)

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EXHIBIT

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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-

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EXHIBIT

D

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VI. UNFINISHED BUSINESS

- Doorman: Mrs. Woodruff reported that she was close to filling the positions for the 24 hour doorman that thought it would take another 30-45 days for full implementation. Mr. Terry raised his concerns for the cost of 24 hour doormen and questioned whether it was approved. Mrs. Page provided the approved minutes from February 2017 confirming that these changes and proposal were approved. Mr. Terry wanted it stated that he had objection to this motion, which was based on his understanding that another final budget analysis would be presented and actual implementation of the doorman would be presented. All other board members did not have this same understanding and the February minutes stand as approved.

- Decals/Overnight guest passes: Mrs. Woodruff reported that this process needs to be postponed until proper parking space assignments can be confirmed. A main concern was primarily on leasing parking spaces with unknown vehicles or others that are not actually residents of the building. Mrs. Woodruff will order these once she has been able to confirm parking assignments of all spaces.

- Storage/ Service room keys: Mrs. Woodruff discussed the bid previously submitted from Best Locksmith to rekey all the common doors. Bid is not to exceed $1000 for the rekeying of those doors. A motion was made, seconded and passed to proceed with the rekeying of all other common area doors as presented.

- Generator: Mrs. Woodruff reported that no action was taken on 2 of the bids previously submitted for generator repairs. The board agreed to have these bids reviewed for consideration at a later date.

- Lockboxes: Mrs. Woodruff reported the need for a space on Adesso property to have a wall mounted box to house MLS lockboxes for agents(s). The location will be in P2 parking (Guest and retail parking) behind the bike rack area on concrete wall. Box will house at least 16-20 MLS lock boxes. Estimated cost will be approximately $500.00. A Motion was made, seconded, and passed to proceed with such accommodation for lockboxes.

- Commercial Units: Mrs. Woodruff presented the bid from Walt Todd in amount of $1750 to research the questions and concerns for Dr. Tadros regarding his commercial spaces. The board also discussed if Mr. Todd could review any other parking or regime matters for total cost not to exceed $2k, including the commercial issues. A motion was made, seconded and passed to have Mr. Todd proceed with this matter.

- Internet Issues: Mrs. Woodruff reported that Both AT&T and Time Warner are still in the process to propose an upgraded option for the Adesso building on internet issues. Mrs. Woodruff is following up with both companies and will update the board when this is completed.

IV. REPORTS OF OFFICERS AND COMMITTEES

There were not any reports of officers or committees.

V. ELECTION OF OFFICERS

The following officers were elected:

Brenda Page- President
Lite Nartey- Vice president
Michael Anastasion- Secretary
Darrell Terry- Treasurer
Kevin bryant- Board member

VI. UNFINISHED BUSINESS

- Doorman: Mrs. Woodruff reported that the head doorman, Clifton Lee, was hired and the other positions were close to being filled.

- Decals/Overnight guest passes: Mrs. Woodruff reported there were some delays in getting the decals implemented due to some issues and questions with assignment on these parking spaces. Decals will be issued once these issues are resolved.

- Commercial Units: Mr. Munson read an email from Walt Todd (HOA Attorney), regarding his initial research into Dr. Tadros' stated concerns which he listed in an email to the board, dated February 15, 2017. The board agreed that prior to moving forward with Mr. Todd's thoughts/suggestion, the HOA first needed to address the more pressing matter at hand; Mr. Tadros' signature on the final litigation documents

- Internet Issues: Mrs. Woodruff presented one proposal for a building wide upgrade from Spectrum/ Time Warner. The proposal from AT&T has not been received. Information from Spectrum was given and will be discussed and reviewed at later date when other proposal has been received.

- AC/ Condensation lines and dryer vent ducts: Mrs. Woodruff reported that she has not received the competitive bids to clean a/c drain lines and also cleaning of the dryer duct vents. When all bids are received these will be presented to board for approval.

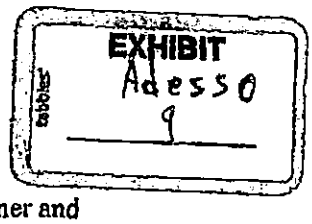
- Amenity Agreement: The previously presented amenity agreement was drafted by Mrs. Woodruff and amended with assistance of Mrs. Page. Mr. Terry was of the opinion that the agreement needed some modifications and suggested it to be sent to Walt Todd to review. Motion was made, seconded and passed to have Walt Todd, to review to have legal conformity.

Finn 5/8/17 BCD MB

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What are tenant expenses

Dr. Tadros - Commercial Owner



February 15, 2017

To whom it may Concern at Adesso's HOA and Adesso's Property Management:

Please allow me to introduce myself, Emad Tadros, MD as one of you, being the owner and trustee of the Four (4) commercial units @ Adesso starting December 5, 2014.
Unfortunately the previous owner/seller of those units was not forthcoming about the financial nightmare of those commercial units and that is how Escrow was dishonestly closed selling those properties to my Living Trust. I have filed a formal government complaint with the SC Department of Labor against that previous commercial owner in regards to the process by which those commercial units were sold to me. A formal investigation with the *Enforcement Division* is currently taking place.

Despite desperate attempts and special offers to lease the still ever vacant unit, nothing has come to live with any solid lease. This vacant unit is approximately 36% of the total Adesso commercial space. Some of the major hurdles leasing it are as follows:

1- its hidden and upstairs location on a main street with no immediate parking for customers.
2- the consistent financial non-viability of all previous businesses and their failure staying afloat due to Adesso HOA additional charges.
3- Recent lack of parking spaces assignment and that goes for any of the Tenants. The US Marines are leased for a monthly price .

A- Parking Spaces Are Illegally Taken Away From The Commercial Owner:

As you can see the original building permit that was filed with the county authorizing this building to function in any viable fashion, was **conditioned upon** the very adequate/logical existence of six (6) parking spaces for those commercial operatives. Somehow someway overtime those originally assigned six (6) parking spaces were slowly and quietly pulled from under the commercial units' ownership by the previous Adesso Management "Holder Properties Management and Builder."

The Master Deed was issued in 2008. in 2011, the Builder Holder took 2 parking spaces and built the US Marines Office. It is unclear how legally viable or city permitted such build out? I cannot find a Master Deed Addendum on file that confirms the county's authorization or permit of such Us Marines Unit hand in hand with exhaustion of those 2 parking spaces? Further Master Deed Addendum 3 in 2013 confirmed that 3 parking spaces belonged to the Marines. However, upon transfer of ownership to me those parking spaces mysteriously disappeared. Instead starting December 2014, the US Marines was suddenly asked by Holder to pay $450 monthly for the US Marines to be able to use its own assigned same parking spaces that used to belong to the Marines in the first place. I find this approach to be conducting theft on the Us government.

Master Deed pages 14 & 15 & 16 Limited Common Elements that Benefit Commercial Units
Item C (4) Copy/Paste
(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

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number to identify such. As set forth in Section VII herein below, 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 herein below. Retail Parking Spaces may not be reassigned 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.

Page 15 last 3 words, All Common Elements, including but not limited to parking and recreational facilities. shall be owned by the regime and and may not be subject to a lease between the Unit owners (or the Association) and another party. "

Final conclusion is that there should be 4 parking spaces assigned to Commercial 1. There are additional documents showing that Commercial 2 was given temporary access to additional parking spaces before sell-out of all Residential Units; unclear whether these temporary additional spaces were leased or not. Around the time Ford sold his interest in Commercial 1 and 2, Holder Properties told the HOA Board **that there were 3-4 parking spaces had been "discovered" that could be leased."**

It is clear that selling or giving hiding or transferring my parking spaces was a Master Deed Violation culminating to illegal conduct. This conduct was privately and mutually carried by likely the previous owner/seller hand in hand with Holder Management.

B- All Commercial Tenants are not allowed to either enter or use any of the Adesso's building amenities.

Adesso is 92.5% residential and 7.5 % is Commercial. In the Mater Deed it is repeatedly stated that Commercial Units must be charged HOA differently. There was a reason for such statement to be made in the Mater Deed in the first place. There is no where the Master Deed that such consideration has ever crystallized other than being written on a piece of paper. The net result of such financial negligence (intentional or not) was dishonestly carried to the financial demise of the Commercial Tenants.

While any and all commercial tenants are not even allowed to enter the building for any length of time, Adesso Property Management dared to bend their elbows for years forcing them to equally pay all HOA fees same as any resident in that building. That is to confirm that the commercial tenants have been forced by your HOA to unfairly pay for the total building water, electricity, gas, security, fire-alarm, Cable, Internet, landscape, trash, Trash Chute Cleaning, Building Cleaning, Carpet cleaning/replacement, Pest Control, elevator maintenance, HVAC maintenance, any building repairs maintenance, reserves etc.

This financial double dipping on the Commercial Tenants has taken place besides the fact that all tenants have been already paying same such charges independently. Below is copy & Paste of Uncle Madio's monthly charges:

electric & gas
water & sewer
Direct TV
AT&T
Terminex Pest Control
Fire Alarm Company (quarterly $165 & $200 annual inspection fee)
ADT Security.

C. The only charge that the Commercial Tenants are logically responsible for is Trash. However, my tenants are not supposed to pay for your Trash Chute Cleaning. That is besides that HOA never paid for their store windows cleaning!!

D. Respectfully I ask Adesso and its HOA management to immediately implement serious re-consideration as follows:

1- Please investigate parking spaces mysterious disappearance matter immediately. Please help me to maintain the commercial units viability to function at our building absent Master Deed Violations and the current illegal parking charges to the US Marines. Please resume all the Mysteriously Missing Parking Spaces as originally assigned per Master Deed.

2- Full refund of all HOA charges in regards to the Commercial Units already made other than Trash since December 2014.

3- Immediately stop charging for any more HOA except for a certain percentage of the Trash. Marsha & Ted @ Uncle Madio's will help you to percentage such.

4- Might consider allowing all commercial units to share with the HOA all above expenses like other residents and this can be a good financial break for both.

Thank you,

Emad Tadros, MD/Owner and Trustee
8587752122

Emad Tadros, M.D.

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EXHIBIT

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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.

EXH F

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 These emails should be read from last page toward first page.

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.**"

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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>

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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.**

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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

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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.

Does not mention condo Must seek Mandatory Arbitration

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.

provide copy of notice and proof of mailings to Tenants

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.

ultra vires act to file lawsuit, MD requires mandatory arbitration

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.

what about special assessment to repair bldg. He has biased Dr.

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.

All representation by Mr Smith work half truths; Never explained to Dr T.

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

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Exhibit D:

Affidavit of Dr. Darrell Terry

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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").

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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.

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

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

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STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-40-00919 **DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

NOW COME Defendants Adesso Horizontal Property Regime ("Regime") and Adesso Homeowners' Association ("Association") (collectively, "HOA Defendants"), by and through their undersigned counsel, and respectfully submit this Memorandum of Law in Support of HOA Defendants' Motion for Summary Judgment, filed December 28, 2020 ("HOA Defendants' Motion for Summary Judgment"). In support of HOA Defendants' Motion for Summary Judgment, HOA Defendants would respectfully show this Court as follows:

INTRODUCTION

This is a frivolous action in which Plaintiff alleges HOA Defendants' allocation of parking spaces serving Plaintiff's two (2) commercial properties ("Commercial Units")—comprising a total of four (4) individual units—within the Adesso Columbia mixed-use condominium development (the "Adesso") violates City of Columbia zoning ordinances and the Master Deed of Adesso Horizontal Property Regime ("Master Deed"). Plaintiff further alleges that HOA Defendants have failed to comply with the Master Deed in assessing Plaintiff's Commercial Units

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amounts for certain costs, expenses, and budget items for the maintenance and upkeep of the Adesso.

Plaintiff purchased the Commercial Units in 2014, at which time all of the parking-related conditions about which Plaintiff complains were matters of public record and/or open and obvious at the Adesso site. However, as will be discussed below, Plaintiff purchased the properties without having first completed the necessary due diligence involved in a large commercial property transaction—including failing to personally visit and inspect the properties, failing to review any title or zoning documents affecting the properties, and failing to hire competent representation with regard to the transaction. More than four (4) years have elapsed since Plaintiff's purchase of the Adesso commercial units, and now, due to recent economic downturns and poor performance by some of Plaintiff's business tenants, Plaintiff seeks to recover from the Defendants named in this lawsuit for his own poor investment choices.

RELEVANT FACTUAL BACKGROUND

The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements. Ex. 1 (Pltf.'s Fourth Amend. Compl.) at ¶ 6. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201. *Id.* Defendant Holder Properties, Inc. ("Holder") developed the Adesso. Ex. 2 (Pltf.'s Amend. Compl.) at ¶ 11. On January 14, 2008, Defendant ADESSO/Columbia, LLC—as then-owner of the Adesso—recorded the Master Deed in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855. *Id.* at ¶ 2. The Master Deed established the Adesso Horizontal Property Regime and created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, Ex. 3 (Adesso Master Deed), p. 20

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at § XV, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements...". *Id.*, pp. 23-24, § XXII.

Moreover, in furtherance of the above powers, 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." Ex. 4 (Adesso Bylaws), p. 6 at § 4(j)(i). Generally, in calculating annual assessments to unit owners, each owner is 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. Ex. 5 (Affidavit of C. Michael Munson) at ¶¶ 9-10. The Plaintiff's Commercial Units comprise a total 8.54279% interest in the total undivided interest of the Regime. *Id.* at ¶ 11. However, of particular relevance to this action, in the development of annual assessment budgets for the Adesso, the Master Deed also requires the following:

> "[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..."

Ex. 3, p.12 at § V(A)(3)(iii).

Additionally, the Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units. Ex. 5 at ¶¶ 14-15. 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." Ex. 3, p. 14 at § V(C)(5). Notwithstanding this provision,

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ADESSO/Columbia, LLC, with the consent and joinder of the required number of unit owners, recorded a certain Fourth Amendment to Master Deed of Adesso Horizontal Property Regime ("Fourth Amendment") on April 22, 2013 in the Richland County Register of Deeds Office, in Book 1854 at Page 818, attached hereto as Exhibit 6. On April 23, 2013, Holder—which by virtue of its status as developer, had controlled the Association and its Board—relinquished control of the Association to the condominium owners. Ex. 1 at ¶ 85.

In contravention of the Master Deed, the Fourth Amendment reassigned 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. Ex. 6 at pp. 6-7. Further, the reassignment of the Retail Parking Spaces 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"). Ex. 7 (Deposition of Rachel Lynn Bailey), Pltf.'s Ex. 5. 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. Ex. 7 at 51:1-12. The January 2008 Amendment also provided a formula to calculate the required number of parking spaces based upon future increases or decreases in the Commercial Units' square footage. *Id.* at 128:25-129:15. The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances controls the parking requirements for the Adesso. *Id.* at 98: 24-25, 99: 1-12.

Plaintiff purchased the Adesso Commercial Units on December 5, 2014. Ex. 2 at ¶ 16. He did not purchase the properties from Defendants or Holder; rather, Plaintiff purchased them from Ford Elliott, the current owner at the time. Ex. 8 (Deposition of Emad Tadros, M.D.) at 169: 17-19. Plaintiff is a sophisticated and well-educated physician who holds a board certification in

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psychiatry from the American Board of Psychiatry and Neurology and has been in private practice since 1993. *Id.* at 9: 12-15. Additionally, by 2014, Plaintiff possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes. *Id.* at 13:23-15:14.

However, 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. *Id.* at 66:21-67:1; 89:24-90:7. 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. *Id.* at 229:19-230:2. Plaintiff did not personally communicate with HOA Defendants at all prior to purchasing the Commercial Units. *Id.* at 125: 17-25, 127: 15-19. Moreover, Plaintiff's hired professional advisor did not communicate with HOA Defendants with regard to the transaction. *Id.* at 126: 3-5; 127: 2-5, 7-11; 129: 17-25[1].

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. *Id.* at 90:12-19. Plaintiff was informed that such rights would be sold to the highest bidder. *Id.* The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner. *Id.* at 90: 20-22. Plaintiff further testified that had he known this at the time, he would not have agreed to lease the parking spaces. *Id.* at 88: 10-89:17. Additionally, around March of 2015, Plaintiff was notified by one of his tenants—the United States Marine Corps ("Marines")—of issues relating to the allocation of Commercial Parking Spaces at the Adesso. *Id.* at 91:5-92:7. Specifically, the Marines informed Plaintiff of their intent to vacate their

[1] It should be noted that Plaintiff has brought a negligence action against his former advisor regarding Plaintiff's purchase of the Adesso Commercial Units, which is pending in the Richland County Court of Common Please, C/A No. 2017-CP-40-07120.

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leased recruiting center space in one of Plaintiff's Commercial Units if Plaintiff was not able to secure parking for them. *Id.*

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. *Id.* at 92:8-12. Similarly, Plaintiff paid assessments to the Association for two (2) years, without taking any action to determine or investigate their propriety under the Adesso governing documents until around February 15, 2017. *Id.* at 37:18-24; 130:23-132:3. Around that time, Plaintiff formed the belief that the assessments being charged to his Commercial Units violated the Master Deed, and although Plaintiff has failed to specifically identify what he believes is a proper formula for calculating such assessments, he determined any such formula by speaking with his tenants regarding their usage of the Adesso building. *Id.* at 132:4-7.

Plaintiff did not file this action until February 14, 2019—over four (4) years after his purchase of the Adesso Commercial Units. Plaintiff's Amended Complaint asserts causes of action for: (1) Negligence/Gross Negligence; (2) Breach of Master Deed; (3) Declaratory Judgment; (4) Injunctive relief; (5) Violation of the South Carolina Unfair Trade Practices Act; (6) Negligent Misrepresentation; and (7) Constructive Fraud. As set forth in more detail below, HOA Defendants are entitled to judgment as a matter of law in their favor regarding all of Plaintiff's claims.

PROCEDURAL STANDARD

Pursuant to Rule 56, SCRCP, "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to Interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled

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to a judgment as a matter of law." In ruling on a Motion for Summary Judgment, the Court must view the facts and inferences therefrom in a light most favorable to the nonmoving party. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449, S.E.2d 495, 496 (Ct. App. 1994).

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading..." Rule 56(e), SCRCP. The nonmoving party must establish specific facts showing there is a genuine issue of material fact for trial, or the court must grant summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Holmes v. East Cooper Community Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014) (internal citation omitted). Nevertheless, when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted. *Id.*

ARGUMENT

I. Plaintiff failed to file this lawsuit within the applicable statute of limitations.

Pursuant to S.C. Code Ann. § 15-3-530(1), "an action upon a contract, obligation, or liability, express or implied," such as Plaintiff's claims asserted herein, must be brought within three (3) years of the date on which the cause of action accrues. The date of accrual for a cause of action is the time in which a plaintiff knew or, by exercise of reasonable diligence, should have known that he/she had a cause of action. The objective test is whether a person of common knowledge and experience should have known the operative facts. *Wilson v. Shannon*, 299 S.C. 512, 386 S.E.2d 257 (Ct. App. 1989). A statute of limitations analysis requires "very little to start the clock." *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998) (citation omitted). Whether the plaintiff understands the full extent of the damages is immaterial to the

issue of whether the statute begins to run. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). Furthermore, the statute begins to run on the date the plaintiff discovered or should have discovered the injury, not on the date that the plaintiff discovers the identity of the wrongdoer. *Tollison v. B & J Machinery Co., Inc.*, 812 F. Supp. 618 (D.S.C. 1993).

Plaintiff purchased his Commercial Units at the Adesso in December, 2014. Plaintiff's own testimony indicates he failed to exercise even the slightest diligence—much less reasonable diligence, required for statute of limitations purposes—with regard to his purchase. Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. Ex. 8 at 66:21-67:1; 89:24-90:7. Plaintiff made no visits to the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units. *Id.* at 229:19-230:2. Further, Plaintiff did not personally communicate with HOA Defendants at all prior to the consummation of the transaction. *Id.* at 125: 23-25, 127: 15-19.

Plaintiff testified that prior to his purchase in 2014, he was not specifically aware of the Adesso Master Deed or other recorded documents governing the Regime and Association. *Id.* at 27:21-28:1-9, 22-25; 29:1-3. However, Plaintiff did testify that his agent hired to represent him in connection with the transaction may have reviewed the Master Deed prior to the transaction. *Id.* at 28:12-21.

Regardless, it is immaterial whether Plaintiff actually knew about the Adesso Master Deed, its amendments, and any other recorded Adesso governing documents because South Carolina law charges Plaintiff with constructive notice under these facts. "Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the

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undisclosed facts." *Spence v. Spence*, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) (citing *Strother v. Lexington County Recreation Com'n*, 332 S.C. 54, 64 n.6, 504 S.E.2d 117, 122 n. 6 (1998)).

Moreover, "constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world." *Id.* As previously discussed, the Adesso Master Deed was recorded on January 14, 2008 in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855. The January 2008 Amendment to the Adesso PUD, which is also a public record, was submitted to the City of Columbia Zoning Department and approved in 2008. Both documents control the allocation of Commercial Parking Spaces at the Adesso. Additionally, the Fourth Amendment to the Adesso Master Deed was recorded on April 22, 2013 in the Richland County Register of Deeds Office, in Book 1854 at Page 818. Accordingly, the Master Deed, 2008 PUD Amendment, and Fourth Amendment to the Master Deed were all of matters of public record at the time Plaintiff purchased the Commercial Units in December, 2014.

Moreover, Plaintiff testified that he understood the Fourth Amendment's allocation of Commercial Parking Spaces to violate the Master Deed, Ex. 8 at 62:10-63:15, and that he was also able to determine the allocation of spaces at the Adesso violated the 2008 PUD Amendment. *Id.* at 70:16-71:3. By late 2014, Plaintiff had at least constructive knowledge of the existence of the three preceding public records. The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Spence*, 628 S.E.2d 869 at 876 (citing *Epps v. McCallum Realty Co.*, 139 S.C. 481, 499 138 S.E. 297, 303 (1927) ("recording amounts to notice, whether known or unknown, because the means of information are at hand.")). Similarly, had Plaintiff or his agent exercised reasonable

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diligence in connection with the Commercial Units purchase, they would have examined the publicly-available Adesso PUD documents—including the 2008 PUD Amendment—and would have been able to determine the Fourth Amendment's allocation of Commercial Parking Spaces violated the zoning requirements of the Adesso PUD.

In addition to the public records providing Plaintiff at least constructive notice of his claims, Plaintiff admitted he had actual knowledge in early 2015 of parking-related issues raised by both Holder and the Marines. Ex. 8 at 88: 10-89:17; 90:12-19; 91:5-92:7. Had Plaintiff further investigated these issues, he would have discovered his Commercial Units did not have all the parking spaces to which they were entitled under the Master Deed or the Adesso PUD. Therefore, as early as December, 2014—when Plaintiff purchased the Commercial Units—and as late as early 2015, there was sufficient information, of public record and otherwise, relating to the then-existing improper allocation of Adesso Commercial Parking Spaces to put a person of common knowledge and experience, in the exercise of reasonable diligence, on notice of the existence of Plaintiff's parking-related claims. As such, Plaintiff's claims accrued by early 2015 at the latest, the date by which Plaintiff would have discovered his claims. Despite this, Plaintiff took no action to investigate the parking issues, or to even visit the Adesso, until 2017.

Pursuant to S.C. Code Ann. § 15-3-530(1), Plaintiff was required to bring an action to enforce his parking-related claims by 2018 at the latest. Plaintiff did not file this action until February 14, 2019. Therefore, as they relate to the allocation of Commercial Parking Spaces at the Adesso, Plaintiff's claims are barred by the applicable statute of limitations. HOA Defendants are entitled to judgment as a matter of law on this ground, and the Court should dismiss Plaintiff's claims with prejudice.

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II. The current allocation of Commercial Parking Spaces at the Adesso complies with the Master Deed, the Adesso PUD Documents, and applicable City of Columbia Zoning Ordinances.

The Court should also dismiss with prejudice Plaintiff's claims for Declaratory and Injunctive relief, as they relate to Plaintiff's parking claims, because there is no genuine issue of material fact that the number of parking spaces in and around the Adesso available for the Commercial Units' use and/or in their possession has complied with the requirements of the Master Deed, the Adesso PUD Documents, and applicable City of Columbia Zoning Ordinances since 2018. The South Carolina Declaratory Judgment Act provides that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing S.C.Code Ann. § 15–53–20).

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Id.* A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character. *Id.* Moreover, "[a] declaratory judgment should not address moot or abstract matters." *Sunset Cay, LLC*, 593 S.E.2d 462 at 466 (*citing Waller v. Waller*, 220 S.C. 212, 223, 66 S.E.2d 876, 882 (1951)).

Plaintiff seeks a declaratory judgment decreeing 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." Ex. 2 at ¶ 59. However, the parking-related matters underpinning Plaintiff's declaratory judgment claim are moot. There is no genuine issue of material fact that Plaintiff's Commercial Units have the requisite number of parking spaces to which they are entitled under the Adesso PUD and applicable City of Columbia zoning ordinances. In June, 2018, Defendants changed the signage for, or otherwise restricted

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access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," Ex. 7 at 99: 16-19; 104: 2-20, to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed.

Moreover, based upon the availability of sufficient additional on-street parking within 400 feet of the Adesso to serve the Commercial Units, the City of Columbia Zoning Administrator has made a final determination that no known zoning violations relating to parking exist at the Adesso. *Id.* at 99: 20-101: 21; 103: 9-104: 25; Pltf.'s Ex. 2 to Dep. of Rachel Lynn Bailey. Therefore, with regard to Plaintiff's parking-related claims, Plaintiff has failed to present a justiciable controversy, and the Court should enter judgment for HOA Defendants and dismiss Plaintiff's Declaratory Judgment claim with prejudice.

Similarly, Plaintiff seeks 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." Ex. 2 at ¶ 43. However, the facts and circumstances of this case do not warrant the grant of a permanent injunction. "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (*citing Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct.App.1984)). The remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* (*citing Forest Land Co. v. Black,* 216 S.C. 255, 57 S.E.2d 420 (1950)). Moreover, "[i]n deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant." *Id.*

Here, Plaintiff would not benefit from the grant of an injunction in his favor. As previously established, Defendants took the action Plaintiff desires in June, 2018, such that Plaintiff's Commercial Units have been allocated the correct number of parking spaces pursuant to the Adesso Master Deed, the Adesso PUD documents, and applicable City of Columbia zoning

ordinances. Accordingly, because Plaintiff has already obtained the relief he seeks with regard to the allocation of Commercial Parking Spaces at the Adesso, the Court should enter judgment for Defendants and dismiss with prejudice Plaintiff's claim for injunctive relief.

III. The assessments charged to Plaintiff's Commercial Units comply with the requirements set forth by the Adesso Master Deed.

HOA Defendants are entitled to judgment in their favor regarding Plaintiff's assessment-related claims because the costs, expenses, and budget items assessed annually to Plaintiff's Commercial Units comply with the Master Deed's requirements for calculating such assessments. 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…"

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." Ex. 5 at ¶ 14. Additionally, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole. *Id.* at ¶ 16.

The above 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. *Id.* at ¶ 17. Pursuant to the Affidavit of C. Michael Munson ("Munson"), a witness with 35 years of property management experience,

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Plaintiff's share of each cost, expense, or budget item assessed against his Commercial Units for the years 2018-2020 was the result of the proper allocation of such items between the Adesso Commercial and Residential units pursuant to the Master Deed. *Id.* at ¶ 25.

Moreover, Munson states: "[E]ach 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." *Id.* at ¶ 26. To date, Plaintiff has relied merely on the allegations in his pleadings, non-specific, hearsay conversations with Commercial Unit tenants, and personal speculation to support his claims regarding the impropriety of assessments charged to his Commercial Units.

Accordingly, Plaintiff has failed to set forth specific facts demonstrating a genuine issue of material fact regarding the subject assessments. Defendants are entitled to judgment as a matter of law that: (1) the assessments charged to Plaintiff's Commercial Units comply with the applicable requirements of the Adesso Master Deed; (2) HOA Defendants have not breached the Master Deed; and (3) HOA Defendants have not breached any duties owed to Plaintiff with regard to the calculation or collection of assessments against his Commercial Units. Therefore, the Court should dismiss Plaintiff's claims, as they relate to assessments against the Commercial Units, with prejudice.

IV. Plaintiff's claims for Negligent Misrepresentation and Constructive Fraud fail because HOA Defendants did not make false representations to Plaintiff in connection with Plaintiff's purchase of the Adesso commercial units.

HOA Defendants are entitled to judgment as a matter of law regarding Plaintiff's claims for Negligent Misrepresentation and Constructive Fraud because there is no genuine issue of material fact that HOA Defendants made no false representations to Plaintiff in connection with his 2014 purchase of the Adesso Commercial Units. "To establish liability for negligent

misrepresentation, the plaintiff must show by a preponderance of the evidence," among other elements, that "the defendant made a false representation to the plaintiff." *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769 (2011) (listing the 6 required elements of the tort of Negligent Misrepresentation). Similarly, "[t]o establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct. App. 2002) (*citing Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993)). An essential element of the tort of Constructive Fraud is a false representation. *See id.* at 334, 431 S.E.2d at 509 (*citing Ardis* at 515, 431 S.E.2d at 269) (setting forth the 9 elements required to establish a claim for actual fraud).

Here, HOA Defendants made no representations to Plaintiff in connection with his purchase of the Adesso Commercial Units. Plaintiff has admitted he did not have any communications with HOA Defendants at all prior to the transaction. Ex. 8 at 125: 17-25, 127: 15-19. Moreover, Plaintiff's hired professional advisor also did not communicate with HOA Defendants with regard to the transaction. *Id.* at 126: 3-5; 127: 2-5, 7-11; 129: 17-25. As discussed above, Plaintiff purchased the Commercial Units from Ford Elliott, *Id.* at 169:19, not HOA Defendants. With regard to the allocation of Commercial Parking Spaces, Plaintiff could only testify that he "would assume [Defendants] [were] in compliance [with applicable Columbia Zoning ordinances]..." because "[Plaintiff] can't walk around and ask people questions." *Id.* at 128: 18-19, 24-25. However, Plaintiff and/or his agent never communicated with HOA Defendants to confirm Plaintiff's assumptions. Therefore, Plaintiff has failed to establish that HOA Defendants made any representations—much less false representations—to him in connection with his purchase of the Adesso Commercial Units, and HOA Defendants are entitled to judgment in their favor, as a matter of law, with regard to Plaintiff's Negligent Misrepresentation and Constructive Fraud Claims.

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V. Plaintiff has abandoned his South Carolina Unfair Trade Practices Act claim as to HOA Defendants.

Finally, the Court should dismiss with prejudice Plaintiff's South Carolina Unfair Trade Practices Act ("SCUTPA") claim, as to HOA Defendants, because there is no genuine issue of material fact that Plaintiff has abandoned this claim. Plaintiff's Answer to Interrogatory Number 12, contained in Defendants' First Set of Interrogatories to Plaintiff—attached hereto as Exhibit 9— evidences Plaintiff's desire to withdraw his SCUTPA claim as to HOA Defendants. Plaintiff further confirmed his intent to withdraw the claim during his deposition. Ex. 8 at 232:22-233:15. Therefore, the Court should dismiss Plaintiff's SCUTPA claim, as to HOA Defendants, with prejudice.

CONCLUSION

Based on the foregoing, as well as any oral argument made at a future hearing on HOA Defendants' Motion for Summary Judgment, HOA Defendants are entitled to judgment in their favor, as a matter of law, with regard to all claims asserted against them in this action by Plaintiff. HOA Defendants seek an Order granting their Motion for Summary Judgment and dismissing all of Plaintiff's claims with prejudice. HOA Defendants further seek any additional relief this Court deems just and proper, including an award of attorney's fees and costs, pursuant to Rule 54, SCRCP, the *South Carolina Frivolous Civil Proceedings Sanctions Act*, S.C. Code Ann. § 15-36-10, *et seq.*, and any other applicable statutory authority.

[SIGNATURE PAGE TO FOLLOW]

This 5th day of January, 2021.

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

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
mmasciale@cskl.law
Ph: 843-727-0307

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EXHIBIT 1

Plaintiff's Fourth Amended Complaint
Filed November 17, 2016 in Federal Court Case No. 3:16-cv-00710-JFA

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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**

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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.

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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

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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

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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

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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

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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.

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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.

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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

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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,

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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.

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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."

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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

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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.

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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.

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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

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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.

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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.

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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.

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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.

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

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.

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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;

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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.

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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

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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.

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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;

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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.

FOR A SIXTH CAUSE OF ACTION
(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

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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.

FOR A SEVENTH CAUSE OF ACTION
(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.

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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.

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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

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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

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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.

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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.

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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.

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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
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Columbia, South Carolina 29201
fsmith@richardsonplowden.com
jgarraux@richardsonplowden.com

November 17, 2016
Columbia, South Carolina

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EXHIBIT 2

Plaintiff's Amended Complaint
Filed May 9, 2019 in this Action

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
Plaintiff,	)	**AMENDED SUMMONS**
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)
Allen & Newman, PLLC
PO Box 1481
Columbia, South Carolina 29202
Telephone: (803) 714-9606, ext. 2202
cblackburn@allenandnewman.com
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 9, 2019

FILED ELECTRONICALLY IN THE 5TH JUDICIAL CIRCUIT
May 05 2019 #2263 RM - RICHLAND - COMMON PLEAS - CASE# 2019CP4000919

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
Plaintiff,	)	**AMENDED COMPLAINT (Verified)**
v.	)	
Holder Properties, Inc., John R. Holder, Individually, 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 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.

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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.

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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

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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.

FOR A FOURTH CAUSE OF ACTION
Injunctive Relief

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

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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

FILED ELECTRONICALLY IN THE COMMON PLEAS - CASE# 2021CP4000989

Respectfully submitted,

/s Charles G. Blackburn
SC Bar No. 69458
Allen & Newman, PLLC
Post Office Box 1481
Columbia, South Carolina 29202
Telephone: 803-714-9606, ext. 2202
cblackburn@allenandnewman.com
ATTORNEYS FOR PLAINTIFF

May 9, 2019
Columbia, South Carolina

[illegible]

STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS C/A No: 2019-CP-40-00919 **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)
Paul H. Hoefer, Esquire (SC Bar No. 77506)
Robinson Gray Stepp & Lafitte, LLC
Post Office Box 11449
Columbia, SC 29211
803-929-1400
kbell@robinsongray.com
phoefer@robinsongray.com

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
Post Office Box 1549
Columbia, SC 29202
803-753-7953

Signature on Following Page

s/ Charles G. Blackburn
Charles G. Blackburn, Esquire
SC Bar No. 69458
Allen & Newman, PLLC
Post Office Box 1481
Columbia, SC 29202
803-714-9606, ext. 2202
cblackburn@allenandnewmand.com

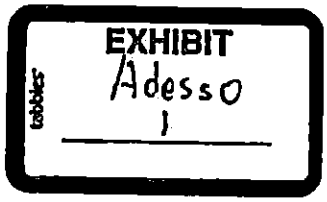
Columbia, South Carolina
May 9, 2019

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EXHIBIT 3

Adesso Master Deed



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THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

Exhibit No. 1
Tadros, Emad M.D.
08/26/2020

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

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION UNDER THE SOUTH CAROLINA ARBITRATION ACT

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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

(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

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(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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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

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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)

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)

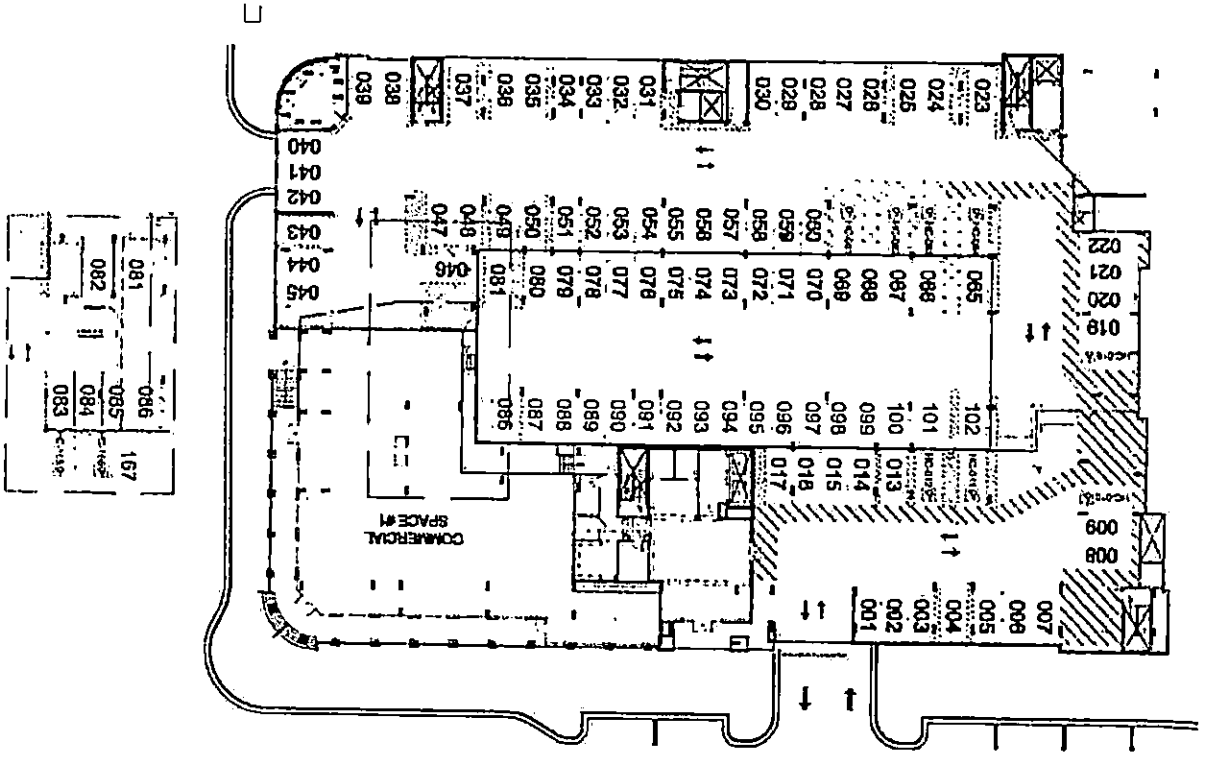
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EXHIBIT "C"

Plot Plans, consisting of
(Site Plans, Building Plans, Elevations
and Floor Plans of Building)

Adesso:
Parking Level 1
COMMERCIAL SPACE #2

Adesso:
Parking Level 2



PLT_00600
671

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EXHIBIT 4

Adesso Bylaws



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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

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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. BOARD OF DIRECTORS

(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

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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

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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;

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(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;

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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

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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

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§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. OFFICERS

(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.

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(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

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

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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;

(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. RIGHT TO NOTICE AND COMMENT. 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. RIGHT TO NOTICE AND HEARING. 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.

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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.

C Smith
Secretary of ADESSO Homeowners' Association

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EXHIBIT 5

Affidavit of C. Michael Munson

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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.	**AFFIDAVIT OF C. MICHAEL MUNSON**

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.

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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.

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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,

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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.

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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.

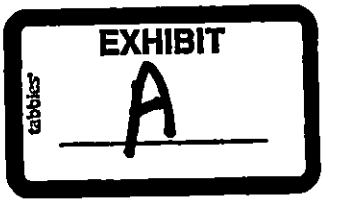
FURTHER AFFIANT SAYETH NOT.

C. Michael Munson

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

(SEAL



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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

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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. BOARD OF DIRECTORS

(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

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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

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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;

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(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;

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

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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

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§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. OFFICERS

(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.

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(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

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

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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;

(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. RIGHT TO NOTICE AND COMMENT. 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. RIGHT TO NOTICE AND HEARING. 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.

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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.

C Smith
Secretary of ADESSO Homeowners' Association

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THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT

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

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION UNDER THE SOUTH CAROLINA ARBITRATION ACT

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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.

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.

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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:

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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

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.

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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

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.

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(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

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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,

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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.

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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;

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(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

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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

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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.

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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

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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;

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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

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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).

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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 Gosse

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)

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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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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%	$196.24
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%	$571.80
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

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Adesso

2020 Operating Budget

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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
6362-0000	Pest Control	$ 1,150.00	$ 1,150.00	$ -	0.00%	$63.7
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
6372-0000	Cleaning Supplies	$ 1,500.00	$ 1,500.00	$ -	0.00%	$1,662.0
6380-0000	Fire Protection	$ 7,000.00	$ 7,000.00	$ -	0.00%	$107.1
6406-0000	Roof Repairs	$ 1,200.00	$ 1,000.00	$ (200.00)	-16.67%	$312.2
6408-0000	Insurance	$ 38,950.00	$ 45,000.00	$ 6,050.00	15.53%	$71.4
6464-0000	Office Supplies	$ 5,000.00	$ 5,000.00	$ -	0.00%	$2,493.0
6476-0000	Accounting/Audit	$ 5,000.00	$ 5,250.00	$ 250.00	5.00%	$15.7
6514-0000	Legal	$ 6,225.00	$ 6,225.00	$ -	0.00%	$18.6
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%**	$13,606.8
8990-0000	**TOTAL OPERATING EXPENSES**	**$ 673,540.00**	**$ 687,601.00**	**$ 14,061.00**	**2.09%**	$19,425.8
9090-0000	**NET OPERATING INCOME**	$ -	$ -	$ -	#DIV/0!	
					Total	$21,368.3
					Monthly	$1,780.7

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EXHIBIT 6

Fourth Amendment to Adesso Master Deed

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FOURTH AMENDMENT TO MASTER DEED OF
ADESSO HORIZONTAL PROPERTY REGIME

THIS FOURTH AMENDMENT TO MASTER DEED OF ADESSO HORIZONTAL PROPERTY REGIME (this "Fourth Amendment") is executed and effective as of the 10th day of April, 2013.

WHEREAS, ADESSO/Columbia, LLC, a South Carolina limited liability company (the "Grantor") caused to be filed that certain Master Deed of ADESSO Horizontal Property Regime (the "Master Deed") dated January 11, 2008, and recorded in the Register of Deeds for Richland County in Book 1392 at Page 855; and

WHEREAS, the Grantor together with each Co-Owner as of December 3, 2008, caused to be filed that certain First Amendment to Master Deed of ADESSO Horizontal Property Regime (the "First Amendment") dated December 3, 2008, and recorded in the aforesaid County and Office in Record Book 1479 at Page 2188; and

WHEREAS, the Grantor together with a majority of the Co-Owners caused to be filed that certain Second Amendment to Master Deed of ADESSO Horizontal Property Regime (the "Second Amendment") dated September 30, 2009, and recorded in the aforesaid County and Office in Record Book 1559 at Page 976; and

WHEREAS, the Grantor together with a majority of the Co-Owners caused to be filed that certain Third Amendment to Master Deed of ADESSO Horizontal Property Regime (the "Third Amendment") dated August 3, 2011, and recorded in the aforesaid County and Office in Record Book 1702 at Page 1208; and

WHEREAS, each non-Grantor owner has executed an Acknowledgment and Joinder evidencing each of his/her/its consent and agreement to effectuate (i) either the Third Amendment which also contemplates this Fourth Amendment or (ii) this Fourth Amendment, copies of which are attached hereto;

NOW, THEREFORE, Grantor does hereby declare as follows:

I. Amendments to specific provisions of the Master Deed

A. Limited Common Elements: The Definition of Limited Common Elements set forth in Section V of the Master Deed is amended:

(i) so as to recognize the assignment of all parking spaces as set out in Section B below.

B. Exhibit E: Grantor hereby lists parking spaces assigned to current Co-Owners as particularly set out in Exhibit "E" attached hereto which shall become a part of the Master Deed.

Book 1854-818
2013031724 04/22/2013 14:34:24:810 Amend. to Decl & Master Deed
Fee:$43.00 County Tax: $0.00 State Tax: $0.00
2013031724 John T. Hopkins II Richland County R.O.D.

II. Other than amended by this Fourth Amendment, the Master Deed shall be in full force and effect as though the contents thereof had been recited herein verbatim.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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The foregoing Fourth Amendment was made by Grantor and is the original Fourth Amendment to the Master Deed adopted this 18th day of April, 2013.

GRANTOR:
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)

Witness #1

Emily D. Nixon
Witness #2/Notary

By: _____
John R. Holder, its sole member

STATE OF Georgia)
)
COUNTY OF Cherokee)

ACKNOWLEDGMENT

I, Emily D. Nixon, Notary Public for the State of Georgia, 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 18th day of April, 2013.

Emily D. Nixon
NOTARY PUBLIC FOR Georgia
My commission expires: 2/22/2014

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EXHIBIT "E"

Unit	Parking Spaces
101	49,50
102	172,173
103	185,186
104	147
105	219
107	57,58
109	217,218
110	51,52
111	23,117
112	20
115	194,195
116	109,110
117	94,95
118	170,171
121	214
123	92,93
125	31,32
126	83,84
127	200,201
128	140
129	98,99,91
130	85,86
201	115,116
202	18,19
203	103,104
204	165
205	150
207	183,184
209	111,112
210	177,178
211	215,216
212	161
215	209,210
216	66,67
217	189,190
218	159,160

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221	90
223	192,193
225	198,199
226	131, 132
227	38,39
228	182
229	89,40,41
230	64,65
301	33,34
302	153,154
303	37,47
304	62
305	191
307	187,188
309	61,105
310	87,88
311	180,181
312	56
315	113,114
316	100,101
317	106,107
318	127,128
321	179
323	166,167
325	135,136
326	70,71
327	53,54
328	176
329	174,175,118
330	122,123
401	59,60
402	133,134
403	29,30
404	63
405	124
407	35,36
409	24,25
410	158,164
411	211,212
412	130
415	21,22

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416	168,169
417	76,77
418	68,69
421	213
423	148,149
425	27,28
426	72,73
427	96,97
428	55
429	48,102,119
430	120,121
501	78,79
502	162,163
503	138,139
504	206
505	26
507	204,205
509	74,75
510	141,142
511	207,208
512	137
515	196,197
516	44,45
517	202,203
518	143,144
521	46
523	155,156
525	80,81
526	151,152
527	125,126
528	82
529	129,145,146
530	42,43
USMC Lease (Expiring October 18, 2014)	220,108,157
Unassigned (Month to month Lease to Resident)	221

Retail/Guest per Section V of the Master Deed, as amended	001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016 and 017

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EXHIBIT 7

Deposition of Rachel Lynn Bailey

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Transcript of the
Deposition of

Rachel Lynn Bailey

2/11/2020

Tadros v. Holder Properties, Inc., et al.
2019-CP-40-00919

COPY

Southern Reporting, Inc.
Phone: 803.749.8100
Fax: 803.749.9991
Email: Depos@southernreporting.net

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State of South Carolina	)	
	)	
County of Richland	)	
Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010 as Amended,	)	2019-CP-40-00919
Plaintiff,	)	
vs.	)	Deposition of
Holder Properties, Inc., John R. Holder, Individually, ADESSO/ Columbia, LLC, ADESSO Horizontal Property Regime, and ADESSO Homeowners' Association,	)	Rachel Lynn Bailey
Defendants.	)	

Date: February 11, 2020

Time: 1:56 p.m.

Location: Vernis & Bowling of Columbia, LLC, 1401 Main Street, Suite 655, Columbia, South Carolina

Reported by

Gretchen H. Wise

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26 spaces. Getting back to the January 24th, 2008. The applicant wants 26 spaces with restricted access spaces.

A. Nineteen restricted access, seven along Main Street and Blossom Street.

Q. Exactly. And I may have misread that, 26 spaces with 19 restricted access spaces.

A. It's 26: 19 restricted; 7 of the 26 are along Main Street and Blossom Street.

Q. I see that. And I misspoke when I asked you the question. I see that. There are 26 total spaces?

A. Correct.

Q. Okay. So if we use the math in this letter based 5.5 per 1,000, like we just did, that number, it'd be more like 27. And I can see 26, whatever -- they may round it down; I don't know -- figure that out. But 26 spaces with 19, when you say -- when -- restricted access spaces means like in the picture I showed you? Restricted would be you've got to go down -- when you went there, you've got to go down that little parking bay where they park. There is 17. And of those 17, there is three handicap, and I'll just submit that to you, out of the 17. And you went to the site, right?

A. Correct. There are 17 with the retail signs and

and ADESSO/Columbia, LLC. I work at the Robinson Gray law firm. Prior to this deposition, have you met or spoken with anybody from the Robinson Gray law firm?

A. I don't believe so.

Q. There was one question, and it was not in the last set of questions, it was before we took a break, in which the question was, there needed to be 38 spaces dedicated to the exclusive use of retail. And there was an objection. I believe you agreed with that. To the extent the spaces included with that 38 are on the street, those do not have to be dedicated to the exclusive use of retail, do they?

MR. BLACKBURN: Object to the form.

A. Correct. So it's 38 to be up to 50 percent can be through off-site or public parking, and then the rest are within the parking structure.

Q. Thank you for that.

EXAMINATION

BY MR. MASCIALE:

Q. And I am Michael Masciale. I'm with Copeland, Stair, Kingma and Lovell. I represent the ADESSO Homeowners' Association and the ADESSO Horizontal Property Regime. Ms. Bailey, just to clarify a few things, and we've been over this, but the PUD

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zoning classification supercedes other portions of the zoning ordinances, correct, in terms of permitted uses in the table of permitted use?

A. Correct. The planned unit development, depending on how specific it is -- so this one specifically does include parking requirements, uses; that information is in there, so it controls.

Q. So that controls, and the table of permitted uses and the other parking spaces found in the ordinances are essentially irrelevant to PUDs, correct?

A. Correct. They're not applicable. Unless a planned unit development --

MR. BLACKBURN: Object to the form.

A. -- specifically references the table.

Q. And I think you had said before that the commercial units owned by the plaintiff have 21 parking spaces within the ADESSO building; is that correct?

A. Correct. There are 21 for the retail.

Q. Okay. And I think you had said, under 17-311(c)(2), 50 percent of the parking requirement can be satisfied by off-street parking within 400 feet of the -- or the lot lines; is that correct?

A. Flip it. Fifty percent of the off-street parking requirement can be met on-street with the public

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parking --

Q. I apologize.

A. -- or leased parking, correct.

Q. Thank you. And so with your letter to Mr. Blackburn, which I can't remember which exhibit it is -- is that Exhibit --

MR. BLACKBURN: Exhibit 2.

Q. Exhibit 2. You stated that you believed, based on 8,139 square feet of the commercial units, that would entitle the plaintiff to an additional 12 extra spaces, correct, to be accommodated on the street and within the structure?

A. Correct. So the initial parking was approved based on that 4,675 using the 3.5 per 1,000 square feet formula within the planned unit development to get to the 8,139 that came up with 12 additional over the 19 within the parking structure and 7 along Main and Blossom Street.

Q. Is it 19 in the structure or 21?

A. The planned unit development sat out the 19.

Q. Uh-huh.

A. There are 21 currently.

Q. Okay.

A. Within the parking structure.

Q. Okay. So that would mean there would have to be,

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based on a total of 38 spaces, 17 on the street, correct, within 400 feet?

A. Yes.

Q. Okay.

A. Math is not my forte, everybody. So I apologize.

Q. It's not mine either.

MS. THYE: That's why we're all lawyers and not CPAs, right?

THE WITNESS: Yeah.

Q. And the parking spaces on the street do not have to be dedicated to the exclusive use of the commercial unit, correct? It just has to be public parking on the street?

A. Correct.

Q. Okay. And is the reason you found -- or you did not find a zoning violation because there are sufficient spaces on Main Street -- on, yes, Main Street on both sides of Blossom within 400 feet to accommodate the requirements of the plaintiff's units?

A. Correct.

Q. I want to address something that was brought up earlier about leased parking spaces. In the Code of Ordinances that was provided, which I believe is Exhibit -- is that Exhibit 1?

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garage.

Q. Okay. So that does not apply to off-street parking, correct?

A. That would through 17-311. The leased parking within a parking structure, a parking garage could count towards up to 50 percent through 17-311.

Q. Okay.

A. But that's separate from 17-345.

Q. I've got it. So through 17-311 then, the public spaces within 400 feet of the building satisfy the commercial units parking requirements, correct?

A. Correct.

Q. And so there -- so I want to go back to 2018 when you spoke with, I believe you referenced Julie Woodruff --

A. Yes.

Q. -- and Walt Todd. Who were they communicating with you on behalf of?

A. And I believe the emails were in my packet to you all too. I had been speaking -- Walter Todd was emailing me on behalf of Mike or Michael Munson.

Q. Uh-huh. And did --

A. And then he -- I apologize. I interrupted you.

Q. Go ahead. That's fine.

A. And then Julie Woodruff was asked by them to email

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me with just the sign updates.

Q. Okay. And they -- they were speaking with you on behalf of the homeowners' association; is that correct?

A. I believe so.

Q. And so when this issue with the parking signage was brought to them, they took actions to correct it, correct?

A. Correct.

Q. So they changed the signage, as we discussed, to restrict the parking for retail use only?

A. Correct.

Q. And that occurred in June of 2018?

A. Correct.

Q. And then after your site visit, which I believe you said occurred in 2019 -- is that correct?

A. I went once in 2018 and once in 2019.

Q. Okay. And it hadn't changed from 2018 to 2019, the signage?

A. No. Not that I observed.

Q. Okay. And as a result of that, you, as zoning administrator for the City of Columbia, found that there was no zoning violation based on the requirements of the PUD, correct?

A. Correct.

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Q. And that striking through did not happen in 2008 as part of the minor amendment, did it?
A. It was not new strike-through.
Q. Thank you, Ms. Bailey.

REEXAMINATION

BY MR. MASCIALE:
Q. And just a few questions from me, as well. I'm looking at the July 12th, 2006, major amendment, which also, that also included the same formula as the original --
A. Yeah.
Q. -- PUD rezoning application, correct? It's about three-quarters of the way back, page 3. It's a --
A. There is --
Q. -- the attachment. Page 3 of the attachment.
A. Correct. The attachment from the -- the -- the July minor -- or the July 12th, 2006, major amendment kept the same application packet that went in May of 2006.
Q. Uh-huh.
A. So that attachment was part of that application submittal. So it is within the packet. But they discussed different changes to the commercial, so that's why there is some --
Q. And the minor amendment from 2008 kept the same

formula, correct?
A. It does have that same formula that was part of that attachment.
Q. And so that formula allows for an accurate calculation of the required parking spaces, correct, by allowing scaling?
A. Correct.
Q. So I believe you had said earlier that the base level of spaces, based on 5.5 per 1,000 square feet for 4,675 square feet, was 26 spaces, correct?
A. Correct. The 19 restricted in the structure and seven along the street.
Q. And then for every additional 1,000 square feet, another 3.5 spaces is required; is that correct?
A. Correct.
Q. And looking at page 2 of that same attachment to the July 12th amendment.
A. This?
Q. About the second major bullet point where it says, "Square Footage Flexibility."
A. Yes.
Q. Does it state that the maximum square footage may be increased to not more than 325,000 square feet without modification of the PUD provided that the owner complies with minimum parking requirements

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CALHOUN)

Be it known that I, Gretchen H. Wise, do hereby certify that I did have Rachel Lynn Bailey, appear before me and I took the foregoing deposition at the time and place aforesaid;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth;

That the foregoing deposition was taken down by me and reduced to written form by means of Stenomask with backup;

That the foregoing transcript represents a true, accurate and complete transcript of said deposition to the best of my skill and ability;

That this transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

That I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

Witness my hand and seal this 21st day of February, 2020.

Gretchen H. Wise

Gretchen H. Wise
Notary Public for South Carolina
My Commission Expires: 10/12/2027

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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 GMW

PEN-GAD 800-631-6989

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HOLDER PROPERTIES

3333 RIVERWOOD PARKWAY ▪ SUITE 500 ▪ ATLANTA, GA 30339 ▪ PHONE 770-988-3131 ▪ FAX 770-988-3105 ▪ WWW.HOLDERPROPERTIES.COM

1320 MAIN STREET ▪ SUITE 100 ▪ COLUMBIA, S.C. 29201 ▪ PHONE 803-753-5100 ▪ FAX 803-753-5799 ▪ WWW.HOLDERPROPERTIES.COM

January 24, 2008

Mr. Jonathan Chambers
Deputy Zoning Administrator
City of Columbia
1136 Washington Street
Columbia, South Carolina 29201

Re: Minor Amendment to PUD-R,DD at 601 Main Street (as amended February 20, 2006)

Dear Mr. Chambers:

Please consider the following minor amendment to the Planned Unit Development (PUD) approved by the City of Columbia for the referenced property. This amendment allows for a 60' parking bay depth in the parking deck, which depth is common in most (if not all) of the large commercial parking decks in down town Columbia and around the nation.

Holder Properties respectfully requests that the current language regarding parking in the PUD be further amended to read (see highlighted text for current amendment):

- *Parking:* The parking requirements for the project will be accommodated in the Parking Structure located beneath the Residential Condominiums, and with street side parking along Main Street and Blossom Street. The proposed parking facility will have approximately ~~230~~ ***222*** spaces. Approximately 7 additional spaces will be available on the street.

  Parking spaces will be allocated as follows:

  1. Residential Condominiums (Assuming 1 space / bedroom)
     - 203 restricted access spaces in the parking deck
  2. Retail (~~Assuming 3.5 spaces / 1,000 SF for 4,000 SF and 8 spaces / 1,000 SF for 2,500 SF~~***Assuming 5.5 spaces / 1,000 SF for 4,675 SF***)
     - ~~34~~ ***26*** spaces with ~~27~~ ***19*** restricted access spaces ~~(i.e. pay-on-foot)~~ in the parking deck and 7 spaces along Main Street and Blossom Street

  Any increase or decrease in the assumed square footage shall increase or decrease the parking allocated to the project at the rate of 1 space / bedroom for residential condominiums and 3.5 spaces / 1,000 SF for retail.

PLAINTIFF'S EXHIBIT 5
Bailey
2-11-20 GHW
VERIGAD 800-631-6989

Parking bays shall be 60' with 18' deep spaces and 24' wide drive aisles.

All minimum parking requirements may be reduced with the approval of the City's traffic engineer based on proposed usage of space in the building.

Please call me at (404) 451-4821 with any questions or concerns regarding the requested amendment.

Sincerely,

Nathan Hedges
Director, Development
Holder Properties

cc: Jerry Thompson, City of Columbia
Timothy J. Bright, Holder Properties

File

HOLDER PROPERTIES

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EXHIBIT 8

Deposition of Emad Tadros, M.D.

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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),) Remote Deposition
)
vs.) of
)
) EMAD TADROS, M.D.
Holder Properties, Inc., John)
R. Holder, Individually,)
ADESSO/Columbia, LLC, ADESSO)
Horizontal Property Regime,)
and ADESSO Homeowners')
Association,)
)
Defendant(s).)
)

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

Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a Copy or portion thereof as an exhibit pursuant to court order or Rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person without the express consent of the reporter and/or reporting agency.

REMOTE APPEARANCES

For the Plaintiff(s):
Charles G. Blackburn, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, SC 29201

For the Defendants ADESSO Horizontal Property Regime and ADESSO Homeowners' Association:
Michael C. Masciale, Esquire
Copeland, Stair, Kingma & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

For the Defendants Holder Properties, Inc., and ADESSO Columbia, LLC:
Kevin K. Bell, Esquire
Robinson Gray Stepp & Lafitte, LLC
PO Box 11449
Columbia, SC 29211

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REPORTER'S LEGEND:
-- [denotes interruption/change in thought]
... [denotes trailing off/incomplete thought or statement]
[sic] [denotes word/phrase that may seem strange or incorrect; written verbatim]
(ph) [denotes phonetic spelling]
(unintelligible) [denotes not capable of being understood]
(indiscernible crosstalk) [denotes multiple speakers at the same time, not capable of being understood]

STIPULATIONS

Pursuant to Order of the Supreme Court of South Carolina, Appellate Case No. 2020-000447 and the agreement of all parties, this deposition is being conducted via remote communication and pursuant to the South Carolina Rules of Civil Procedure.

- - - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

- - - - -

Whereupon,

EMAD TADROS, M.D., being administered an oath of affirmation or duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Court Reporter: State your full name for the record, please.

Witness: Emad Tadros

- - - - -

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EXAMINATION

BY MR. MASCIALE:

Q Dr. Tadros, my name is Michael Masciale. I'm an attorney here in Charleston with Copeland, Stair, Kingma & Lovell. I represent the ADESSO Horizontal Property Regime and the ADESSO Homeowners' Association in this case. Before we begin, I just want to go over a few rules of the road with you. First of all, have you ever given a deposition before or taken part in one?

A Yes, I have.

Q Okay. How many?

A One in 2003 in a patient who killed himself.

Q Okay.

A And another which was my deposition against the seller of this property.

Q Okay. So, generally, just when I'm asking questions, if you have any -- if you don't understand my question or need any clarification, just make sure you ask me and not Charles for any clarification. I know it might be -- you may want to ask Charles, but obviously you have to -- the rules require that you ask me as the deposing counsel. So just keep that in mind.

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Additionally, if we do take any breaks during this deposition, you're not permitted to speak with anyone else about the subjects of your testimony today unless it's your attorney about a matter that's privileged. And, obviously, if you speak with anyone else, I can ask you about that when we resume. Other than that, let's try and make sure, as Heather said, that we don't talk over each other so that, especially on videoconference, so that she can hear and she can understand my questions and your answers clearly. And just please respond verbally to any of my questions rather than any head nods or anything because that will be even more difficult for Heather to pick up. So do you understand all of that?

A Yes, I do.

Q Okay. Thank you. And you've already said -- and could you just restate your name for me.

A Emad, E-m-a-d, last name Tadros, T-a-d-r-o-s.

Q And Dr. Tadros, when were you born?

A I was born in March 5, 1958.

Q And where were you born?

A Egypt.

Q Egypt. Okay. And how long did you live over in Egypt?

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A Until 1984; '83, '84.

Q Okay. And where did you go after that?

A I stayed in the United States.

Q Okay. And you came to the United States. And what brought you here to the US?

A I had an immigrant approval since actually a very young age.

Q Okay. And are you married?

A Currently, I'm single.

Q Single, okay. Do you have any children?

A Yes.

Q How many?

A One.

Q And is it a boy or girl?

A It's a son.

Q And how old is your son?

A Fifteen years old.

Q Fifteen years old. And I guess he would be in high school right now?

A Yes.

Q Okay. And what's his name?

A Luke.

Q Okay. And going into your educational background, where did you attend primary and high school? Was

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that in Egypt?

A In Egypt.

Q Okay. And after attending those schools, what did you do after that? Did you go to college, I assume?

A I went to medical school.

Q Okay. And were you in Egypt for medical school?

A Yes, I was.

Q Okay. And how long were you there?

A Until I finished my internship which is early 1984.

Q Okay. So how many years did you spend in medical school?

A Straight, one year premed and five and half years medical school.

Q Okay. Gotcha. And then once you finished your internship you came to the United States?

A Yes.

Q And where in the United States did you move when you came in 1984?

A California.

Q California.

A Los Angeles.

Q Okay. And what did you do once you got there? Were you employed by a hospital right away or?

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A No. I had to get my license done. So I did all kinds of low-paying jobs.
Q Okay. When did you find employment as a doctor?
A Approximately in 1989. That's when I started my formal residency training.
Q And where was that at?
A In Loyola University.
Q In Chicago?
A Yes.
Q Okay. And after you finished your residency what did you do?
A I transferred the residency to the UCSD in San Diego, and I ended up in 1993 finishing. And ever since, I have been a private practice in San Diego.
Q Okay. You've been in private practice. What's the name of your practice? Is it just you?
A My name, MD, and Professional Corp.
Q Okay. Thank you. And Dr. Tadros, I've seen from a prior deposition that you've given that at some point you became interested in -- well, you created, I think, two trusts. Is that correct?
A No, one trust.
Q One trust?
A Yes.

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Q And I believe it was the Luke Tadros Trust?
A That was the initial trust that morphed into the Grace Living Trust.
Q Okay. And when was that created, the Luke Trust?
A The Luke Trust was called Beloved Son Luke Living Trust. And that was, I believe, created I'm going to say 2010. I'm not a hundred percent sure.
Q Okay.
A 2010 or 2012.
Q Okay. And what was the purpose of that trust?
A Just to make sure that my son is protected. I didn't know for how long I'm gonna live.
Q Uh-huh. He was the only beneficiary of that trust?
A Yes.
Q Okay. And who's the trustee?
A Myself.
Q Okay. Were you the sole trustee or were you a cotrustee?
A Sole trustee.
Q Okay. Now, I know you said it changed names to the Grace Living Trust. When did that occur?
A I believe in 2014.
Q Okay. Now, to capitalize the trust what did you do? Did you invest in any particular assets?

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A Yeah. Yes, we did.
Q And what were those?
A The real estate assets.
Q Okay. When you say real estate assets, do you mean commercial and residential or only residential?
A No residential, were not -- were financially not viable. So I was advised to move into commercial.
Q Okay. So only commercial?
A Yes.
Q And can you recall exactly when you first invested in commercial real estate?
A Yes. In 2005 I bought a commercial office building.
Q Okay. And where was that located?
A Escondido, California.
Q And when you say commercial office building, do you mean like a high-rise or kind of like a small office?
A No. It's isolated, small building, and most basically we're talking about I would be having my own office there.
Q And do you remember approximately how much that building cost to purchase?
A 1.7.

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Q 1.7 million?
A Yes.
Q Okay. And how did you or I guess the Trust afford that?
A I sold the other property that I had, residential property that I had, and I moved it. It was a 1031 exchange.
Q Uh-huh. And can you explain your understanding of a 1031 exchange to me?
A It means, as I have been told, that you don't have to pay taxes on your capital gain if you just move the property and the purchase into. Don't touch the money when you sell it and it moves into -- a 1031 exchange means it goes into some kind of company that keeps the funds of this sale until something else is purchased.
Q Uh-huh, okay. And so when you say you sold another property to pay for this office building in Escondido, what other property are you referring to?
A What other properties?
Q Yes.
A Oh, it was a home and another condo in downtown.
Q Okay. So it was two residential properties?
A Yes. And there was a third home in Huntington

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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.

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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?

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A Another Hardee's and a Bojangles.
Q Okay. And do you remember approximately how much those cost?
A I believe the last one was 400,000 and the other one I only paid like 250,000.
Q Okay.
A That was down payment.
Q Down payment? What was the --
A For the loan.
Q And what was the total purchase price of those?
A Approximately -- I don't have exact numbers in my head -- approximately, the Hardee's, 1.2, close to that; and Bojangles I believe approximately 1 million.
Q Okay. And how were you securing those loans? Were you giving mortgages on these properties or?
A Yes.
Q Okay. And that covered the million, million point two, on those loans? Those properties were worth that much?
A Yes.
Q Okay. When you entered into these transactions, were you doing this by yourself or did you have anyone representing you or advising you on these?
A I was generally getting advice from brokers,

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people lying, talking. But regarding these transactions, I did have a broker that was helping out to buy them.
Q Do you recall the broker's name?
A Not offhand.
Q Okay. I think I had seen in your other deposition that you referenced something called Luke Net. Can you explain what that is?
A Wood Neck?
Q I think Luke, Luke Net. Is that correct?
A Oh, Luke Net. Yeah, Luke Net. That's what other people told me to go to.
Q And what is that?
A It's a place where people advertise for selling property, and anybody can just look at the property if they're interested. You can call up and find out. I didn't have time for this, so I had a broker that was doing this.
Q And did you do any independent research when you first started trying to get into commercial real estate? Did you research any procedures or any issues that could be involved in these transactions?
A I don't, and I did not.
Q You didn't?

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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

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you in these transactions as the buyer?
A The attorney represented the bank with the loan. They said if the bank is comfortable then that's it, then you rely on that attorney.
Q So the attorney wasn't representing you, though?
A There was no -- no, I never needed one.
Q Okay. So would the brokers, would they negotiate the contracts and bring any issues with the perspective transaction to you?
A Yes.
Q Okay. And how would you deal with things when they came up? You know, if have they asked for guidance or what you wanted to do, would you, you know, tell them what you wanted them to do?
A You know, I work with my background. My patients trust me, and I'm a very trusting guy. So whatever I'm told that I need to do, I do. They're sitting in the driver seat in the transaction; I'm not. So I basically maintain a passive position.
Q Uh-huh. Okay.
A And I never had a problem with that.
Q Okay. But you had only -- I think you said up until this point, you had only purchased two Hardee's, a Bojangles, and one office building?

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A Yes.
Q So you had never purchased any multiunit restaurants or retail locations in a mixed-use development?
A No. Never.
Q Okay. So then kind of going forward to 2014, I think you said -- did you do a -- excuse me -- a 1031 exchange to buy the ADESSO properties?
A Yes.
Q Okay. And what properties did you sell to do that?
A According to the broker that contacted me, I sold all of them.
Q So you sold all three properties?
A Yes.
Q So that would be the office building in California --
A No.
Q -- and the -- no? Oh, no. Sorry, the Hardee's in Georgia, and the Bojangles and Hardee's in North Carolina?
A Yes.
Q Okay. And what was the name of the agent who contacted you?
A Jimmy Weeks (ph).

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Q And did you know him before this or have any prior contact with him?
A No.
Q Okay. And so he just reached out to you out of the blue?
A He sent me a letter.
Q And what did he say in that letter?
A He gave his background as an MBA.
Q Uh-huh.
A And reference phone numbers to contact. And he outlined his expertise that he worked for -- (phone ringing) -- knew that I had units. He had studied what I had. And he said basically you have not purchased something that's good for you because they are basically, they are on a main road, they're small, small towns. The likelihood of your feeling was extremely high. I became scared. So I talked to him more. I trusted him. He sounded like a very nice man. He cited Bible verses. I felt comfortable.
Q And did you contact any of those references he listed?
A I'm trying to remember. I cannot confirm yes or no. I think I did. It was six, seven years ago. I make thousands of calls on a weekly basis, so I

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don't know. I can't precisely answer that one. I believe I did.

Q Okay. And so, I guess assuming you did, do you recall what any of those people would've said about him?

A I mean, whatever they said was enough that I would move forward with him.

Q But to be clear, you don't know or you can't recall whether or not you actually contacted him?

A Honestly, I cannot.

Q Okay. So what did he do to get you interested in the ADESSO properties? Was that the only one that he recommend to you, or did he show you others? What was that process like?

A No. Actually, he purchased two other properties and then ADESSO came. I personally said what do you think of this one. And he said this is a great one. This is the best of all. He was so excited about it that this is a beautiful building and beautiful condos, et cetera.

Q Did he tell you anything else about why he thought it was a great location?

A He said a lot of things. I mean, I can go back to the email back and forth. There is so much that he said.

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Q Did he tell you --

A He was so excited that this was one of the best investments.

Q And so, did you consider other properties after he came back with that excitement, or did you just go straight for ADESSO at that point?

A I mean, like I said, I'm a trusting person. I trusted him. And he said that he studied so many and that would be the best.

Q Okay. So you went with his recommendation. Had you ever been to Columbia before, before that?

A No.

Q Okay. So you were just taking his word for it?

A Exactly.

Q But you didn't actually -- had you ever met Mr. Weeks in person?

A No.

Q Okay. So he just contacted you out of the blue and said I have this great opportunity for you and you should go with it and that's what you did?

A Yeah. He sent me also written material, and we talked on the phone many, many times.

Q Okay. What did he send you?

A A flyer about his expertise, what he had done. He sent me a letter that he has an MBA, very well

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experienced in real estate transactions, 30-plus years. And you can tell how nice of a person he is when you talk to him on the phone.

Q And I think you said that he got his real estate experience by working for Hardee's. Is that correct?

A And Bojangles, yes.

Q Okay. And I think you may be aware of this, but he testified in your other case basically that his experience was pretty much limited to purchasing those Hardee's -- purchasing and selling those Hardee's and Bojangles franchises kind of as a corporate franchise deal. And a lot of times that wouldn't even include the actual purchase of the property but the franchise rights. Are you aware of that?

A Aware that whether or not it's franchised versus single property purchase?

Q Correct.

A I became aware when he did that interview and when he did his deposition, but not prior to that. He claimed to be experienced.

Q But he never told you that he was experienced in the type of transaction you were looking for in ADESSO, though, did he?

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A He did say that he was experienced.

Q Okay. But not in this particular multiunit, mixed-use retail unit transaction, did he?

MR. BLACKBURN: Object to the form.

A He did not claim it to the contrary. He was consistently comfortable that he knows exactly what he was doing, that his experience -- as a matter of fact, he said that the very condos in that building is actually the best he's ever seen.

Q Okay. So you decided then to go with ADESSO. And I believe -- I think you sent a letter of intent over to Elliott and Lathan some time in the beginning of -- was it October?

A Yes.

Q Okay. And what all did you state in that letter of intent?

A That's a hard question to answer. I'm sorry, I don't have it in front of me. But basically saying that I'm interested in purchasing the property.

Q Okay. And how did Elliott and Lathan respond?

A He responded that he will be happy to assist in the process, and this is a wonderful property.

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Q Okay. So after that -- sorry. Let me backup for a second. So at that point I think you had said that you started investing in commercial real estate in 2005. Is that correct?
A Yes.
Q So at that point you would've had 11 years experience in investing in that kind of real estate. Or, I'm sorry, nine years.
A I wouldn't say that long of an experience because that was an office building intended for me to work from it.
Q Well, you also purchased a couple of Hardee's and Bojangles, correct?
A In 2013.
Q Yes. I meant since 2005 up until 2014?
A Yeah.
Q Okay. So you did have some experience with commercial real estate --
A Some --
Q -- investment?
A Some, yes.
Q Okay. So from your experience that you've had about that nine years, would you say that parking is very important to a commercial or retail unit, having adequate parking?

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A Yes.
Q Okay. And why is that?
A Because that's what I know, that there should be parking. If you have a commercial unit, you have to have parking for it.
Q Okay. So you knew that it was important in 2014 when you were negotiating the ADESSO, correct?
A It was important. But I've been told that because it's university the arrangement is different.
Q And who told you that?
A My agent.
Q Okay. And when you mean the arrangement was different, what do you believe he meant by that?
A He said he believed that I have one parking spot per unit.
Q Did he tell you what he based that on?
A Go figure. I don't know. This is 2020.
Q So he never gave you an explanation for his belief that you needed one unit -- or one parking space per unit?
A To my recollection it was because of the university had special arrangements.
Q Okay. He never cited a zoning provision or any law to support that?
A I don't know what he did.

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Q Okay. So at that time -- so in 2014, I think it's fair to say then that you were certainly aware that just generally parking is important to commercial properties. Is that fair?
A Yes.
Q Okay. Well, I'm going to send you or have you open exhibit -- or what's been marked as ADESSO 1. And I'm gonna try to figure out how to do this.

COURT REPORTER: Do you need me to show it on my screen, or how would you like to do that?
MR. MASCIALE: That would be good, if you could do that.
COURT REPORTER: Okay. Just give me a second and I'll pull it up.

(Whereupon, Master Deed was marked Exhibit No. 1 for identification.)

BY MR. MASCIALE:
Q As I said, this is ADESSO's Exhibit No. 1. Dr. Tadros, have you seen this document before?
A After the purchase, yes.
Q After the purchase?
A Yes.

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Q But you never saw it before the purchase?
A No.
Q Okay.
A I did not even know there is a master deed.
Q Did you know this was a -- the ADESSO was a condominium?
A I was not buying a condominium.
Q What --
A -- a store.
Q And is that what Jimmy Weeks told you?
A Yes.
Q Okay. And I think you may have seen this with his deposition, but he did review -- at the time of this transaction, he did review the ADESSO Master Deed, correct?
A I believe he made that claim, yes.
Q Okay. And he was at the time working as the buyer's agent, meaning you, correct?
A Correct.
Q So at the time he was working for you?
A Yes.
Q Okay. And did he advise you at all about this master deed and what it said?
A No, nothing to my recollection.
Q Okay. So you weren't even aware that there was a

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master deed. Is your testimony?
A I mean, I was not aware of anything like this, like a master deed like this.
Q Okay. Let me ask you this: What did you think -- you knew there was a homeowners' association, correct?
A To some extent, yes.
Q Okay.
A I live in a homeowner association area, yes.
Q Okay. And what did you at the time think governed this development? Govern the ADESSO I mean.
A I would imagine it's the building, whatever the homeowner is.
Q And what do you mean by that?
A Whatever the association rules and regulations are.
Q Okay. So you were aware generally that there were some sort of -- some form of rules and regulations that governed the homeowners' association, correct?
A (Unintelligible audio.)
Q I'm sorry, can you repeat that.
A Correct.
Q Okay. Did Jimmy Weeks tell you about those or, you know, kind of give you heads up that, hey,

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these will apply to your property?
A You know, I can't remember exactly what he told me, precisely what he told me regarding this. But all I can tell you it was not an issue.
Q Okay. And did you -- irrespective of whatever Mr. Weeks did or didn't do, did you take it upon yourself to research any of these?
A Had I known about it, yes.
Q Okay.
A But I did not. I did not. I would have done partial, but I still depended on him helping me out.
Q Uh-huh. And I think you just testified that you were generally aware, though, that there were certain rules and regulations that governed the ADESSO that would apply to your property, correct?

MR. BLACKBURN: Object to the form.

A You know, the question is kind of evasive a little bit. Because when you said you were aware to some extent certain, I was not aware of anything certain.
Q I don't think I -- if I said certain, I apologize.
A Okay.

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Q But you were where generally that there were rules and regulations that governed the ADESSO, right?

MR. BLACKBURN: Object to the form.

A To some extent. I did not really know that much about it.
Q Okay. And you didn't --
A I never bought -- I never purchased anything like this. I don't know what -- I didn't even know that those would apply to the condos because the condos are residential, the stores are commercial. I had no clue.
Q Okay. And so you didn't do any further research on your own?
A Absolutely not.
Q Okay. Well, turning to the first page here on Exhibit No. 1.

MR. MASCIALE: And Heather, if you could scroll down just under Holder Properties.

BY MR. MASCIALE:
Q Dr. Tadros, do you see that bar code stamped that's kind of on the right, middle of the page?

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A Yes.
Q And can you tell me what that first line says?
A Book 1392-855.
Q And I know it's kind of small, but can you tell me the date that this document was recorded?
A January 14, 2006.
Q Okay. And in the bottom right corner of that stamp can you tell me what that says?
A Richland County ROD.
Q That's the Richland County Register of Deeds, correct?
A I would assume.
Q Okay. So this document was recorded January 14, 2006 in the Richland County Registry of Deeds.

MR. MASCIALE: Heather, can you turn to page 12 of the Master Deed.

Q And you've seen this document since your purchase, correct, Dr. Tadros?
A Looks familiar to me. I'm not precise about the exact page, but it looks familiar to me, yes.
Q Okay. And did you research this at all after your purchase?
A To some extent, yes. I started to become more

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diligent, yes.
Q Okay.

MR. MASCIALE: And now on page 12, if you could go to the bottom, Heather, please. Thank you.

Q Do you see down there where it says "Limited Common Elements that benefit Commercial and Residential Uses"?
A Yes.
Q Does that say that at paragraph one, "Retail/Guest Parking, specifically parking spaces 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217"?
A Yes.
Q Okay. What do you understand those spaces to be?
A To my limited knowledge, as of 2017, that this would be guests for the building and retail for the tenants and the customers.
Q Okay. And so, you understand that to mean that those spaces are for both retial guests and regular guests?
A Guest means -- yes, regular guests or building guests.

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Q Okay. I'm going to --

MR. MASCIALE: Heather, could you please bring up -- or actually, first, could you scroll to Exhibit D, which is Plaintiff 00639. And then go to Plaintiff's 00641 -- or actually first -- I'm sorry.

BY MR. MASCIALE:
Q Dr. Tadros, can you tell me what this is?

MR. MASCIALE: Heather, can you scroll up just a little more. Thank you.

Q This, Exhibit D.
A Exhibit D, Schedule of Values.
Q Uh-huh.
A Say the unit number, the value, and the percentage.
Q Okay. And what do you understand that value and percentage to mean?
A I really don't know.
Q You don't know what even the percentage means?
A I surmise or assume that's the percentage of the space. I don't know what the value means. Value

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in dollar or value in square footage.
Q Okay.

MR. MASCIALE: Okay. Heather, if you could go to 00641. Thank you. Could you go down just a little bit. Great, thank you.

Q Do you see the two columns marked "Commercial 1" and "Commercial 2"?
A Yes.
Q Can you tell me the value for Commercial 1?
A I would assume that's the square footage because that's similar to what I have. For Commercial 1 it's 6913 and the percentage is 7.26759. And Commercial 2 is 1226 and the percentage is 1.2752.
Q Okay. And so it's your belief that that 7.26759 percent and that 1.2752 percent are the percentage of the whole condominium for those two commercial units?
A This is my understanding now, yes.
Q Okay. And do you know what the significance of those percentages is?
A Square footage-wise, I guess.
Q Do you know if there's any other significance to those?

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A Tax, county tax value.
Q Okay. Anything relating --

COURT REPORTER: I'm sorry, let me interject. Was there an objection?

BY MR. MASCIALE:
Q -- to assessments?
A It would be -- according to the Master Deed that you're showing me, it did make the clear distinction that the commercial is not the same as residential. So I cannot make a conclusion here. It's not similar. This is absolutely misleading.
Q What do you mean it's not similar?
A According to the Master Deed, my percentage in square footage is not relevant to the percentage of the building. According to the Master Deed, my percentage is treated differently from residential percentage.
Q And do you know where in the Master Deed it says that?
A I can tell you right now. It was my letter to Mr. Walter Todd dated on November 4, 2017, and master deed page 14, 15, and 16, and specifically in my letter, page number 3 where it says

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"Residential HOA charges should be separate from the commercial ones." Page number 13 --

Q Okay. And we'll get into all that in a little bit. I just wanted to go over those values, but we'll circle back to that.

MR. MASCIALE: Heather, could you pull up what's been marked as ADESSO 2, please.

(Whereupon, Third Amendment to Master Deed was marked Exhibit No. 2 for identification.)

BY MR. MASCIALE:

Q And Dr. Tadros, have you seen this document before?

A I assume that I have seen it.

Q Okay. And I think you said before you did research into at least the Master Deed. Do you think you probably would've researched this document as well? And can you tell me what it is?

A I started to do research in 2017, not beforehand, into the Master Deed when I found out that it was violated, both financially and party-wise. Now, what did I read then? I read a lot and I

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self-educated myself.

Q Okay. Just for the record, tell me what this document is?

A Third Amendment to Master Deed of ADESSO Horizontal Property Regime.

Q Okay.

MR. MASCIALE: Heather, if you could scroll down to the very bottom of page 1. Thank you.

Q Can you tell me in the bottom left-hand corner what book and page this document was recorded at?

A Book 1702-1208.

Q Okay. And can you tell me the date on which that was recorded?

A Something 19, 2011, maybe. I cannot really read it very well. It's not a great copy.

MR. MASCIALE: Is there anyway you can zoom in on that, Heather.

Q Does that clear it up a little bit?

A Thank you, Heather. 8/19/2011.

Q Okay. So it was recorded in 2011. And then, again, on the bottom right-hand corner, can you

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tell me the county that it was recorded in?

A I assume Richland. I can kind of figure it out. Richland County ROD.

Q Okay. And we said that was recorded in 2011.

MR. MASCIALE: Heather, would you mind scrolling up just a bit. Okay, thank you.

Q Can you see, first of all, Section I. Does that say "Amendments to specific provisions of Master Deed"?

A Yes.

Q Okay. And Section I-A talks about the limited common elements, correct?

A Correct.

Q And then it amends the definition of limited common elements as set forth in Section V of the Master Deed, correct?

A Yes.

Q And by the language of this, what was that definition amended to do?

MR. BLACKBURN: Object to the form.

A Certain parking spaces as set out in Section B

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below. I tell you, this is the most confusing thing for me to understand this.

Q Why is that?

A I don't understand the numbers. I've seen the numbers differently.

Q Okay.

A I was told I'm not sign anything.

Q Okay. So it says to recognize the assignment of certain parking spaces as set out in Section B below, correct?

A Yes, it does say that.

Q And it also corrects the list of retial guest parking limited common elements, correct?

A I don't know what the word correct means because according to the Master Deed, must not be.

Q Does that mean mislabel -- or it was mislabeled and they were correcting that error?

A Help me out, please. The Master Deed says no changes should be done to the parking spots. That's what we're here for. It's says to correct. I don't know what that means because they're not supposed to touch it.

MR. MASCIALE: Could you scroll down to the next page, Heather. Okay, that's good.

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BY MR. MASCIALE:
Q And Dr. Tadros, what is that correcting? Those two instead of -- is it correcting it from spaces labeled in the two hundreds to spaces labeled in the single digits and teens?
A According to the document description, I would imagine that's --
(Court reporter loses Zoom connection.)
- - - - -
(This portion of the deposition stopped at 1:21 p.m. and resumed at a later time with another court reporter.)

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CERTIFICATE

Be it known that the foregoing remote deposition of EMAD TADROS, M.D. was taken by Heather R. Landry, CVR;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

That upon verification of identity, the witness was sworn by me or administered an oath of affirmation via remote communication to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 4th day of September 2020.

_____
Heather R. Landry, CVR

Notary Public for South Carolina
My Commission Expires: April 10, 2024

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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.

REMOTE ZOOM DEPOSITION OF
EMAD TADROS, M.D.

DATE: August 26, 2020
TIME: 1:50 p.m. - 6:07 p.m.
LOCATION: Remote Zoom Proceeding
(All Participants, Various SC Locations)
REPORTED BY: Lorraine B. Whiteley

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A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff:
By: Charles G. Blackburn, Esquire
VERNIS & BOWLING OF COLUMBIA, LLC
1401 Main Street, Suite 655
Columbia, SC 29401
(803) 234-5416
cblackburn@scarolina-law.com
(VIA ZOOM)

For Defendants Holder Properties, Inc. and Adesso/Columbia, LLC:
By: Kevin K. Bell, Esquire
ROBINSON GRAY STEPP & LAFITTE, LLC
1310 Gadsden Street
Columbia, SC 29201
(803) 929-1400
kbell@robinsongray.com
(VIA ZOOM)

For Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association:
By: Michael C. Masciale, Esquire
COPELAND, STAIR, KINGMA & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307
mmasciale@cskl.law

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EXHIBIT INDEX

Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's:

Exhibit 1 Master Deed of Adesso Horizontal Property Regime (97 Pages)
Exhibit 2 Third Amendment to Master Deed of Adesso Horizontal Property Regime (6 Pages)
Exhibit 3 Fourth Amendment to Master Deed of Adesso Horizontal Property Regime (7 Pages) — 49
Exhibit 4 Commitment For Title Insurance of WFG National Title Insurance Company (10 Pages) — 93
Exhibit 5 Plaintiff's Answers to Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association's First Set of Interrogatories to Plaintiff (25 Pages) — 96
Exhibit 6 [NOT USED]
Exhibit 7 E-Mail Dated 03/04/16 From Lauren Smith to Emad Tadros RE: Marine's Parking With Attached Monthly Parking Space License Agreement (10 Pages) — 88
Exhibit 8 [NOT USED]
Exhibit 9 Letter Dated 02/15/17 From Emad Tadros, MD to "To Whom It May Concern at Adesso's HOA and Adesso's Property Management" (3 Pages) — 130
Exhibit 10 [NOT USED]
Exhibit 11 Chart Titled 2018 Adesso Operating Budget (1 Page) — 132

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EXHIBIT INDEX (Continued)

Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's:

Holder Exhibit 1 Third Amendment to Master Deed of Adesso Horizontal Property Regime (6 Pages) — 170
Holder Exhibit 2 Letter Dated 03/13/18 From Rachel L. Bailey to Charles Blackburn (1 Page) — 180
Holder Exhibit 3 Affidavit of Emad Tadros, M.D. (39 Pages) — 189
Holder Exhibit 4 Compilation of E-Mails (6 Pages) — 199
Holder Exhibit 5 Commercial Claims Settlement Agreement and Release (41 Pages) — 186

PROCEEDINGS

[COURT REPORTER'S NOTE: At this point court reporter Lorraine B. Whiteley commenced reporting this deposition pursuant to an interruption in internet connectivity with the first reporter. It was stipulated by and between counsel that the witness continues under oath as sworn by the first reporter.)

PROCEEDINGS

= = = = = =

(EMAD TADROS, having been previously duly sworn as hereinafter certified, deposes and says as follows:)

= = = = = =

E-X-A-M-I-N-A-T-I-O-N

BY MR. MASCIALE:

Q So going back to -- I think it's Adesso 2, the Third Amendment to the Master Deed. Okay. Or -- yeah: Third Amendment -- actually ...

MR. BELL: What page you need?

MR. MASCIALE: Let's see. That would be Plaintiff -- actually, you know what? I think that is -- that's actually everything I had for this one.

BY MR. MASCIALE:

Q So, actually if we can go to Adesso 3. Sorry about that.

MR. BELL: There it is.

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(Fourth Amendment to Master Deed of Adesso Horizontal Property Regime (7 pages), Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 3, having been previously marked for identification, is made part of this deposition.)

BY MR. MASCIALE:

Q Okay. Dr. Tadros, do you recognize this document?

A I do see it; yes.

Q Okay. And is this the Fourth Amendment to the Master Deed of the Adesso Horizontal Property Regime?

A Yes; it is, as it states.

Q Okay. And looking at the recording stamp down in the bottom right-hand corner, can you tell me the book and page this one was recorded at?

A Book 1854-818.

Q Okay. Thank you. And what date was this recorded on?

A 4/22/2013.

Q So it's April 22nd, 2013. And was this recorded in the Richland County Register of Deeds office, as well?

A Yes. It does say that.

Q Okay. And in section -- let's see. In

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Section 1.B., can you tell me what that says?

A Grantor hereby lists parking spaces assigned to current Co-Owners as particularly set out in Exhibit "B" attached hereto which shall become a part of the Master Deed.

Q And then going to Plaintiff 00714, can you tell me who signed as the Grantor?

A Emily D. -- I cannot tell the last name.

Q And that's -- yeah. The grantor, on the right-hand side?

A Oh. John Holder.

Q Okay. And who -- and what's the company listed directly underneath Grantor?

A It says John R. Holder, comma, its sole member.

Q I'm sorry. Underneath where it says Grantor, underneath 18th day of April, at the top of the page; do you see that?

A Oh, okay. Adesso/Columbia, LLC, a Georgia; limited liability company.

Q Okay. And then I'll just read the rest off. And is that by Drake/Adesso, LLC, a Georgia limited liability company, its manager; by Holder Adesso, LLC, a Georgia limited liability company, its manager; and by JRH Adesso, LLC, also a Georgia limited liability

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company, its manager; and JRH LLC, a Georgia limited liability company, its manager?

A Yes.

Q Okay. And now turning to Exhibit E which is attached to this document, specifically Plaintiff 00717, do you see the column that says -- down at the bottom. Do you see the column where it says USMC Lease?

A Yes.

Q Can you tell me what that refers to?

A I don't know what that means, but it probably -- I would assume it's the United States Marine corps.

Q Okay. And which spot -- and these are for -- as you read on page one, these are for parking spaces assigned to the co-owners; correct?

A I would not agree with "assigned." I would say "leased."

Q Okay. So spaces 220, 108 and 157 were leased?

A Yes.

Q And they were leased by the Marines; is that correct?

A I assumed; yes.

Q And who leased them to the Marines?

A The building: Holder Properties.

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Q Okay. Was Holder Properties the owner of the building and those spaces?

A To my understanding, the owner, the builder, and also the property management.

Q Would you agree if I presented to you that Adesso/Columbia was the owner?

A I don't know the differences between in the timing, which one was the exact owner.

Q Okay. But you do know that the Marines' spaces were leased to the Marines in 2014. Is that correct?

A Correct.

Q Okay. Now turning to the last page of this document which is Plaintiff 00718, do you see where it says Retail/Guest per Sectio V of the Master Deed, as amended?

A Yes.

Q And does that list spaces 001 through 017?

A Yes.

Q And are those the same spaces that are in the non-gated portion of the Adesso parking lot fronting Main Street?

A Yes.

Q And so what is your understanding of this provision that says Retail/Guest?

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A When you read the sign that was listed in the parking space, it actually said Guest/Retail Customers Only, not retail tenants. And this sign was posted by Adesso and/or Holder Properties. So it's a little bit misleading in this document because it says Retail/Guest but the sign on the premises, it said Guest/Retail Customers Only.

Q So it said -- okay. So would you understand that to mean that both retail customers and other guests were allowed to park there?

A The retail customers supposedly were allowed to park. But that was not the case; it was just an assumption. But the retail tenants complained bitterly that they were not able to park.

Q Okay. And did they -- when you say that the retail customers were not allowed to park there, do you know that those customers were never allowed to park there? How do you know that they couldn't park there?

A I live in California. I don't know. I have been told --

Q Okay.

A -- by the bitterly complaining tenants.

Q Uh-huh.

A Retail tenants.

Q Okay. And do you recall when the tenants

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started complaining about this parking?

A From day one --

Q Since --

A -- uncle Maddio's, who now moved out, complained about this. And, specifically, Marsha Curtis complained that you have to drive for 20, 30 minutes because she's not allowed to park.

Q So by "day one," do you mean when you purchased the property?

A No. By "day one" means when I became aware of their complaint. I thought that everybody was comfortable and happy, and I started to become alerted that they were not happy.

Q And --

A Day one, it's a -- it's just -- it's an imaginary date sometime in 2017.

Q 2017; you think that's the earliest you knew about that?

A That's, more or less, when I started to be, to open my eyes; yes.

Q That you were aware of any parking issues?

A I did not -- I did not understand it. Like I said, there was the University campus.

Q Okay. So up until --

A So I did not understand it.

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And please allow me one other thing, that -- because your question was early on, on this part: I live in California. I don't know South Carolina rules. So I didn't really know anything. I thought this is the norm.

Q And you didn't know -- and so was that your attitude or your knowledge before this transaction in 2014?

A Yeah. When I was told in one parking spot, I thought that's just a -- the city rule.

Q Okay. And you didn't do anything to follow up on that; correct?

MR. BLACKBURN: Object to the form.

A No; I did not.

BY MR. MASCIALE:

Q Okay.

A I thought that was the prevailing thing.

Q Do you think --

A I had no reason to suspect it; let's put it this way.

Q And do you think if you're coming into -- you're buying commercial property in a new state you're not familiar with, you think it would be a good idea to do some of your own research on this?

MR. BLACKBURN: Object to the form.

A Well, the question is a little broad. As I

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mentioned before, that's why I hired somebody: Because I don't know what to do. That's why I hired somebody.

BY MR. MASCIALE:

Q Uh-huh. I actually want to --

A If you ask me now about that question, after my -- what I've done, absolutely, I would have everything under the microscope. But I've never been stabbed like this.

Q Okay. So would you agree with me that, generally, though -- let's say you were buying a million dollar piece of commercial property in California. Would you agree with me, generally it's a good idea to do some sort of due diligence on a transaction like that?

A Generally; yes.

Q Okay. But you would testify that you didn't -- you left everything up to Jimmy Weeks; correct? And you didn't really do any of your own research?

MR. BLACKBURN: Objection.

A [Unintelligible] -- as being mentioned.

BY MR. MASCIALE:

Q Okay. Let's see. So going back to the Fourth Amendment to the Master Deed which is Adesso 3, if you could -- and you can take a second if you need to. If you'd compare the assignment of spaces that's on Plaintiff 00718 which is up on the screen with the

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wording of -- I think it's Section V of the Master Deed that talks about limited common elements. And like I said, take all the time you need to read them over. And just for reference, the limited --

A And so what -- what exhibit number is it? I'm sorry.

Q Okay. So the Master Deed is Adesso 1. And I am --

A I don't have that. I don't have the Master Deed handy with me at this point.

Q Let's see. Let me see if I can pull it up.

MR. BELL: Yeah. That would be good, Michael. I e-mailed Dr. Tadros about 200 pages.

MR. MASCIALE: Yeah. That's -- okay. There we go. Let's see. So, Kevin, it's page -- the Master Deed initially is page 12 which is Plaintiff 00564.

A Okay.

BY MR. MASCIALE:

Q Okay. And I think we had already established that these retail guest parking spaces were corrected in the Third Amendment to not be listed in the 200s; is that correct?

A Correct.

Q Okay. So I'm turning to what would be page 14 of the Master Deed which is 00566, Section C(5), down

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towards the bottom. Can you tell me what that paragraph says?

A 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 -- id it B now or VII?

Q I think that's Section VII.

A Yeah. V-I-I, hereinbelow, Retail Parking Spaces may not be reassigned 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 the rental to different vendors, stores, restaurants, et cetera, may designate certain Retail Parking Spaces to each lessee of a portion of the Commercial Unit in the Commercial Unit Owner's reasonable discretion.

Q Okay. Thank you. And would you agree -- okay. So if we look at Exhibit "C" to the Master Deed which is -- it begins on page --

MR. BELL: Here we go.

MR. MASCIALE: You're faster getting there than me.

MR. BLACKBURN: Okay. 592, Michael.

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MR. MASCIALE: This is 0592. All right. Thank you.

BY MR. MASCIALE:

Q Okay. So we turn to, we turn to 00599. Does that show the parking spaces, listed by number, of the Adesso?

A Yes.

Q Okay. And is this Parking Level 1?

A I have no clue.

Q Can you see the bottom right-hand corner? Can you tell me what that says?

A Can you drag it down a little bit?

Q [Complying.]

A It says PLT_00599.

Q No. Where he's got -- where Kevin's got the mouse.

A That's level -- level parking -- Adesso: Parking Level 1.

Q Okay. And I think you had said the Marines were assigned -- or were leasing spaces 220, 108 and 157. Is that correct?

A I assume that; yes.

Q Okay. And if we go to the next page which is Plaintiff 00600, can you tell me which parking level this reflects?

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A Parking Level 2.

Q Okay. And do you see the spaces marked 001 through 017 up in the -- so I guess it would be the bottom left on this page, just off the entrance to the garage?

A Yes.

Q Okay. And those are -- or were those the commercial or the retail guest parking spaces?

A The guest --

MR. BLACKBURN: Object to the form.

A The guest/retail customers only.

BY MR. MASCIALE:

Q Okay. And that's identified in Section C(5) of the Master Deed; correct? The one that you just read?

A I don't know. I don't recall. But I will assume that. I'm not a hundred percent.

Q Okay. Well, we can go back to it, if you would like.

A No. No, no, no. I disagree with you because Section (5) did not specify the numbers, just talked about parking, commercial parking, period. And that's were, hell, the whole dispute is. So what you're saying is 1 through 17 is what Section (5) -- no. Section (5) relates to the Master Deed, according to the -- whatever the City code is.

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Q I think Section C(5) stated that the parking spaces that were listed in this Exhibit "C" that we just went over would be limited to the commercial unit that they serve. They would be limited common elements of that unit; correct?
A According to that Section (5), the answer is yes.
Q Okay. Now if we go back to --
A That's what I testified. But -- but I -- just to correct your question, looking back, Section (5) only talks about commercial; it does not talk about guests. And it even gave me --
Q Correct.
A -- the power to control it.
Q Right.
A But -- but you --
Q And as you sit here --
A But the real question is about guests/retail, so. You're mixing two things together. So you got to be a little bit more precise with me, please, because it's very --
Q Sure.
A That's -- that's the nature -- that's the core of the whole problem.
Q Sure. And I'm getting to that. You're

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right; it does only mention commercial or retail. Now if we go back to Adesso 3, though, which, on page Plaintiff 718 ...
MR. MASCIALE: I think that might be 2, Kevin.
MR. BELL: Hang on. That's entirely possible, I got them out of order.
MR. MASCIALE: Okay. There we go.
BY MR. MASCIALE:
Q So again you said the Master Deed speaks only about retail or commercial parking spaces; correct?
A Section (5).
Q Yes. But this amendment, the Fourth Amendment, talks about retail and guests per Section (5); correct?
A Yes.
Q Okay. And that is how these parking spaces were listed; correct?
A If you want my answer to be correct, I have to tell you I am most confused, because here it says Retail/Guests. Referring to Section (5), that only say Retail.
Q Right. I'm just asking you --
A Well --
Q -- this Fourth Amendment --

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A You asked me about correct. I'm telling you I'm confused.
Q No. I'm just asking you, does this document state that spaces 001 through 017 are listed as Retail/Guest parking?
A That document; yes. And it's not -- it's -- it's extremely misleading because it says per Section (5).
Q Uh-huh.
A It's -- the color is white for Section (5), but the color is actually black. That doesn't make sense because this one, it says retail and guest per Section (5), which only say Retail.
Q So this contradicts the Master Deed; right?
A Yes.
Q Okay. And just going back to the first page again, can you tell me when this document was recorded?
A Get me to the bottom, please. Fourth Amendment. This document, 4/22/2013.
Q Okay. In the Richland Count Register of Deeds office?
A Yes.
Q And you purchased your commercial units at the Adesso in December of 2014; correct?
A Correct.

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Q Okay. Now would you agree with me that all of these documents, what I've just shown you, Adesso 1, 2 and 3, are all matters of public record and they're publicly available?
A. If -- if the law demands this, I would assume such; yes.
Q Okay. So they were publicly available at the time you purchased your property?
A I don't know that. I'm making an assumption. I'm not giving a fact.
Q Would you agree that the Register of Deeds is a public office?
A Yes.
Q Okay. And I believe you said that these were recorded in the Register of Deeds office; correct?
A Yes.
Q Okay. And all of these were recorded prior to the date when you purchased your commercial units; correct?
A Correct.
Q Okay. So these were matters of public record, at the time you purchased them?
A I assume such.
Q Okay. Well, I think we've covered that. So if you had -- I know you said you hadn't done any

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research. But if you had wanted to, on the date you purchased your property or any time before that, you could have researched these and found these documents; correct?

A Correct.

Q Okay. Now I want to go to your relationship with Jimmy Weeks a little bit. So I think you had said he handled all of this transaction. First of all, how much input did you have on this?

MR. BLACKBURN: Object to the form.

BY MR. MASCIALE:

Q How involved were you in this Adesso transaction?

A Through a lot of e-mails, phone calls.

Q With Jimmy, or with anyone else?

A Only Jimmy.

Q Okay. And I know when he first reached out to you, he discussed this was a great opportunity, or something along those lines; correct?

A Yes.

Q Did he tell you anything about the parking situation at Adesso?

A Like I said, to my recollection, he mentioned one parking spot because it's treated specially, being a University.

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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

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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

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between the remote desktop and my actual desktop to do this, so I'm not sure it's going to --

MR. BELL: Yep. E-mail away.

MR. MASCIALE: Okay. Thanks. All right.

BY MR. MASCIALE:

Q Okay. Let's see. We're on -- I think this will be Adesso 4, when I get it over to you.

MR. BELL: Can we call it 3-A?

MR. MASCIALE: 3-A? Okay. That's fine. Okay.

MR. BELL: How big is it, Michael?

MR. MASCIALE: It's five pages.

MR. BELL: Well, why isn't it here?

MR. MASCIALE: All right. Come on. Okay. It should have sent.

MR. BELL: Okay.

MR. MASCIALE: And, actually, while we're waiting, I can go ahead -- I had a few questions about Adesso 12, if we want to go ahead --

MR. BELL: Sure.

MR. MASCIALE: -- and do that.

THE DEPONENT: Yeah. I'm fine.

MR. MASCIALE: Okay. Thanks, Kevin.

(Three Black-and-White Photographs (3 pages), Defendants Adesso Horizontal Property Regime's and Adesso

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Homeowners' Association's Exhibit No. 12, having been previously marked for identification, is made part of this deposition.)

BY MR. MASCIALE:

Q Dr. Tadros, do you recognize this first document and --

A Yes; I do.

Q Okay. Can you tell me what that is?

A This is around mid to end of 2018, a picture that I have taken, personally, from the garage.

Q Okay. And you say you took this in mid to the end of 2018?

A I'm not exactly sure on the timing, but I did request that this should be taken down.

Q Okay. And this is a sign you were referring to earlier when you said that these spaces were for both guests and retail customers?

A Yes. And retail customer, not -- not retail tenant.

Q Okay.

A Retail Customer Parking Only.

Q And then --

MR. MASCIALE: Kevin, if you'd go to the third page in this exhibit.

BY MR. MASCIALE:

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Q Did you also take this picture, Dr. Tadros?

A Yes; I did.

Q Was this the same time period, sometime in 2018?

A On the same day.

Q Okay. And this sign just says Adesso Visitor Parking Only. What did you understand that sign to mean?

A Well, that's exactly what I was trying to figure out because it's so confusing.

Q Okay.

A At one point, it says retail customers and guests, and then another it says visitor parking only.

Q Okay.

A And that if you -- if you were a retail client with a customer or tenant, you'll be towed away.

Q Okay. And so you contacted Columbia -- the City of Columbia zoning department. When did you first contact them about this parking situation?

A Roughly around the same time.

Q In 2018?

A In -- yeah. Around end of -- mid -- mid 2018, maybe.

Q Okay. And did they look into your questions and concerns?

A Yes.

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Q Okay. And what was their response to you?

A Response to me that the building was in violation of the City code, zoning code.

Q Okay. And this was in 2018?

A Yes.

Q Okay. And, to your knowledge, was anything done to remedy that?

A Later on; yes. A few months later.

Q Okay. And that's because the Homeowners' Association changed the signs to reflect them as retail parking only; correct?

A There are a lot of things that happened in between that you're not asking me to -- or asking me about.

Q Well --

A But bottom line is, the City ordered that Adesso, starting June 1, two thousand -- I believe 2018 -- so I started to search into this 2017, mid 2017.

Starting in June 2018, approximately a year later, the -- the court had ordered the building -- that they must free at least 17 parking spots that you had mentioned on Exhibit 5, at least that much. And if the building continued to use them for their guest use, that the building will be paying $100 a day, starting June 1, 2018.

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Q You said a court ordered that?

A That was a zoning -- City code. And the City met with the building, which -- I don't know -- I don't have any documents of what exactly had happened.

Q So you don't know --

A But I have been --

Q I'm sorry. Go ahead.

A But I have been [unintelligible] that the building -- acknowledged that the building will be cited $100 a day starting June 1, 2018, if they continue to have any of these spots used by the guests.

Q Okay. And the signs were changed on time; correct?

A I don't know what they are -- they change in signs exactly as they did change to -- to say commercial use only. After June 2018. I don't know the exact timing.

Q Okay. And you were present at Rachel Bailey's deposition; correct?

A Yes; I was.

Q And do you remember what she testified to regarding the parking, the commercial parking spaces at Adesso?

A I have a document from Ms. Bailey that says that if I'm 8,139 square foot, that I'm entitled to a

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total of 38 parking spots.
Q And you don't believe you have those; correct?
A I do not "believe?" It's not about believe; it's about facts.
Q But you --
A They're not there. They're not there.
Q But you do remember that Rachel Bailey testified that you do in fact have those spaces, based on the PUD design and specifications; correct?
A Not correct. She did not make a visit to the site. She's relying on her opinion upon the lower square footage which is 4,675. She did not in her answer specify that, according to 8,139, that I'm entitled to 38 parking spots, which she actually put that in writing in a letter dated to my attention.
Q And I think she testified --
A Yes, sir. I have that letter. My -- well, my attorney has access to that letter.
Q Right. I do, too. But she also testified that you can accommodate, I think -- I believe -- not more than 50 percent of those spots in on-street parking within a certain distance from the building; correct?
A I had spoken to Ms. Bailey and she had informed me that, for every 1,000 square foot City-wide,

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eatery or restaurant, it should be eight to ten parking spots --
Q Okay.
A -- for every thousand square foot. However, she said if, within 400 square foot, there is public parking or meter -- I don't know, meter to public; I don't know exactly -- then the number, the total required number, drops down to 50 percent of that.
Q Correct. And I just want to -- so to be clear, it's not 400 square feet, but just 400 feet in a straight line from the building. But, anyway -- okay. So we --
A And that's why she allowed a lower number --
Q Right.
A -- instead of --
Q And you have -- and there are currently 21 commercial spaces in the Adesso parking garage; right?
A There are 17, three of which are handicap parking that I use by the building, and there are three -- they're simply no longer leased to the U.S. Marine Corps because the building realized that it's illegal to continue to lease.
Q And the U.S. Marine Corps is a commercial tenant; correct?
A Yes.

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Q They occupy commercial -- is it Commercial 1?
A I believe Commercial 2.
Q Okay. So then you would agree that there are 20 commercial spaces in the Adesso parking lot; correct?
A Seventeen, and three handicap parking spots which the building uses.
Q Okay. Well, I think it -- and you may not recall. But Rachel testified that, under the City zoning code, handicap spaces aren't counted differently than normal spaces; correct?
But, anyway, moving on --
MR. MASCIALE: Kevin, could you pull up that listing agreement, please?
A I just want to let you know something, Mr. Masciale. I'm a board-certified psychiatrist. You make a statement, and you answer the question yourself and you say "correct" and you don't allow me to answer. Just want to make sure that goes for the record.
BY MR. MASCIALE:
Q Well, it's a questioning technique --
A Well, it's incorrect.
Q -- that lawyers typically do.
A When you say "correct," I respectfully state I'm not in agreement with that.
Q Okay. Well, it's in the record.

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A Thank you.
Q Moving on --
MR. MASCIALE: Kevin, could you scroll --
BY MR. MASCIALE:
Q Well, first of all, Dr. Tadros, have you seen this document before? Can you tell me what it is?
A It has my name on top. It says Non-Exclusive Buyer Agency Agreement and it's dated on 3/18, and it has my name on it. I don't -- I cannot see the rest of the details, please.
Q Okay.
MR. MASCIALE: Would you mind just zooming in a little bit, Kevin, on the top? I know it's not the best copy in the world.
BY MR. MASCIALE:
Q Okay. Is that better?
A Yeah. Jimmy Weeks, right there.
Q Okay.
A Jimmy Weeks. I'm familiar with him, so I will surmise or assume that that's correct; yes.
Q Okay. And I think you had already testified that you had entered into this Non-Exclusive Buyer Agency Agreement with Mr. Weeks for the purchase of the Adesso units; correct?
A Correct.

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Q Okay.
MR. MASCIALE: Kevin, would you mind scrolling down to -- I believe it's -- I think it's Section 7. That's not it. If you scroll up -- okay. Or -- let's see. Actually, you might want to -- let's see. Can you keep going up? I thought I had it. Okay. No; it's got to be down below all that. Sorry to make you keep -- okay.
BY MR. MASCIALE:
Q So Section 8. Do you see where it says Buyer's Duties?
A Yes.
Q Okay. And what does subsection A say that the buyer shall?
A Shall work with the firm during the term of this agreement, comply with the reasonable requests of the firm to supply any pertinent financial or personal data needed to fulfill the terms of this agreement, be available for reasonable periods of time to examine properties, and pay for all products and/or services required in the examination and evaluation of the properties -- example: Surveys, water and soil tests, title reports, property inspections, et cetera.
Regardless of whether the buyer closes on the purchase of such property, the termination or expiration

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of this agreement shall not relieve buyer from buyer's duties to pay fees/expenses referenced herein.
Q Okay. Thank you. And then in regard to section C, were you available for reasonable periods of time to examine the property?
A If he asked me to. He never asked me to. And he told me -- in his letter to me, he said he will travel, and he will go and examine the properties on my behalf. He told me that a thousand times.
Q Okay. And I think you had said --
A And that's exactly -- and that's exactly what he did.
Q Okay. And I think you had -- you had said before that you never independently researched this transaction; right? At least not before you bought the property?
A No. I relied on him helping me.
Q Okay. So if you look at Section 9 where it says Buyer's Acknowledgments, does it state that buyer acknowledges that buyer -- meaning you, as trustee of the Grace Living Trust -- should independently and thoroughly research and inspect the property and surrounding area prior to investing?
A Yes.
Q So you acknowledge that, under this

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agreement, you had a duty to do that; correct?
A That's exactly what I brought to Jimmy Weeks who said do not worry about that; I'll take care of all of that. Circumstantially, that's exactly what happened. Circumstantially, he's the one who went and acted on my behalf and did exactly that.
Q Does that say that anywhere in this agreement, that Jimmy Weeks could tell you not to worry about this and just take care of all of it?
A I don't see that --
MR. BLACKBURN: Object to the form.
A I don't see that in writing. But that's what he told me on the phone, multiple times -- countless times.
BY MR. MASCIALE:
Q Okay. So you acknowledge, though, that you did have a duty to independently research this project before you invested; right?
MR. BLACKBURN: Object to the form.
A I don't know. I don't know if I acknowledged that.
BY MR. MASCIALE:
Q I'm thinking -- it says buyer acknowledges the buyer should, independently and thoroughly, research and inspect the property. And it does say that; correct?

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A It does say that.
MR. BLACKBURN: Object. Objection.
A But I did not read that in full detail and understand it the way it is written.
BY MR. MASCIALE:
Q So you didn't read that section; is that your testimony?
A I did not really pay too much attention to it because he was covering this for me.
Q Did you read the rest of Section 9 or the rest of this contract?
A I don't -- I don't really recall what I read, exactly. I remember signing it.
Q But you -- so you did sign it?
A I did sign it; yes.
Q Okay. So moving on to Section -- I'm sorry?
MR. BLACKBURN: Can you scroll down? Is this an executed copy of that Exclusive Buyer Agreement? I see Jimmy Weeks's signature; the buyer's initials are absent. Did Dr. Tadros even sign this?
MR. MASCIALE: Well, he just -- he -- and here it is. They had a -- and I pulled this from that deposition you produced, Charles.
MR. BLACKBURN: Okay.
MR. MASCIALE: And the Tadros-executed

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document was a really bad copy. But, yes -- he -- I mean he just testified to signing it. And I think it's -- but moving on --

MR. BLACKBURN: He signed [unintelligible].

MR. MASCIALE: I'm sorry?

MR. BLACKBURN: It was signed in two parts. I see that.

MR. MASCIALE: Okay.

MR. BLACKBURN: I believe I see it.

MR. MASCIALE: Yeah. That's probably what it -- what happened.

BY MR. MASCIALE:

Q If you can see Section 9(b), does that also state that there are risks in making a commercial real estate investment?

A There's always a risk; yes.

Q What kind of risk? Risks that a tenant will just leave and breach a lease?

A It can happen -- which it never really happened to me, in the past. Or a tornado or an earthquake, any natural disaster. Or, yes; a tenant might leave. Yes.

Q Or would you say that being in a University town where the students aren't there for the summer and some of the winter, do you think that would be a risk for

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business?

A I don't think so. I was on campus at UCSD. I've seen the campus. And I think that you have a lot of students all the time.

Q But I think you just -- you testified earlier that you don't really know much about real estate in South Carolina; correct?

A About the parking guidelines and the real estate in South Carolina, yes; I do not.

Q Okay. And did you -- and I think you testified earlier that you never visited the property before you purchased it and --

A Or that I visited any property.

Q Did Jimmy Weeks tell you anything about college students being gone for the summer and winter?

A I cannot recall it, but I would assume yes.

Q Okay. And going to Section 9(d). Can you read that sentence for me?

A Buyer may seek independent legal or other professional advice before committing to invest.

Q And did Jimmy Weeks advise you to do that?

A No.

Q He didn't?

A No.

Q I believe -- I think he's testified in his

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deposition in your other case that he suggested that you do so.

A He can claim whatever he wants to claim. But the facts of the matter is he never advised me to, and he proceeded with three different transactions, none of which there was ever an attorney.

Q Okay.

A However, he actually assured me that as long as the bank is comfortable with it, everything should be okay.

Q Okay. But it is there in the contract; correct? That you may seek independent legal counsel?

A May; yes. "May."

Q Okay.

A But he actually made it that there's no reason to.

Q Well, I think in hindsight, there might have been.

A Hindsight is a totally different story.

Q I know. I know.

A Hindsight --

Q I guess I'll conclude that part with just -- and I think you may have said this earlier. But -- correct me if I'm wrong, but do you think, just generally, it's a good idea to have legal and other

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financial professionals advising you on commercial real estate transactions?

A Look, we -- as human beings, we act on our experience. That's just normal. That's a normal human reaction. My experience has been very positive. I have never been stabbed or double -- or back-stabbed or ended up in a -- such a lemon transaction, the way it is with Adesso.

So your question, for the present, absolutely. From now, forward, I am -- I'm opening my eyes, putting everything under the microscope. But, then, I was very trusting person. Sign here; I signed. Did I read it fully? Not really.

Q Okay.

A I just trusted.

Q Okay. And --

MR. MASCIALE: Yes? Did -- Charles, did you say something?

MR. BLACKBURN: No.

MR. MASCIALE: Oh, okay. Sorry.

BY MR. MASCIALE:

Q Okay. Let me -- okay. I think you -- you had referenced before where Holder Properties altered the PUD to adjust the square footage of the units and adjust the parking space. Do you recall when that occurred?

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A Not precisely. I discovered -- you mean the addition of the Marines?
Q In the 2008 letter that they sent to the Zoning Board adjusting the square footage and the available parking spaces, I think you said you had looked into that, afterwards?
A Afterwards; yeah. There were --
Q Okay.
A -- many misleading numbers. But, yeah. Go ahead.
Q So you were --
A To some extent.
Q So you were aware -- so would you agree, then, that that letter and the application that they submitted to the Zoning Board in 2008 is a public record that's publicly-available information?
A I don't know whether or not it was --
MR. BLACKBURN: Object to the form.
A -- public record.
BY MR. MASCIALE:
Q Is the City of Columbia Zoning Board, is that a public agency?
A I believe so; yes.
Q And so I think -- I believe -- did you and Darrell Terry -- and, by the way, who's Darrell Terry?

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A Darrell Terry is a -- a resident that lives at Adesso. He's, in my opinion, an extremely intelligent, well-educated bioengineer. He's a Ph.D. He's a doctor, actually: Dr. Darrell Terry.
Q And did you and he obtain those zoning records regarding Holder Adesso PUD from a FOIA request?
A I honestly do not know which records I exactly obtained. But there are a whole bunch of records in the Master Deeds and the amendment, the Third and Fourth amendment. He helped me out with that.
Q And I think we talked about those. But specifically with regard to zoning, how did you obtain those records?
A In regards to zoning, I mostly called the City.
Q And they just produced them to you?
A I don't know what they gave me. But I went to the Master Deed and I found out that it was filed for commercial units, 34 parking spots. That's what was filed, to my recollection. You'll see on a lot of the documents it says 34 units for commercial use or for commercial -- I mean 34 parking spots for commercial use.
Q Okay. So would you agree with me that, at the time when you purchased your commercial units in 2014, you could have obtained that information from the

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City of Columbia Zoning?
A If I had doubt. I would have exactly done that.
MR. BLACKBURN: Michael, I think I've --
MR. MASCIALE: I'm sorry, Charles?
MR. BELL: I just wanted to let you know I've got those documents from Dr. Tadros. After he retained me, then I produced them.
MR. MASCIALE: Okay.
COURT REPORTER: I'm getting a lot of breakup in Mr. Blackburn's audio, just FYI.
MR. BLACKBURN: I hear you. You're breaking up on me, too. I don't know what we can do about that. Can you hear me now? Can you hear me? Can you hear me at all, Michael?
MR. MASCIALE: I can.
MR. BLACKBURN: Michael, can you hear me?
MR. MASCIALE: Yeah. You kind of -- you're still kind of breaking up. I can hear you a little bit.
COURT REPORTER: If you could, when you object, if you could do it a little more forcefully?
THE DEPONENT: Or raise your hand.
MR. BLACKBURN: I can do that. I can absolutely do that.
MR. MASCIALE: Okay. All right. Well, I'll

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move on.
(E-Mail Dated 03/04/16 From Lauren Smith to Emad Tadros re: Marine's Parking, with Attached Monthly Parking Space License Agreement (10 pages), Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 7, having been previously marked for identification, is made part of this deposition.)
BY MR. MASCIALE:
Q So now I want to show you what's been marked as Adesso 7. Okay. Do you recognize this document?
A Yes.
Q Okay. And what is this?
A It says it's from Lauren Smith from Holder Properties Management, which was managing the property after I bought it. That -- than e-mail was sent after I bought the property, about two months after I bought the property.
Q Okay.
A It says Dear Doctor -- Hi, Dr. Tadros. Please see attached agreements for the parking space rentals in the Adesso garage for parking spaces 220, 221, and 108. We apologize for the delay. Let us know of any questions. If you will fill out the information and sign then return to me, that would be great.

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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

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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?

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A I believe -- whatever the time is. I'm not 100 percent sure about that date.
Q Okay. That's fine. That's all I had for that exhibit.
Okay. Not long after you closed on the property, did you receive an e-mail from anyone associated with the Marines about those parking spaces?
A I don't know if I received -- I can't remember an e-mail or if I definitely spoke with someone from the Marines.
Q Was it Patricia Lawless?
A [Unintelligible; talking over] first name. Last name is Lawless. If I don't grant parking spots for the Marines, the Marines are going to depart.
Q Okay. Do you remember when that conversation occurred?
A It was right before the -- getting the Marines that contract or that rental agreement.
Q Okay.
A It was right before that. Because when she knew that the whole thing was taken away and up for grabs by a lottery done by Holder Properties, she said if that happens, we are leaving.
Q Okay. And so that would have just been sometime in early 2015, sometime before --

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A Yeah.
Q -- March 4th? Okay.
A Yes.
Q So to the best you can recall, she basically said, hey, there's an issue with this parking and if you don't fix this we're going to leave; correct?
A Yeah.
Q Okay. And I think you had testified earlier that you didn't start looking into whether or not these parking arrangements violated anything in either zoning or the Master Deed until about 2017; right?
A Yes.
Q Okay. And you didn't do any independent due diligence before the closing; correct?
A I did it dependent upon my agent, Jimmy Weeks.
Q Okay.
A Yes.
Q Okay. So Jimmy did everything?
A Yes.
Q Okay. Did you read over any of the existing -- the preexisting leases between Elliott and Lathem and any of the tenants who were in the property, when you bought them?
A No. Not before the purchase.

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Q Okay. Did Jimmy read over any of them and communicate any information to you about them?
A He claimed to have read them all. And he made a summary, like one-page summary.
Q Okay. Did the summary involve parking at all?
A I don't recall the word, what happened with the parking part.
Q Okay.
A He did mention that verbally, like I said before.
Q And just one more thing, kind of going back to the Master Deed.
MR. MASCIALE: Kevin, can you pull up Adesso 4, please?
(WFG National Title Insurance Company Commitment For Title Insurance, Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 4, having been previously marked for identification, is made part of this deposition.)
BY MR. MASCIALE:
Q Dr. Tadros, have you seen this document before, this Commitment For Title Insurance?
A Probably. If it has my signature on the bottom, I probably did.

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Q I'm not sure -- I'm not sure if it does.
A Then I cannot confirm it.
Q Okay. But if you go to Plaintiff 3, can you tell me who's named as the proposed insured under the owner's policy?
A Owner's Policy, Proposed Insured: North American Savings Bank --
Q No. I'm sorry. The Owner's Policy, directly above it.
A That's my name, Emad Tadros, M.D., as Trustee of the Grace Living Trust, dated October 12th, 2010, as amended.
Q Okay. And do you think you would have received a copy of this prior to the closing?
A I'm not going to deny it. I just don't know.
Q Okay. Do you think Jimmy would have?
A I don't know.
MR. BLACKBURN: Object to the form. Did you mark this as an exhibit, Michael?
MR. MASCIALE: Yes; it's marked. It's Adesso 4. I think; is it not? Okay. Yeah; it is. Yes: 4.
MR. BELL: Thank you.
BY MR. MASCIALE:
Q If you go to -- let's see -- Plaintiff 7, Section 9, does that list the Master Deed under

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Restrictive Covenants? Where it says Restricted Covenants appearing of record? That first book and page reference.
A Okay. Whatever it is.
Q Okay. So that is listed on there; correct? The Master Deed?
A The book --
Q And we can go back to --
MR. MASCIALE: Do you still have Adesso 1 pulled up, by any chance?
A I'm going to assume that's accurate.
BY MR. MASCIALE:
Q Well, I don't -- I don't want you to have to assume.
MR. MASCIALE: Can you go to the first page, Kevin?
A Let me write that down.
BY MR. MASCIALE:
Q Okay. And can you see that recording information down there on the bottom right?
A 1392, 855. Okay.
Q Okay. And then going back to Adesso 4, Section 9, is that the same book and page reference that appears as the first Restricted --
A Yes.

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Q -- Covenant listed? Okay. So that's listed in this Title Commitment; correct? That was part of this transaction?
A Yes.
Q Okay. All right. I'll try and speed this up a little bit. Okay. Now I'm going to Adesso 5 which is your answers to our first set of Inerrog -- the Adesso HOA and Horizontal Property Regime's First --
A Do you mind if I stand up for my back, please? Just stand up a little?
Q Sure.
A Thank you.
MR. BELL: Why don't we take like a five-minute break, Michael?
MR. MASCIALE: That's fine.
MR. BELL: Thanks.
(At this point there is a break in the deposition.)
(Plaintiff's Answers to Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association's First Set of Interrogatories to Plaintiff (25 pages), Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 5, having been previously marked for identification, is made part of this deposition.)
BY MR. MASCIALE:

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Q All right. Dr. Tadros, I think we left off with what's been marked as Adesso 5 which is your answers to my client's First Set of Interrogatories. If we can turn to page five.

MR. BELL: Numbered page five?

MR. MASCIALE: Yes. Number -- yeah. That's perfect.

BY MR. MASCIALE:

Q Where it says i), Scott Davis: Dr. Tadros, who exactly was he? I know it says he was your real estate agent after you acquired the commercial units in the Adesso. What exactly did he do regarding this transaction?

A Well, I had two agents that -- they all quit. And he was patient with me and he -- he found me a tenant, after approximately two and a half years of vacancy, to take the unit in dispute, which was Unit D, that was vacant.

Q And was that the same unit that Hero Subs vacated?

A Yes.

Q Okay. And what tenant did he put in there?

A JJ Tea House.

Q And are they still in there?

A Yes.

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Q Okay. And you said it took him about two years to find them. So when did JJ Tea House go into Unit D?

A Two and a half years. JJ Tea House started in June or July of 2017.

Q 2017. Okay. And what amount of rent are they currently paying?

A He's on -- he's on a percentage, so.

Q Okay.

A And he actually is not -- he can leave any time he wants to. And that's the deal that I had with him. So he pays 12 percent of whatever the -- the gross sales.

Q And do you know how their sales have been these last two and a half years?

A They were actually doing better in the last -- right before COVID.

Q Okay. Do you know, kind of as a ballpark figure, how much 12 percent of their gross sales would amount to?

A Approximately -- well, he doesn't really pay taxes and insurance and -- actually, I pay that for him. So he paid roughly, grossly, $70,000. And I'm just -- I don't know the exact numbers. I'm going to assume approximately $25,000 or $30,000 of those are taxes, insurance and HOA expenses.

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Q So he does pay the taxes, insurance and HOA?

A He does not. He does not.

Q Okay. So the set -- I guess I'm a little confused. So he -- how much does he -- so he pays approximately $70,000 annually?

A Approximately. Until, yeah, before COVID.

Q Okay.

A It was $70,000.

Q And I think you said about thirty -- so you're saying that, out of that $70,000, you then have to pay approximately $30,000; correct?

A Now I don't have the exact numbers. But, yes.

Q Okay.

A Approximately $30,000.

Q Okay. I gotcha. Okay. Did he --

A $25,000. $25,000 to $30,000. I'm not hundred percent sure.

Q Okay. All right. And is that about -- has Mr. Davis done anything else for you with regard to these properties or is that it?

A He -- when Unit A left, he took it for like seven months, tried to rent it. And he gave up and we agreed mutually that we should assign another agent.

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Q Okay. And when did that occur?

A I would imagine at the beginning of this year. I don't have the exact numbers.

Q Okay. And which tenant was in Unit E when they vacated?

A In Unit A.

Q Oh, I'm sorry. Is it E?

A No: Unit A. When they vacated, it was Uncle Maddio's Pizza.

Q Okay. And is that unit still vacant?

A Yes.

Q Is anyone trying to rent it out?

A I tried.

Q Okay.

A But people complained the expenses were too high; they could not afford it.

Q Okay. It looks like -- so turning to page six now of the Interrogatories, it looks like you also had Ansel Bunch try to place tenants in your commercial units?

A Yeah. And he could not. Unit D. That was before the hiring of Davis.

Q Okay. So he was unsuccessful at -- okay. And that's the extent of his involvement with these units?

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A Yes.
Q Okay. Going down to Section K, Brenda Page. It states that she showed you some hostility when you attempted to express your frustration with parking space issues.
A Yeah.
Q What do you mean by "hostility?"
A I refer to e-mail, HOA fees, and also refer to HOA behavior. There is a lot of threat on these two e-mails. But it started after 2017, where I tried to attend a hearing by phone. They only allowed me to speak once. And, beyond that, they would not allow me ever since then, not even once again, to talk on the phone.
Q And you haven't spoken with Ms. Page since this lawsuit's been filed; have you?
A Absolutely not.
Q Okay. And do you still not know her address?
A I have no idea. I heard she moved. I don't know.
Q Okay. Moving down to i) then: Lauren Smith. I think you dealt with her fairly regularly, at least with regard to these Marines parking issues. Did you deal with her in any other respects relating to your units?
A To my recollection, she was very kind to me.

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And she worked with me to make sure that I get the parking spots because I told her the Marines are going to leave. So she worked with me to win the lottery that the HOA made, and I won three spots.
Q Okay.
A And she charged me $150 per spot, for approximately 22 months or 20 months. I'm not exactly sure.
Q Which I think you've said violates the Master Deed; right?
A Yes.
Q Okay.
A Now not then. I did not know, then. I thought that was a requirement that's -- that's southern -- that it was a state of South Carolina. I did not know that this was a complete breach of the Master Deed.
Q I understand. And you haven't spoken to her since this lawsuit's been filed?
A I have not.
Q Okay. But moving on to page 7, the Patricia Lawless: Is she the -- I think you said someone with the last name of Lawless called you regarding the Marines spaces. Is that her?
A Yes; it's her.

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Q Okay. And other than saying, hey, we're going to leave if you don't fix this, what other interactions did you have with her related to your commercial units or the parking situation?
A I don't really recall anything except relocations, water fountain needed to be fixed or air condition needs to be maintained. Some light bulbs. I mean minor things, not major thins.
Q So just routine maintenance kind of things?
A Yeah.
Q Okay.
A The U.S. Marine Corps has special protocol. They have to contact Georgia, and Georgia has to contact me, and then I contact people, and I have to contact the local office. So it gets a little bit of --
Q It sounds exhausting.
A Yeah. Triangulation. Triangulation because of government.
Q Right, right. Did she or the Marines ever complain about the CAM charges and the taxes and insurance?
A Well, bear in mind, they're a very small space. They're only 1,200 square foot. I do not recall the government complaining about that.
Q Okay. And they were the ones paying that;

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right?
A Yeah. It was the Central Office in Georgia.
Q Okay. And you haven't spoken to Patricia Lawless since this lawsuit's been filed; have you?
A I have not.
Q Okay. Now moving down to n): Marcia and Ted Cantos. I think you said that they owned Maddio's?
A Yeah. They walked away from what they owned; yeah.
Q Okay. How long were they in that space?
A I think five and a half years.
Q Okay. And do you know why they left?
A I'm glad you asked me that question, but the answer is extensive because it's wide; it's open-ended question. But in brief, please follow up my e-mail threats where Marcia complained bitterly of the behavior of the -- the building management who would not allow her to park in the garage and she had to drive. This one day, she had to drive approximately 20, 30 minutes in the neighborhood, trying to try to find where she could park her car to run her store. She said they were not allowed to park in the building.
She also complained that the HOA fees were very high. So as a way to proactively protect from them leaving, I paid -- I had -- I dropped down $500 a month

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which is, basically, their HOA fees. Dropped -- I ended up paying it myself in hopes that they would stay. They said it's too late; they had to leave. After one year, they said they're not making it; the expenses are too high.

Q Okay. And when you, you purchased these commercial units, you were aware that you were going to have to pay HOA fees; correct?

A I was aware that I was going to have HOA fees, but I didn't know what that entailed exactly. I thought that the tenants -- the electricity, water, everything is paid by the management like any -- like any commercial thing. And the answer was no, they had to pay their own water, their own electricity and their own alarm. I discovered that after the purchase.

Q Okay.

A I still don't fathom why the HOA charges money.

Q Do you think that's something that could have been discovered before the purchase with an investigation of the site?

MR. BLACKBURN: Object to form.

A I don't know what -- I don't know how to answer that question.

BY MR. MASCIALE:

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Q Well, I think Mr. Weeks, he went in and spoke to the owners of Hero Subs; correct?

A He did not introduce himself as my agent. It was implied to Hero Subs that he was a commercial -- that he was an insurance agent for which the tenant were Hero Subs.

Q But he could have asked them the question, though; right?

A He could have asked them a lot of things. I don't know. I cannot answer on his behalf.

Q Okay. Just generally, do you think that's something that's -- do you tink the arrangement for electricity and power to commercial units is something that's important, going into a commercial transaction?

A Generally; yes.

Q Okay. And I know you said you're not sure what Mr. Weeks said to the Hero Sub owners, but he could have asked them how their electric and water bills were paid; right?

A In theory; yes.

Q Okay. And, in theory, you could have, as well; correct?

A I could have done a lot of things.

Q So is that a "yes?"

A I could -- well, in theory, I could do

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surgery, but I cannot. So, in theory -- anything in theory is possible. But in practicality, no.

Q So you couldn't have called them and asked them about that?

A If I had any doubts --

MR. BLACKBURN: Object to form.

A -- I would have done exactly that.

BY MR. MASCIALE:

Q Okay. And you said that the Cantoses and Maddio's were in there for five and a half years. When did their lease start?

A To my recollection, 2012.

Q So they left in 2017?

A Yes.

Q Okay. And when did --

A I'm sorry. I'm sorry. They left in 2018.

Q Okay. 2018. And when did they begin to complain about the parking situation there at Adesso?

A When I met with them in 2017, they bitterly complained. They were very unhappy. They also -- they were so unhappy that there were no money because of the parking so deprived that they actually put their business for sale because they were not having enough people coming in.

Q So I think you had -- you had testified

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earlier that the Association didn't change the parking signs until 2018. Is that right?

A Did not exclusively specify only to the commercial use 'til that very day the Association still confiscating three handicap parking spots by using it to the building.

Q So if they hadn't changed anything and then the Cantoses had been in that space since 2012 -- and they never complained to you right after you bought the property? They were in there for almost -- about four and a half, five years without saying anything?

A They did not. I did -- I only --

MR. BLACKBURN: Object to form.

A -- in the 2017.

BY MR. MASCIALE:

Q Okay. So they never said anything to you, I guess is my question?

A Prior to '17, I cannot recall that there was serious complaints --

Q Okay.

A -- because we did not communicate anyway.

Q Okay. And have you spoken with them since this lawsuit's been filed?

A Not. No; I did not.

Q And do you still not know their address or

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know how to reach them?
A Do I still not know how to? I don't know of their address.
Q Okay.
A I have -- I have their phone number. I don't know their address.
Q Okay. Would you be able to provide that phone number in a supplemental response to this Interrogatory?
A Yeah.
Q Okay. Thank you.
I think we've been over Darrell Terry. And have you spoken or otherwise communicated with Mr. Terry since this lawsuit's been filed?
A Yes. Multiple times.
Q Okay. About this lawsuit?
A Yes.
Q Okay. And what was the substance of those conversations?
A It's an open-ended question that will take me hours.
Q I've got time.
A Well, Mr. Terry, in my opinion, has a lot of integrity. He's well-educated, and he goes by the book. And he complained that the -- the HOA was a serious

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violator of the Master Deed in their selection process of the property management, in the way the property management runs the meetings, in the way the property management handles the account -- the financial accounts.
And, also, he told me that there was a violation in regards to the parking spots for me, and he -- all he could come up to was, I believe, 26. And then, when I went to see the Master Deed that was filed with the City by Holder Properties, it was actually 34 parking spots. So he was actually surprised that he was underestimating it.
He's very unhappy with a few things that are happening in his situation. I don't know the exact details, but he is definitely unhappy with the HOA violating the Master Deed.
Q Okay. And I guess since this lawsuit's been filed, what have you discussed with him?
A I have discussed with him about the -- especially now, the property management. He's a cowboy. He is a cowboy. Mike Munson, that's exactly who he is. He is out to get me. He had a special assessment that I should pay $613,000 Draconian dollars to his buddies -- that he's probably getting his own commission from them; I don't know. But don't get me started here because I'm pissed and somebody needs to go to jail. And I informed

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the South Carolina Police Department.
Q And what did they -- and when was that?
A I put down the date in that document.
Q Okay.
A I can tell you.
Q Is it under -- is it under Mike Munson?
A Officer --
Q I don't --
A On page number --
Q I don't see a date in there.
A On July 12th, '20.
Q Which page are you on?
A Page number 21.
Q Yeah. I'm --
A He's out to get the commercial units to go belly-up, foreclose on me and make sure that the banks does not give me the loan that I need.
Q And what evidence do you have to support that?
A What evidence do I have? The first bank that had this property refused to continue because of the vacancy and because of the relationship -- what's happening with the HOA. The second bank, who has this property right now, is not willing to continue.
Q And why isn't it?

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A Because the assessment that's coming up and because the vacancy that I have from Unit A.
Q And I think you acknowledged earlier that vacant -- or vacancies in units is a risk in a commercial real estate investment; correct?
A It is a risk, and it's always a risk, and it's happening to a lot of people. And I'm not denying that. Okay?
But there are people left and left behind $400,000 to $500,000 worth of things that they have done, upgrades to the unit, and then walked away from it because they're not making it because the structure by which they were supposed to operate, according to the City code, is to have between 15 to 20 parking spots. But they don't. They did not.
And until the day they moved out, they did not have a single parking spot because they moved before June 1, 2018. And when I begged them to stay, they said, no, we have given up; we're tired of this.
Q And I know at least -- did you speak with the owners of Hero Subs when they moved out shortly after you purchased the commercial units?
A Yes. And they're in the position -- they said that they had to walk sometimes two blocks to --
Q And is it --

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A -- to bring items to the store, because they're not allowed to park their cars in the building.
Q And isn't it true that they also said they interviewed lots of South Carolina students who said they wouldn't eat there because they weren't on the Carolina Card meal plan?
A I don't know the exact details of this one. But if -- I will be happy to provide you with a copy of what the girlfriend and what the man said: That the parking was the major problem. The parking was a major -- the parking killed their business.
Q Well, I've got a copy of their deposition.
A Well, then count the word parking --
Q I appreciate it.
A Count the word "parking," how many times it's been mentioned in their depositions.
Q Well, I think they -- well --
A Do a -- do a Microsoft count. You'll see it.
Q They also mentioned the lack of Carolina Card and just general business experience.
A They also mentioned that -- they also mentioned that the HOA had an attitude, because their grease pipes were flying above the cars in the garage and that they were out to destroy them and make them leave. So they left. The HOA did this to them: Adesso HOA.

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Q Was that in their deposition?
A It's in her deposition; yes, sir.
Q Okay. When did Hero Subs open up their business at the Adesso; do you remember?
A I think May 2014 they got the -- some kind of agreement, I think. Somehow, they opened in August.
Q In August?
A Two thousand -- in 2014.
Q So from May until August -- and I think they testified to this in their deposition -- there were very few students on campus; correct?
A Relatively less; yes.
Q And I think they'd testified that that a major reason why they were not making as much money as they hoped to be.
A One of the reasons, for these months only. But after that --
Q Well, they closed in January of 2015; right?
A Yeah. They could have made the money then in these months, and they did not.
Q And I think they said they --
A In the months following August, which is when the school opens: September, October, November.
Look, you're asking me a question and I see that you're misleading -- you're misleading me how to you

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want me to answer it. So I'm going back and I'm saying -- talking about September, belly-up. October, belly-up. November, belly-up. December, decided to close. And when you read their testimony, it's because they have been mistreated traditionally by the HOA against them and because of lack of parking.
Q Well, we can agree to disagree on that.
A It's in their deposition. You're welcome to read it.
Q Okay. How about on page eight: Shafen Kahn with the Corner Blend.
A Shafen Kahn? He continues to be there. He's on the corner.
Q Is he Yoghut now?
A Yes.
Q Okay.
A He also complained -- he actually had Yoghut. And he was not making money, so, as a way to survive, he changed his name to Corner Blend.
Q Oh. So it's now Corner Blend; it's not Yoghut?
A It used to be a Corner Blend -- or used to be a Yoghut, and now it changed from Yoghut to Corner Blend, adding more stuff, more coffee and -- I don't know. Pastry, maybe. To help the business grow, because his

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business -- he was not doing well.
Q And how's his business doing now?
A His business, since he has been having parking, now he's actually better, same as JJ's -- prior to COVID. Since COVID, they are not doing well. But that's not -- that's not the HOA problem.
Q Okay. And so you believe it was due to parking and not his expanded product line?
A Sir, I am not saying I believe. I'm telling you a hard care, slam dunk parking problem. This is the major problem.
Q And --
A You think that building is sitting there, you park your car outside.
Q Huh?
A You have a place to park your car. Otherwise, you can't be here. Otherwise, you cannot function. Same as everyone, each one of us. But the -- your building had crippled my tenants and crippled my customers -- their customers, because they did not allow them to park.
Q Well, I think --
A I'm telling you I believe. I'm telling you, slam dunk.
Q Well, I think when you -- I think when you

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initially testified about your conversations before you purchased the property with Jimmy Weeks, I think -- and stop me this is inaccurate. But I think you acknowledged that a big part -- a big benefit of this property was that it had a lot of foot traffic from students and didn't have to rely on parking. Is that right?

A I did not say that it had to rely on parking. Don't make two statements, please. These are two statements: Did it have a lot of foot traffic? I'm correcting it and repeating the same thing. The answer is yes: It had a lot of foot traffic.

Q Okay.

A Did it not rely on parking? Parking is extremely important. I'm learning my lesson the hard way now.

Q Okay. Fair enough.

I think we've been over Wade Holland and Ashley Jones. Let's talk about Frank Smith just briefly. He was involved in the settlement of the construction defect plans at the Adesso; correct?

A Correct.

Q And I think you allege that he kind of coerced you into signing a settlement agreement?

A I did not allege, sir. I say it as a clear-cut straightforward fact that he is -- he had

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coerced me and he threatened me that if I don't sign -- as a matter of fact, I repeatedly refused. And at the end he said, okay, if you don't sign, I will have the HOA sue you or they will sue you.

And the same thing in that very meeting: Their attorney also attended the meeting, where he said he witnessed that, too, that they were prompted to sue me if I don't sign the agreement between Adesso and Holder Properties.

Q Okay. And Investigator R.J. Cullop -- I know -- I think you said Darrell -- was it Darrell Terry who had -- yeah, has been communicating with him since July 12th, 2020? Is that correct?

A That's my letter. But, yeah, he -- I asked him that I needed to contact the Police Department for this assessment and --

Q Okay. And what do you think his --

A And he gave me that name. He said that's the one that he connected with regarding the bank accounts being controlled by CMM Management.

Q Okay. And I guess can you explain to me what you think is criminal about an HOA assessment? I understand the amount.

A Okay. I'm not an attorney. Okay? But I do know something called "white collar crime," and that's

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pending further discussion with my attorney to discover more, to find out exactly what was happening. But from the -- on the surface, when somebody's committing a crime in a very subtle way, they end up making sure that a lot of people go bankrupt or lose their property, that's a crime.

Q And what evidence do you have to support --

A I don't have any evidence. I am left in the dark. The HOA, hand-in-hand with its attorney Walter Todd -- and they had the -- whatever attorney that they have, maybe, I'm not saying you, but whatever -- representing them, they're keeping me in the dark. You don't let me know anything and you never answer my question, never did.

Q Okay. But would you agree that it's within the Board's authority to levy and collect assessments to maintain and preserve the common and limited common elements? That's --

A And the Board's authority is to comply with the Master Deed that they have violated. Yes. They have the right to levy; yes. They have the right to levy me, equally. Well, if they're violating me, they have no right.

Q Okay. And we'll get to those assessments here pretty soon.

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And have you spoken -- have you or Darrell Terry spoken with -- well, first of all, has there been a formal report filed with Investigator Cullop, to your knowledge?

A I filed a letter with the Police Department and they have it on file.

Q Okay. Has that been provided in discovery?

A I don't know.

MR. MASCIALE: Hey, Charles, has that letter to the Columbia Police Department been provided in discovery?

MR. BLACKBURN: No. It was given to your client.

MR. MASCIALE: Okay. I'll check with them on that. Okay.

MR. BLACKBURN: Yeah. Let me know --

MR. MASCIALE: Okay. Yeah; I will.

BY MR. MASCIALE:

Q Okay. Now I know in our answer -- or in your answer to our Interrogatories, I think we had -- we had asked about your damages that you're claiming you're entitled to recover from my clients in this lawsuit, and I'd kind of like to go into those a little more. And this is on -- bear with me one second.

Okay. This is on page ten, Interrogatory 5.

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We asked for an itemized statement of all damages, and there was an objection made. Dr. Tadros, this case has been pending now I think for almost a year, a year and a half. Is it your testimony then that you still haven't been able to calculate your damages?

A I wouldn't say that at all. I would say they are partially calculated. The damages continue.

Q Okay. Well, do you have a ballpark figure? What -- first of all, what kind of damages are you claiming? Lost rent?

A Lost rent; yes. And now the property as it is stands to be foreclosed upon, so I might end up with a complete damage, total damage.

Q And that's based on?

A The bank would not renew.

Q And is that based on just not enough revenue from rent coming in or --

A One thing.

Q -- or high assessments?

A Another -- well, not enough revenue. Forty percent of the property has been vacant for two, almost two and a half years. Number three, the recent assessment of $613,000 on the commercial tenants to pay.

Q That hasn't actually been assessed yet, though; has it?

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A It's like I saw somebody on a videotape trying to steal from my car, but then when I caught him -- so he ran. And then they said, well, he hasn't stolen your car yet. You have it in writing. They have it in writing that they are going to do exactly that. And I have no power, and they have been very stubborn and unprofessional, with all my respect to each and every one of them.

Q Okay.

A Jimmy -- on many occasions I told them, I'm your colleague; I'm your neighbor. So they have -- they have been totally -- treating me totally like dirt.

Q Okay. Do you have any sort of kind of monetary figure, at least for the lost rent, at this point?

A Okay. The lost rent, I don't have the exact numbers but I'm going to say at least half a million dollars, $400,000 to half a million. I'm not exactly sure of the exact number. $400,000 would be too low because Unit A has been vacant for two years. Their loss is about $75,000 a year. Two years, that's $150,000. Plus a few more months, additional four more months, so that's roughly close to $200,000. And then the -- the loss from Unit D that was vacant for two and a half years, and that's along -- it's approximately --

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approximately $200,000.

But that's -- that's the actual damage. The pending damage is when this thing goes belly-up, when the bank refuses to give it to me and either you guys got to foreclose on me because I am unable to pay, or the bank will foreclose on me because I'm unable -- unable to get a -- a loan.

Q Okay. Well, will you be able to provide some additional information on that, those lost rent claims, moving forward?

A Yeah. I mean I can give you the spreadsheet that I submitted in the other case.

Q That would be good.

A I'll get you a copy of the same thing.

Q Okay.

A It'll be no problem.

Q I appreciate that.

A No problem.

Q Now you allege that -- in your Complaint, I think you brought a cause of action for negligent misrepresentation?

A Yes.

Q As it relates to my clients, what facts are you using to support this claim?

A Okay. Forgive me if I become a little tense

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when I talk about it because it's a -- it's a heated subject for me.

Q Sure.

A I have -- multiple times as a physician, there's a -- when there's a problem, you make a phone call, you try to make friends and, hopefully, they'll understand.

They mistreated me so badly. They never allowed me to come to the meetings. So one time I walked in that meeting. When they had a meeting, I walked in, identified myself. I said, please allow me to talk because you're not allowing me to Zoom in or to talk on the phone or not even returning my phone calls.

So they would not allow me. They said you have seven minutes to talk --

MR. MASCIALE: Hey, Charles, could you mute yourself?

MR. BLACKBURN: Sorry.

MR. MASCIALE: No problem. Thank you.

BY MR. MASCIALE:

Q Sorry, Dr. Tadros.

A No problem.

In the seven minutes that they allowed me to talk, as I started talking, they cut me off. They said, done; you cannot talk anymore. It is that Hitler. It's

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that dictatorship. I said, I need to speak to you guys more. The ceiling of these stores are leaking water.

And JJ Tea House, if you sit there, you can see the water coming on top of your head. Either it's going to go on you or on your plate. Which restaurant any of us had gone to eat or even to continue to come eating when the -- when the water is leaking on their plates?

I brought this up to their attention. They did nothing. The water continues to leak, as we speak, in all the units, on rainy days. And I know if a unit is having a problem -- but my units are commercial: Totally different language. It was like talking to the wall. They'd look at me with a smile, extreme passive aggression, and do nothing, waiting for me to go belly-up and walk away.

Q Okay. But in your Complaint, you allege that the Defendants made representations that were material; that is, they caused you to enter into the contract to purchase the Adesso units. I guess my question is, what representations did my clients make to you to cause you to purchase the units?

A Well, they made it -- I would imagine -- because I didn't really speak with anyone prior to the purchase, so it's -- i -- I'm talking in a -- in an

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abstract, that it was to my representative which is Jimmy Weeks.

Q But you don't know that Jimmy Weeks was ever even in contact with the HOA; do you?

A I do not.

Q Okay.

A I do not know now.

MR. BLACKBURN: Michael, I'm going to object to all --

A I thought --

MR. BLACKBURN: I'm going to object to all -- the line of questioning on -- around the legal conclusions. Can y'all hear me? I'm trying to speak up.

MR. MASCIALE: Yeah.

MR. BLACKBURN: Can y'all hear me?

MR. MASCIALE: Yeah. We can hear you.

MR. BLACKBURN: Good. I'm going to object to this line of questioning because it calls for legal conclusions and --

You can go ahead and answer him, Dr. Tadros, but objection noted for the record, please.

MR. MASCIALE: I'm just asking about his actual knowledge.

A Sometimes, when a question is asked, you're asking me in the -- in the present tense, so I ask --

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answer upon the present tense. But if you take me back to then, what had happened, I thought he talked to them. I thought he got all the details that are needed. I thought he did all his due diligence. What I know now, obviously, he did not.

BY MR. MASCIALE:

Q Okay. So, to your knowledge, Jimmy did not communicate with my clients before this transaction; right?

A To my current conclusion or understanding, that he probably did not.

Q Okay. And you yourself never --

MR. BLACKBURN: I'm going to repeat my objection.

MR. MASCIALE: I'm just asking for his fact -- his knowledge of the fact. I'm just asking if he communicated with my clients prior to the purchase of the units.

A No; I did not.

BY MR. MASCIALE:

Q Okay. Thank you.

Okay. And kind of along those lines, you've also made a claim for constructive fraud. And you claim that -- or you said that Defendants made representations to you that the parking for the commercial units were in

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compliance with City of Columbia planning and zoning ordinances. Did my --

MR. BLACKBURN: Let me just object, just for the record.

But you can go ahead and answer, Dr. Tadros.

BY MR. MASCIALE:

Q Did my clients ever tell you that the parking -- the commercial parking was in compliance with the City of Columbia zoning ordinances?

A That's exactly what -- they made lottery, and they said they're even making lottery on the parking spots, to who wins them.

Q Did they --

A I was not -- I was not entitled, and they said that they were in compliance. I mean I did not ask that specific question. Actually, I cannot recall whether or not I asked that specific -- are you in compliance with the City? You would assume that they are in compliance.

Q Okay. But you never asked, though, prior to 2017?

A Well, I never asked you if you stole the parking -- the car before walking in the building or not, because I assume you're an honest person. I can't walk around and ask people questions. I assume -- I make the

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assumption that they are good people.
Q Okay. And did -- well, again you state that whatever representations were made were material or caused you to purchase the commercial units. So I guess, going back to my prior questions, you never communicated with my clients, prior to your purchase of the units; did you?
A Not that I recall.
Q Okay. And you don't believe --
A Now hear me out, please.
Q Sure.
A I am under oath and I raised my right hand for a reason: To answer with accuracy. So when you asked me something that happened six years ago specific about whether or not did I talk to anybody, I do not recall that I did this.
Q Okay. And you also don't know whether Jimmy Weeks did; right?
A Oh, absolutely. At the time of purchase, I thought he did.
Q You thought he did.
A Yes.
Q But you're not -- don't know; correct?
A Now I -- now I don't know. I -- obviously, he did not.

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Q Okay. And you didn't know at the time of purchase, either; you just thought he did?
A He implied that he did. He implied that he -- he actually implied that he talked to the tenants, too. He implied all that.
Q He implied that he talked to who?
A That -- that he had talked to the tenants.
Q But that's not the -- those aren't my clients. Did he ever imply that he talked to the Homeowners' Association?
A I believe he implied that 100 percent to me. Because he said he walked in the building, he looked at the building, he looked at the neighborhood; he loved it.
Q But he never -- okay. Well, we're just -- we're going in circles, so I'll move on. Which I think that is --
A You're asking me what was my understanding versus what he had done. My understanding, he did it. What he -- what did he do, I don't know.
Q Okay.
A Thank you.
Q Almost done.
And I want to show you what's been marked as Adesso 9.
(Letter Dated 02/15/17 from Emad Tadros, MD to "To Whom It May Concern at Adesso's HOA and Adesso's Property Management" (3 pages), Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 9, having been previously marked for identification, is made part of this deposition.)
BY MR. MASCIALE:
Q Do you recognize this document?
A Yes.
Q And what is it?
A It's a letter from me to Adesso HOA and Adesso Property Management.
Q And can you tell me the date on this letter, please?
A February 15, 2017.
Q Okay. And we've gone over the parking spaces already so I don't really want to focus on that part.
A Uh-huh.
Q But I do want to get down to Section B where you talk about the assessments to the commercial units. Do you see it's on -- it begins on kind of the bottom of page two?
A Yes.
Q Okay. At that time, what was your belief as to or your knowledge as to -- or your knowledge as to the types of assessments that can properly be charged to the commercial units under the Master Deed?
A Until that day, I don't know how they're calculating it.
Q Okay. And how did you come up with what you thought is the correct number or the correct formula?
A I asked the tenants what they use the building for.
Q Are the tenants members of the HOA?
A The commercial tenants, they are my tenants, of which I'm a member of the HOA.
Q Okay. But they wouldn't know how the HOA's assessments are calculated; would they?
A They actually --
Q They're not --
A They laughed when I told them.
Q Why did they laugh?
A Because they were charging water, insurance, alarm system, fixing the elevators, the pool, the carpet in the building, and they had nothing. They don't even have a key to go into the building.
Q Okay.
(Chart Titled 2018 Adesso Operating Budget (1 page), Defendants Adesso Horizontal Property Regime's and Adesso Homeowners' Association's Exhibit No. 11, having been previously marked for identification, is made part

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of this deposition.)
BY MR. MASCIALE:
Q I want to show you what's been marked as Adesso 11.
A Okay.
Q And just going down the list, where we start at Utilities, can you identify for me which charges you believe are not properly charged to commercial units?
A For me to make that identification -- all four tenants are not allowed to enter the building. So anything here that is building expenses for the interior of the building, they have nothing to do with it.
Can I identify to you -- I don't know. He's not showing us any bills to show exactly what that is. When they refused to cooperate and refused to give me a formula and refused to be transparent about why they're charging this much, I said I believe I'm responsible for a big portion of the trash expenses, and everything else is 7.5 percent only for the outside expenses of the building such as electricity or clean-up of the building.
Because when you look at any commercial property, that's what you pay for: You pay for the outside of the building, the clean-up outside the building.
Q So you would agree that that that is a proper

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charge under the Master Deed: Cleaning-up -- cleaning the exterior of the building?
A The exterior that is related to the stores.
Q Okay.
A That's related only to the stores. They are not -- they are not -- they are not residents; they are not living in the building 24/7. They come in, and they leave And if they try to enter the building, they have to knock on the door and they'll be told no; do not enter.
Q Okay. So you don't --
A They're not being treated equally when it comes to the appearance of the building.
Q Okay. I'm trying to find the exact portion of the Master Deed that I want to reference.
MR. MASCIALE: Okay. So if we could -- Kevin, if you wouldn't mind, go -- again going back to Adesso 1. Okay. If you can get to -- sorry. One second.
THE DEPONENT: Thank you for your patience with me.
MR. MASCIALE: I thank you for your patience with me. I don't know why I can't all of a sudden find the Assessments section. Hang on.
Okay. Well, I'll keep looking. But so to

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move things along -- so again going back to 11, so you've got -- it looks like Retail 1 and Retail 2 were charged $2,598.60 for the year of 2018. Does that sound correct?
A How much for the year 2018? I'm sorry.
Q $2,598.60.
A For the year 2018? $20,000, maybe. I don't have the numbers in front of me. I'd be happy to get it from the bank.
Q Okay. Well, would you -- obviously, would you agree that the retail units use their own I think separately metered electricity and gas?
A Yes.
Q Okay. So they should be charged for that; correct? They should be assessed for that?
A They should not be assessed for that; yes.
Q They should not or they should?
A They have it separate from the building. They pay their own bill to the -- outside, to the company directly.
Q They do?
A Yes.
Q Okay.
A That's why they walk away, because they -- they find their own expenses besides what the HOA

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cutting, and they say that's too much for this.
Q And would you be able to provide documentation of those payments? Who's paying those? Are the tenants paying them themselves, or are you, as the landlord, paying that?
A No. They are -- you know, I have to go back to them; yeah. I can ask them to provide it. That's not a problem. The water, electricity, gas, alarm.
Q Okay. What about irrigation?
A Insurance. Insurance and taxes.
Q Okay. Irrigation?
A Irrigation? They have their own grease pipes.
Q No. I think by "irrigation" it means like an outdoor sprinkler system.
A For the plants outside their stores? The answer is no.
Q They don't pay for that directly?
A They don't pay, because that comes from the building for irrigation for all the plants in the whole building --
Q Okay.
A -- at the front of their stores.
Q What about cable TV? Who has to --
A They have -- we have no use of that.

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Q Maddio's didn't have cable TV?
A They had their own.
Q So it wasn't provided through the building?
A Not that I know of.
Q Okay. Did any of the tenants ever discuss that with you?
A Yeah: Maddio's, themselves. They said they were paying everything. Maddio's is the one that complained the most about this.
Q Okay. Internet: Same thing?
A None.
Q Okay. What about telephones and communications?
A For the residents inside the building. They have nothing to do with it.
Q Did they not have their own lines connected?
A They had to connect -- well, they're stores. You have no connection with your store. When you go to a store, the store is a separate entity from where you live. They are not allowed to go into the building.
Q Well, I didn't ask if they -- I know they're not allowed to necessarily go into the building. But is their phone system connected to the building's phone system?
A They don't use it. They have their own line.

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Q Do you know that?
A Yes.
Q How do you know that?
A They told me that.
Q Who told you that?
A JJ told me that. Uncle Maddio's told me that. Because when they were talking about their camera system that they had installed -- JJ, they had the camera and they had their own internet connection and had their own phone connection. Had everything on their own.
Q And would you be able to get documentation to kind of show their independent phone bills?
A Okay. I'll be happy to.
Q Okay.
A Glad to.
Q And trash disposal. I think you had said that that was something that should probably be -- it's properly assessed; correct?
A Trash, in my fair view, that the commercial units should pay double or triple than the average tenant.
Q Okay.
Okay. Now moving on down this list a little bit to Operating Expenses. Electrical repairs?
A They're responsible for their own.

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Q The tenants are?
A Yes.
Q What about exterior electrical repairs like potentially signs or --
A Lights that are outside their stores, I do not believe it's their responsibility.
Q Okay.
A So it comes to the responsibility of the building. And that's what I say: 7.5 percent of the electrical expenses of the front of the building, not the whole building.
Q Okay.
A The part where the stores are.
Q What about a janitorial contract?
A They have nothing to do with janitorial contract. They don't use -- they don't have -- they don't even have showers. They just have restrooms. And they have their own stores and they clean their own stores.
And outside the stores, that I bitterly complained about it, it was dirty. The pillars were dirty, the cobwebs were up in the ceiling, and the water was leaking inside their stores. And the pressure wash was never done, and, when it was done, you had to pay for it.

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Q Okay. So there were no -- at least you don't think there were any Association-hired janitors that clean their units or outside their units?
A Absolutely not. No.
Q Okay.
A You're talking about outside? Outside the building, you mean? This one I cannot answer with any accuracy. But inside, absolutely not.
Q Okay. What about contracted maintenance?
A I'm not familiar with any contracted maintenance to their stores by anyone.
Q Okay. What about maintenance of any of the common elements or the limited common elements that might be associated with the commercial units?
A Like cleaning currently? Cleaning the garage area? Yes. Outside the stores, they have proven to be a failure. They have not done it. They have not cleaned for four or five years. I don't know if they are doing this now or not.
Q Okay.
A But four or five years, which had resulted in ugliness of their -- the looks of their stores. I have pictures to show you that the cobweb was sitting up there. They were not even cleaning. And that's called common areas, right outside their stores.

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Q Okay. So it's possible -- and again, I don't want to, you know, get this inaccurately. But it's possible that these could be proper charges; right? Possible?
A No.
Q It's not?
A Disagree. No. Because the tenants complained that -- that the outside was totally dirty.
Q Well, I think you just said if they're doing maintenance on limited or common elements that serve the commercial units --
A If. If.
Q Right. And --
A But they have not. The front of the stores, absolutely it's not maintained, as far as I know. Last time I was there, it was not maintained. The cobweb was there. The stains on the pillars were there. There was a --
Q When's the last --
A If you walk around, you don't want to walk underneath in that place.
Q Okay. And when was the last time you were there?
A Ah ...
Q Would it have been for Rachel Bailey's

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deposition?
A Yeah. I can't remember, precisely. It was right before COVID.
Q Okay. Elevator?
A They don't use the elevators. They don't use the carpet outside the elevators. They -- they don't use the walls around the elevators.
Q Okay.
A Same as the pool.
Q What about the landscape maintenance contract? I think you had said that there were --
A It makes -- it makes sense that -- we have to treat each other with fairness, not to act like cowboys. And that's what the management is doing: He's acting like a cowboy.
"Fairness" means he needs to come and see the percentage of the plants that are outside these stores. And 7.5 percent of the expense of maintaining this limited amount of plants outside the stores to be the responsibility of the commercial owners: That would be fair.
Q Okay. I think -- pest control. I think we can agree on that one; right?
A I don't know about that one. I can ask the owners. I cannot answer on their behalf.

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Q Well, I think -- okay. Moving on. Plumbing?
A I don't know. They never complained of plumbing problem. They are less than the average tenant because they don't use the showers. And they have their own machines and they have the grease pipes, so if any -- the way I see it, logically speaking, you don't have the oils because everything they dispose is disposed according to the County guidelines that they pay for, which is the grease pipes.
Q But could their plumbing system be tied into the building so that everyone's using the same system?
A I'm sure it's tied into the building. I agree with that.
Q So you --
A I just know -- I don't know -- I don't know the expense of that, what problems they have gone through, that they were directly related to.
Q Okay. So you think it's possible if it's tied into the building, that maintenance to their plumbing would be part of an assessment?
A I think it's a fair statement to make as long as it's maintenance, not to start fixing a problem that somebody else created.
Q Okay. What about assessments for payment for management?

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A I don't need them. They are a nightmare. I'm suing them.
Q Well, I had a --
A They should go to jail. These people are a nightmare. They are the most offensive and the most digressive. And whether they are friendly or not, these people have not been helpful. They have been a deterrent to --
Q Yeah.
A -- the growth and the stability of the stores.
Q Okay. Well, that aside, would you agree, though, that management is responsible for serving both the residential and the commercial units?
A No. Absolutely not. These stores have alarm systems, and these stores open certain hours and close certain hours, only a few hours of the day. And the management has nothing to do with them. As a matter of fact, I'm the owner; I have nothing to do with them, either.
Q Okay.
A I have nothing to do with the stores.
Q But -- and I just want to go back. When you had an issue with parking, you communicated with Adesso's management; correct?

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A I communicated with the violator. I communicated with the one that stole it from me, not saying management, come and help me out. I went to the management that said you guys are in violation of my rights. As a matter of fact, according to the Master Deed, the one that manages the parking spots is me, not them. And they still have jurisdiction over it and they still play with it.

Q Well, I think the Association manages the common elements and they've contracted with a management company to do that, including the commercial parking spaces and those other common elements.

A I -- I think I mentioned earlier, cleaning the parking spots is a fair measure.

Q Okay.

A Cleaning the 17 parking spots is -- is a fair measure.

Q So would you agree also, then, that cleaning supplies would also be a proper subject for assessment?

A No, because cleaning supplies can be including the pool, the whole building, the carpet, only cleaning to the extent of these 17 parking spots. Yet to require additional -- almost 18 parking spots, all these parking spots that are commercial, assigned to commercial, logically and fairly speaking, that is my

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responsibility, to pay for them.

Q Okay. Well, it looks like out of $1,500, the commercial units were only charged $107.10. So you could be right there, that they didn't use it for most of the cleaning of the building.

What about fire protection?

A They are charging that charge for the whole parking. And that's where -- the problem, too. I am a mathematician, too. So you look at that percentage, the amount of parking spots that are limited to the use of the commercial units which I am in charge of. That's my responsibility and I'm not walking away from it.

Q Okay. And would you think that fire protection --

A They have their own fire department that comes into their stores. They have their own fire alarm. They have their own fire policy.

Q Do you --

A In fact, I just changed the fire extinguisher for the USMC. I just changed the fire -- I was fully responsible for it. The fire department has nothing -- the -- the stores are totally different from the rest of the building. I'm glad you asked that question, because the fire department looks at them totally different than the rest of the building.

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Q Okay. So they pay all of that separately?

A Yes.

Q And would you be able to provide documentation of that?

A I did it myself, for USMC. I called up the fire department and I paid them myself to -- to change the fire extinguisher. I hired a company to do it.

Q Okay. And it's not tied into the building's fire system?

A Absolutely not.

Q Okay. And would you be able to provide documentation showing that?

A Yeah. I have to go through my credit card statements. Absolutely. No problem.

Q Okay. What about roof repairs; would you agree that that's a --

A That is a --

Q -- common element?

A That's one thing -- I have not mentioned it in my previous letter. As I thought about it, it's a common element and that 7.5 percent of that is a fair deal; yes.

Q Okay.

A Of the -- of fixing the roof.

Q And then insurance?

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A We have the -- I'm paying the insurance already. I'm paying the --

Q But I think --

A -- City taxes, separately. I'm paying the insurance, separately. And they have their own business insurance. So we have two types of insurance. I'm having the insurance on the -- on the building, and they have their own insurance on the business.

Q Well, I understand that part. But as a member of the Association, you know, isn't it true that, you know, you have to pay certain insurance assessments of the --

A No. No.

Q It's not?

A Absolutely not.

Q So the Master Deed doesn't provide for insurance assessments to members?

A I already -- I'm paying -- why do I have to pay separate insurance? Why am I obligated to pay separate insurance?

Q Well --

A And why are they obligated to pay additional separate insurance?

Q Well, I think there's -- well, I -- would you agree that there's different types of insurance, that

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there's certain general --
A Yeah.
Q -- liability policies and commercial?
A I am not sophisticated into the insurance. I will -- pending further examination of such, however, I just want to let you know that they don't use the building as the residents not living in the building. They are separate.
Q I understand. But the insurance covers the entire building and the entire Association; correct?
A I don't know this. I'm not sophisticated to answer that question because I pay separate insurance for these stores.
Q Okay.
A But because they pay their own insurance, I cannot answer that question.
Q Okay. That's all right.
How about assessments for legal fees?
A Oh. You know what; don't get me started here. Can we skip that question, please? I will refer you to read my e-mail threads regarding Walter Todd.
Q Well, I --
A He was the closing attorney of CMM Management. And I will stop there.
Q And I --

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A I mentioned my spiel enough in my e-mails. And I refuse to communicate with that individual under any circumstances.
Q And I understand your personal position on that and --
A Yeah.
Q -- you know, I can certainly sympathize with that. I guess my question is, do you think that that's a legitimate --
A No.
Q -- charge to be assessed for the entire HOA, just in general, not in this specific situation?
A No, no. It's not; no. Because the stores do not live the same way. When you have insurance and you have lawsuits and you have all these -- you are having -- the building has a pool, amenities, workout room, elevators, carpet, walls, none of this is used by the commercial tenants. They are selling pizza, selling salads and ice cream. Why they have to have them pay this?
Q Okay. And I think that actually covers the entire list of charges.
I have no further questions at this point. I may have just one brief follow-up if I can find the section. But just answer any questions Mr. Bell might have for you, and thank you for your time.
MR. BELL: Y'all want to take a break before we do that?
MR. MASCIALE: Okay.
THE DEPONENT: Thank you.
MR. BELL: Yes.
(At this point there is a break in the deposition.)
BY MR. MASCIALE:
Q Okay. Dr. Tadros, thank you for bearing with me. I found the section of the Master Deed I wanted to ask you about. So this is Adesso 1. It's going to be Master Deed, page 12, which is Plaintiff 564. Do you see what I'm referring to?
A No; I don't.
Q Okay. Hang on. Let's see if I can -- that's Adesso 1. Okay. I will pull it up. Okay. Let's see. Share screen. Okay. Can you see it now?
A Yeah.
Q Okay.
A I do.
Q And I will scroll down maybe -- all right. There we go. Okay. Do you see this, this last full paragraph that says "notwithstanding?"
A Uh-huh. Yes.
Q Not withstanding anything here unto the

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contrary and to the fullest extent allowed by law, the Commercial Unit Owners shall not have rights to certain Common Elements which are residential in nature.
And I believe you had stated that earlier, that commercial owners and tenants can't use the recreational facilities or go in the building; right?
A Correct.
Q Okay. And do you see section 3 where it says separate budgets for the Commercial Units and Residential Units shall be developed annually?
A Yes.
Q And then it says and no cost expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa?
A Yes, sir.
Q Okay. So do you understand that to mean no budget items that are only for residential units can be used for commercial units?
A Yes.
Q And not be budgeted to commercial units?
A Yes.
Q Okay. Now do you see after that, where it says, likewise, cost expenses and budget items which affect Residential and Commercial Units shall be

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appropriately allocated in relation to the use by the owners of such units?
A Yes.
Q Okay. And so you would agree then that there are certain budget items that benefit both residential and commercial units, that are properly budgeted to both?
A Yes.
Q Okay. And do you see underneath that, where it lays out the limited common elements that benefit both residential and commercial units?
A Yes.
Q Okay. And does number two state, sidewalks, plantings and lighting along Main and Blossom and all appurtenances thereof?
A And I'm glad it mentioned along Main and Blossom. Did not mention lighting of the whole building.
Q Okay. That's fair. But it does go down -- large portions of the building, though; right?
A No. Not necessarily; no. It's only one-quarter of the building, and it's the lower part of the building. It's one corner of the building. It has four corners, and it's the lower floor, one corner of the lower floor. You have electricity --
Q Is that what --
A -- inside the building. You have electricity

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for the elevators.
Q Is that what that -- does it say it's only for the corner, though, or does it --
A It says -- it -- it's specified in here. It says along Main and Blossom --
Q Correct.
A -- and, in parentheses, "thereof." "Thereof" means of that part of the building, that corner, that piece of the building -- for a reason. I mean I really like this language because it's a fair and honest language.
Q Does the word "corner" appear in Section 2?
A No. But they made it alternative which is, logically, appropriate.
Q Did --
A Along --
Q -- the address -- did --
A The --
Q Dr. Tadros, did you draft -- did you draft this Master Deed?
A I did not draft it.
Q And have you spoken with anyone who did or anyone who has personal knowledge of the drafting of this Master Deed?
A No.

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Q So would you say that you're able to interpret the intent of this document with regard to this Section 2 here?
MR. BLACKBURN: Object to the form.
A That Section 2 makes it clear as to the electrical expense of a specific and certain area of the building. That's what I understand.
BY MR. MASCIALE:
Q Well, it's also sidewalks and plantings; correct? It's not just electrical expenses?
A For that area; yes.
Q Okay. I mean you don't know the intent behind this, this section; do you?
A Intent? I do not know the intent.
Q Okay.
A I -- I -- I read it. I understand it. And I don't know what you mean by "intent." I'm just telling you my simple understand -- simple, logical understanding of reading English. They put sidewalks, plantings, and lightings, all three --
Q Along --
A -- in -- in that area, which --
Q Along Main and Blossom?
A Yes. Which makes a lot of sense.
Q Which would -- would you agree that means

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running down the length of the building, both Main and Blossom?
A No.
Q And why is that?
A Because the stores are not running down Main, Main and Blossom.
Q Well -- and again, can you tell me what this section, the bold type two lines above it, states?
A Two line -- what? I'm sorry.
Q The bold type that begins with Limited Common Elements.
A Okay. Limited Common -- that benefit Commercial and Residential Units. So that's --
Q So would you agree that this is a limited -- Section 2 here is a limited common element that benefits both commercial and residential units?
A Absolutely. Yes.
Q Okay. And the Master Deed has set that out as an express example of that; right?
A Yes.
Q Okay. Section 3 says Trash Chute; correct? And I think we've already been over that.
A Yes.
Q Section 4 says Trash Compactor.
A That -- for that area. Trash chute and trash

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compactor for that area; yes.
Q Okay. That benefits -- I don't know how many trash compactors there are at Adesso. Do you know?
A No idea.
Q Okay. There's also a service elevator listed under here. I know you had said you didn't believe the elevator was available to commercial or commercial tenants or owners.
A I believe there are four elevators in the building.
Q Okay. And there was a service elevator?
A And that's a separate elevator that only goes one floor to the trash, which I believe that's, fairly speaking, must be responsible for maintaining it.
Q Okay. So then the Master Deed includes this in items that can be budgeted to the commercial units; correct?
A Yes.
Q Okay.
A At a 7.5 percent --
Q Okay.
A -- reduction of what -- what's trash chute, which I believe it's a little bit more.
Q And I believe we went over the elevator charge from 2018, and I think you said that wasn't a

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properly-assessable item. Is that correct?
A I am -- I apologize. You said which one, exactly?
Q Back on Adesso 11, under Operating Expenses, it's the -- one, two, three, four, five, six -- and I apologize; I just remembered that I'm the one controlling the screen now. Let me pull that up. Okay. Do you see right here, Elevator?
A Okay. And where's the word "elevator?"
Q Right here.
A Yeah. That's -- the way it's written is a [unintelligible] expense because the -- we all know service elevators for the tenants to go up and down the five floors are much more used than trash elevator that's only limited.
Q Well, it looks like the total assessment was --
A They have nothing to do --
Q -- $11,700 for elevators. And it looks like the commercial elevators --
A Have nothing to do with that. Have nothing to do with that.
Q Okay.
A Only the trash elevator.
Q Right. And do you think that -- well, I'll

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move on from that.
A The company that services five elevators brings a -- brings a breakdown of the charge that they charge.
Q Okay.
A I don't have that breakdown.
Q And so you would agree -- obviously, I know the exact math. But you would agree that $521.62 is a small portion of the total $11,700 that was charged for elevators; right?
A Right. I disagree with the whole -- no. I -- I disagree with that, absolutely. You're making me pay almost five percent of the building expenses for elevators that I don't use. Trash chute; yes. Trash elevator; yes. But that's -- everybody uses that elevator, too. So I want to go to one-quarter or one-fifth of that, and then you calculate 7.5 of that.
Q Okay. But the Master Deed expressly sets out that the trash elevator --
A It did not say elevators.
Q -- in the assessment?
A It says -- and this statement did not isolate --
Q The service elevator.
A -- from trash elevator. It just said

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"elevators."
Q Yeah. I apologize. I meant to say "service elevator," not "trash elevator."
A They meant lighting. They meant landscaping. Same on all these.
Q Okay.
A The Master Deed limited them to certain area that -- the one that you see here, it's to the whole building.
COURT REPORTER: Doctor --
A That's how -- that's how commercial tenants leave.
COURT REPORTER: Doctor?
THE DEPONENT: Yes?
COURT REPORTER: Respectfully, sir, if you would kindly allow Mr. Michael to get his question out so that I get a clear question and a clear answer, it would make it a lot easier on me, please, sir.
THE DEPONENT: Thank you for reminding me. Thank you. I'll do exactly.
COURT REPORTER: Sorry.
THE DEPONENT: Thank you.
MR. MASCIALE: No problem.
BY MR. MASCIALE:
Q Okay. Just going back to Adesso 1, Loading

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Dock and All Appurtenances Thereof: Do you agree that that's a properly-assessable item for the commercial units?

A At a certain percentage yes.

Q Well, do you think --

A Oh, wait a minute. I'm sorry. I take that back. Loading dock, that's -- that's not -- that's not a trash thing. If they are using it; yes.

Q Well, do you think the residential tenants would be using a loading dock?

MR. BLACKBURN: Object to the form.

A I don't know. I don't know who's using it. But if they are using it; yes.

BY MR. MASCIALE:

Q Okay. And it is included under limited common elements that benefit commercial and residential units; correct?

A It is included. But are they using it? Are they allowed to use it?

Q Well, it would seem so.

A Well, we might want to ask them, because they'll tell you they're not allowed to go into the building.

Q I don't know where the loading dock -- do you know where the loading dock is located?

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A I don't know. But I know it's on the other side of the building. I saw something, and I saw a door to it. I'm making an assumption. I'm not 100 percent.

Q Okay. Overhead Entry and Exit Devices to the Secure Parking Areas and All Appurtenances Thereof: Would you agree that that's properly assessable to the commercial and residential units?

A What does the word "secure" mean?

Q I would imagine they're -- they mean the area behind the parking gate.

A Okay. That's not my -- my area. Actually, in that area there have stolen 18 parking spots total from the commercial units, behind that gate. So when they are free, then -- until then I -- I -- I cannot -- no.

Q The Marines park behind the gate; don't they?

A You're right. I think they do park behind the gate. Three parking spots; yes.

Q Okay.

A Mark that one; yes.

Q So it does serve some of the commercial --

A Yes.

Q -- limited -- okay.

A Yeah. Three -- there are three parking spots in the secure parking area amongst, I think -- what, 220?

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Q Okay. A couple more and then I'll be done. Exterior Security Cameras and All Appurtenances Thereof?

A That's something that we don't use because they have their own security cameras. Plus, they don't stay overnight in the building. They are not allowed to stay overnight in the building. There's nothing to steal from their stores, in the first place, so. I, personally -- and I talked to them about this. They have their own system, so why do they have to pay for the building's system?

Q Well, were they required to get their own system?

A They are doing it for their own safety and their own stores, regardless. For employees; for customers. The way they function, it's a different operation. They are not --

Q Okay. Are their security -- are those security cameras interior security cameras?

A They're in -- there are -- they have inside security cameras; yes.

Q Okay. Well, would you agree that Section 8 stats exterior security cameras, meaning those on the out --

A I don't believe that they need them. I don't

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believe that they need them. These security cameras -- like in my building and where I am, where I live, you have it outside to spot people that are coming in the middle of the night when you're asleep.

Q Okay.

A They don't sleep there, so.

Q But you --

A [Unintelligible] element that they came back and told me I'm wrong, then we should pay for it. But as far as I know, we don't need it.

Q Okay. But you would agree that it falls under this definition of limited common elements that benefit commercial and residential units; right?

A Yes. Yes.

Q Okay. And I think we discussed the roof. I think you agree that benefits both; right?

A Yes.

Q Okay. Well, what about the retail service corridor?

A They don't clean it. That's the problem. The corridor means pillars, and you have cobweb. They are not doing it. They are not cleaning it. So all the money to keep paying them when they're not doing anything, and my tenants have to hire their own people to do the work. Logically speaking, if the building can

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clean it and maintain it in good shape, well-painted and cleaned, it's -- it's fair.

Q Okay.

A This is fair measure.

Q Okay. Fair enough.

A But again, please allow me, allow -- allow me to mention, the dock corridor is also used by the whole building, not just by these people. Because the whole building comes in that area. The whole building walks in that area.

Q Okay. And then you would agree that it makes sense then that this is part of the common elements that benefit both residential and commercial --

A Yes.

Q -- units; right? Okay.

A Yeah.

Q And then just briefly, below that, you would agree that both the retail sign placard and all appurtenances of that in the retail colonnade benefit commercial units only; is that correct?

A That's not -- they are not to put the sign in. I'm the one to put the sign. They have devised their own signs that said "commercial" on it, thereby anybody can come and park. And everybody who's there in a different store, no one knows where they're at. I am

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in control of it. And I told my tenants to put their own sign, assign their name to every parking spot.

Q Okay.

A When I retrieve the rest of them, which I have not had the rest of them --

Q Okay.

Well, that's all I've got.

MR. MASCIALE: So thanks, everyone, for bearing with me and --

THE DEPONENT: Thank you.

MR. MASCIALE: Please answer whatever questions Mr. Bell has. And I will stop sharing my screen.

MR. BLACKBURN: Now you're going to ask -- you're going to be Mr. Bell's scribe now, right, Mike?

MR. MASCIALE: I can do that, too, if I can figure out how to -- there we go.

MR. BELL: I feel like I was duped into that arrangement.

MR. BLACKBURN: It looks like it, Kevin.

MR. BELL: All right. Well, we've had Dr. Tadros for a while, so let's keep moving so we can --

MR. BLACKBURN: II hear you. Let's go.

MR. BELL: -- see if we can get you finished up.

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E-X-A-M-I-N-A-T-I-O-N

BY MR. BELL:

Q Dr. Tadros, my name is Kevin Bell.

A Hi, Mr. Bell.

Q I represent --

A Good morning -- or good afternoon.

Q -- the two Holder Defendants and John Holder, that I will just collectively refer to as "Holder," probably, during the day. I know you've testified on a number of topics in response to Counsel's earlier questions. I have a few additional lines of inquiry that relate more specifically to the issues that you have alleged against Holder.

Some of my questions are going to be similar to what you've already answered, just -- it's nature of the beast. But I'll try to keep that to a minimum and -- and if you'll bear with me.

Very important that we understand each other, so the same ground rules apply in terms of seek clarification from me if you don't understand my questions. I'll be happy to try to re-ask the question in a way that gets us on the same page.

Also, and I don't plan to go as long as the first round of questions, but you are in charge of taking breaks. If at any time you want to take a break for any

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reason, it is 100 percent okay. Just let me know, and we'll stop and then we'll reconvene after a break.

A few questions about the Master Deed for Adesso/Columbia. You've looked at it. It was Exhibit 1, previously. I'm going to simply refer to that as the "Master Deed." My understanding is that you saw the Master Deed after you purchased the units; correct?

A Yes.

Q When did you see it?

A It came on an e-mail to me about two or three months after the purchase. And I started to look at it more carefully when I took legal action against the -- actually, when I sent a letter to Mr. Walter Todd when I started to look at the parking more carefully, which is around 2017.

Q What's the date of your letter to Mr. Todd?

A November 4, 2017.

Q Okay. Thank you.

You are aware that the Master Deed has been amended -- or was amended multiple times prior to your purchase of the retail units correct?

A I became aware of this later on; yes.

Q Yeah. And you're aware of that as are talking today; correct?

A Yeah.

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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?

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A I could have done a lot of things which I didn't do.
Q I understand. But there was no impediment to you doing that?
MR. BLACKBURN: Object to the form.
A I became aware of it.
BY MR. BELL:
Q And if you had looked at the Master Deed, you could have seen exactly how many spaces were available to the retail units in the parking garage; correct?
MR. BLACKBURN: Object to the form.
A I would not be able to understand it very well because I trusted my agent and everything he told me. I didn't even question -- as a matter of fact, I recall vividly when I had JJ Tea House coming into the building in May or June of 2017, started the business, he called me up pretty unhappy because I told him you have no -- we have no parking. He said, why? I said that's just -- that's the way it goes; it's a University or a City ordinance. I had not really -- at that time, I remember vividly, I did not know too much, nor did I question.
(Third Amendment to Master Deed of Adesso Horizontal Property Regime (6 Pages), Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's Exhibit No. Holder 1, previously marked for identification, is made part of this deposition.)

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BY MR. BELL:
Q I've put up on the screen what's been marked as Holder Exhibit 1. Did you receive these exhibits by e-mail, Dr. Tadros?
A From who? From you guys? Yeah.
Q Okay.
A Yeah.
Q And we looked at this previously. This is the Third Amendment.
A Uh-huh.
Q And would you agree that it sets forth the correct identification of the spaces available to retail?
A According to the document; yes. However, the word "correct," I objected to it because that very paragraph is a violation of the Master Deed because the parking spots shall not be reassigned or corrected -- or changed or leased or sold.
Q If all of the owners of the retail and the residential units agree to a change in the Deed, every single one of them, is it your testimony that they don't have the right to change the Deed?
MR. BLACKBURN: Object to the form.
A I don't know how to answer this one. I do not know. I still go by the Master Deed.

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BY MR. BELL:
Q So you'll defer to the court on that issue?
A Absolutely. Because when that decision was made, I was entitled to 38 parking spots. According to your client, the paperwork that he filed with the City, he claimed 34 parking spots. Barely able to read, you have to hold a magnifying glass to read it: 34 parking spots for me, that did not -- that I don't have now.
Q Are you saying you don't have 34, or you don't have all 34?
A I only have 20.
Q Okay.
A Three of which used by the building as -- what do they call it -- handicap parking.
Q And there are the 17 spaces that we have talked about earlier in the day in the ungated area of the parking garage, and then there are handicap spaces in addition to those; right?
A No. The 17 spaces -- the three handicapped are included in the 17, so I actually only have 14 spaces. And you have three handicapped spaces, a total of 17 spaces, and three additional spaces in the gated area for the Marines.
Q Bear with me. I'm going to have to ...

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A Okay.
Q And I'm going to zoom in on this. This is the ungated area where my mouse is moving around; correct?
A Yeah.
Q And we can count these off. It's one through seven?
A Right.
Q Eight and nine?
A I think these two are ten and 11.
Q Okay.
A I don't know what's number 12.
Q Okay. All right. Very good. But the handicap spaces that are in the ungated area, those are available to retail customers who are, in fact, qualified to use them?
A If they were handicapped; yes.
Q Perfect. Okay. Are you alleging that the number of spots identified in the Deed, the Master Deed, are different than the number of spots in the garage, for the commercial units?
A In the drawings that were submitted. The drawings imply 34 parking spots. The paperwork implies only 17 parking spots.
Q And the 17 are there; correct?

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A The 17 are there, not the 34.
Q The 34 -- and I think we'll -- we'll come back to those. Thank you.
A Okay.
Q Counsel discussed with you earlier in the day, pictures of signs that you took about parking. I think it was marked as Adesso's Exhibit 12. Do you remember those signs?
A Yes.
Q Okay. I'm not going to pull them up right now. But do you know when those signs were affixed to the walls?
A I have no idea.
Q When did you first see them?
A When I became alerted that I -- I don't -- that the parking spots were stolen by the building, basically. So, roughly, end of '17.
Q Okay.
A Roughly. I don't -- I don't have exact date.
Q When's the first time you visited the Adesso property?
A '17.
Q There was nothing preventing you from coming to South Carolina to inspect what you had purchased prior to that time, was there?

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A I don't think there was a court order to prevent me. But my work always prevent me from travel around. Look where we at right now.
Q How many times have you visited Columbia since then?
A Lots. Seven, eight times --
Q Okay.
A -- roughly.
Q When you saw the parking facility for the first time, you could see the spaces that were available for the retail units?
A The parking spaces for the first time, it says Visitor Parking Only on one side. And just next to them, within a few feet, another sign that says -- Guest comes first, slash, Retail Customer Parking Only.
And the reason I stress this point is because my tenants were 100 percent inconvenienced to even do delivery. The tenants told me that your client and your client's company threatened them that if they leave their car into that parking structure, that they will be towed. And that's how the -- I mean that was part of the problem that we had to fix.
Q And you don't know when that sign was put up; do you?
A I have no idea.

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Q But when you visited the property, you had no problem seeing that sign and thinking it was wrong?
A I called up the manager, Julie Woodruff. I stood there. I said please remove these signs and must -- you must not put the Guest in because guests come in and leave their cars for three or four days in a row. And by doing that to say $5, $10 parking somewhere else, they just drop the -- made the tenant -- the commercial tenant, losing money --
Q That's --
A Who have his clients coming in.
Q I think that answer was a "yes." But the question was, when you saw those signs, you felt they were wrong?
A Absolutely. I demanded -- I requested that they should be removed immediately.
Q And if you had come to the property at the time you had purchased it and if those signs were there, you would have thought they were wrong, then, too?
A No. Don't put words in my mouth, Mr. Bell. No.
Q It's -- we're --
A No. No.
Q Okay.
A That's not true.

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Q Okay.
A Because if I had known this, have I known this fact, I would have been there before even the purchase, probably not even making the purchase in the first place, if I'd known that I've -- I've been ripped off like this.
Q So --
A So the answer is, absolutely not. Have -- the minute I knew about it, the minute that I demanded. Because there was a flight before that when I came to talk to the City, who inflated my taxes because of the sale price of the property.
I didn't say anything about the parking. I thought that's just -- you walk around and you trust. You go to your doctor, the doctor say take off your clothes, let me examine you. Trust. You don't think he's going to stab you. You take off your chest [sic] and he listens to your heart. That's who I am. I trust people.
And one day, when I was told this is -- this is what -- whatever the parking is, I didn't even question it. It was not even on my mind that this is my property.
Q So you really, in 2014, just had no idea about parking?

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A I had a -- a slight idea that it's one parking per tenant and that, because it's a University kind of thing, that there's parking for them to park off the premises on the street and somewhere else, and that was agreed upon by the City and this was, basically, something agreed upon. You don't question it.
You go to your doctor, you don't say show me your -- your license so I can see if you can examine you or not. You trust him.
Q The understanding that you just described, that there had been an agreement with the City that parking would be this way, that was your understanding in 2014?
A Exactly. That was my impression, and that was my brief understanding; yes.
Q Very good. When did you first form the belief that the number of parking spaces available for the retail units was less than the number you were entitled to under the Master Deed or the PUD?
A I recall there was an e-mail in early 2017 where I demanded to be given five -- all I knew was five -- or 19 parking spaces. I can't remember the exact -- I don't have the e-mail with me. Early in 2019.
And then, as the year progressed forward, I started to look at the paperwork in the Master Deed. I

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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:

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Q Very good. But it was several months before your coming to understand your position on parking?
MR. BLACKBURN: Object to the form.
A Let me -- let me just make myself clear, that when I talked to Uncle Maddio's during which Holder was the manager, they had no parking. And Holder also charged me to lease my own parking spots for three spots: $450 a month. Holder did that.
BY MR. BELL:
Q Sure.
A I don't think the HOA violated me that bad when it came to charging me money for my own spots.
Q All right. Let's talk a little about the Planned Unit Development -- or the PUD. You understand that reference; right?
A Yes.
Q Okay. And you're aware that your attorney communicated with Rachel Bailey in 2019 about your belief that the parking situation violates the Columbia zoning ordinance?
A Yes.
(Letter dated 03/13/18 from Rachel L. Bailey to Charles Blackburn (1 page), Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's Exhibit No. Holder 2, previously marked for identification, is made part of

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this deposition.)
BY MR. BELL:
Q And you're aware that the City -- Rachel Bailey, acting on behalf of the City, wrote a letter saying that there were no parking violations at Adesso?
A Actually, that -- that statement is incorrect, Mr. Bell. You were in that meeting yourself, sitting next to me. And she showed no knowledge of visiting the site nor that she talked accurately about the actual amount of square footage.
I don't know if you are still there or not.
Q I'm here.
A Yeah. And she sent the letter saying that if I were to be 8,139, that I'm entitled to an additional 12 spots to the 26 spots, for a total of 38 spots. But when she answered her questions which I -- I have to say that I -- as a physician, I was not very happy with the way she answered. She was wavy. She was not indirect -- she was not direct; she was indirect.
And she did not substantiate her own letter. And she did not even visit the site; she did not visit my property. She didn't know what she was talking about, in all practicality, which she was supposed to.
And, on top of this, she wrote down that I'm entitled to an additional 12 parking spots if I am truly

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8,139. And according to the City and the tax records, I am 8,139 square foot. That means I'm entitled to 12 more parking spots, in addition to the 26 which I don't even have.
Q And if -- you can see where it's highlighted that she says because you're in the design and development district, street parking within 400 feet of the building counts towards that total; correct?
A When I talked to her on the phone a year earlier, she told me that eatery restaurants are entitled to eight to ten parking spots per 1,000 square foot. That's what she told me. She said that drops down to half. And we can go to her records. We can go to see what the -- exactly what she authorizes across the City.
But she said if you have within 400 square feet, half that much parking, then it's only required to have half that much parking spots. So that's why it dropped down from 70-something to 38-something spots.
Q You were at the deposition in which Ms. Bailey testified that the condition -- the terms and conditions of the PUD, once they are approved by the City, that is what governs parking and not the City of Columbia's regular zoning ordinance; correct?
A The City approved 4,675 square foot. That's what the City has, and that's what Ms. Rachel Bailey

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implied. Read her letter, please. You're ignoring -- and you did not highlight the part where it says I'm entitled to additional 12 -- increase of 12 parking spots to accommodate within the parking structure.
She wrote that down, and you're ignoring it. You're not highlighting it. And that's additional to the 26 parking spots.
Q The 12 spaces are her words, and I'm happy to highlight it.
A And count them off. It's -- 19 spaces within the parking structure were to be used for retail, approximately seven spaces available along the Main Street and Blossom. That's 26. An additional 12. If you give that to -- any third grader will tell you that's 36 parking spots.
With all my respect to Mr. Holder, I am the victim of this transaction.
Q She says 12 parking spaces to be accommodated within the parking structure and via street parking along Main and Blossom; correct?
A She wrote that down; that's true. She wrote that down.
Q You asked me to highlight it, and I did. So that's --
A Right. Right.

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Q That's what you're talking about. Okay.
A Right. But that means somebody needs to assign these parking spots. They are not assigned. She said 12 parking spaces for -- to be accommodated. These parking spots need to be assigned, accommodated. They are not accommodated. They are not accommodated, they are not assigned. Holder did nothing. They just took the parking spots.
Q Dr. Tadros, the letter concludes with, my final determination is that there are no known zoning violations. Correct?
A Based upon 4,675 square foot. I am not a third-grader. I am a doctor. And this letter -- she is wavy. That letter is so clear: 12 additional parking spots, in addition to 26 parking spots.
It's not correct, what you're saying, sir. It's her English. But her English is -- she's -- this woman, when we deposed her, she said she did not make a visit to the site. She did not make a visit to the site.
She does not want to see it for her eyes because she has to come back and put the facts as they should be. How about that? I mean she didn't even make a visit. And you want to call this a reliable deposition?
Q I'll let her testimony on that point speak

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for itself.
You have not sued the City, alleging they are interpreting the PUD incorrectly; have you?
A I am not into the habit of suing everybody. I'm exhausted, financially. It costs money to do this. I'm trying to hold onto what I have and defend what I have using the City zoning code.
Q You have not filed anything with the City to change the parking requirements in the PUD; have you?
A I don't know that I can even do that, because the City goes back and say you deal with the building. When I went to them -- the City came to the building and said you need to at least release these 17 spots to him, and, if you don't, we're going to cite you $100.
And the City walked out putting their hands over their -- over their eyes. They don't want to see that it's actually 8,139 square foot and not 4,675 that is filed wrongfully with the City.
Q So it's -- and just to make sure I'm clear, in this lawsuit you are still maintaining that Adesso is not complying with the PUD?
A Absolutely not.
Q And you were not --
A Adesso, they said accommodated. Where are the spots? Where are they? I need 26 spots. Where are

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they? And then I need, in addition to that, 12 more spots. Where are they? Ask Mr. Holder. As far as I know, he sold them.
Q Let's talk about your prior lawsuit against Mr. Holder.
A I don't have a prior lawsuit with him.
Q Let me talk -- let's talk about your prior lawsuit with Holder Properties; is that fair?
A I don't have a prior lawsuit. I have a current lawsuit.
MR. BLACKBURN: I believe he's talking about the HOA lawsuits, Dr. Tadros.
THE DEPONENT: Okay.
A I don't have a -- I have a -- I don't have a prior. I have an existing lawsuit.
BY MR. BELL:
Q Give me just a moment, please, sir.
(Commercial Claims Settlement Agreement and Release (41 pages), Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's Exhibit No. Holder 5, previously marked for identification, is made part of this deposition.)
A You mean talking about the settlement?
BY MR. BELL:
A You mean talking about the settlement?

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Q I am talking about -- I'm showing you the settlement currently.
A Yeah. The settlement; yes. I --
Q Let's -- just give me a second.
A Yes, sir.
Q Let me use the highlighter. I didn't realize we were going to have this issue.
A Okay.
Q If you could, read for me the highlighted text that I just added.
A Yes. My name, as Plaintiff in a settlement case that never went to court, as far as I Know. I did not have a separate -- I -- I thought I had a separate lawsuit. I don't have a separate lawsuit; it was a lawsuit filed by the HOA against your client, Mr. Holder.
Q That says that you were a Plaintiff in that lawsuit.
A They drafted my name as a Plaintiff; yes. I became aware of it days before it was settled.
Q I'm going to represent to you that a lawsuit was filed on your behalf naming you as one of the parties filing suit against Holder. If you didn't know that, I will represent it to you as a fact. There was a Summons and Complaint filed with your name as a Plaintiff against Holder and a number of other entities, so that is why I

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am going to refer to it as a "lawsuit."
A Go ahead, please.
Q I do want to talk with you about the settlement. And before we do that, I know that you are asserting that the release was executed under duress. I'm going to give you an opportunity to tell me as much as you want about those claims of duress. For now, I just first need to discuss with you what the release actually says, because duress doesn't matter if the release didn't apply to your claims in the current lawsuit.
Can we agree that we will hold off on discussing duress until after you and I have discussed what the release says?
A Let's see what the release says. Go ahead.
Q Very good.
You were named in the caption previously because you were the owner of all of the retail units; correct?
A Correct.
Q And you are a Plaintiff in this current action because you own the retail units. That's also correct?
A Correct.
Q And you may not be aware of this: I will

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represent to you that the previous lawsuit was filed in February of 2016. Does that sound correct to you?
A I am not familiar with that; no. I don't know.
Q The lawsuit was settled in 2017; correct?
A Yes.
Q At the time that the lawsuit was settled, you had concerns about the scope of the release; correct?
A Yes.
(Affidavit of Emad Tadros, M.D. (39 pages), Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's Exhibit No. Holder 3, previously marked for identification, is made part of this deposition.)
BY MR. BELL:
Q What I've got on the screen is your affidavit, Dr. Tadros?
A Yeah.
Q And you have stated that when you signed the settlement agreement, that you were told that you could maintain the claims against the developer and contractor; is that correct?
A Correct.
Q And at the time you signed the settlement agreement, you said that the attorney for the HOA was fully aware of the issues you had with parking that were

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allocated to your exclusive use; correct?
A Correct.
Q And I take it if the attorney was fully aware of that, then you were also fully aware of that. Is that correct?
A I disagree with that.
Q Okay. How was the -- maybe I asked it awkwardly. I apologize. It says the attorney for the HOA was fully aware of the issues I had, meaning -- and my question was, you were aware of the issues you had?
A My issues were, at that time, limited. I was only asking for a certain amount of parking spots. At that time, like I mentioned, I became more aware, and more and more as I discovered that I'm losing more parking spots, like I said, towards the end of 2017.
Q And how did you become more aware, sir?
A By going through the Master Deed, seeing that your client filing 34 parking spots on the drawing when, in fact, he's saying on paper 26 parking spots retail.
Q In other words, you found out -- you knew you had parking issues, in your mind, and you found out that the extent was worse than you thought. And you found that out by reading the Master Deed, which you could have done at any time prior to entering this settlement; correct?

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MR. BLACKBURN: Object to the form.
A One more -- can you please rephrase your question again one more time?
BY MR. BELL:
Q Sure. At the time you entered the settlement, you knew you had issues with parking; correct?
A Yes.
Q Over the course of that 2017, you came to appreciate in your mind that you had additional parking issues; correct?
A Yes.
Q And you came to appreciate that --
A After the settlement.
Q After the settlement. And you came to appreciate that by reading the Master Deed; correct?
A To some extent; yes. Asking the City, asking Rachel Bailey herself, who told me I'm entitled to approximately 30 to 40 parking spots, on the phone, when I talked to her.
Q And each of those things you just identified as causing you to appreciate the extent of your alleged harm for parking are things you could have done at any time between the purchase of the property and the time of the settlement?

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MR. BLACKBURN: Object to the form.
A Okay. Your -- your question is too long for me, so. I apologize. If you make it a little simpler for me, I'll be happy to think about it.
BY MR. BELL:
Q Sure.
You could have read the Master Deed and its amendments in between the time of your purchase of the property and entering this settlement?
MR. BLACKBURN: Same objection.
A I don't know if I -- I don't know if I read this in detail. Like I said, I was, at that time, shopping for an attorney to sue my old agent. And I have -- at that time, I have not filed a lawsuit yet.
BY MR. BELL:
Q My question is simpler than that. You could have read the Master Deed and its amendments prior to the settlement of the lawsuit?
MR. BLACKBURN: Object to the form.
A Anything -- anything, I guess, you could say it could have. But could I possibly have done it? The answer is no.
BY MR. BELL:
Q Why could you have not possibly have done it, sir?

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A Because I had no doubt. I said that a thousand times. I had no doubt. When I started getting alerted to that theft, then I started to dig deeper and look under the microscope at your client and at the HOA. And that's when I called them and called the City, and the City went after the HOA and said you release parking spots to him.

Q In Paragraph 17 of your affidavit, you indicated that you initially refused to sign the release because of concerns about the liability of the original developer and contractor. That was Holder; correct?

A Yes. Yes.

Q What were those concerns?

A I did not know about -- my -- my major concern was about the parking and the HOA fees. That was my major concern: The -- the stolen parking spots and the HOA fees.

Also, they wanted me to sign. And I said I do not know what's inside these walls. There is water coming; logically speaking, you can have mold. I, as a physician, have nothing but mold patients in my practice. I have -- this is pretty bad. I don't know -- I don't know the inside damage. I am not comfortable to sign this.

I'm not comfortable. I don't know the

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ramifications of the repairs. I don't know anything. And I even objected that I was not given any notice. He said the filed lawsuit was filed in January or February; I had no clue that there was a lawsuit filed. I had no clue that I was even mentioned as a major Plaintiff until he served me with the settlement that I was supposed to sign immediately.

Q And to finish up with this exhibit, in Paragraph 23 you say that Mister -- well, the HOA attorney repeatedly assured you that executing the settlement would not preclude you from using Holder again, basically; correct?

A Yes.

Q And the attorney that you're referring to is Frank Smith?

A Yes.

Q And I have -- this is an -- this was an exhibit to your affidavit. It's e-mail exchanges between you and --

A I saw that; yes.

Q Okay. I've just pulled them out separately --

A Yes.

Q -- to make it easier to --

A Yeah.

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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.

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A Thank you.

Q A little further on in Mister -- let me turn that thing off.

A little further on in Mister -- the e-mail we were looking at, after he told you they wanted protection from any future claims from any of the owners, he told you that, from the Defendants, perspective they only see total damages that may be recovered. Don't care which entity may recover them; they only want to ensure that they get a complete release. That's what he told you; correct?

A Right.

Q Now he did leave open the fact that you could sue the HOA, in that next highlighted paragraph? Do you see that?

A Yeah. I see that; yes.

Q Okay. He left open the possibility that you could sue the HOA. He wouldn't be involved because --

A Uh-huh.

Q He didn't tell you, anywhere in this e-mail, that you could sue Holder, though; did he?

A He said if you don't sign, the HOA will sue you. If you don't sign the release to Holder, the HOA will sue you. He did -- he did mention that, on the phone and in writing.

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Q If you refused to sign the settlement agreement, I expect the HOA will file an action against you for breach of the agreement that you are attempting to revoke?

A If I don't settle with your client, I will be sued.

Q He said that you signed that agreement in return for the HOA indemnifying you against tenants' claims for loss of revenue; correct?

A You're reading the second part. But the first one -- for the record, please -- 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're attempting to revoke.

Q It says you agreed to sign the settlement agreement. But they're talking about suing you for not signing the settlement agreement; right?

A Yes.

Q If they had an agreement with you that called for them to indemnify you -- the HOA, that is -- and for you to sign the settlement agreement, wouldn't they be within their rights to threaten to sue you?

A No; they are not. Because I refused, in the first place, to sign anything.

Q You're suing the HOA for your belief they're

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not living up to the Master Deed; correct?

MR. BLACKBURN: Object to the form.

A You mean parking spots and HOA fees? Yes.

BY MR. BELL:

Q Among other things; yes. And you would have been -- before you hired a lawyer to sue the HOA, you would have been within your rights to threaten them with a lawsuit if they didn't correct what they were doing; correct?

MR. BLACKBURN: Object to the form.

A I don't know what that is. I'm not into threatening people with lawsuits. I'm not into this. I'm not buying -- I'm buying this property for peace of mind, not for a nightmare of a lifetime, which has been the case already.

BY MR. BELL:

Q How may lawsuits have you filed in Columbia, sir?

A In Columbia? I did not file any lawsuits here. Yeah, well I did, against the buyer and -- I mean -- I take that back. Against the seller and my own agent, for selling me this property.

Q And you've sued the HOA and you've sued Holder; correct?

A With your --

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MR. BLACKBURN: Object to the form.

A -- clients, all together, you client, HOA, and John Holder, all three of them, in the second lawsuit following the lawsuit that I had to sue, which is my agent and the seller of this property.

BY MR. BELL:

Q And your lawyer asked us earlier in the day about suing some additional parties in this case. Are you aware of that?

A Yes.

(Compilation of E-Mails (6 pages), Defendants Holder Properties, Inc.'s and Adesso/Columbia, LLC's Exhibit No. Holder 4, previously marked for identification, is made part of this deposition.)

BY MR. BELL:

Q I don't know if you have this e-mail in front of you, but if you -- do you have it in front of you?

A I see it.

Q Okay. Anywhere in that e-mail does Frank Smith leave open the possibility of a future claim by you against Holder?

A Well, he --

MR. BLACKBURN: Object to the form.

A Well, he told me on the phone, sir, multiple times, that you can go after the -- because I told them

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that they had stolen parking spots from me, and that I paid Holder $450 a month for stealing parking spots. And he said that's irrelevant to the construction defect. Mr. Bell, you're ignoring that e-mail that I constantly mention construction defects, construction defects, construction defects. It was all about construction defects.

It is unethical for me, as a doctor, to give you a Tylenol and it's actually cyanide. That's unethical. That's exactly what happened to me: Cyanide pill instead of Tylenol.

BY MR. BELL:

Q And who gave you the cyanide pill?

A Your client.

Q I thought you said you didn't purchase from Holder or talk to --

A He handed over -- he stole the parking spots and he handed over lacking the parking spots, which is the landmark of the failure of all the commercial units. That's the landmark. They only started to survive and be up on their feet when the City came back and said give him the parking spots back, give him some. So I got 17, so they're up on their feet.

When that missing tenant comes in, they'll have less parking spots and they'll have less income

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because right now, we only have two tenants using 17 parking spots -- or 14 parking spots. But when the third tenant comes in, who is vacant for the last two and a half years, when he comes in they're gonna start fighting the parking spots and they're going to go down. And the one that caused it was your client.

Q Very good, sir.

Let's take a look at the Commercial Settlement Agreement and Release. This is a document you signed; correct?

A Okay.

Q Was that a "yes?"

A Yes. Go ahead.

Q Thank you. First thing I want to draw your attention to, it says whereas this action relates to improper design and construction defects and deficiency as well as improper management, maintenance, sale and control of the retail units, parens, quote, commercial claims.

So you are challenging management, maintenance, sale and control. That would involve Holder; correct?

A As a manager.

Q Very good. And then you said whereas the settling parties have agreed to enter this agreement to

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bring about the full, complete and final resolution of all matters between them.

You had issues with parking, at that time; didn't you?

A Yes.

Q But you agreed that this was going to be a full, complete and final resolution of those issues; correct?

A Construction defects. Construction defects.

Q Sir --

A Construction -- I insist -- don't mislead me, please, Mr. Bell. I insist it was about construction defects.

Q Okay, sir. What --

A Construction defects only.

Q Are you done?

A Go ahead.

Q Last words of that language: All matters between them. And you say that means construction defects?

A Only.

Q You represented that you were the owner of all claims for loss of use, lost rents, interior damages, damages to contents, any other personal damages claims, including anything that was asserted in the Complaint,

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flowing from or relating to the retail or commercial units. That's what you represented: You owned all type -- any claims there were to be had related to the commercial retail units, you owned them; correct?

A Yes.

Q And then in Paragraph 1, it says you -- 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 demand -- 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.

Do you see that?

A Construction defects.

Q Where do you see that?

A Well, that -- that -- on that basis -- I signed this based upon construction defects.

Q I want to talk to you about what the document says, sir. Where do you see "construction defects" in

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that paragraph?

A I don't see it. I don't see it here. But I see it on the top, on the very top of that settlement where it says "in that matter." So everything that's mentioned is going to be in that matter, which is a construction defect, if you go to the very top of the beginning.

Q Well, tell me where to go.

A Stop right there, please. [Reviewing.] Keep going down, please.

Q [Complying.]

A Keep going down, please.

Q [Complying.]

A Up. Up.

Q [Complying.]

A Construction defects. "Whereas this action relates to the alleged improper design and construction defects and deficiencies."

Q "As well as improper management, maintenance" -- it's everything, sir.

A I'm not asking for the sale or the maintenance part of it.

Q Management?

A It has nothing -- the word "parking" is not there. I was charged for parking. And I'm not asking

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Holder for the --
Q At the time you signed this, parking was a matter between you and Holder; correct?
A Say that again. I'm sorry.
Q At the time you signed this agreement, parking was a matter between you and Holder; correct?
A Absolutely.
MR. BLACKBURN: Object to the form.
A That -- that's what my attorney told me, that it's something that you have to go back -- it's a separate matter.
BY MR. BELL:
Q But it was a matter between you and Holder: Parking? Correct?
A Okay. When you say "matter," meaning initial?
Q Yes.
A Yes. Absolutely.
Q And you signed a document saying the settling parties have agreed to enter this agreement to bring about the full, complete and final resolution of all matters between them.
A In regards to the alleged matter. See, when you read this -- I do not expect you to keep repeating "construction defect" in every paragraph. When I go to

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reply upon the very top where it says "as it relates to" the design and the construction defects, as it relates -- whereas it relates to. Here you go. There is a reason for this to be written down.
Q Correct. It says it relates to that as --
A Design/construction defects.
Q As well as alleged improper management, maintenance, sale and control; correct?
A I'm not asking him for maintenance. I'm not talking about HOA with him. I'm talking about stealing my parking spots.
Q At least, according to this document, you released Holder from any claims that were asserted or that could have been asserted, arising out of work performed by Holder. Do you see that?
A As it relates to construction defects, design and construction defects.
Q Sir --
A As it relates -- listen. I disagree with you. This is misleading. This whole thing is misleading. This whole sentiment now, the way I see it, between threatening me, misleading me, and then you come and you want my deposition under oath. We go to the judge on this one. I'm relying on the first line, up on top.

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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

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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

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that you have. Mr. Frank Smith, who dealt with your client, dated 5/21/2017 at 9:02 in the morning, when he said this is unrelated. This very thing is unrelated, and that I'm threatened. That's not mentioned here, that I'm threatened.

Q We're going to get into that, sir, I promise.

A Okay.

Q Before we went down this path, I told you I was going to let you talk all you wanted about duress. I wanted to have a conversation with you first, without those allegations, so we could talk about the document.

A I am not -- I am -- I'm telling you right now, this whole thing is misleading because you are -- you are dividing the pages. You're taking the pages differently. I'm going back to the first page, back to the name of the patient, back to the identification of this document. The identification is construction defects.

Q Do you think Holder would have contributed $250,000 to this settlement if Holder thought you were going to then turn around and sue him for more damages?

MR. BLACKBURN: Object to the form.

A I have no idea what your client would be thinking. I don't know.

BY MR. BELL:

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Q Okay.

A As far as I know, I don't trust.

Q Very good.

A Yeah.

Q In the second paragraph on this page it says, 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.

A Construction defects.

Q Okay. Very good. And you again warrant that you are the owner of all such claims that you just waived; correct?

A For construction defects.

Q The words "any and all," to you means construction defects?

A Yes. That means that -- it is. It's not means to me. It is construction defects.

Q Okay. Very good.

A When you -- you have an ethical obligation as a -- as a client -- as an attorney, that you need to understand what your client understands. But to block me and go around and block me and say, well, we're gonna put it on top but we're gonna make the language different in every page, then we go to the judge.

Q In Paragraph 10, Legal Fees, it says in the

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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 parties its costs and expenses including reasonable legal fees, expenses and associated court cost.

That was --

A In regards -- in regards to the construction defects settlement.

Q But you agree that if there is a breach of this settlement and you were the breaching party, then you have to pay legal fees; correct?

MR. BLACKBURN: Object to the form.

A If I'm in breach of the settlement in regards to construction defects only.

BY MR. BELL:

Q I understand what you think the settlement agreement says. But --

A It's not what I think. It is what it says.

Q And this next paragraph: This instrument constitutes the entire and final agreement among the settling parties and there are no agreements, understandings, warranties or representation amongst the parties except as set forth in this settlement agreement.

Do you see that?

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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.

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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

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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;

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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

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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

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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.

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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.

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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

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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.

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MR. BLACKBURN: Sounds good.
MR. MASCIALE: Sounds good.
(At this point there is a break in the deposition.)
BY MR. BELL:
Q Dr. Tadros, answering an earlier question from -- not by me, did I understand you to answer that you're a mathematician?
A No; I'm not mathematician. I'm just -- I scored good in school on math.
Q Okay. Okay.
I have no further questions.
A Thank you.
Q Thank you. I appreciate it very much.
A Thank you.
MR. BLACKBURN: Michael, do you have any follow-ups or anything?
MR. MASCIALE: Yes. Just a very brief follow-up.
R-E-E-X-A-M-I-N-A-T-I-O-N
BY MR. MASCIALE:
Q Dr. Tadros -- and I'll start sharing my screen. I've got the exhibits pulled up. Going back to -- all right. Going back to Adesso 1 which is the Master Deed, I'm going to go to page 15 which is Plaintiff 567. Okay. Do you see where my cursor is down here, the

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beginning of the last sentence?
A All Common Elements?
Q Yes. Would you agree that this sentence says 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, parentheses, or the Association, and another party?
A I agree.
Q Okay. Would you also agree, then, that a lease of any of those parking spaces -- and if we get specific, were they your commercial parking spaces -- would be a violation of the Master Deed?
A Yes. Absolutely.
Q Okay. And now I want to go to Exhibit 7, Adesso 7, which is the e-mail from Lauren Smith. And that was an e-mail from Lauren Smith of Holder Properties to you; correct?
A Uh-huh. Yes.
Q And that's dated Wednesday, March 4th, 2015?
A Yes.
Q Okay. Now, at the time, Holder Properties was only the property manager; correct?
A Correct.
Q Okay. And this e-mail states -- and it has

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attachments with Lease Agreements for parking spaces 220, 221 and 108; correct?
A Correct.
Q And you did, in fact, lease those parking spaces from the Association, as managed by Holder?
A Yes.
Q Okay.
MR. BELL: Michael, I'm just going to object to the form of the question. And maybe I wouldn't have the objection if I saw the agreements.
MR. MASCIALE: Okay.
MR. BELL: You're using a different word than the e-mail is using.
BY MR. MASCIALE:
Q Okay. So here is the -- and they're all the same. They're just a form document. Okay. So, Dr. Tadros, under Section 3, Payment, can you see where my cursor is? Does that say the monthly rental fee shall be $150 per month?
A Yes.
Q Okay. So was this a -- and to rephrase, was this a rental of the parking spaces I just indicated?
A Yes.
Q And you paid monthly rent for those; correct?
A They charged me $150.

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Q Per month; correct?
A Yes.
Q Okay. And so based on what you've said about the Master Deed, this would be a violation of the Master Deed; correct?
A Yes.
Q Okay. And at the time, as of March 4th, 2015, had you read the Master Deed?
A No.
Q Was there anything preventing you from reading the Master Deed?
A Was there any reason for me to read the Master Deed? The answer is no.
Q But could you have?
A I didn't -- I don't recall having -- even having the Master Deed or being knowledgeable of where the Master Deed is.
Q And I think you testified earlier that this is a publicly-available document that was recorded in the Register of Deeds office; is that correct?
A Yeah. It -- it's supposed to be a public record. It's supposed to be. Have I read it? The answer is no.
Q Okay.
A Then going back to my story, you're --

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someone comes in and asks me a doctor, my answer is, this is Tylenols. It's not supposed to be cyanide. And I don't give them cyanide.

Q Okay. But just to be clear, at the time, if you had chosen to read the Master Deed, you --

A If I had.

Q -- could have --

A If I had a reason.

Q Okay. But you could have, regardless? And based on your reading of it now, you understand that leasing these -- or excuse me -- renting these parking spaces, 220, 221 and 108, to you, would be considered a breach of the Master Deed. Is that correct?

A Absolutely.

Q Okay. Moving on. I think earlier, when Mr. Bell had some questions for you about getting some of the parking spaces back, you referred to helping the commercial unit tenants get back on their feet. Do you recall that?

A Yes.

Q Okay. And I believe -- which commercial unit has been vacant since I think 2017 or 2018?

A That's Unit A. It's about 37 percent or 36 percent of the space.

Q Unit A?

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A Yeah.

Q Okay. And I think you had said before, the HOA changed the parking signs in June of 2018. Is that correct?

A I don't know when they changed them, but they were asked -- they were forced to change them. And I don't know when exactly they changed them.

Q Okay. B?

A But --

Q But you would agree -- I'm sorry. Go ahead.

A The City demanded they should change them.

Q Okay. But you would agree that -- we're currently at end of August 2020; correct?

A Yes.

Q And would you agree that the signs were changed at some point in 2018?

A By the management company, to the word Commercial.

Q Okay.

A Which I told my tenants to --

Q Okay.

A -- put up their own signs. And the building said there's no need to. And when you use the word Commercial, it becomes more general where, then, anybody in the building can also park there.

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Q Okay. So then it's been almost two years, possibly, at least two years, that these signs have been changed to give you those commercial park -- those 17 commercial parking spaces --

A Yes.

Q -- in the front of the building?

A Yes.

Q And Unit A is still empty?

A Yeah. The place had bad reputation for not making money.

Q So you would agree, then, that there are other factors at play that can influence whether or not a tenant is successful, other than just parking; correct?

A Parking is a major one. If you don't have parking, you're not going to go there. No one will go there.

Q Well --

A Except the people that are walking in front of it. That's it.

Q Okay. But you would agree now that Unit --

A [Unintelligible] with you on this one.

Q Okay.

A Parking, major one.

Q But you would agree now that Unit A has parking; correct?

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A Unit A right now has parking. But I cannot find the one because everybody comes in asks how come people put in half a million dollars and walked away from it? What's wrong? And then I show them the numbers that I need from them, which this is how much you pay, taxes, insurance and HOA, they say this is too much.

Q Okay.

A And other units, other businesses, walked away. This is unsafe investment. They are not comfortable.

Q So when people ask you what's wrong with the unit, you don't tell them it's because they have no parking; right?

A Parking, they still ask. They all ask about how much. They don't ask whether or not you have parking. They say how many, how many parking spots. And I say I only have six, six parking spots for their unit. They say, obviously, that that's not enough. As a restaurant, they want more parking, and that's not enough.

Parking brings money. If there's no parking, there's no money. Parking brings the client who pays the money. So they view that as limited income.

Q Are parking spaces divided by unit or are they allocated to all the units for their --

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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

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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

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anything -- because the management is there already; they are inside the building. So I'm not really doing that. I need -- all I need is --

Q Okay. But let's say --

A When I need to rent -- and right now I have a contract with a real estate agent who keeps showing it.

Q Okay. So let's say there was a maintenance issue that was solely a landlord/tenant problem and didn't involve the HOA common elements? Who took care of that?

A Okay. There's no such thing.

Q Why not?

A Because everything is taken care of by the tenants.

Q So the tenant paid for everything; you didn't manage the property at all?

A I didn't manage for anything. JJ Tea House, whatever, Corner Blend; they do everything on their own.

Q Okay. So the tenant made all their own repairs --

A Yeah.

Q And --

A Everything. Everything. They do everything.

Q Okay. All right.

Well, that's all the questions I have. And

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again, thank you for your time.

MR. BLACKBURN: Kevin, do you have anything else?

MR. BELL: Nothing further.

MR. BLACKBURN: I've just got a couple of follow-ups, Dr. Tadros.

MR. MASCIALE: I'm sorry, Charles. I have one more thing. Is that okay?

MR. BLACKBURN: Sure. Go ahead.

MR. MASCIALE: Okay. Thanks.

BY MR. MASCIALE:

Q Dr. Tadros -- and I apologize. It kind of got buried in my notes here. I'm going to refer to what's been marked as Adesso 5. Is that up on the screen right now?

Hello?

MR. BLACKBURN: Yes; it is. It is.

MR. MASCIALE: Okay.

MR. BLACKBURN: I was waiting for you to say "congratulations;" that's such a damned good job.

BY MR. MASCIALE:

Q Okay. Let's see. Looking at response number 12, Dr. Tadros, did you -- and I should say these are your answers to my client's First Set of Interrogatories. So did you assist your attorney in preparing these?

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A Yes.
Q Okay. So all of these statements are true and accurate, to the best of your knowledge; is that correct?
A To the best of my knowledge; yes.
Q Okay. So I'm going to reference 12 here, your answer. Can you confirm, then, on the record, that you are withdrawing your South Carolina Unfair Trade Practices Act claim against my clients, that being the Adesso --
A According to the answer; yes.
Q Okay. So you're withdrawing that claim as to the Adesso Horizontal Property Regime and the Adesso Homeowners' Association?
A Yes.
Q Okay. Thank you.
No further questions.
MR. BLACKBURN: Okay. Just a quick second.
E-X-A-M-I-N-A-T-I-O-N
BY MR. BLACKBURN:
Q Do you know who's the current management company in charge of Adesso's management?
A It's called CMM Realty.
Q Are you familiar with CMM Realty?
A I'm not very familiar other than with the

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contract that I had with them. But I don't know who they are.
Q You're familiar with Charles Michael Munson? Does that name ring a bell?
A Yes. Absolutely.
Q How do you recognize Charles Michael Munson?
A He's the first one that called me back when I said I wanted my parking. And he told me that I'm not entitled to any parking, and that even though that it has been shown someplace that some -- I'm -- that I was entitled to either five or ten parking spots, I don't know, he said you're not getting anything.
Q Have you continued with Charles Michael Munson's company, CMM Management?
A Yes. And he's the one that also was setting it -- when I walked in a meeting on, I believe, November 18, that that was not the meeting. And he was the one who was leading the meeting, was reading from his tablet. He had all kinds of print-outs. And everybody else was sitting. They didn't have -- have any piece of paper. He was controlling --
Q Are you happy with Charles Michael Munson's management of the Adesso?
A Yes.
Q I'm not sure if you're understanding my

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question.
A I did not understand the question.
Q Can you hear me okay?
A Go ahead. Repeat slowly, please.
Q Are you happy with CMM's management of the Adesso?
A Absolutely not. I'm very frustrated.
Q Thank you. That's all I have, Dr. Tadros. Appreciate your time today.
A Thank you.
MR. BLACKBURN: Anybody else?
MR. MASCIALE: I'm good.
MR. BELL: Same here.
(The witness was explained his right to read and sign the transcript of the deposition and chose to waive that right.)
(The deposition concludes at 6:07 p.m.)

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CERTIFICATE OF REPORTER

I, Lorraine B. Whiteley, Court Reporter and Notary Public in and for the state of South Carolina, do hereby certify that the second portion of the aforementioned deposition of EMAD TADROS was recorded by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said deponent at the time and place specified.

I FURTHER CERTIFY that I am neither attorney nor counsel for, nor related to nor employed by any of the parties to the action in which this deposition is taken, neither am I financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 8th day of September 2020.

Lorraine B. Whiteley
Notary Public for South Carolina
Commission Expires: 4/7/2027

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EXHIBIT 9

Plaintiff's Answer to Interrogatory No. 12 of Defendants' First Set of Interrogatories to Plaintiff

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STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-40-00919 **PLAINTIFF'S ANSWERS TO DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: DOUGLAS W. MACKELCAN, ESQUIRE, AND MICHAEL C. MASCIALE, ESQUIRE, ATTORNEYS FOR DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADDESSO HOMEOWNERS' ASSOCIATION AND TO THE DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADDESSO HOMEOWNERS' ASSOCIATION ABOVE NAMED:

Plaintiff Emad Tadros, M.D. as Trustee of the Grace Living Trust dated October 12, 2010, as amended ("Plaintiff") hereby answers Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association's First Set of Interrogatories to Plaintiff pursuant to SCRCP Rule 33 as follows:

In setting forth these answers, Plaintiff does not waive the attorney-client, work/product, or other privilege or immunity from disclosure which may attach to information called for herein, or responsive to, the Interrogatory. Plaintiff does not concede the relevance or materiality of the Interrogatory, or the subject matter for which the Interrogatory refers. These answers are submitted by the Plaintiff subject to, and without in any way waiving or intending to waive, but on the contrary intending to reserve and reserving:

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US Marines Office

a. **Lease Began August 21, 2009.**
b. **Lease Began October 19, 2009.**
c. **5 years lease renewed January 2015 and January 2020.**
d. **See spread sheet previously produced.**
e. **Tenant is currently exercising the second 5-year option and tenant has been allowed parking from day one.**

12. Identify and describe in sufficient detail each and every statement, action or omission, including the date of such alleged statement, act or omission, by Adesso Horizontal Property Regime and/or Adesso Homeowners' Association which Plaintiff believes constitutes a violation of the South Carolina Unfair Trade Practices Act.

ANSWER:

Plaintiff is withdrawing it South Carolina Unfair Trade Practices Act claim as to these Defendants only.

13. Identify and describe in sufficient detail each and every statement, action or omission, including the date of such alleged statement, action or omission, by Adesso Horizontal Property Regime and/or Adesso Homeowners' Association which Plaintiff believes constitutes negligent misrepresentation.

ANSWER:

Objection. Plaintiff cannot reasonably be capable, of identifying each and every statement or action of these Defendants. Notwithstanding said objection, see answers 7 and 12 above.

Additionally, these Defendants have failed to maintain the premises as required by the management agreement with CMM Management in:

a. **Plaintiff has asked Defendants to pressure wash, and Defendants have not;**
b. **Plaintiff has asked to clean the wall from the cobwebs atop of all the restaurants' entrances on the building walls and defendants did not;**
c. **Plaintiff asked Defendants to clean outside pillars from obvious dirt and dark stains and Defendants have not**

See Plaintiff's Answer to Interrogatory #14 above.

In addition, Attorney Frank Smith sent an email "threat" to Plaintiff titled Pending Settlement Agreement in Adesso v. Holder et. al. dated May 21, 2017 @ 9:02 am: "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."

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

Charles G. Blackburn, Esquire
SC Bar # 69458
1401 Main Street, Suite 655
Columbia, SC 29201
cblackburn@scarolina-law.com
Phone: (803) 426-3323 x4502
Fax: (803) 978-6246
Attorneys for Plaintiff

August 19, 2020

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STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-40-00919 **CERTIFICATE OF SERVICE**

I certify that on this date, I, Kimberly R. Bickford, a Paralegal with the law firm of Vernis & Bowling of Columbia, LLC, have served a copy of **PLAINTIFF'S ANSWERS TO DEFENDANTS ADESSO HORIZONTAL PROPERTY REGIME AND ADESSO HOMEOWNERS' ASSOCIATION'S FIRST SET OF INTERROGATORIES TO PLAINTIFF** in this action on counsel of record by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Michael C. Masciale, Esquire
Douglas W. MacKelcan, Esquire
Copeland, Stair, Kingma & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531

AND

Walter B. Todd, Jr., Esquire
Walter B. Todd, Jr., PC
Post Office Box 1549
Columbia, South Carolina 29202-1549
Counsel for Defendants Adesso Horizontal Property Regime and Adesso Homeowners' Association

AND

Kevin K. Bell, Esquire
Paul Hamilton Hoefer, Esquire
Robinson Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211-1449
Counsel for Defendants Holder Properties, Inc., John R. Holder, Individually, and Adesso/Columbia, LLC

Kimberly R. Bickford
Paralegal

August 19, 2020

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ELECTRONICALLY FILED - 2021 Sep 14 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4000919

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 **STIPULATION OF DISMISSAL AS TO HOLDER DEFENDANTS**

Plaintiff Emad Tadros, M.D., as Trustee of the Grace Living Trust dated October 12, 2010, as amended ("Tadros"), and Defendants Holder Properties, Inc., Adesso/Columbia, LLC, and John R. Holder (collectively "Holder") have reached a settlement of all matters between them. Pursuant to Rule 41(a)(1), SCRCP, Tadros and Holder, with the consent of all parties who have appeared in this action, stipulate to the dismissal of this action as to all claims that were or that could have been asserted between them in this action. For a period of 60 days from the date of filing of this stipulation of dismissal, the dismissal shall be without prejudice to the right of Tadros or Holder file a motion to enforce the settlement or to withdraw the dismissal on the basis that the settlement between Tadros and Holder was not fully consummated.[1] After 60 days from the date of filing, if no party has filed a motion to enforce the settlement or withdrawn the dismissal due to the failure of the parties to consummate the settlement, the dismissal shall be with prejudice.

[1] The material terms of the parties' confidential settlement agreement are set forth in correspondence from Holder's counsel dated August 13, 2021, and the email by Tadros's counsel on August 19, 2021. For purposes of Rule 43(k), SCRCP, those material terms are hereby stipulated to by Holder and Tadros.

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s/ Charles G. Blackburn
Charles G. Blackburn [SC Bar No. 69458]
BLACKBURN LAW, LLC
1701 Cherry Laurel Drive
Columbia, SC 29204
(803) 920-8726

Counsel for Plaintiff

s/ Kevin K. Bell
Kevin K. Bell [SC Bar No. 65495]
Paul H. Hoefer [SC Bar No. 77506]
La'Jessica Stringfellow [SC Bar No. 102376]
ROBINSON GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Counsel for Defendants Holder Properties, Inc., ADESSO/Columbia, LLC., and John R. Holder

s/ Michael C. Masciale
Douglass W. MacKelcan [SC Bar No. 76332]
Michael C. Masciale [SC Bar No. 103819]
COPELAND, STAIR, KINGMA & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

Counsel for Defendants Adesso Horizontal Property Regime and Addesso Homeowners' Association

September 14, 2021

STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-40-00919 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO RECONSIDER**

RICHLAND COUNTY
FILED
2021 OCT -1 PM 4:51
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, by and through its undersigned attorney, pursuant to S.C.R.C.P. Rule 59(e) will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court granting its Motion to Reconsider the Court's Order (the "Order") entered September 21, 2021, Granting Summary Judgment to ADESSO Defendants ("ADESSO Defendants").

Plaintiff's Notice of Motion and Motion to Reconsider is based upon the grounds that the Court's Order was based on factual errors, as well as errors at law. The errors include, but are not limited to, the following:

1. **A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE REASONABLENESS OF PLAINTIFF'S ACTIONS AFTER PLAINTIFF BECAME AWARE OF THE ALLOCATION OF PLAINTIFF'S COMMERCIAL PARKING SPACES;**

2. **A GENUINE ISSUES OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S CHARGING OF ASSESSMENTS TO PLAINTIFF'S COMMERCIAL UNITS;**
3. **A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S BREACH OF THE ADESSO MASTER DEED;**
4. **A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING PARKING SPACES DEDICATED TO THE EXCLUSIVE USE OF PLAINTIFF'S COMMERCIAL UNITS; AND**
5. **A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S FAILURE TO MAINTAIN THE ADESSO RESULTING IN THE CONTINUING WATER DAMAGE TO PLAINTIFF'S COMMERCIAL UNITS.**

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). When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide. Brown v. Finger, 240 S.C. 102, 124 S.E. 2d 781 (1962); *See also* Arant v. Kessler, 327 S.C. 225, 489 S.E. 2d 206 (S.C. 1997).

In determining whether any triable issues of fact exist, 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).

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).

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 for Fair Employment v. South Carolina Dep't of Labor, Licensing and Regulation, 337 S.C. 476, 523 S.E.2d 795 (S.C. App. 1999).

I. A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE REASONABLENESS OF PLAINTIFF'S ACTIONS AFTER PLAINTIFF BECAME AWARE OF THE ALLOCATION OF PLAINTIFF'S COMMERCIAL PARKING SPACES AFTER PLAINTIFF PURCHASED.

Plaintiff's Commercial Units at issue in this case ("Commercial Units") comprises a total 8.54279% interest in the total undivided interest in the Regime. Order at ¶ 6.

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

The Master Deed identifies seventeen (17) restricted access spaces designated for the exclusive use of Plaintiff's commercial units.

Per the January **2008** Amendment to the ADESSO Master Deed, 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. Order at ¶ 23. **(Emphasis added)**

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. Order at ¶ 34.

Point being, the original Master Deed allocated **17** commercial parking spaces within the ADESSO. The January 2008 Amendment to the Master Deed to **19** and the Order claims there

are 21 commercial parking spaces within the Adesso designated to the exclusive use for Plaintiff's commercial units. **Emphasis added.** Are there 19 or 21 parking spaces designated for the exclusive use of Plaintiff's commercial units? This is one, among other issues, the Plaintiff has been dealing with since Plaintiff's purchase of the commercial units.

To add even more confusion to the issue of Plaintiff's commercial parking spaces, "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. Order at ¶ 34." This is an erroneous statement. There are not **21** commercial parking spaces located within the Adesso, there are **17**, of which 3 of the 17 have been designated for handicapped use, resulting in **14** commercial parking spaces designated to the exclusive use of Plaintiff's commercial units.

Mike Parades, Plaintiff's expert, counted a total of **17** commercial spaces. Mr. Parades' Affidavit was attached as Exhibit C to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment and is fully incorporated herein as if set forth verbatim.

The **14** commercial parking spaces designated for the exclusive use of Plaintiff's commercial units, violates the 2008 Amendment's purported **19** commercial parking spaces and the purported **21** set forth in the Order at ¶ 34.

When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide. Brown *Supra* and Arant *Supra*.

So, the issue is are there 14, 17, 19 or 21 commercial parking spaces designated for the exclusive use of Plaintiff's commercial units? The Plaintiff has been trying to clarify this question and the answer is still unknown. However, the bottom line is Plaintiff has 17 parking spaces within the Adesso with 3 of the 17 designated for handicapped use and Plaintiff Leases 3 additional parking spaces from the Adesso Defendants for use for one (1) of Plaintiff's tenants on another located within the Adesso. The leasing of the parking spaces will be discussed below.

The conflicting testimony with regard to the actual number of Plaintiff's commercial parking spacing becomes a question or a jury to decide pursuant to Arant and Brown and

constitutes reversible error of the Order granting the Adesso Defendants' Motion for Summary Judgment.

Accordingly, this Court should reverse its Order Granting Adesso Defendants' Motion for Summary Judgment and Grant Plaintiff's Motion to Reconsider.

Furthermore, the Order, drafted by the Adesso Defendants, does not mention **why** the signage was changed in **2018**. **Emphasis added**

The reason the signage was changed in 2018 was due to the continued problems with access to the commercial parking spaces by Plaintiff's tenants.

It is undisputed that the Adesso Defendants changed the signage in 2018.

Exhibit A attached hereto, bates stamped PLT_001260-PLT_001270, is an email thread beginning on December 14, 2017, from one (1) of Plaintiff's tenants, Marcia Contos, regarding her complaints about the availability of commercial parking for the exclusive use of the commercial units.

Mrs. Contos, in her December 14, 2017, email to the Plaintiff and her husband, identified seventeen **(17) parking spaces inside the parking structure,** not the **twenty-one (21)** set forth in the Order at ¶ 34. **Emphasis added.**

Furthermore, Mrs. Contos' husband, Ted Contos, brought the issues with the commercial parking to the attention of Rachel Bailey, Interim Zoning Administrator for the City of Columbia in his February 15, **2018.** *See* PLT_001260 in Exhibit A. **Emphasis added.**

Ms. Bailey, in response to Mr. Contos' email, replied, "I will continue to keep you posted as we gather information from CMM Realty." Both Mr. Contos and Plaintiff relied on Ms. Bailey's representation regarding "keeping you posted" to the detriment of both Mr. Contos (who is no longer a tenant) and the Plaintiff.

The December 14, 2017, email from Mrs. Contos contradicts the number of commercial parking spaces set forth in the Order and the 2008 Amendment and presents a question of fact as to the actual number of parking spaces for a jury to decide and provides the scintilla of evidence to deny the Adesso Defendants' Motion for Summary Judgment. Accordingly, this Court should Deny the Adesso Defendants' Motion for Summary Judgment and Grant Plaintiff's Motion to Reconsider

The Order states in ¶¶s forty-five (45) through forty-seven (47), that the parking spaces "were a matter of public record," (Order at ¶ 45), "Plaintiff possessed actual knowledge regarding matters of Commercial parking allocation," (Order at ¶ 46), and "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" (Order at ¶ 47).

¶¶s forty-five (45) to forty-seven (47) are erroneous and inaccurate at best, based on the number of commercial spaces identified by Mrs. Contos in 2017 and Mr. Contos in February 2018 and the number of commercial spaces identified in the 2008 Amendment to the Master Deed. The issue of the actual number of Plaintiff's number of commercial parking spaces creates a question of fact for a jury to decide.

The Contos' copied the Plaintiff on all of the emails in **Exhibit A** from December 14, 2017, to February 15, 2018. The Plaintiff took action with the City of Columbia Zoning Department just like he did when another tenant, the Marines, contacted Plaintiff in January 2015 despite the assertion by the Adesso Defendants in the Order at ¶ 32 that "Plaintiff took no action."

The Adesso Defendants claim the Plaintiff took no action regarding the Marines' complaint about lack of parking in 2015. However, this is not true. Plaintiff contacted the ADESSO management company by email on **January 29, 2015** in response to the Marines' complaint about the lack of parking. **Emphasis added.** *See* **Exhibit B**, bates stamped PLT_001303.

The Order at ¶ 29 is inaccurate. The "lottery" the Adesso Defendants refer to in ¶ 29 refers to the January 29, 2015, email from the management company to the Plaintiff in **Exhibit B.**

The management company proposed the "lottery" to satisfy the Plaintiff's parking issues with the Marines. The proposed "lottery" violated Section VII of the ADESSO Master Deed.

In fact, the Adesso Defendants **admit**, in ¶ 22 of the Order, "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 the

letter of Holder Properties, Ince dated January 24, 2008 ("January 2008 Amendment"). **Emphasis added**

Furthermore, the Adesso Defendants claim, in ¶ 32 of the Order, that "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." This statement is inaccurate at best as evidenced in **Exhibit B.**

Contrary to the Adesso Defendants' set forth in the Order at ¶ 32, Plaintiff was contacted by the Adesso management company and relied on the false representation made by the management company on **January 29, 2015.**

The Adesso management company told Plaintiff that Plaintiff could bid on additional parking spots for the parking issues Plaintiff was experiencing with the Marines. This is another instance of reliance similar to the Plaintiff's reliance on the representations made by Rachel Bailey with the City of Columbia Zoning Department that she would "keep them posted" in 2018.

The Adesso Defendants point to Section V(A)(3) of the Order setting forth examples of Limited Common Elements but ignore Section VII of the Master Deed that prohibits leasing "between the Unit owners (or the Association) and another party.

The Plaintiff's reliance on the management company's representation that Plaintiff could lease parking spaces, even in violation of Section VII of the Master Deed, begs the question: Who possesses actual knowledge of the terms of the Master Deed? The entity in charge of enforcing the Master Deed or the Plaintiff who relied upon the entity in charge of enforcing the provisions of the Master Deed? This is a question of fact for a jury to decide and supports the equitable tolling of the statute of limitations based on the representations made by both the management company and Ms. Bailey.

Plaintiff, again, took further action to investigate the parking requirements when he was notified of a lawsuit (the "lawsuit"), filed in 2016, regarding construction defects at the ADESSO. The lawsuit settled in **May 2017** for approximately $7,500,000.00.. **Emphasis added**

The Plaintiff was not aware of the lawsuit, even though Plaintiff was named as a Plaintiff without his knowledge (See Affidavit of Emad Tadros, M.D. attached as Exhibit B to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment and **refused to execute** the Settlement Agreements and Releases as part of the 2017 settlement. **Emphasis added.**

However, the HOA's attorney assured the Plaintiff and the HOA Board that Dr. Tadros' execution of the Settlement Agreements and Releases would not preclude Dr. Tadros from pursuing the claims he had against the develop and contractor that developed and built the ADESSO. See Affidavit of Dr. Darrell Terry attached as Exhibit D to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment previously filed with this Court and is referenced to and incorporated herein as set forth verbatim.

Furthermore, the Plaintiff contacted attorney Franklin J. Smith, Jr. regarding Plaintiff's claims regarding the assessments and commercial spaces. Mr. Smith executed an Affidavit, previously filed with this Court on December 16, 2019, and attached hereto as **Exhibit C**.

Mr. Smith declined to represent the Plaintiff and advised the Plaintiff to **contact the current HOA Board members** about that issues (sic). **Emphasis Added.** *See* Affidavit of Franklin J. Smith, Jr. at ¶ 8.

The Plaintiff took Mr. Smith's advice and wrote a letter the HOA attorney, Walt Todd, and the Adesso HOA Members on November 4, **2017,** about his complaints with the commercial parking spaces and the regime fees. **Emphasis added.** Plaintiff's November 4, 2017, letter to Mr. Todd and the Adesso HOA Members is attached hereto as **Exhibit D** bates labeled PLT_001275-PLT_001292.

However, the Adesso HOA did not respond to Plaintiff's concerns as outlined in paragraph two (2) included on PLT_001275.

After being stonewalled by the Adesso HOA Members as evidenced in **Exhibit D,** particularly as set forth in ¶ 2 of Plaintiff's November 4, 2017, Plaintiff filed suit on **February 14, 2019. Emphasis added** The suit filed by Plaintiff on February 14, 2019 was the final measure Plaintiff took to hold the Adesso Defendants responsible for its blatant disregard for

Plaintiff's rights as an owner in the Regime and to hold the Adesso Defendants responsible for its actions.

In summary:

1. **January 2015**: The Marines contacted Plaintiff regarding issues with parking. Plaintiff was contacted by the ADESSO property management company who informed Plaintiff that the Board was making four (4) available parking spaces available in a "sealed bid process."
2. **2016**: Plaintiff sought counsel from attorney Smith regarding his issues with the regime fees and commercial parking spaces. **(See Affidavit of Franklin J. Smith, Jr.)**. Mr. Smith declined to represent Plaintiff and advised Plaintiff to work out his issues with the commercial parking spaces and regime fees out with the ADESSO HOA.
3. **May 2017**: Affidavit of Dr. Darrell Terry. Dr. Terry testified 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.
4. **November 4, 2017**: Plaintiff wrote to the HOA attorney and the Adesso HOA Members about the issues Plaintiff had with his commercial parking and the assessment of regime fees.
5. **February 14, 2019**: Plaintiff filed this action after being stonewalled by the ADESSO Board.

Questions of fact, conflicting testimony and facts inconsistent with the Order are identified above and constitute reversible error. Accordingly, this Court should deny the Adesso Defendants' Motion for Summary Judgment on the grounds set forth pursuant to the holdings in Arant and Brown (conflicting testimony), and Hill and Hancock (Scintilla of evidence) and Grant Plaintiff's Motion to Reconsider.

II. A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S CHARGING OF ASSESSMENTS TO PLAINTIFF'S COMMERCIAL UNITS

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

The Adesso Defendants have not complied with the provisions of the Adesso Master Deed in charging assessments to Plaintiff's Commercial Units for the reasons set forth below.

The Plaintiff's expert, Mike Parades, in his Affidavit (Attached as Exhibit C to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment), disagrees with the Adesso Defendants' calculation of the assessments and the regime fees.

For example, Mr. Parades, in his Affidavit, testified the Adesso Defendants did not comply with the provisions of the Adesso Master Deed in charging assessments:

> "Sadly, there is **NO explanation** of the methodology used to establish the various line fees only a statement that they are consistent year to year. **(Emphasis Added)**
>
> "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."
>
> ***See Affidavit of Mike Parades included in Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment Opposition at 91.*** **(Emphasis Added)**.

Additionally, the Plaintiff testified at length during his deposition as set forth in Plaintiff's Affidavit attached as Exhibit A to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment regarding the issues he had in trying to obtain the HOA's budget and an explanation from the HOA regarding how the HOA levied assessments on Plaintiff's commercial units. The Plaintiff's Memorandum in Opposition to Holder Defendants'

and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment is incorporated herein as if set forth verbatim.

Plaintiff reiterated these same concerns to the Board and its attorney (at the behest of attorney Smith) in Plaintiff's letter of November 4, 2017, attached hereto as **Exhibit D.**

The Adesso Defendants did not comply with Plaintiff's requests for documents or information requested in **Exhibit D.**

Specifically, the Adesso Defendants violated its duty to Plaintiff pursuant to the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. Section 27-31-170 (the "Act), specifically, Section 27-31-180:

> **SECTION 27-31-180.** Records of receipts and expenditures.
> The administrator or the board of administration, or other form of administration specified in the bylaws, shall keep a book with a detailed account, in chronological order, of the receipts and expenditures affecting the property and its administration, and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon **shall be available for examination by all the co-owners at convenient hours on working days** that shall be set and announced for general knowledge.
> **(Emphasis Added)**

The Adesso Defendants, including its attorney, did not provide Plaintiff with any of the requested information in response to Plaintiff's November 4, 2017, letter, ultimately resulting in Plaintiff filing this suit on February 14, 2019.

Additionally, the Act, Section 27-31-170 mandates:

*"Each co-owner **shall comply strictly** with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be 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 in the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner." **(Emphasis Added)***

The ADESSO Board is run by unit owners in the ADESSO who have a strict duty to comply with the terms of the ADESSO Master Deed.

As set forth above, the Adesso Defendants did not strictly comply with the provisions of the Act in providing documentation to Plaintiff or the Adesso Master Deed in charging assessments. The conflicting testimony regarding the accuracy of the assessments by the Adesso Defendants becomes an issue for the jury to decide (*See* Arant) and constitutes reversible error.

Accordingly, this Court should reverse its Order Granting Adesso Defendants summary judgment and Grant Plaintiff's Motion to Reconsider based on the plethora of evidence creating questions of fact for a jury to decide and above the scintilla of evidence standard set forth in Hancock.

III. A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S BREACH OF THE ADESSO MASTER DEED.

The Adesso Defendants have breached the Master Deed despite ¶ 41 of the Order including, but not limited to, the reasons set forth below.

The filing of the 2016 lawsuit that settled in May 2017 is the most egregious breach of the Master Deed by the Adesso Defendants.

The Plaintiff's expert Mr. Parades provided Affidavit testimony:

"*It is my professional opinion, the problem with Defendant's argument is that* **all of the Settlement Agreements are invalid** because filing the lawsuit was an ILLEGAL ULTRA VIRES act by the Board of Directors."

(*See Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 86*) **(Emphasis Added):**

"The one overriding issue is the fact that the Master Deed provides that any dispute **MUST** be resolved via Mandatory Arbitration. **This requirement is an Affirmative Obligation of the Board and Adesso HOA. It was an ULTRA VIRES act for the Board to file a lawsuit.** As such, the lawsuit, mediation, and settlement must be vacated and the claim by the HOA against the **HOLDER DEFENDANTS** must be submitted to Mandatory Arbitration as **REQUIRED** by the Master Deed. **(Emphasis Added)**

(See Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 92)

In addition to the above, Mr. Parades references **the Act, Section 27-31-170:** "Compliance with the bylaws, rules, and regulations; remedy for noncompliance:" **Each 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 damage for damages or injunctive relief, or both, maintainable by . . . an aggrieved co-owner." (Emphasis Added)**

(Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 92)

Furthermore, the Court failed to consider the Affidavit of Darrell A. Terry, PhD included as Exhibit D in *Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants*

ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment.

Dr. Terry executed the ultra vires Settlement Agreement on behalf of the ADESSO HOA. Dr. Terry, in his Affidavit testified:

> "**None of us as owners were given the 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." **(Emphasis Added)**
>
> *See Affidavit of Dr. Darrell Terry included as Exhibit D to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 152.*

Furthermore, the Plaintiff executed the Commercial Claim Settlement Agreement under threats of a lawsuit against him if he did not execute the Commercial Settlement Agreement.

For example, Dr. Terry testified in his Affidavit:

> " 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."
>
> *See Affidavit of Dr. Darrell Terry included as Exhibit D to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 151, at ¶ 13.*

Dr. Terry also testified:

"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."

See Affidavit of Dr. Darrell Terry included as Exhibit D to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 151, at ¶ 14.

Furthermore, and of utmost importance with regard to Plaintiff's claims in this action, Dr. Terry testified:

"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."

See Affidavit of Dr. Darrell Terry included as Exhibit D to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment at 151, at ¶ 16.

The Plaintiff, in his Affidavit provided factual testimony related to the 2017 lawsuit brought by the ADESSO:

"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."

See Affidavit of Emad Tadros, M.D. included as Exhibit B to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO

Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment, page 39, at ¶ 17.

In addition to the testimony of Dr. Tadros in his Affidavit referenced above, Dr. Tadros testified:

> "I was led to believe, under the assurances of the HOA attorney and threats of possible lawsuits against me by other units, that I could maintain my claims against the develop and contractor that developed and built the ADESSO." *See Affidavit of Emad Tadros, M.D. included as Exhibit B to Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment, page 39, at ¶ 19.*

The threats and assurances made against Dr. Tadros, including Plaintiff's first notice of the lawsuit, are identified in the email thread attached as Exhibit C to the Affidavit of Emad Tadros, M.D. *(See Plaintiff's Memorandum in Opposition to Holder Defendants' and Defendants ADESSO Horizontal Property Regime and ADESSO Homeowner's Association's Motions for Summary Judgment, page 73).*

The failure of the Defendants to strictly comply with the terms of the Master Deed, as set forth above, violate the Act and constitute errors of law that should have been considered by this Court before granting the Adesso Defendants' Motion for Summary Judgment.

Furthermore, Plaintiff's Affidavit, the Affidavit of Dr. Terry and Plaintiff's expert Mike Parades provide genuine issues of material fact and meet the burden of the scintilla of evidence standard set forth in Hancock that the Court failed to consider in granting the Adesso Defendants' Motion for Summary Judgment.

The conflicting testimony as to the number of commercial parking spaces is on point with the Court's holding in Arant and the scintilla of evidence regarding the Adesso Defendants assessment of regime fees to Plaintiff's commercial units is a factual question that must be considered by a jury. All of which constitute grounds for reversible error in law and in fact.

Accordingly, the Plaintiff respectfully requests that this honorable Court reconsider its Order Granting the Adesso Defendants' Motion for Summary Judgment and Grant Plaintiff's Motion to Reconsider.

IV. A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE START OF THE STATUTE OF LIMITATIONS AND THE TOLLING OF THE STATUTE OF LIMITATIONS.

Section I sets forth a timeline of events and issues that cloud the issue of the date on which the statute of limitations in this case began.

In 2015 the Marines contacted Plaintiff regarding issues with parking. Plaintiff took immediate action with regard to the Marines' concerns about the commercial parking spaces.

The ADESSO property management company who informed Plaintiff that the Board was making four (4) available parking spaces available in a "sealed bid process."

In 2016 Plaintiff sought counsel from attorney Smith regarding his issues with the regime fees and commercial parking spaces. (See Affidavit of Franklin J. Smith, Jr. Attached hereto as Exhibit C). Mr. Smith declined to represent Plaintiff and advised Plaintiff to work out his issues with the commercial parking spaces and regime fees out with the ADESSO HOA.

Plaintiff heeded Mr. Smith's advice and wrote a letter on November 4, 2017. See Plaintiff's November 4, 2017 letter to the Adesso Defendants' attorney and the Adesso Board Attached hereto as **Exhibit D.**

Plaintiff was unable to get any response to the questions he requested the Board to answer and filed this suit on February 14, 2019.

The testimony and the record in this matter is filled with questions of fact and conflicting testimony as outlined above. The conflicting testimony and issues of fact create a question of fact for a jury to decide as to the actual knowledge of the Plaintiff and when the Plaintiff finally had to file this suit.

When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide. Arant *Supra*.

All of the evidence introduced went to the reasonableness of Santee's actions, which was an issue to be decided by the jury. Brown v. Finger, 240 S.C. 102, 124 S.E.2d 781 (1962).

The reasonableness of Plaintiff's actions is set forth in Section 1. The actions of the Plaintiff were reasonable. The Plaintiff and his commercial tenants relied on the representations and inactions of the Adesso Defendants to Plaintiff's and Plaintiff's commercial tenants to their detriment.

A defendant may be estopped from asserting the statute of limitations as a defense if the delay that otherwise would give operation to the statute has been induced by defendant's conduct. This may consist of an express representation that the claim will be settled without litigation or conduct that suggests lawsuit is not necessary. Holy Loch Distributors v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (S.C. App. 1998); *see also* Vines v. Self Memorial Hos., 314 S.C. 305, 443 S.E.2d 909 (1994); Wiggins v. Edwards, 314 S.C. 126, 442.

In Brown (supra), all evidence introduced went to the reasonableness of Santee's actions, which was an issue to be decided by the jury.

While it is well settled that a statute of limitations commences to run only from the time that the cause of action accrues. *Id.* See also Suber v. Chandler 18 S.C. 526, it is often difficult to determine when that time arrives. *Id.*

The evidence, set forth in Section 1 and as outlined above make it difficult to determine when the Statute of Limitations began to run. Specifically, in January 2018, the number of commercial spaces was 17, not the 21 the Adesso Defendants believe (See **Exhibit A**). Plaintiff's tenant Marcia Contos emailed Plaintiff regarding the problems she was having with the 17 commercial parking spaces not the 19 as set forth in the Order at ¶ 23.

Furthermore, the Adesso Defendants attorney advised the Plaintiff to contact the ADESSO Board to resolve his issues with the commercial parking spaces but also Plaintiff issues with the assessments. Plaintiff relied on the Adesso Defendants' attorney's representations to Plaintiff's detriment by not filing suit in early 2016 or 2017. Did this constitute delaying Plaintiff's filing of the lawsuit? This presents a question of fact for a jury, regardless of the "reasonableness" of the Plaintiff as the Adesso Defendants have included in the Order at ¶ 48.

In Brown (supra), all evidence introduced went to the reasonableness of Santee's actions, which was an issue to be decided by the jury. Accordingly, and pursuant to Brown, the "reasonableness" of Plaintiff's actions is a question or a jury to decide, not the Adesso Defendants.

Furthermore, and most significantly, when Plaintiff followed the Adesso Defendants' attorney's advice, he was stonewalled by the Adesso Defendants when the ADESSO Board (or its attorney) did not respond to Plaintiff's requests he made by letter on November 4, 2017.

Was the Plaintiff "reasonable" in following the advice of the Adesso Defendants' attorney? Again, this is a question of fact as to the "reasonableness" of Plaintiff's actions for a jury to decide, not the Adesso Defendants to determine.

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 *Supra.*

The Plaintiff respectfully requests this honorable Court to reconsider the Order Granting ADESSO Defendants' Motion for Summary Judgment and Grant Plaintiff's Motion to Reconsider based on the plethora of questions of fact in this matter at the summary judgment stage combined with the conflicting testimony as set forth in the Affidavits set forth in Plaintiff's Motion to Reconsider.

V. A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING THE ADESSO DEFENDANT'S FAILURE TO MAINTAIN THE ADESSO RESULTING IN THE CONTINUING WATER DAMAGE TO PLAINTIFF'S COMMERCIAL UNITS.

The Association, acting through its Board of Directors ("Board"), possesses the authority "[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." Order at ¶ 11.

The Association has been woefully derelict in its duty to maintain the ADESSO even after the Association received approximately $7,500,000 in settlement of its 2017 lawsuit. The Association has not made any of the repairs as alleged in the 2016 lawsuit giving rise to the settlement in 2017 as of this day.

The Plaintiff's commercial units are, and as of this day, experiencing water leaks and damages due to the Association's failure to maintain the ADESSO.

The Adesso Defendants continue to ignore the Plaintiff's repeated efforts to address his issues with the commercial parking space allocation as well as the assessments and the ongoing water intrusion into Plaintiff's commercial units. **Exhibit D** is a perfect example of the Adesso Defendants failure to address the Plaintiff's issues with both the commercial parking space and the regime fees. The Adesso Defendants' failure to work with the Plaintiff violated its duty to Plaintiff under the Master Deed and the Act, as set forth above.

Attached as **Exhibit E** is an email dated July 5, 2020, from Plaintiff to the ADESSO HOA Board summarizing, again, identifying Plaintiff's ongoing problem with the Adesso Defendants.

Exhibit F is an email from one (1) of Plaintiff's tenants regarding continued leakage into one (1) of Plaintiff's commercial units. **Exhibit F** is an example of the leaks into Plaintiff's commercial units which are directly related to the construction defects identified by the Adesso Defendants' expert in 2015.

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).

In summary, the record in this matter is filled questions of fact and contradicting testimony that meet the scintilla of evidence standard in denying a motion for summary judgment including:

1. **January 2015:** The Marines contacted Plaintiff regarding issues with parking. Plaintiff was contacted by the ADESSO property management company who informed Plaintiff that the Board was making four (4) available parking spaces available in a "sealed bid process."
2. **2016:** Plaintiff sought counsel from attorney Smith regarding his issues with the regime fees and commercial parking spaces. **(See Affidavit of Franklin J. Smith, Jr.).** Mr. Smith declined to represent Plaintiff and advised Plaintiff to work out his issues with the commercial parking spaces and regime fees out with the ADESSO HOA.
3. **May 2017:** Affidavit of Dr. Darrell Terry. Dr. Terry testified 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.
4. **November 4, 2017:** Plaintiff wrote to the HOA attorney and the Adesso HOA Members about the issues Plaintiff had with his commercial parking and the assessment of regime fees and did not receive a response from the Adesso Defendants.
5. **February 14, 2019:** Plaintiff filed this action after being stonewalled by the ADESSO Board.
6. The Plaintiff's commercial units are still experiencing problems with leaks into the commercial units as late as September 29, 2021.

For the reasons set forth herein, the Plaintiff respectfully request that this Court reconsider it Order Granting Adesso Defendants' Motion for Summary Judgment and Grant Plaintiff's Motion for Reconsideration of its Order of September 21, 2021.

This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore filed, and

any and all affidavits, memorandums and supporting material which may be served on or before the date of service hereon.

Respectfully submitted,

s/Charles G. Blackburn

Charles G. Blackburn, Esquire, SC Bar No.: 69458
BLACKBURN LAW, LLC
1701 Cherry Laurel Drive
Columbia, SC, 29204
(803) 426-3323
cgblackb4@gmail.com
Attorney for Plaintiff

September 30, 2021
Columbia, South Carolina

EXHIBIT A:

PLAINTIFF'S TENANT TED AND MARCIA CONTOS COMPLAINTS ABOUT PARKING AND EMAILS WITH THE CITY OF COLUMBIA ZONING DEPARTMENT IN 2018

COPY

---------- Forwarded message ---------
From: **Ted Contos** <tcontos@walkerhunter.com>
Date: Thu, Feb 15, 2018, 3:52 PM
Subject: Re: [EXTERNAL] FW: Adesso
To: Bailey, Rachel L <rlbailey@columbiasc.net>
Cc: Dr. T <tadrosmd@gmail.com>, Marcia Contos <mmcontos@gmail.com>, Yoghut <info@yoghut.com>, li minhui <minhuili2001@yahoo.com>, Lawless, Patricia SAS <Patricia.Lawless@usace.army.mil>, Darrell Terry <darrell.terry@att.net>

Thank you Rachel, keep us abreast, Ted

Sent from my iPad

On Feb 15, 2018, at 3:10 PM, Bailey, Rachel L <rlbailey@columbiasc.net> wrote:

> Good afternoon,
>
> We heard back from C. Michael Munson at the beginning of the month and a zoning inspector has begun a dialogue with him regarding the parking issues. I will continue to keep you posted as we gather information from CMM Realty.
>
> Please note that as of February 9th, Brian Cook is no longer with the City.
>
> Thank you,

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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. BOARD OF DIRECTORS

(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

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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

A belated Happy New Year to you. I know that we are all just getting back into the swing of things after the Holidays, just curious if you have had any luck with contacting CMM Realty ? Thank you,

Ted

From: Cook, K Brian [mailto:kbcook@columbiasc.net]
Sent: Friday, December 22, 2017 12:35 PM
To: Dr. T; Ted Contos
Cc: Marcia Contos; Yoghut; li minhui; Lawless, Patricia SAS; Darrell Terry
Subject: RE: [EXTERNAL] FW: Adesso

Good Afternoon-

Please be advised that I have reached out to the property management company (CMM Realty, Inc.) regarding your parking concerns. After I speak with them, I will contact you with an update.

Kind regards,

Brian

<image001.png>

<image007.jpg>**K. Brian Cook**

Zoning Administrator

Planning and Development Services

1136 Washington Street

Columbia, SC 29201

803-545-3332

www.columbiasc.net

From: Dr. T [mailto:tadrosmd@gmail.com]
Sent: Tuesday, December 19, 2017 2:55 PM
To: Ted Contos
Cc: Cook, K Brian; Marcia Contos; Yoghut; li minhui; Lawless, Patricia SAS; Darrell Terry
Subject: Re: [EXTERNAL] FW: Adesso

Dear Mr. Cook,

I appreciate your prompt reply. Please understand that Commercial Tenants are extremely frustrated with what is taking place. That self explains as to why the city created commercial zone in the first place. This also the ongoing commercial tenants' sufferings.

The consequences of nothing done where Adesso's guests do not have to walk an extra block to park somewhere else, is Commercial Tenants serious financial demise. That is not what the city intended and/or established for the City's Commercial Operations.

Thank you,

On Tue, Dec 19, 2017 at 10:30 AM, Ted Contos <tcontos@walkerhunter.com> wrote:

Good Afternoon Brian,

In case no one has responded to your question, Holder Properties does NOT manage the property anymore, the current manager is CMM Realty, thank you

Ted

From: Cook, K Brian [mailto:kbcook@columbiasc.net]
Sent: Monday, December 18, 2017 9:30 AM
To: Dr. T
Cc: Ted Contos; Marcia Contos; Yoghut; li minhui; Lawless, Patricia SAS; Darrell Terry
Subject: RE: [EXTERNAL] FW: Adesso

Mr. Tadros-

Good morning. My goal is to assist you. In order to do that, I need to know the history on a property going back 10 or so years, and that takes a little time to research.

From my research thus far, I can tell you that you are mistaken with the required parking you referenced at 4 commercial spaces for each 1,000 commercial square foot. Also, we will not enforce any private restrictions on this property. Another point to consider is that the PUD zoning references "retail", not all commercial is retail by zoning terms. The PUD zoning document uses the term "approximately" when referring to the number of spaces as well.

I agree with you that it appears that the commercial parking is short. I am attempting to figure out how much – thus my questions to you.

Does Holder Properties still manage the property? If so, who have you been dealing with?

  **K. Brian Cook**

Zoning Administrator

Planning and Development Services

1136 Washington Street

Columbia, SC 29201

803-545-3332

www.columbiasc.net

From: Dr. T [mailto:tadrosmd@gmail.com]
Sent: Saturday, December 16, 2017 5:52 PM
To: Cook, K Brian
Cc: Ted Contos; Marcia Contos; Yoghut; li minhui; Lawless, Patricia SAS; Darrell Terry
Subject: Re: [EXTERNAL] FW: Adesso

Mr. Cook,

Sorry, I was connected on my earlier email.

I have originally contacted ***Ms. Rachel Bailey*** after my November 2017 trip from San Diego to Columbia expressing my serious concerns about my recent findings of this very serious parking issue. In that trip Adesso HOA refused to correct its years long flagrant Columbia's Commercial zoning code for Adesso's Commercial stores where that HOA has been posting guests and visitors at all the stolen commercial parking spots.

Holder Properties sold the building to the current residential tenants by claiming that there was guest/visitor parking, when in fact there was none. However, such claim is false and misleading to the buyers and violates your very Columbia city commercial zoning code. If any this claim artificially raised the sale value of the residential units but then , cripples the commercial functionality of the retail units. This violates what the city mandated.

The financial consequences of violating the City Zoning Code is a financial nightmare to the commercial tenants and their customers leading to inevitable financial disaster. This disaster is due to the very violation that your office is supposed to enforce but it never did!

I am respectfully dismayed to read your city's mandating requirement and enforcement questions as follow:

*"Is there any chance for everyone to come together with Holder and **attempt to find a compromise**? Has this already taken place?"*

My answer is that there is a reason for your city to mandate minimum of 4 (not the customary 8) commercial spots for each 1000 sq foot of commercial space in that area of down town. And when this minimum is not met, then there is clear cut violation of your city code.

No compromise when it comes to the financial viability of the commercial stores that your city mandated and licensed in the first place.

My answer to your inquiry is that if you are not the one to enforce the law, then respectfully please tell us who is it?

Please direct me to your higher up if you do not know the answer..

Thank you

Emad Tadros, M.D.

Owner of Adesso's commercial units..

On Sat, Dec 16, 2017 at 12:50 PM, Dr. T <tadrosmd@gmail.com> wrote:

Dear Mr. Cook,

The reason for THESE serious inquiries is because there is pending a legal action.

The basics are:

1- a mandated commercial zoning code to license such commercial operation.

2- identification of how many spots were legally authorized..

3- The city's enforcibility of such mandatory requirement.

On Dec 15, 2017 11:54 AM, "Cook, K Brian" <kbcook@columbiasc.net> wrote:

Good afternoon. Thank you for the helpful information.

As I continue to review this, I do have one question. Did something change recently to stir all of this up or has it just been an issue all along?

There seems to be several interested parties, with different interests, but neighbors just the same. Is there any chance for everyone to come together with Holder and attempt to find a compromise? Has this already taken place?

<image013.png>**K. Brian Cook**

Zoning Administrator

Planning and Development Services

1136 Washington Street

Columbia, SC 29201

803-545-3332

www.columbiasc.net

From: Ted Contos [mailto:tcontos@walkerhunter.com]
Sent: Friday, December 15, 2017 8:33 AM
To: Cook, K Brian; tadrosmd@gmail.com
Cc: 'Marcia Contos'
Subject: [EXTERNAL] FW: Adesso

CAUTION: This email originated outside of the organization. Do not click links or open attachments from unknown senders or suspicious emails. Never enter a username or password on a site that you did not knowingly access.

Good Brian,

Per your request, hope that this helps. Let us know if we can be of any further assistance,

Ted

From: Marcia Contos [mailto:mmcontos@gmail.com]
Sent: Thursday, December 14, 2017 4:30 PM
To: tcontos@walkerhunter.com; tadrosmd@gmail.com
Subject: Adesso

There are 110 residential units. There are five floors and on each floor there are 7 one-bedroom units, 14 two-bedroom units and 1 three-bedroom unit. That comes out to 35 one-bedroom units, 70 two-bedroom units and 5 3-bedroom units (a total of 180 bedrooms).

The current parking situation is there are 17 parking spaces inside the parking structure that are used by guests of residents and commercial units as well as two street parking spots in front of the building. There are 218 parking spots assigned to residents, 3 parking spots leased to the USMC and the remaining space is leased to a resident.

Marcia Contos

Uncle Maddio's Pizza Joint USC

Emad Tadros, M.D.

Emad Tadros, M.D.

EXHIBIT B:

January 29, 2015 to Plaintiff from ADESSO Management Company offering Plaintiff the option to Lease parking spaces at the ADESSO

COPY

---------- Forwarded message ---------
From: **Smith, Lauren** <lsmith@holderproperties.com>
Date: Thu, Jan 29, 2015, 11:42 AM
Subject: Parking
To: Emad Tadros (tadrosmd@gmail.com) <tadrosmd@gmail.com>
Cc: Ford Elliott RETAIL <fordelliott@yahoo.com>

The Board has decided with so many interested in additional parking spaces at Adesso they will offer the four available parking spaces in a "sealed bid process" for $100/month minimum with a minimum six month agreement. Confidential email bids are due to me by 11:59 p.m. February 1st. Spaces will go to the highest bidder(s). I am sending the email out to all of the residents and owners (Dr. Tadros, you are on that email list) momentarily.

Thank you,

Lauren

Lauren Smith

Holder Properties

1221 Main Street, Suite 100

Columbia, SC 29201

(803)451-4701 phone

(803)451-4718 fax

EXHIBIT C:

AFFIDAVIT OF

FRANKLIN J. SMITH, JR.

ELECTRONICALLY FILED - 2019-Dec-16 3:55 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4000919

STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO: 2019-CP-40-00919 **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 18th
day of ~~October~~ December, 2019.

Notary Public for South Carolina
My Commission Expires: 12/24/2025

ELECTRONICALLY FILED - 2019 Dec 16 3:55 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4000919

EXHIBIT D:

PLAINTIFF'S NOVEMBER 4, 2017 LETTER TO WALT TODD AND ADESSO HOA BOARD

Emad Tadros, M.D.
13349 Caminito Mar Villa
Del Mar CA 92014

November 4, 2017

COPY

Walter D. Todd, JR, PC
Counselor and Attorney At Law
2711 Middleburg Dr. Ste. #305 - Columbia SC. 29204-2488
803-753-7952 & WTODD@WBT-LAW-COM

Dear Mr. Todd and Adesso HOA Members:

I am in reply to Mr. Todd's letter to my attention dated October 31, 2017. I was hoping that the statements in that letter would be the language of compliance with the Master Deed and the logical understanding of the financial hardship that has been rooted by Holder Properties Master Deed Violations. Holder Properties' Management is the Builder, Owner, Manager and Seller of Adesso Properties, which you currently represent. Neither Holder nor Adesso's HOA ever provided me with an approved *DDR/Design Development Review.*

I have been sending multiple emails to Adesso HOA requesting that the new Adesso HOA provide me with the needed financial commercial requirements as required by the Master Deed. After about six months, the only reply I received, Mr. Todd's letter demanding monies, attorney fees and threats to take legal action when in-fact I request the implementation of the Master Deed.

The Master Deed Is In Conflict With The DDR:

(Attachment #1) Page 17 of the Building Permit filed with the City on 2-15-2006, released by the office of Freedom of Information Act/FOIA detailing that the total parking spots are 203 (Residential) + **19 (Commercial) = 222 total.** There is no mention of assigned parking spots for Residential Guests filed with the city. Filing plans with the city was made by *Nile Bolton Associates* on the Behalf of *Holder Properties Management,* as Mixed-Use Properties.

(Attachment #2) Master Deed page 17 states that Commercial owner to be in control and must distribute parking spots at his discretion "*Master Deed pages 14 & 15 & 16 Limited Common Elements that Benefit Commercial Units*

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PLT_001275

item C. (4) Copy/Paste (attachment #2)
(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 herein below, 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 herein below. Retail Parking Spaces may not be reassigned 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.

Page 15 last 3 words: 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. "

Holder Pursued Parking Amendments in 2011 and 2013 That Are In Violation Of The Municipal, Zoning Code And Operation Permit of The Commercial Units. To my current knowledge, the Building Permit was filed in 2006 and Adesso's Master Deed was established in 2008. In 2011, Holder converted 2 parking spots into the Marines commercial unit calling it Retail #2. There is no viable parking permit filed for that very conversion?

Since I purchased the four commercial Suites (retail #1 & #2), starting January 2015, Holder charged me $450 monthly for leasing (my owned 3 of 4 Commercial Tenant Spots) three commercial spots to be leased back to the Marines (back to my ownership), for 24 months at $450 a month for total $10,800. Please note "according to building permit filed with the city" Parking spots must not exchanged or leased or changed or sold. If any, **commercial owner must maintain control, assign at his sole discretion his 19 retail parking spots to his tenants' use etc.** Owner now controls none and can designate none. According to the Master Deed, this is a violation

of both the Master Deed and the City's Permit to legally authorize Adesso as a Mixed-Use.

Unclear why there are only left over 17 Commercial parking spots where they are currently controlled by HOA signs that state ***Guests/Retail***. No explanation as to exactly who "squeezed" the word Guests before Retail spots?
1- This is a Commercial Zoning/Permit and Master Deed Violation.

No one knows where are the other 2 missing Retail parking spots went to?
2- This is Another Commercial Zoning/Permit and Master Deed Violation.

(Attachment # 3) No explanation as to how the gated four (4) Commercial Tenants' spots vanished? HOA does not to allow the Commercial Tenants parking anywhere in the gated parking garage.
3- This is a Third Commercial Zoning/Permit and Master Deed Violation.

The city mandates off street parking for any business. That's why the city mandated that Adesso to come up with 19 commercial spots, otherwise Mixed-Use would not be authorized. However, Adesso Commercial Parking quietly disappeared by artificially leaching the sign "Guests" to the Retail spots with the signage ***Guests/Retail*** to elevate the building monetary sale value to be more attractive to residents to buy, which in turn increased the sale value of the building by the *Seller, Holder Properties*. This is a flagrant Zoning and Permit Violation. As expected, this violation currently chokes, the retail properties functionality.

Residential HOA Charges Should Be Separate From The Commercial Ones:
(Attachment #4) Master deed Page 13 details: *"Notwithstanding anything herein to the contrary, and to the fullest extent allowed by law: the commercial unit owner shall not have the right 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. The value of the commercial unit has a corresponding value as set forth in the table of values on exhibit "D". **Separate budget expenses for the commercial units and residential Units shall be developed "annually" and no cost expenses and budget issues 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 owners of such units for the purposes of example but not limitation.*

(Attachment #5) I am in review of Adesso 2017 HOA Operating Budget:
The charges listed included Building Maintenance, Employee Tax and Benefits, Administrative Salaries, Electric, Gas, Water, Telephone, Internet, Cable TV Antenna, cleaning, Cleaning Supplies, Electrical Repairs, Security Contract, Elevator, Roof Repair, HVAC Repairs, Pest Control, Pool Expenses, Plumbing Expenses, Contracted Maintenance, Fire Protection, Accounting Audit, Management Fees, Insurance, None of these charges ever applies to Commercial Tenants. If any, none of the Commercial Tenants have a key to enter Adesso or even are allowed to enter or use ANY of the building amenities.

(Attachment#6)
HOA Notes that repeatedly commented on the need for commercial units parking and Commercial HOA fees should be different from Commercial Units. None has been pursued.

I hereby request the implementation of the city's required Commercial Zoning Code and the immediate return of:
1- All 19 non gated, Retail Parking Spots and to be marked "Retail" only please and immediately remove the word Guests. None of the Building guests should be allowed to park at any of those spots as per 2008 City Permit.
2- All 4 Commercial Tenants' Gated Parking Spots.
3- Refund of the $10,800 that was collected illegally by Holder Properties Management, your prior HOA, for the Master Deed Violation by leasing back to me my owned parking spots.
4- Adjustment and return of all HOA fees that should have been separate, many years ago. Total commercial HOA paid by Landlord for 24 months (till end of 2016) is $37,200.

Total amount paid by Commercial Landlord and Tenants $11,800 + 37,200= $49,000.

Total Garbage removal is $11,400. Approximate % for commercial is 20% = $2280, that is the only due from me to HOA. *(Actual commercial square footage is only 7.5 % of the total building square footage).*

Total Due from Adesso to Commercial Landlord and Tenants is $49,000- $2,280 = $46,720.

I am the same as respectfully anyone of the owners (with The exception of The current HOA manager Mike Munson, who totally ignored my serious concerns) all share a

common and best interest, which is treating everyone fairly and legally. The commercial tenants have been complaining bitterly from day one.

I leased to the USMC below-market so they would afford paying the additional HOA Expenses, where there was also paying additional $450 a month to your HOA, otherwise the Marines threatened to leave. I personally pay the new JJ teahouse any potential HOA, taxes and insurance otherwise he would not survive. He still is frustrated that he is not allowed to park anywhere in the building..

I refunded money back to Uncle Mario's pizza to keep from moving out. Uncle Madio's pizza business has been on the market for sale for the last 20 months for a reason! Many of their employees chronically quit because they could not park anywhere in the building! Yoghut's Owner and his employees are all constantly complaining about lacking of parking for any of them. The Business owners cannot afford the current CAM imposed expenses. Worse, it is not unusual for customers to habitually drive somewhere else because they would be able to park. This is an unending financial hardship for all commercial units caused by Adesso HOA Violation of the City Zoning Code.

Instead it is the building guests, who are painfully allowed by the HOA to park at the Commercial spots for days-weeks. Adesso's Residential Guests are encroaching and choking the commercial financial survival, where all the spots are always full. This is all invited by Adesso's HOA illegal Guest/Retail signage.

This is considered HOA Negligence, Breach of Contract and Violation of the Commercial Zoning, building Mixed-Use Permit and Master Deed Guidelines. Please note that all legal expenses will be the responsibility of the violating party.

Respectfully,

Emad Tadros, M.D./Trustee
8587752122

Retail
19

SQUARE FOOTAGE CALCULATIONS	
Building Gross Area	305,136 sq ft
Parking - Gross Area	80,733 sq ft
Retail	4,034 sq ft
Lobby/Mail Rm/Tenant Storage	4,500 sq ft
Residential - Gross Area	100,925 sq ft
Amenities - Gross Area	13,451 sq ft
Amenities (Pool Deck) - Gross Area	14,002 sq ft
Fitness and Lounge	2,134 sq ft

UNIT TYPES	TOTALS	
1 Bedroom Units	32	(29%)
2 Bedroom Units	73	(65%)
3 Bedroom Units	7	(6%)
Total Residential Units	113	

PARKING STRUCTURE ([illegible])	TOTALS
Residential Spaces	203
Retail Spaces	19
Total Parking Spaces	222

RESIDENTIAL	# UNITS	# BEDS
Unit Type "A1" - 1 Bedroom	7	7
Unit Type "B1" - 2 Bedroom	2	4
Unit Type "[illegible]" - 2 Bedroom	2	4
Unit Type "B3" - 2 Bedroom	2	4
Unit Type "B4" - 2 Bedroom	6	12
Unit Type "B5" - 2 Bedroom	1	2
Unit Type "B6" - 2 Bedroom	2	4
Unit Type "C1" - 3 Bedroom	1	3
Totals	23	40

TOTAL AREA
[illegible] Net sq ft

RESIDENTIAL AREA
17,731 Net sq ft
24,427 Gross sq ft incl Balconies

RETAIL AREA
0 Net sq ft

PARKING AREA
0 Gross sq ft — Parking Spaces 0

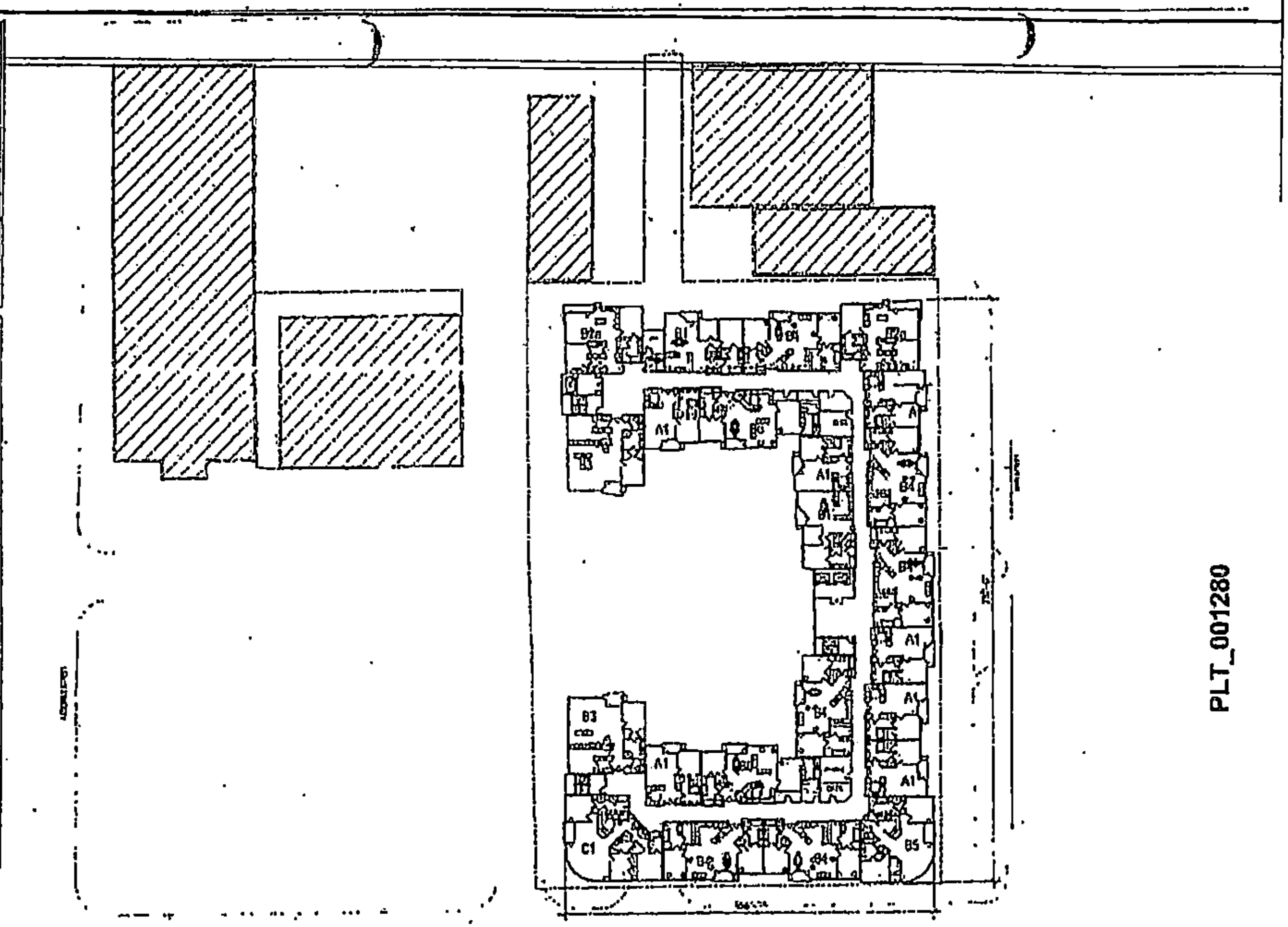
CORRIDOR AREA
4,544 sq ft

VERTICAL CIRCULATION AREA
1,455 sq ft

ELEVATOR + LOBBY = 307 sq ft
(2) STAIRS = 420 sq ft
FREIGHT ELEV. + LOADING = 178 sq ft

SUPPORT AREA
1,319 sq ft

TRASH CHUTE + JANITOR'S CLOSET = 232 sq ft
ELECTRICAL ROOM = 234 sq ft
(3) STORAGE ROOMS = 177 sq ft
PHONE = 221 sq ft
DATA = 135 sq ft



ASSEMBLY at BLOSSOM
Mixed-Use Development

Level 334

Columbia, South Carolina

0 10' 25' 50' 100'

SCALE: 1" = 50'

February 15, 2006

HOLDER Properties — Holder Properties

Niles Bolton Associates, Inc.

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(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,

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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.

PLT_001283

416	168,169
417	76,77
418	68,69
421	213
423	148,149
425	27,28
426	72,73
427	96,97
428	55
429	48,102,119
430	120,121
501	78,79
502	162,163
503	138,139
504	206
505	26
507	204,205
509	74,75
510	141,142
511	207,208
512	137
515	196,197
516	44,45
517	202,203
518	143,144
521	46
523	155,156
525	80,81
526	151,152
527	125,126
528	82
529	129,145,146
530	42,43
USMC Lease (Expiring October 18, 2014)	220,108,157
Unassigned (Month to month Lease to Resident)	221

Commercial Tenant
Gated & Parking
Access

PLT_001284

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

#1 5

2017 Operating Budget
Adesso HOA

	2016	2017	Variance	% Variance
** REVENUE **				
4010 Regime Fees	$ 634,536.00	$ 634,536.00	$ -	0.00%
4995 Other Income	$ 36,000.00	$ 36,000.00	$ -	0.00%
TOTAL RECEIPTS	$ 670,536.00	$ 670,536.00	$ -	0.00%
** EXPENSES **				
PERSONNEL EXPENSE:				
5010 Salaries - Maintenance	$ 13,872.00	$ -	$ (13,872.00)	-100.00%
5050 Employee Tax & Benefits	$ 10,452.00	$ 11,926.36	$ 1,474.36	14.11%
5075 Uniform Service	$ 96.00	$ 96.00	$ -	0.00%
5085 Salary-Administrative	$ 50,844.00	$ 40,000.00	$ (10,844.00)	-21.33%
TOTAL PERSONNEL	$ 75,264.00	$ 52,022.00	$ (23,242.00)	-30.88%
UTILITY EXPENSE:				
5110 Electric and Gas	$ 70,656.00	$ 70,656.00	$ -	0.00%
5120 Water and Sewer	$ 33,840.00	$ 33,840.00	$ -	0.00%
5125 Water-Irrigation	$ 852.00	$ 852.00	$ -	0.00%
5130 Garbage Removal	$ 11,400.00	$ 11,400.00	$ -	0.00%
5140 Telephone	$ 14,160.00	$ 14,160.00	$ -	0.00%
5141 Internet	$ 41,520.00	$ 41,520.00	$ -	0.00%
5150 Cable TV/Antenna	$ 48,012.00	$ 48,012.00	$ -	0.00%
TOTAL UTILITY	$ 220,440.00	$ 220,440.00	$ -	0.00%
OTHER EXPENSES:				
5255 Cleaning Expenses	$ 29,520.00	$ 29,520.00	$ -	0.00%
5256 Cleaning Supplies	$ 1,200.00	$ 1,200.00	$ -	0.00%
5270 Electrical Repairs	$ 5,616.00	$ 5,616.00	$ -	0.00%
5271 Security Contract	$ 84,528.00	$ 89,400.00	$ 4,872.00	5.76%
5275 Elevator	$ 9,624.00	$ 9,624.00	$ -	0.00%
5290 Roof Repairs & Maint.	$ 1,200.00	$ 1,200.00	$ -	0.00%
5310 Landscape Contract	$ 8,376.00	$ 8,376.00	$ -	0.00%
5321 HVAC Repairs	$ 1,872.00	$ 1,872.00	$ -	0.00%
5370 Exterminate/Pest Control	$ 4,548.00	$ 4,548.00	$ -	0.00%
5375 Pool Expenses	$ 7,296.00	$ 7,296.00	$ -	0.00%
5380 Plumbing Expense	$ 1,776.00	$ 1,776.00	$ -	0.00%
5405 Contracted Maintenance	$ 28,644.00	$ 65,044.00	$ 36,400.00	127.08%
5440 Fire Protection	$ 6,996.00	$ 6,996.00	$ -	0.00%
5510 Accounting/Audit	$ 4,992.00	$ 4,992.00	$ -	0.00%
5610 Management Fees	$ 26,820.00	$ 27,500.00	$ 680.00	2.54%
5620 Office Supplies & Expense	$ 5,136.00	$ 5,136.00	$ -	0.00%
5622 Miscellaneous Expense	$ 1,092.00	$ 1,092.00	$ -	0.00%
5730 Insurance - Property	$ 42,000.00	$ 42,000.00	$ -	0.00%
6550 Reserve-Mthly Budget Trn	$ 103,596.00	$ 84,886.00	$ (18,710.00)	-18.06%
TOTAL OTHER EXPENSES	$ 374,832.00	$ 398,074.00	$ 23,242.00	6.20%
TOTAL OPERATING EXPENSES	$ 670,536.00	$ 670,536.00	$ -	0.00%
NET FUNDS FOR PERIOD	$ -	$ -	$ -	

PLT_001286

2017 Operating Budget
Adesso HOA

	2016	2017	Variance	% Variance
** REVENUE **				
4010 Regime Fees	$ 634,536.00	$ 634,536.00	$ -	0.00%
4995 Other Income	$ 36,000.00	$ 36,000.00	$ -	0.00%
TOTAL RECEIPTS	$ 670,536.00	$ 670,536.00	$ -	0.00%
** EXPENSES **				
PERSONNEL EXPENSE:				
5010 Salaries - Maintenance	$ 13,872.00	$ -	$ (13,872.00)	-100.00%
5050 Employee Tax & Benefits	$ 10,452.00	$ 11,926.36	$ 1,474.36	14.11%
5075 Uniform Service	$ 96.00	$ 96.00	$ -	0.00%
5085 Salary-Administrative	$ 50,844.00	$ 40,000.00	$ (10,844.00)	-21.33%
TOTAL PERSONNEL	$ 75,264.00	$ 52,022.00	$ (23,242.00)	-30.88%
UTILITY EXPENSE:				
5110 Electric and Gas	$ 70,656.00	$ 70,656.00	$ -	0.00%
5120 Water and Sewer	$ 33,840.00	$ 33,840.00	$ -	0.00%
5125 Water-Irrigation	$ 852.00	$ 852.00	$ -	0.00%
5130 Garbage Removal	$ 11,400.00	$ 11,400.00	$ -	0.00%
5140 Telephone	$ 14,160.00	$ 14,160.00	$ -	0.00%
5141 Internet	$ 41,520.00	$ 41,520.00	$ -	0.00%
5150 Cable TV/Antenna	$ 48,012.00	$ 48,012.00	$ -	0.00%
TOTAL UTILITY	$ 220,440.00	$ 220,440.00	$ -	0.00%
OTHER EXPENSES:				
5255 Cleaning Expenses	$ 29,520.00	$ 29,520.00	$ -	0.00%
5256 Cleaning Supplies	$ 1,200.00	$ 1,200.00	$ -	0.00%
5270 Electrical Repairs	$ 5,616.00	$ 5,616.00	$ -	0.00%
5271 Security Contract	$ 84,528.00	$ 89,400.00	$ 4,872.00	5.76%
5275 Elevator	$ 9,624.00	$ 9,624.00	$ -	0.00%
5290 Roof Repairs & Maint.	$ 1,200.00	$ 1,200.00	$ -	0.00%
5310 Landscape Contract	$ 8,376.00	$ 8,376.00	$ -	0.00%
5321 HVAC Repairs	$ 1,872.00	$ 1,872.00	$ -	0.00%
5370 Exterminate/Pest Control	$ 4,548.00	$ 4,548.00	$ -	0.00%
5375 Pool Expenses	$ 7,296.00	$ 7,296.00	$ -	0.00%
5380 Plumbing Expense	$ 1,776.00	$ 1,776.00	$ -	0.00%
5405 Contracted Maintenance	$ 28,644.00	$ 65,044.00	$ 36,400.00	127.08%
5440 Fire Protection	$ 6,996.00	$ 6,996.00	$ -	0.00%
5510 Accounting/Audit	$ 4,992.00	$ 4,992.00	$ -	0.00%
5610 Management Fees	$ 26,820.00	$ 27,500.00	$ 680.00	2.54%
5620 Office Supplies & Expense	$ 5,136.00	$ 5,136.00	$ -	0.00%
5622 Miscellaneous Expense	$ 1,092.00	$ 1,092.00	$ -	0.00%
5730 Insurance - Property	$ 42,000.00	$ 42,000.00	$ -	0.00%
6550 Reserve-Mthly Budget Trn	$ 103,596.00	$ 84,886.00	$ (18,710.00)	-18.06%
TOTAL OTHER EXPENSES	$ 374,832.00	$ 398,074.00	$ 23,242.00	6.20%
TOTAL OPERATING EXPENSES	$ 670,536.00	$ 670,536.00	$ -	0.00%
NET FUNDS FOR PERIOD	$ -	$ -	$ -	

PLT_001287

2017 Operating Budget
Adesso HOA

	2016	2017	Variance	% Variance
** REVENUE **				
4010 Regime Fees	$ 634,536.00	$ 634,536.00	$ -	0.00%
4995 Other Income	$ 36,000.00	$ 36,000.00	$ -	0.00%
TOTAL RECEIPTS	$ 670,536.00	$ 670,536.00	$ -	0.00%
** EXPENSES **				
PERSONNEL EXPENSE:				
5010 Salaries - Maintenance	$ 13,872.00	$ -	$ (13,872.00)	-100.00%
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TOTAL PERSONNEL	$ 75,264.00	$ 52,022.00	$ (23,242.00)	-30.88%
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5140 Telephone	$ 14,160.00	$ 14,160.00	$ -	0.00%
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TOTAL OTHER EXPENSES	$ 374,832.00	$ 398,074.00	$ 23,242.00	6.20%
TOTAL OPERATING EXPENSES	$ 670,536.00	$ 670,536.00	$ -	0.00%
NET FUNDS FOR PERIOD	$ -	$ -	$ -	

PLT_001288

2017 Operating Budget
Adesso HOA

	2016	2017	Variance	% Variance
** REVENUE **				
4010 Regime Fees	$ 634,536.00	$ 634,536.00	$ -	0.00%
4995 Other Income	$ 36,000.00	$ 36,000.00	$ -	0.00%
TOTAL RECEIPTS	$ 670,536.00	$ 670,536.00	$ -	0.00%
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5375 Pool Expenses	$ 7,296.00	$ 7,296.00	$ -	0.00%
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5405 Contracted Maintenance	$ 28,644.00	$ 65,044.00	$ 36,400.00	127.08%
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TOTAL OTHER EXPENSES	$ 374,832.00	$ 398,074.00	$ 23,242.00	6.20%
TOTAL OPERATING EXPENSES	$ 670,536.00	$ 670,536.00	$ -	0.00%
NET FUNDS FOR PERIOD	$ -	$ -	$ -	

PLT_001289

NOTES FROM ADESSO DOCUMENTS:
RETAIL PARKING AND SEPARATE BUDGETING

Enclosed are exerts extracted from the Adesso Master Deed and the By-Laws (Exhibit G to the Adesso Master Deed) that pertain to the Commercial Units. These exerts specifically address either the status of retail parking spaces or address separate budgeting for the Commercial Units. For accuracy and context compare to the original documents. There is at least one non-material error in the specification of the Retail/Guest parking spaces which actually should be 001 thru 017.

Documents for build-out of Commercial 2 specifies no parking spaces go with the newly built space. Verbally I was told by the sales staff that two parking spaces were lost in order to build-out Commercial 2.

The most likely scenario is that Commercial 1 originally had 6 parking spaces; this number was reduced to 4 parking spaces by taking the 2 lost parking spaces from the Commercial 1 allocation of parking spaces. It appears that all Residential Units have their original allotments, though the specific parking spaces assigned may have been reassigned to facilitate sale of some units. Final conclusion is that there should be 4 parking spaces assigned to Commercial 1.

There are additional documents showing that Commercial 2 was given temporary access to additional parking spaces before sell-out of all Residential Units; unclear whether these temporary additional spaces were leased or not. Around the time Ford sold his interest in Commercial 1 and 2, Holder Properties told the HOA Board that there were 3 parking spaces had been discovered that could be leased.

FILE: Master Deed

p. 12

i) the Commercial Unit Owner shall not have rights to use certain common elements which are residential in nature ...

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 budge items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; ...

p. 12 – p. 13

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, 217
2. Sidewalks, ...
3. Trash Chute

10. Retail Service Corridor

p. 13
Limited Common Elements that Benefit Commercial Units only:

p. 14
C. Limited Common Elements means and includes:
(4) Designated Parking Spaces as identified I Exhibit "C" shall be Limited Common Elements, limited to the use of the Unit it/they serve ...
(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. ... . As set forth in Section VII hereinbelow, Retail Parking Spaces may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit. ...

p. 15 – p. 16
VIL RESTRICTION AGATNST FURTHER SUBDIVIDINC OF UNITS AND SEPARATE CONVEYANCE OF APPURTENANT COMMON ELEMENTS, ETC.
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.

p. 16
IX. PERPETUAL NON-EXCLUSIVE EASEIUENTS IN GENERAL COI\{MON ELEMENTS
(end of first paragraph) Notwirhsranding anything above provided in this article, the Association shall have the right to establish the rules an<l 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.

p. 16
X. PERPETUAL EXCLUSIVE EASEMENT TO USE LTMITED COMIUON 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.

p. 19
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.

p. 20
XIV. RESTDENTIAL USE RESTRICTION APPLICABLE TO RESIDENTIAL UNITS AND COMMERCIAL USE RESTRICTIONS APPLICABLE TO COMMERCIAL UNITS

FILE: Master Deed, Exhibit G (By-Laws)

p. 8
4. BOARD OF DIRECTORS
(j)
xii) To assign, reassign, or designate parking spaces

p. 13
9. ASSESSMENTS
(e) All funds ... derived ... from the leasing or use of General Common Elements, shall be held for the benefits of the Association ...

EXHIBIT E:

PLAINTIFF'S JULY 5, 2020 EMAIL TO ADESSO HOA BOARD REGARDING SPECIAL ASSESSMENT

Gmail Charles Blackburn <cgblack4@gmail.com>

Fwd: Adesso's Special Assessment Matter

7 messages

From: Dr. T <tadrosmd@gmail.com>
Date: Sun, Jul 5, 2020 at 10:41 PM
Subject: Adesso's Special Assessment Matter
To: Berry Campbell <campbellberry@bellsouth.net>, <scott.barnes@carolinatax.pro>, Lite Nartey <litenartey@gmail.com>, Sharon Von Fange <sharonlikessteve@gmail.com>, <porterv@winstream.com>

To whom It May Concern At Adesso's HOA And Board of Directors,

I am emailing you to formally introduce myself as the Trustee of The Grace Living Trust- Owner of Adesso's Commercial Units.

Please allow me to highlight the following Chronology:

1- Adesso's HOA and its Board threatens the Commercial Owner Emad Tadros, if Tadros did not agree with Adesso's V. Holder Properties Settlement. On May, 21 2017, at the end of many back and forth emails with Attorney, Mr. Frank Smith, hired by Adesso's HOA - to master the referenced Settlement, Mr Smith wrote to me the following: ***"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.... the HOA performed its obligations but you did not when you refused to sign the agreement."***

2- Adesso's HOA consistently violated and never complied with Adesso's Master Deed:
In my letter to Walter Todd and Adesso's HOA dated **November, 4 2017** I outlined the following:
"Residential HOA Charges Should Be Separate From The Commercial Ones:
(Attachment #4) Master deed Page 13 details: *"Notwithstanding anything herein to the contrary, and to the fullest extent allowed by law: the commercial unit owner shall not have the right 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. The value of the commercial unit has a corresponding value as set forth in the table of values on exhibit "D". **Separate budget expenses for the commercial units and residential Units shall be developed "annually" and no cost expenses and budget issues 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 owners of such units for the purposes of example but not limitation.*

(Attachment #5) I am in review of Adesso 2017 HOA Operating Budget:
The charges listed included Building Maintenance, Employee Tax and Benefits, Administrative Salaries, Electric, Gas, Water, Telephone, Internet, Cable TV Antenna, cleaning, Cleaning Supplies, Electrical Repairs, Security Contract, Elevator, Roof Repair, HVAC Repairs, Pest Control, Pool Expenses, Plumbing Expenses, Contracted Maintenance, Fire Protection, Accounting Audit, Management Fees, Insurance etc.. None of these charges ever applies to Commercial Tenants. If any, none of the Commercial Tenants have a key to enter Adesso or even are allowed to enter or use ANY of the building amenities." ....

Ever since this letter, Adesso's HOA never corresponded with me even once on the phone or in writing. I made multiple phone calls to speak at the HOA meeting, mastered by CMM Mike Munson but was never

allowed to speak on the phone even once. I requested that my call be returned from the HOA. The only one who did around January 2017, was Mike Munson CMM Owner, asserting that he had a similar parking problem in another building and that based upon his background in his other building, my tenants will not get any parking spots and that was the way it is.

I flew to one of your HOA monthly meetings and walked in - personally identifying myself - requesting to be allowed to speak. I noticed that Mr Munson controlled the entire meeting and was the only one who was reading from his own tablet with paperwork printed at his own discretion etc. I was only allowed 7 minutes and then was asked to immediately stop talking, while the meeting was controlled by Mike Munson, CMM Management. No one had anything ready to read from. A lady with blonde hair was sitting in the corner intermittently dozing off while the meeting was going on! The HOA never corresponded with my concerns. My commercial Tenants paid hundreds of thousands of dollars for their commercial functionality while this "Controlled" Adesso's HOA and its Board are placed in the forefront making preposterous financial decisions that are to the detriment of my commercial tenants business stability.

Since then I repeatedly complained that the HOA fees were and continue to be exorbitant - exhausting the Commercial tenants and the HOA's negligent opportunistic behavior resulting in many commercial moves out. I repeatedly pleaded asking for the formula that HOA used and how the HOA reached its charges against the commercial tenants. The HOA never replied. For reference I hereby refer to ***"HOA Behavior"*** email threads where I repeatedly requested explanation as to the charges made., requested bills to be produced and I still received nothing.

Out of frustration, I finally hired a law firm and filed a legal action against ***Adesso's HOA for Negligence/Gross Negligencew & Breach of the Master Deed & Violation of South Carolina Unfair Trade Practices Act and Constructive Fraud*** CASE#2019CP4000919. The case is active but on hold due to Covid -19.

A few days ago, I learned from Darrell Terry's e-mail to the membership that an Annual Meeting is planned for July 16 to consider a Special Assessment, while Covid's restrictions continue. **Why have I not received any formal announcement as required?**

In investigating further into your recent Special Assessment proposal, I see nothing but draconian consequences for the commercial tenants and my ownership at Adesso. As the commercial owner (and Plaintiff against the HOA described above) it is clear that the four Commercial units are assessed unfairly. The assessment for the commercial properties is estimated at $613,000. The commercial property assessment goes up by a factor of 4.541, when in-fact none of the commercial tenants and/or customers are even allowed to ever enter or use the building or its amenities.

The Residential Units go up by a factor of 2.277 and not any higher. Who prepared these numbers? What formula and how are these numbers justified?

Who can explain these differences? Fair or unfair, assessment increases of this magnitude on the commercial properties will lead to the inevitable collapse of the retail businesses and foreclosure on my investment. This could lead to further increases of residential fees, with a snowball effect on the entire HOA.

I hereby request Adesso's HOA to professionally produce the following documents:

1. Documents that were used in regards to the recent Special Assessment Proposal Matter.
2. The formula that was applied to charges and bills paid since 2013.
3. Bills to which the formula was applied - addressing the server's/recipient's name, details of service provided, address and phone number since 2013.
4. Bills to which the formula was not applied - addressing the server's/recipient's name, address and phone number since 2013.
5. All Electrical Bills including their breakdown since 2013.

6. All Trash Bills.

It has come to my attention that Mr. Mike Munson and his wife Marilyn Munson are the only two people with signature authority on our operating funds and our reserve funds. **How come and why were these people approved to have signature authority on these accounts?**

Why doesn't the HOA Treasurer have signature authority on these accounts- Who is benefiting from this arrangement? Please clarify.

I heard earlier this year that the Board signed another three-year contract with CMM Realty for property management services without going through the Master Deed's required competitive bidding process. What the hell is going on here?

The Board is Acting Unprofessionally - And Business As Usual- In Violation Of The Master Deed - announcing Dr. Berry Campell being appointed as the "Proxy Holder." It is unclear how he was appointed and how would the board ever dare to vote on accepting this special assessment (**Commercial Tenants' Complete Collapse**) without even talking to me once?

My commercial tenants are currently financially barely making it, as it is the case now. Further with this Unfair Special Assessment, the HOA hand in hand with CMM Management will sever my tenants, bleeding their businesses to death. Not only have I not received the announcement and a ballot of what is to be voted on at the meeting, it is further unclear whether there are Resolutions on the Special Assessment to be voted at the Annual Meeting?

This is more than negligence, this is outright irresponsible conduct. This conduct violates the rights of the membership in their role as the deliberative body of Adesso. This Unfair Special Assessment is threatening my commercial tenants' financial survival and a destructive tactic to my Living Trust and its loan.

Please note for the record, I formally object to this unfairly established Special Assessment in its entirety. I respectfully request for my teleconferencing and/or pending representation in the pending HOA scheduled meeting July 16, 2020 6 PM EST.

Thank you,

Email signed
Emad Tadros, M.D.
858-775-2122

—
Emad Tadros, M.D.

Dr. T <tadrosmd@gmail.com> Tue, Jul 14, 2020 at 2:28 AM
To: Charles Blackburn <cgblack4@gmail.com>

---------- Forwarded message ---------
From: **Dr. T** <tadrosmd@gmail.com>
Date: Mon, Jul 13, 2020 at 11:17 PM
Subject: Re: Adesso's Special Assessment Matter
To: Berry Campbell <campbellberry@bellsouth.net>

Please see attached..

Thank you
[Quoted text hidden]

--
Emad Tadros, M.D.

Adesso's Proxy for 7-16.PDF
95K

EXHIBIT F:

EMAIL FROM PLAINTIFF'S TENANT REGARDING LEAKS WITHIN TENANT'S COMMERCIAL UNITS

Gmail

Charles Blackburn <cgblack4@gmail.com>

Fwd: FW: JJ's Teahouse

minhui li <minhuili2001@yahoo.com> Wed, Sep 29, 2021 at 4:55 PM
To: Kenyetta Hye <Kenyetta@cmmrealty.com>
Cc: "Dr. T" <tadrosmd@gmail.com>, Cassy <Cassy@cmmrealty.com>, Charles Blackburn <cgblack4@gmail.com>

Hello Kenyatta,
The pluming guys are coming and will fix my leaking inside the restaurant at 9:30 pm tonight. Thank you,

Sent from my iPhone

> On Sep 29, 2021, at 3:07 PM, Kenyetta Hye <Kenyetta@cmmrealty.com> wrote:
>
> Hi Mr. Li, can you let me know again when your plumber is coming out to look at the leak in the back? Ms. Yvette told me a plumber was coming out when I walked the unit, I want to put it on my calendar.
>
> Thank you so much.
>
> <Outlook-1qcee2vu.png>
>
> [Quoted text hidden]
> [Quoted text hidden]

ELECTRONICALLY FILED - 2021 Oct 22 1:52 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4000919

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 MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**

NOW COME, Defendants Adesso Horizontal Property Regime ("Regime") and Adesso Homeowners' Association ("Association") (collectively, "Defendants"), by and through their undersigned counsel and hereby submit this Memorandum in Opposition to Plaintiff's Motion to Reconsider the Court's Order granting Summary Judgment to Defendants, filed on October 1, 2021 ("Plaintiff's Motion"). In opposition to Plaintiff's Motion, and in support of the Court's Order granting Summary Judgment to Defendants entered September 21, 2021 ("Court's Order"), Defendants would respectfully show the Court as follows:

I. The Court's Order properly granted Summary Judgment to Defendants.

Upon consideration of all competent summary judgment evidence presented, the Court properly granted Summary Judgment on Plaintiff's claims to Defendants, and therefore, Plaintiff's Motion should be denied. While summary judgment is generally "not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law," *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (internal citation omitted), "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 653-54, 661 S.E.2d at 796 (internal citation omitted).

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Under Rule 56(e), SCRCP, once the party seeking summary judgment has satisfied its initial burden of showing the absence of a genuine issue of material fact, the non-moving party must "come forward with ***specific facts*** showing there is a genuine issue for trial." *Ellis v Davidson*, 358 S.C. 509, 518-19, 595 S.E.2d 817, 822 (Ct. App. 2004). The non-moving party may not rest upon the mere allegations or denials of his pleading. Rule 56(e), SCRCP.

a. The Court's Order properly found no genuine issue of material fact as to the Statute of Limitations.

The Court correctly concluded that Plaintiff's claims are time-barred by the applicable Statutes of Limitations because Plaintiff failed to bring this action by 2018. *See* Order Grant. Defs.' Mtn. for S.J. at ¶ 54. In support of its ruling, the Court found, among other facts, that:

> (1) Plaintiff purchased the Adesso Commercial Units at issue from Ford Elliott on December 5, 2014, *id.* at ¶ 25; (2) the Adesso Master Deed ("Master Deed"), which sets forth Association parking requirements and rules for the charging of assessments, was recorded in 2008, *See id.* at ¶¶ 8, 12, 14-17, 19; (3) the 2008 Amendment to the Adesso PUD ("2008 Amendment") also set forth parking requirements for the Adesso Commercial Units and was a matter of public record, *See id.* at ¶¶ 22-23, 49; (4) the Fourth Amendment to the Master Deed ("Fourth Amendment"), which improperly reassigned Retail Parking spaces in violation of both the Master Deed and 2008 Amendment, was recorded in 2013; (5) prior to his purchase of the Adesso Commercial Units, Plaintiff did not personally review or inspect the units, nor did he review any of the recorded documents relating to the Adesso, *id.* at ¶ 27; (6) Plaintiff was notified on March 4, 2015 that he would be required to participate in a lottery among Adesso owners to determine leasing rights for three Adesso Commercial Parking Spaces, which the Master Deed specifically prohibits, *see id.* at ¶¶ 29-30; (7) Also in March, 2015, one of Plaintiff's commercial tenants notified Plaintiff of insufficient Commercial Parking and of their intent to vacate their unit if Plaintiff could not secure parking for them, *see id.* at ¶ 31; (8) despite being made aware of these issues, Plaintiff took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017, *id.* at ¶ 32; (9) 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, *id.* at ¶ 33; and (10) Plaintiff did not file this action until February 14, 2019, *id.* at ¶ 37.

The foregoing are all uncontroverted facts in this case. It is indisputable that both the Adesso Master Deed and the 2008 Amendment—as well as the Fourth Amendment which plainly violated both—were all matters of public record by the time Plaintiff purchased his commercial units. As

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such, Plaintiff had at least constructive knowledge of their existence and contents. *See Spence v. Spence,* 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006) ("[C]onstructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents which gives constructive notice to the world."). *See also, Quail Hill, LLC v. Cty. of Richland,* 387 S.C. 223, 239, 692 S.E.2d 499, 507-08 (2010) (holding that a developer had the "means of knowledge" and could not justifiably rely on erroneous information provided by county zoning staff, where the developer could have reviewed the publicly-available zoning map and zoning ordinances).

Had Plaintiff or his representative reviewed these documents and inspected the Adesso site prior to the transaction—which is standard practice in any real estate transaction—he would have discovered the existence of his parking-related claims during his purchase of the Commercial Units in 2014. Further—as raised on page 10 of Defendants' Memorandum in Support of their Motion for Summary Judgment, and as found by the Court—Plaintiff admitted in his deposition to having actual knowledge, by early 2015, of matters directly relating to Commercial Parking allocation. Had Plaintiff pursued these matters with reasonable diligence, he would have discovered that by no later than 2015, the allocation of Commercial Parking Spaces at the Adesso violated the Master Deed and the 2008 Amendment. Similarly, had Plaintiff examined the publicly available Master Deed—which sets forth the method by which assessments are calculated and charged to his Commercial Units—during his 2014 purchase, he could have known of the existence of his assessment-related claims, if any, by 2014.

Moreover, Plaintiff was required to act with reasonable diligence when put on notice of the foregoing matters. *See Walbeck v. I'On Company, LLC,* 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2019) (*citing Dean v. Ruscon Corp.*, 321 S.C. 360, 363–64, 468 S.E.2d 645, 647 (1996)) ("The 'exercise of reasonable diligence' means 'the injured party ***must*** act with some promptness

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[when] the facts and circumstances of an injury place a reasonable person of common knowledge and experience *on notice* that a claim against another party *might* exist.'") (emphasis added and in original). That Plaintiff failed to do so does not absolve him of knowledge of the operative facts supporting his claims. *See Spence* at 119, 628 S.E.2d at 876 ("Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Therefore, this person is presumed to have actual knowledge of the undisclosed facts.").

Plaintiff failed to produce any evidence showing a genuine dispute as to any of the facts forming the basis of Defendants' Statute of Limitations defense. Under the facts established on Summary Judgment, the only reasonable inference to be drawn is that, by no later than 2015, Plaintiff knew or should have known he potentially had parking-and-assessment-related claims against Defendants. As a result, the Court could properly decide the Statute of Limitations issue as a matter of law. *See Walbeck* at 520, 827 S.E.2d at 361 ("[W]hen there is no conflicting evidence or only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court.") (emphasis in original). Therefore, the Court correctly ruled that Plaintiff's claims accrued by 2015 at the latest, and that they are barred by the applicable Statutes of Limitations because Plaintiff failed to file this action by 2018.

b. Statute of Limitations There is no genuine issue of material fact as to the charging of assessments to Plaintiff's units or as to Commercial Parking allocation, and the Court's Order properly concluded Defendants complied with the Adesso Master Deed.

The Court found the Adesso Master Deed authorizes the Adesso Board of Directors ("Board") to "make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime," among other purposes. Order Grant.

Defs.' Mtn. for S.J. at ¶ 11. It also found the Master Deed sets forth the applicable formula or method by which assessments would be calculated and charged to Plaintiff's Commercial Units. *See id.* at ¶¶ 12-17. These facts are not in dispute.

Further, based upon the uncontradicted testimony of C. Michael Munson—the president of the property management company utilized by the Association, who has over thirty-five (35) years experience in the field of property management, and who was personally involved in the formulation of annual budgets for the Adesso—the Court properly concluded Defendants have not breached the Master Deed, *id.* at ¶ 41, and Defendants complied with the Master Deed in charging assessments to Plaintiff's Commercial Units. *Id.* at ¶ 42.

Similarly, the uncontradicted testimony of Rachel Bailey, the City of Columbia Zoning Administrator who inspected the Adesso site, established that since June, 2018, Plaintiff's Commercial Units have had the exclusive use of twenty-one (21) restricted access parking spaces within the Adesso building and sufficient on-street, public parking within 400 feet of the Adesso to satisfy the parking requirements for the Commercial Units under the Adesso PUD. Consequently, the Court properly concluded the allocation of Commercial Parking Spaces at the Adesso complies with both the Adesso Master Deed and the Adesso PUD, which is the applicable zoning ordinance. *Id.* at ¶¶ 43-44.

The only evidence Plaintiff presented in support of his assessment and parking claims was the Affidavit of Michael R. Parades, attached as Exhibit "C" to Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment ("Parades Affidavit"). The Parades Affidavit does not constitute competent evidence on Summary Judgment and is, therefore, excludable for two primary reasons. First, pursuant to Rule 56(e), SCRCP, an affidavit used to support or oppose a motion for summary judgment "shall be made on personal knowledge, shall

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set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

Here, the Parades Affidavit does not set forth facts that would be admissible in evidence because it fails to show Mr. Parades had personal knowledge of, or was otherwise competent to testify to, the purported facts alleged therein. Indeed, the affidavit is riddled with inadmissible speculation. *See, e.g.,* Parades Aff. at p. 6 ("As background for the *likely* reason the management agreement was being terminated by HPI..."); *id.* at p. 17 ("[I]t *appears* the Board was trying to keep owners from knowing what was going on until the very end."); *id.* at p. 13, ¶ 8 ("A final longstanding complaint *of Plaintiff* relates to the monthly assessment he is being charged by [Defendants]. *He* has asked repeatedly for an explanation of how the commercial property budget is determined and never gotten a response.") (emphasis added). Clearly, absent a showing of sufficient personal knowledge, a witness may not testify to other parties' mental processes, motivating reasons, actions, or any other matters outside the scope of the witness's own knowledge.

Second, the overwhelming majority of the statements made in the Parades Affidavit constitute inadmissible legal argument, conclusions of law, and conclusory facts with no support. Consequently, the Court was not required to accept the affidavit as evidence in considering Defendants' Motion for Summary Judgment. *See Dawkins v. Fields*, 354 S.C. 58, 65, 580 S.E.2d 433, 437 (2003) (holding the trial court properly refused to consider an affidavit of an expert witness where the affidavit primarily contained legal arguments and conclusions). With regard to the charging of assessments to Plaintiff's Commercial Units, the affidavit simply sets forth Parades' opinion that "there are several line items are not appropriate to be included in the commercial budget and other line items that *appear* high." Parades Aff. at p. 13, ¶ 8 (emphasis added). It sets forth no factual evidence to support this conclusion, nor does the affidavit explain

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or identify the process by which Parades arrived at it. Similarly, the affidavit merely states an unsupported conclusion by Parades that "Plaintiff is still missing parking spaces that in accordance with the Master Deed he controls as well as additional on street parking mandated by the City of Columbia." *Id.* at p. 8.

In *Dawkins*, the South Carolina Supreme Court held that a similar affidavit by an expert witness was properly excludable by the trial court. In doing so, the Court referred to *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002), in which it rejected proffered expert testimony where the expert:

> "offered no factual evidence. He proffered his opinion, assuming certain facts, [that] trial counsel's actions fell below acceptable legal standards of competence. **The testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel's actions fell below an acceptable legal standard of competence.** Such 'testimony' falls outside of Rule 702, SCRE."

Dawkins, 354 S.C. at 66, 580 S.E.2d at 437 (emphasis in original). Here, in addition to the unsupported conclusions regarding assessments and parking, the affidavit also contains many impermissible legal arguments and/or conclusory facts relating to other matters. *See, e.g.,* Parades Aff. at p. 11, ¶¶ 1-3 (stating that the prior construction defect settlement agreements between the Holder Defendants and Plaintiff, and the Holder Defendants and Association, respectively, should be "vacated" as a result of "ultra vires" conduct on the part of the Board); *id.* at p. 14 ("As such, the Motion for Summary Judgment should be denied and the settlement agreements and releases should be vacated.").

While it is largely incoherent and addresses many matters outside the scope of this case, the Parades Affidavit is similar to the affidavit at issue in Dawkins, in that it "reads as if it could have been [Plaintiff's] oral argument to the trial court at the summary judgment hearing." *Dawkins*, 354 S.C. at 66, 580 S.E.2d at 437. Indeed, Plaintiff's counsel's arguments at the hearing on Defendants' Motion for Summary Judgment mirrored, to a relatively large degree, the

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arguments set forth in the Parades Affidavit. Accordingly, because the Parades Affidavit sets forth inadmissible legal arguments and conclusory, unsupported facts regarding the matters at issue in this case, the Court could properly exclude it from consideration in conjunction with Defendants' Motion for Summary Judgment.

In response to Defendants' properly supported Motion for Summary Judgment, Plaintiff submitted no other competent evidence to "set forth specific facts showing that there is a genuine issue for trial," as required by Rule 56(e). Therefore, the Court properly entered Summary Judgment for Defendants on the issue of their compliance with the Adesso Master Deed.

II. Plaintiff may not raise additional evidence and arguments not presented on Summary Judgment by way of a Motion to Reconsider.

Plaintiff's Motion improperly attempts to submit for the Court's consideration additional matters not raised on Summary Judgment. Specifically, Plaintiff included in his Motion: (1) 2018 email correspondence between Ted and Marcia Contos and City of Columbia Zoning personnel, *See* Pltf.'s Mtn. at Ex. A; (2) a January, 2015 email from Lauren Smith of Holder Properties to Plaintiff, *See id.* at Ex. B; (3) a November, 2017 letter from Plaintiff to Defendants' general counsel, *See id.* at Ex. D; (4) a July, 2020 email from Plaintiff to the Board, *See id.* at Ex. E; (5) a September, 20221 email from a Commercial tenant to Plaintiff regarding matters unrelated to this action, *See id.* at Ex. F[1]; (6) arguments relating to horizontal property regime records under S.C. Code Ann. § 27-31-180, *see id.* at p. 11; and (7) arguments relating to the maintenance of the Adesso building, which is not an issue before the Court in this case. *See id.* at p. 20, Section V.

The inclusion of new matters and/or arguments for the first time in a motion to reconsider is improper. A party cannot use Rule 59(e) to present to the court an issue the party could have

[1] While certain of the exhibits are bates-stamped, the bates numbering does not correspond with the numbering of the documents produced by Plaintiff in discovery. As such, it appears the documents contained in these exhibits were not previously produced.

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raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). *See also, Kiawah Property Owners Group v. Public Service Com'n. of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (finding that a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment); *Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 780 S.E.2d 263, footnote 12 (Ct. App. 2015) (finding an argument was not preserved for appellate review, where it was presented for the first time in the appellant's motion to reconsider the entry of summary judgment instead of in pre-hearing briefs or during oral argument at the summary judgment hearing). Here, the matters contained in the exhibits to Plaintiff's Motion—as well as Plaintiff's new arguments relating to them—were never raised to the Court prior to, or during the hearing on, Defendants' Motion for Summary Judgment.[2] Therefore, the Court should disregard such matters and arguments and deny Plaintiff's Motion based on the lack of genuine factual issues in this case and the sufficiency of evidence supporting the Court's Order Granting Defendants' Motion for Summary Judgment.

III. Plaintiff's Motion sets forth the incorrect standard for evaluating notice and claim accrual under the Statute of Limitations.

Plaintiff suggests his claims did not accrue until he acquired "actual knowledge" of the terms of the Adesso Master Deed and that he may have claims arising thereunder. *See* Pltf.'s Mtn. at p. 7. This is directly contrary to the law in South Carolina. Pursuant to the discovery rule, a plaintiff's claims accrue on the date the plaintiff knew or, by the exercise of reasonable diligence, should have known that he or she had a cause of action. Despite Plaintiff's assertions to the contrary, the well-settled test to be applied in this case is objective and asks "whether a person of

[2] Defendants would note that many of the matters referenced in the exhibits are either irrelevant to the issues in this case or actually help further support Defendants' Statute of Limitations argument. Nevertheless, they were not timely raised to the Court, and are therefore waived.

common knowledge and experience should have known the operative facts." Wilson v. Shannon, 299 S.C. 512, 386 S.E.2d 257 (Ct. App. 1989). The statute begins to run on the date the plaintiff discovered or should have discovered the injury, not on the date the plaintiff discovers the identity of the wrongdoer. *Tollison v. B & J Machinery Co., Inc.*, 812 F. Supp. 618 (D.S.C. 1993). Accordingly, the Court properly applied the discovery rule, as articulated by the South Carolina appellate courts, in ruling on Defendants' Motion for Summary Judgment. *See* Order Grant. Defs.' Mtn. for S.J. at ¶ 48.

Plaintiff also argues, without support, there is conflicting testimony sufficient to create questions of fact for trial as to when he should have known of the existence of his claims. *See* Pltf.'s Mtn. at p. 9. This argument is directly contrary to the facts established on Summary Judgment, and as found by the Court in its Order Granting Defendants' Motion for Summary Judgment. For the sake of brevity, Defendants incorporate the Court's Order in its entirety—and specifically, the factual findings referenced in Section I of this Memorandum—in support of their argument. There is no genuine dispute as to any of the facts the Court found in its Order.

Further, the Court properly applied the *objective* discovery rule test to such facts in concluding 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." (emphasis added). As discussed in more detail above, and as supported by the record, Plaintiff failed to exercise reasonable diligence to investigate potential claims until 2017. Plaintiff submitted no competent evidence on Summary Judgment to contradict the facts established and conclusions reached by the Court. Therefore, the Court should deny Plaintiff's Motion.

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CONCLUSION

For the foregoing reasons, the Court considered the competent evidence submitted in connection with Defendants' Motion for Summary Judgment and found no genuine issues of material fact relating to Defendants' defenses and Plaintiff's claims. Therefore, the Court properly entered judgment as a matter of law in favor of Defendants. Defendants respectfully request the Court to enter an Order denying Plaintiff's Motion to Reconsider and awarding Defendants the fees and costs incurred in connection with the motion, and for such other and further relief as the Court deems just and proper.

This 22nd day of October, 2021.

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

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
mmasciale@cskl.law
Ph: 843-727-0307

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2019-CP-40-00919

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

v.

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

NOTICE OF APPEAL

Emad Tadros, appeals the Order of the Honorable DeAndrea Gist Benjamin, Circuit Court Judge, dated September 19, 2022 denying Plaintiff's Motion to Reconsider the Order Granting Defendants' Motion for Summary Judgment dated September 21, 2021, that are attached hereto.

GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr., SC Bar No. 73789
Charles G. Blackburn, SC Bar No. 69458
2309 Devine Street
Columbia, SC 29205
(803) 251-4517
jgoodwyn@goodwynlaw.com
cblackburn@goodwynlaw.com
Attorneys for Appellant

Columbia, South Carolina
October 10, 2022

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)

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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** _____

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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

EFILED IN COMMON PLEAS - CASE#2019CP4000919

STATE OF SOUTH CAROLINA 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.	) IN THE COURT OF COMMON PLEAS) FIFTH JUDICIAL CIRCUIT) CASE NO.: 2019-CP-40-00919 **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:

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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

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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..."

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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

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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.

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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.

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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.

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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

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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.

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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]

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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

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
CIRCUIT COURT

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2019-CP-40-00919

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

v.

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

PROOF OF SERVICE

I certify that I have served a copy of the **Notice of Appeal** on Douglas W. Mackelcan, Esquire, and Michael C. Masciale, Esquire, counselors for the Respondents at the address below by depositing a copy of same in the United States Mail, postage prepaid, on October 10, 2022.

Douglas W. Mcakelcan, Esquire
Michael C. Masciale, Esquire
Copeland, Stair, Kingma & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

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GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr., SC Bar No. 73789
Charles G. Blackburn, SC Bar No. 69458
2309 Devine Street
Columbia, SC 29205
(803) 251-4517
jgoodwyn@goodwynlaw.com
cblackburn@goodwynlaw.com
Attorneys for Appellant

Columbia, South Carolina
October 10, 2022

ELECTRONICALLY FILED - 2024 Dec 20 11:46 AM - RICHLAND - COMMON PLEAS - CASE#2019CP4000919

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.	**MOTION FOR RECONSTRUCTION OF THE RECORD**

Defendants ADESSO Horizontal Property Regime and ADESSO Homeowners' Association (collectively "HOA") move this Court to reconstruct the appellate record pursuant to an Order of the Court of Appeals.

Introduction

This lawsuit involves Plaintiff's claims that 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 a hearing, the then-circuit court Judge Benjamin, granted HOA's motion for summary judgment. Plaintiff appealed and, upon receiving the transcript of the hearing, asked the Court of Appeals for a new summary judgment hearing because of errors in the transcript. The Court of Appeals declined Plaintiff's request, but remanded the matter to Judge Newman "for reconstruction of the record." ***See* Ex. 1 (11.6.23 Order)**. The HOA files this motion to request a hearing before the Chief Administrative Judge for the Fifth Judicial District to reconstruct the record.

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Relevant Background

The Adesso is a mixed-use development comprised of 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201. The Master Deed for Adesso established the Adesso Horizontal Property Regime and created the Association to, among other things, manage the Regime's affairs, and prescribe rules for the use of the Regime's General Common Elements.

Plaintiff purchased his Commercial Units at Adesso on December 5, 2014, becoming a member of the Association. After becoming an owner, Plaintiff took issue with how parking spaces were allocated to Commercial Units. Plaintiff also believed that he was not assessed costs appropriately under the Master Deed. As a result, Plaintiff filed suit against HOA and others on February 14, 2019.

After discovery, HOA 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. Judge DeAndrea G. Benjamin held a virtual hearing on the motion on January 7, 2021. Judge Benjamin granted HOA summary judgment on September 21, 2021. Plaintiff moved to reconsider, which was denied on September 19, 2022.

Appeal

Plaintiff filed his Notice of Appeal on October 11, 2022. Plaintiff ordered the transcript of the summary judgment hearing, but ran into issues acquiring it. Plaintiff eventually acquired the transcript, which contained numerous instances of "inaudible" or other notes that reflected the court reporter's inability to transcribe arguments from both counsel. Accordingly, Plaintiff

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moved the Court of Appeals to remand the case for a new hearing on summary judgment on October 11, 2023. HOA contested the motion to remand.

The Court of Appeals declined to remand for a new summary judgment hearing. On November 6, 2023, however, the Court of Appeals held the appeal in abeyance and remanded it "to the circuit court for reconstruction of the record." **Ex. 1.** The Order further stated:

> Counsel for [Plaintiff] shall contact opposing counsel and the Honorable Jocelyn Newman, the Chief Administrative Judge for Common Pleas for the Fifth Circuit, within 10 days of the date of this order. Judge Newman shall schedule such hearings as she deems appropriate. If Judge Newman determines reconstruction is not possible, she shall immediately notify this court and all parties.

Ex. 1.

The parties appeared before Judge Coble on December 20, 2024 for a status conference, and discussed procedure for getting a hearing to reconstruct the record. As a result of the hearing, it was decided that counsel for HOA would file a motion to reconstruct the record, coordinate with the Court to set a hearing, and the parties would be permitted to submit briefing on the issue of reconstruction.

HOA files this motion to reconstruct the record to begin the process. The parties will work together to discuss timing for briefing prior to a hearing.

This 20th day of December, 2024.

COPELAND, STAIR, VALZ & LOVELL, LLP

By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Respondents Adesso Horizontal Property Regime, and Adesso Homeowners' Association

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: (843) 727-0307

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The South Carolina Court of Appeals

Emad Tadros, M.D. 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 are the Respondents.

Appellate Case No. 2022-001434

ORDER

Appellant filed a notice of appeal from an order granting Respondents' motion for summary judgment. Appellant has now moved for a new hearing on the motion for summary judgment because the sixty-nine-page transcript contains fifty-four instances of "inaudible" or "noise interference," making meaningful appellate review impossible. Respondents filed a return, opposing the motion. We deny Appellant's motion to remand for a new hearing, but we hold the appeal in abeyance and remand this appeal to the circuit court for reconstruction of the record.

Counsel for Appellant shall contact opposing counsel and the Honorable Jocelyn Newman, the Chief Administrative Judge for Common Pleas for the Fifth Circuit, within 10 days of the date of this order. Judge Newman shall schedule such hearings as she deems appropriate. If Judge Newman determines reconstruction is not possible, she shall immediately notify this court and all parties. If the record is

reconstructed, Appellant's counsel shall immediately notify this court so that the appropriate appellate timelines can be set.

Appellant's counsel shall provide an update to the clerk of this court no later than 30 days from the date of this order, and every 30 days thereafter until Judge Newman resolves this matter, or the appeal will be dismissed.

Debbie H. Verdin
FOR THE COURT

Columbia, South Carolina

FILED
Nov 06 2023

cc:
Thomas Jefferson Goodwyn, Jr., Esquire
Charles Grant Blackburn, Esquire
Douglas Walker MacKelcan, III, Esquire
Skyler Cole Wilson, Esquire

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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.

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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***

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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*

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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).**

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Furthermore, the Plaintiff, although named as a Plaintiff in the **2016 lawsuit**, was not given notice of the 2016 lawsuit until **May 2017. (Exhibit B "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. **(Exhibit B "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;

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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

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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

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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

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***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.

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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.

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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**)

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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

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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

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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

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STATE OF SOUTH CAROLINA 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.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2019-CP-40-00919 **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").

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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.

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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

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

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Exhibit C:

Affidavit of Michael Parades including:

Exhibit A:

Parades' Resume

Exhibit B:

ADESSO Master Deed

Exhibit C:

Notice provision of Settlement Agreement

Exhibit D:

Extracts of HOA Meeting minutes and Plaintiff's February 15, 2017 letter to HOA Board and Management

Exhibit E:

Emails between Frank Smith and Plaintiff

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STATE OF SOUTH CAROLINA	}	**IN THE COURT OF COMMON PLEASE**
	}	**FIFTH JUDICIAL CIRCUIT**
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	}	**AFFIDAVIT OF MICHAEL R. PARADES, PCAM**
	}	
v.	}	
	}	
Holder Properties, Inc., John R. Holder, Individually, ADESSO/Columbia, LLC, ADESSO Horizontal Property Regime, And ADESSO Homeowners' Association,	}	
	}	
Defendants.	}	

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn, deposes and states:

1. My name is Michael R. Parades. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience, training and expertise in the field of community association governance, community association management and affirmative duties of a Board of Directors with regard to the operation and management of a community association and the maintenance, repair and replacement of common components of the General and Limited Common Elements. A copy of my Resume, marked as **Exhibit A** is attached hereto and incorporated by reference as part of this Affidavit.

2. I attended the College of Charleston, in Charleston, SC, from which I received a B.S in Business Administration, Summa Cum Laude, 1979.

3. I am currently the President of Parades Consulting Services and provide consulting services to community associations primarily in the areas of governance, management and affirmative duties of a Community Association Board of Directors. I have been qualified by the South Carolina State courts

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as an expert witness in the field of community association management, community association governance and affirmative duties of Community Association Boards of Directors. Based on my work experience and the fact that I am a retired Certified Public Accountant (CPA) with over 30 years of accounting experience related to community associations, I could also be qualified as an expert forensic accountant.

4. I am not a party to the above entitled action, nor am I related to any of the above captioned parties.

5. This Affidavit is submitted in support of the Plaintiffs Opposition to Defendant's Motion for Summary Judgment by Holder Defendants.

PROPERTY DESCRIPTION

The Adesso Horizontal Property Regime, the Regime, was created by the recordation of the Master Deed January 11, 2008 in accordance with the South Carolina Horizontal Property Regime Act, as amended, marked as **Exhibit B.** The Adesso HOA was also incorporated in accordance with the SC Non-Profit Corporation Act on January 11, 2008.

The Adesso HOA is located at 601 N. Main St and consists of 110 residential units in five stories over ground level commercial space consisting of 8,139 sf and a parking area with 225 parking spaces, of which 17 are exclusive for the Commercial space.

The Master Deed identified defendants ADESSO/Columbia, LLC as the Owner and Holder Properties, Inc. as the Developer of the ADESSO and was signed by John R. Holder as the sole member of each.

As noted in Article XXXIV MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSOR AND ASSIGNS, AND SUBSEQUENT 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 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 all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representative and successors and assigns.***

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DOCUMENTS REVIEWED

1. Master Deed with all Exhibits
2. Amendments #1 through #4 to the Master Deed
3. Management Agreements:
    a. Between Adesso HOA and Holder Properties Inc (HPI): 2/1/08 to 4/29/16
    b. I have been advised McCabe Trotter & Beverly provided Management from 4/29/16 to 6/1/16 but have not seen a management agreement between Adesso HOA and McCabe Trotter & Beverly.
    c. Between Adesso HOA and Cedar Management Group: 6/1/16 to 12/31/16 as reflected in Board meeting minutes. I have not seen the management agreement.
    d. Between Adesso HOA and CMM Realty, Inc. from 2/1/17 to present (series of one year contracts)
4. Budgets for 2016, through 2020 FYs reflecting Residential Costs and Commercial Costs.
5. Appraisal Report by George Knight of REAC as of December 5, 2014.
6. Complaint filed July 16, 2020 in State of South Carolina, County of Richland titled

    Darrell Terry, individually, on behalf of all others similarly situated, and derivatively on behalf of Adesso Homeowners Association a/k/a Adesso Horizontal Property Regime,
    Plaintiff

    vs.

    Adesso Homeowners Association a/k/a Adesso Horizontal Property Regime, CMM Realty, Inc., CMM Real Estate LLC, Michael Munson, Margaret Munson, Synovus Bank, Berry Campbell, W. Scott Barnes, Lite Nartey, Sharon von Fange, and Victoria Porter
    Defendants

7. Memo in Support of Motion for Summary Judgment by Holder Defendants.

8. Amended Complaint **Civil Action No. 2019-CP-40-00919** titled:

    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

Holder Properties, Inc.; ADESSO Columbia, LLC et al., Defendant(s)

This case was subsequently transferred to

The United States District Court
For the State of South Carolina
Columbia Division
Case No.3:16-cv-710-JFA

It should be noted that the owner of the Commercial units, Emad Tadros, M.D., was included as a named plaintiff without his permission or knowledge.

10. Plaintiff's responses to Request for Production and Interrogatories

11. **ADESSO HOA SETTLEMENT AGREEMENT AND RELEASE**, signed May 5, 2017; **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**, signed May 5, 2017; **COMMERCIAL CLAIMS SETTLEMENT AGREEMENT AND RELEASE**, signed May 30, 2017;
INDEMNIFICATION AGREEMENT BETWEEN Adesso HOA, Inc and Adesso Regime and Emad Tadros, M.D., signed May 30, 2017

12. Preliminary Visual Evaluation Adesso Condominiums performed by Applied Building Sciences, Inc. (ABS). Observation performed August 11, 2015 with report dated January 26, 2016.

13. Forensic Investigation Adesso Condominiums performed by ABS, report dated September 26, 2016.

14. Estimate for Repairs needed at Adesso Condominiums prepared by Cooper River Contracting (CRC) based on scope of work prepared by ABS. Estimate dated September 26, 2016

15. All Board and Annual Meeting minutes produced from April 24, 2012 Annual Meeting through Board meeting December 9, 2019.

16. Defendant's Motion for Support of its Motion for Summary Judgment.

17. Defendant's production of 3,824 pages of documents which included meeting minutes from 2012 through 12/31/19.

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9. Original Construction Complaint filed February 9, 2016 in State of South Carolina, County of Richland, Civil Action **2016-CP-40-00844 titled**

ADESSO Homeowners' Association, et al, Plaintiff(s)
vs.

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18. Deposition of Darrell A. Terry, PHD, Owner and former Board Member

19. Deposition of Rachel Bailey, City of Columbia Zoning Administrator

20. Various correspondence and Commercial Leases.

RELEVANT ISSUES

Plaintiff purchased the Commercial Units on December 5, 2014, which specifically included 17 parking spaces that were, in accordance with the Master Deed, exclusively controlled by the Commercial Unit owner. The **HOLDER DEFENDANTS** through deceptive and fraudulent actions have worked to control the number of spaces available to the Commercial Owner. The tactics used are outlined in the complaint and include varying Commercial space when negotiating with City of Columbia zoning authorities to change parking space requirement for the commercial spaces, changing signage to imply the spaces were for Guest parking and NOT restricted to commercial/retail parking, and requiring the Commercial Owner to pay rent for his parking spaces, etc.

In addition, due to the serious deficiencies in the building, the Commercial Owner has had difficulty keeping the retail spaces occupied due to water intrusion that continues to present. Plaintiff's complaints regarding lack of parking and water intrusion into retail spaces leading to lost rentals and other costs have fallen on deaf ears.

During my review of the various documents listed above, it became obvious that the building deficiencies have existed from the time the Developer **(HOLDER DEFENDANTS)** began construction and continue to present. In addition to being responsible for the planning, design, development, construction, marketing and sales of the ADESSO units, the **HOLDER DEFENDANTS** also include a wholly owned subsidiary company **(HPI)** that was engaged as the management company for ADESSO HOA. This entity was responsible for the management, control, maintenance and repair of the ADESSO HOA in accordance with the provisions of the Master Deed under the direction of the Board, which was controlled by the **HOLDER DEFENDANTS.**

In April 2013, Holder turned over control of ADESSO HOA to the Unit owners. While Holder turned over control of the Board, he still effectively controlled the ADESSO HOA by virtue of being the management agent through his wholly owned subsidiary **Holder Properties, Inc. (HPI).** At the April 12, 2016 Board Meeting it was reported that HPI in response to a termination letter from ADESSO HOA counsel had announced it was terminating the management contract April 29, 2016. Further, it was

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announced that Cedar Management Group (CPG) was in the process of taking over the management function June 1, 2016.

As background for the likely reason the management agreement was being terminated by HPI, the building was still experiencing significant water intrusion. While there are no Board minutes documenting the decision at some point in mid 2015 the ADESSO HOA Owner Board engaged Applied Building Sciences (ABS) to perform a visual inspection of the building. The inspection was done in August 2015 and ABS issued their report January 2016. There is no doubt the management agent, HPI, provided a copy of the report to **HOLDER**. The ABS report no doubt led to the termination letter and resignation of HPI as noted above. Management responsibilities were temporarily assumed by the ADESSO HOA legal counsel, McCabe Trotter and Beverly, until the new Management Company, Cedar Management Group (CMG) started June 1, 2016.

Based on the Visual Inspection Report, the ADESSO HOA Board engaged ABS to do a forensic inspection of the building. Again, there is NO Board meeting minutes wherein the Board authorized engaging ABS to perform a forensic inspection. ABS performed the forensic inspection and issued their report in September 2016, which included a scope of work that could be used to solicit a bid for the necessary repairs.

The ABS scope of repairs was provided to Cooper River Contracting (CRC), a well respected General Contractor. **CRC's estimate to complete all repairs set forth in the ABS scope of work was $16,442,059.**

Based on the documents reviewed, it appears the ADESSO HOA Board made the decision, in early 2016, to take legal action against the **HOLDER DEFENDANTS** and engaged Frank Smith, Jr. Esq to proceed with legal action. As with the decision to engage ABS for the preliminary inspection, there is no Board meeting minutes reflecting approval by the Board to engage Mr. Smith. It is interesting that a lawsuit was filed by Mr. Smith on February 9, 2016 five months before it was announced to the HOA members he had been hired. Again there is no Board meeting minutes reflecting Board approval to file a lawsuit. Based on information in the ABS Forensic Investigation Report dated September 22, 2016, it appears the Board approved engaging ABS but there are NO Board meeting minutes authorizing such action.

It is unclear why Mr. Smith and the Board chose to file a Civil Action in Richland County that was ultimately moved to SC Federal District Court. A cursory review of the Master Deed very clearly

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provides that should there be a dispute such as exists, the dispute **MUST and CAN ONLY be resolved through BINDING ARBITRATION; see annotated portions of Exhibit B.**

It should be noted that based on the provisions of the Master Deed, the Board does **NOT** have the authority to file a construction defect lawsuit, more on this later under Opinions.

At the January 23, 2017 Board meeting, Frank Smith was present and explained the mediation process. **There are no minutes of a Board meeting wherein the Board formally approved mediation.** At the March 13, 2017 Board meeting, Frank Smith announced a Settlement had been reached whereby the **HOLDER DEFENDANTS** would pay $7,505,000. After payment of attorney fees and legal costs, the ADESSO HOA netted approximately $4,800,000. **Again, there are NO Board minutes reflecting Board approval to mediate the claim or approving a settlement.**

At the April 10, 2017 Board Meeting, a bid from HOA counsel Walt Todd to research the questions and concerns of Dr. Tadros was approved, see **Exhibit D**.

At the May 8, 2017 Board meeting, it was noted that Class Action Settlement Agreement and Release had been signed on May 5, 2017 by William Durkin on behalf of the class and the Adesso HOA Settlement Agreement and Release had been sighed on May 5, 2017 by Darrell Terry, Board Member. Mrs. Page, Board President noted there was no motion needed to approve signing the Settlement as it had already been approved. **NO minutes evidencing approval have been produced.**

Also at the May 8th meeting," **Mr. Munson read an email from Walt Todd (HOA Attorney) regarding his initial research into Dr. Tadros' stated concerns which he listed in an email to the board, dated February 15, 2017. The board agreed that prior to moving forward with Mr. Todd's thoughts/suggestions, the HOA first needed to address the more pressing matter at hand; Mr. Tadros signature on the final litigation documents."** See **Exhibit D**;

This can only be called extortion. I will address further under Opinions.

I am further advised that four years later **ESSENTIALLY NO REPAIR WORK HAS BEEN DONE.**

Recently an owner meeting was held to vote on a special assessment of $11,000,000 to combine with the lawsuit proceeds and move forward with repairs. The proposed assessment was not approved. It is interesting to note that had the $11,000,000 been approved and combined with cash on hand there would

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be $16,000,000 available for repair work. As noted earlier, the quote in 2017 from Cooper River Construction to make all repairs was $16,442,000.

In summary, Plaintiff still is missing parking spaces that in accordance with the Master Deed he controls as well as additional on street parking mandated by the City of Columbia. The lack of parking impacts the business of Plaintiff's lessees. Having read the deposition of Rachel Bailey, City of Columbia Zoning Administrator, it is very clear that the **HOLDER DEFENDANTS** misstated the square footage of the commercial property in order to impact the number of spaces required in the parking garage and surrounding streets needed to satisfy zoning requirements. Even though they clearly knew the square footage of the commercial property was 8,139 sf, they told the zoning department it was only 4,675sf. There is also confusion as to how many handicap spaces are required and where those spaces should be located. Presently, the only three handicap spaces are part of the 17 commercial spaces in the garage. This creates another restriction on commercial parking.

In her letter to Plaintiff's counsel dated March 13, 2018, Ms. Bailey states there are NO zoning violations even though it is unclear how many should have been provided per code and where handicap spaces should be located.

Plaintiff still has a large unleasable space due to severe water intrusion and two other spaces that are rented but continue to have water intrusion. Finally, Plaintiff's monthly assessments appear to be too high based on provisions of the Master Deed. The Plaintiff has made numerous efforts to get his issues addressed since early 2015 with little success. His last resort was to file the current action.
In response to his suit against Defendants, the Defendants have filed a Motion for Summary Judgment alleging Plaintiff signed a release absolving Defendants of any liability.

FACTUAL OPINIONS

Defendant argues in their Memo that because Plaintiff signed the Commercial Claims Settlement and Release related to the Construction Defect Lawsuit, Defendant is barred from any further claims against Defendant. **It is my professional opinion is the problem with Defendant's argument is that all of the Settlement Agreements are invalid because filing the lawsuit was an ILLEGAL ULTRA VIRES act by the Board of Directors.**

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The Master Deed, **Exhibit B** is the controlling document the ADESSO HOA. It sets forth the duties, rights and obligations for all parties including the Developer, the HOA, the Board and the Owners. The Bylaws set forth how the HOA will operate

Exhibit B addresses in several sections the issue of Mandatory Arbitration in lieu of litigation. Specifically:

1. The Cover Sheet of the Master Deed has the following language in all caps and bold at the top and bottom of the cover sheet:

THIS INSTRUMENT CONTAINS AN ARBITRATION PROVISION PURSUANT TO THE SOUTH CAROLINA ARBITRATION ACT.

2. Section IV Arbitration Agreement of the Master Deed reads as follows:

> **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 of assignee of any such persons or entities, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION BEFORE A PANEL OF THREE ARBITRATORS PUSUANT 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 on one forum. NO CLAIM OR CAUSE OF ACTION MAY BE ASSERTED THAT WOULD BE BARRED BY THE STATUTE OF LIMITATIONS OR THE STATUTE OF REPOSE.**

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The last paragraph of this section reads as follows:

> **THE GRANTOR, DEVELOPER, CONTRACTOR, ARCHITECT, THE ASSOCIATION AND THE INDIVIDUA UNIT OWNERS EXPRESSLY WAIVE ALL RESORT TO TRIAL BY JURY OF ANY AND ALL ISSUES OTHERWISE TO TRIABLE.**

3. Section XXXVI.C Reads:

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 South Carolina and agree(s) that any action concerning 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....**

4. Section XXXVI.D Reads:

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

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(4) THIS PROVISION IS A MATERIAL INDUCEMENT FOR GRANTOR TO MAKE THE DECLARATIONS SET FORTH HEREIN.

PROFESSIONAL OPINIONS

1. There is no question that the legal action resulting in a settlement should be **VACATED** due to the Board having no authority to initiate legal action. It was an **ULTRA VIRES** action. The SC Supreme Court ruled in Fisher, etal vs. Shipyard Village Council of Co-Owners, Inc. **"409 SC164 2nd 121 S.C. App. 2014"**

   "A corporation's actions taken within the scope of the powers granted it are considered intra vires acts; acts beyond the scope of its powers, however, are ultra vires acts. The business judgment rule applies to intra vires acts of the corporation, but not to ultra vires acts. In other words, while the business judgment rule protects a corporation's exercise of its best judgment when deciding between viable options in a given business-related situation, the business judgment rule is not a cloak that protects a corporation from a violation of its own bylaws."

2. Defendant's Motion for Summary Judgment should be **VACATED** as it is based on Settlement Agreements that should be **VACATED** due to being obtained through **ULTRA VIRES** action by the ADESSO HOA Board and its legal counsel.

3. The Commercial Claims Settlement Agreement and Release should also be **VACATED** as it was obtained fraudulently. The Class counsel should have known that Plaintiff always had the right to opt out of the proposed settlement see **Exhibit C**. Per Plaintiff, the time he heard about a lawsuit and settlement was when he was presented with the Claims Settlement Agreement and Release in early May 2017. This raises the question of whether Class Counsel ever sent the required **Notice** to persons on the Class list. The question is answered by the deposition of Darrell A. Terry, PHD on December 10, 2019, item #20.. It should be noted that Dr. Terry was the Board Member who signed the Adesso HOA Settlement Agreement and Release.

4. Even more incredulous, **DEFENDANT HOLDER** knew the HOA could not sue because he wrote the Master Deed and signed it as the sole member of each of the **HOLDER DEFENDANTS**, see signature page **Exhibit B** yet said nothing.

Article XXXIV " MASTER DEED BINDING UPON GRANTOR, ITS SUCCESSORS AND ASSIGNS, AND SUBSEQUENT CO-OWNER" creates an affirmative obligation that

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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, it successors and assigns, and upon all parties who may subsequently become Co-Owners of Units in the Regime and their respective heirs, legal representatives, and successors and assigns.

5. Having read all of the minutes produced by ADESSO HOA, it appears the Board was trying to keep owners from knowing what was going on until the very end. Several major actions do not have appeared to have been properly approved as evidenced in the Board meeting minutes. The major actions included:
    a) 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. No mention of a report being received.
    b) Engaging Frank Smith to represent ADESSO HOA and file a lawsuit against Holder Properties, etal
    c) Authorizing Frank Smith to proceed with filing a lawsuit against Holder Properties, etal
    d) Hiring ABS to perform a forensic investigation to identify all deficiencies in the building for the lawsuit. ABS report was issued in September 5 months after the lawsuit was filed.
    e) Approving mediation in early 2017.
    f) Approving proposed settlement in March 2017.

While reading the minutes, I noted occasional reference to Executive session minutes around the same time frame as actions noted above. I suspect the Board was discussing and approving the above actions in Executive session to keep owners in the dark about what was going on.

6. Having participated in a number of construction defect claims/lawsuits, this case is highly suspicious for the following reasons:
    a) The claims were supported by a very thorough forensic examination and cost estimate
    b) I was very surprised to learn there were no discovery/depositions/interviews done
    c) I now know the case was mediated. It is unclear who was involved with mediation but given the difference between the repair cost estimate and the actual mediated value an explanation should be sought. I am reasonably sure that had the case been arbitrated, as required, the award would have been substantially higher.

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d) Having personally been involved with 15 construction defect lawsuits, I have never seen one resolved in less than 2 years. This case was settled in a little more than thirteen months.

7. It should also be noted that Defendant's Motion for Summary Judgment disputes Plaintiff's assertion of being forced to sign the illegal Settlement Agreement and Release is untrue. After many months of trying to get the HOA's attention, Plaintiff stopped paying assessments he felt were wrong. HOA Counsel, Walt Todd, then started a dialogue with Plaintiff to understand concerns and get Plaintiff/s accounts brought current. HOA Counsel also threatened the HOA would file a lien against Plaintiff's properties.

At the 5/8/17 Board meeting, HOA Manager Munson read an email from Todd regarding his research into Plaintiff's concerns. The Board response was prior to moving forward with Counsel Todd's thoughts/suggestions; HOA first needed to address the more pressing matter at hand; Plaintiff's signature on the final litigation documents, see **Exhibit D** second page extract from meeting minutes.

Finally, Attorney Smith had an exchange of emails with Plaintiff regarding the need for Plaintiff to sign the Commercial Settlement Agreement and Release, see **Exhibit E**, and read from back to front. The emails are self explanatory; Plaintiff would not agree to sign and Attorney Smith threatened that HOA could sue Plaintiff, even though Plaintiff always had the right to opt out of the settlement. Ultimately, Plaintiff signed the Commercial Settlement Agreement and Release on May 30, 2017.

8. A final long standing complaint of Plaintiff relates to the monthly assessment he is being charged by ADESSO HOA. He has asked repeatedly for an explanation of how the commercial property budget is determined and never gotten a response until the Affidavit from C. Michael Munson dated December 28, 2020 was filed as part of Defendant Motion for Summary Judgment. I have reviewed the Affidavit and explanations provided. Sadly, there is NO explanation of the methodology used to establish the various line item fees only a statement that they are consistent year to year. 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.

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SUMMARY

The one overriding issue is the fact that the Master Deed provides that any dispute **MUST** be resolved via Mandatory Arbitration. **This requirement is an Affirmative Obligation of the Board and Adesso HOA. It was an ULTRA VIRES act for the Board to file a lawsuit.** As such, the lawsuit, mediation and settlement must be vacated and the claim by the HOA against the **HOLDER DEFENDANTS** must be submitted to Mandatory Arbitration as **REQUIRED** by the Master Deed.

Chapter 31, The Horizontal Property Act, Section 27-31-170: **"Compliance with bylaws, rules, and regulations; remedy for noncompliance:" Each owner SHALL comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto...Failute 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."**

AS SUCH, THE MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED AND THE SETTLEMENT AGREEMENTS AND RELEASES SHOULD BE VACATED.

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I affirm that the foregoing is true to the best of my personal knowledge, information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same. I reserve the right to modify my opinions based on any new information that may be provided subsequent to this Affidavit.

FURTHER AFFIANT SAYETH NOT

Michael R. Parades, PCAM

SWORN to and subscribed before me this

4th day of January, 2020

Taylor M. Englert

Notary Public for

My Commission Expires: 10/04/2029

TAYLOR M. ENGLERT
COMM. EXP.
NOTARY
PUBLIC
10-04-2029
SOUTH CAROLINA