

STATE OF SOUTH CAROLINA]
COUNTY OF CHARLESTON]
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
SIMMONS POINTE II SUBDIVISION

THIS declaration, made on the date hereinafter set forth by C. R. Campbell Construction Co., Inc., a South Carolina corporation (hereinafter referred to as "Developer")

W I T N E S S E T H

WHEREAS, Developer is the owner of certain real property located in Mt. Pleasant, Charleston County, State of South Carolina, which is more particularly described as follows:

All those certain pieces, parcels, lots or tracts of land situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, and being shown and designated as Tracts 3-4-1 through 3-4-15 on a plat entitled, "Plat Showing the Subdivision of Tracts 3-A, 3-B, 4-F, 4-E, and 4-D into 15 lots shown as Tracts 3-4-1 through 3-4-15, Simmons Pointe II, located in the Town of Mt. Pleasant, Charleston County, South Carolina" by Charles F. Dawley, Jr., dated December 27, 1992, and recorded February 10, 1993 in Plat Book CL at Page 83 in the RMC Office for Charleston County. Said tracts, having such size, shape, dimensions, buttings, boundings and content as will reference to said plat more fully and at large appear.

WHEREAS, Developer desires to convey the property pursuant and subject to certain protective covenants, conditions, restrictions, reservations, easements, liens and charges as hereinafter set forth;

ARTICLE I

DEFINITIONS

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular and plural forms of any such term(s):

Section 1.02 Assessment shall mean and refer to an Owner's share of the common expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

Section 1.03 Association means Simmons Pointe II Property Owners Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

Section 1.04 Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.05 By-Laws of the Association shall mean and refer to those By-Laws of Association which govern the administration and operation of the Association attached hereto as Exhibit "A" and made a part hereof by reference, as may be amended from time to time.

Section 1.06 Subdivision Plat shall mean and refer to the plat or survey entitled, "Plat Showing the Subdivision of Tracts 3-A, 3-B, 4-F, 4-E, and 4-D into 15 lots shown as Tracts 3-4-1 through 3-4-15, Simmons Pointe II, located in the Town of Mt. Pleasant, Charleston County, South Carolina" by Charles F. Dawley, Jr. dated December 27, 1992, and recorded in the RMC Office for Charleston Count in Book CL at Page 83.

Section 1.07 Subdivision shall mean and refer to the lots in Simmons Pointe II Subdivision as shown on the Subdivision Plat.

Section 1.08 Simmons Pointe HPR shall mean and refer to the Simmons Pointe Horizontal Property Regime being the condominium development immediately to the east of Simmons Pointe II Subdivision and lying between Simmons Pointe II Subdivision and Ben Sawyer Blvd. (S. C. Highway 703), Mt. Pleasant, South Carolina with which certain easements, facilities, systems, and/or expenses are or may be shared.

Section 1.09 Common Easement Areas shall mean and refer to the ingress and egress easements shown on the Subdivision Plat as well as their extension through Simmons Pointe HPR to Ben Sawyer Blvd. as well as the location of the water and sewer mains, electrical, telephone, and other utility cables serving the subdivision and such areas immediately adjacent to said mains and cables as may be reasonable or necessary to maintain said services, and/or replace said services.

Section 1.10 Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment or material reserves, consistent with the provisions and intent of this Declaration.

Section 1.11 Declaration shall mean this Declaration and all supplements and amendments to this Declaration as filed in the office of the Charleston County Register of Mesne Conveyances.

Section 1.12 Developer means C. R. Campbell Construction Co., Inc., its successors and assigns.

Section 1.13 Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

Section 1.14 Improved Lot shall mean a Lot upon which a residence has been built.

Section 1.15 Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, for a term of hours, days, months or years.

Section 1.16 Living Space shall mean and refer to covered areas within a dwelling on a Lot which are enclosed and heated, exclusive of garages, unenclosed porches, porte-cocheres, carports, breezeways, terraces, balconies, decks, patios, courtyards, greenhouses, bulk storage areas, attics and basements.

Section 1.17 Lot shall mean and refer to the fifteen tracts numbered 3-4-1 through 3-4-15 on the Subdivision plat.

Section 1.18 Mortgage, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Lot.

Section 1.19 Mortgagee, shall mean and refer to the holder of a Mortgage.

Section 1.20 Occupant shall mean and refer to any person, including without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, or family member of an Owner, lawfully occupying or otherwise using a Lot within the Subdivision.

Section 1.21 Owner shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not mean or refer to any Mortgagee or subsequent holder of a Mortgage, unless and until such Mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

Section 1.22 Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.23 Amenities shall include the pool, tennis courts, pavilion and crab dock of the Simmons Pointe HPR for which an agreement for use by the occupants of the homes in the subdivision is being sought (which agreement is not insured or guaranteed at the time of the signing of the within covenants).

ARTICLE II
PLAN OF DEVELOPMENT

Section 2.1 Plan of Development of the Subdivision.

The Subdivision shall consist of the fifteen (15) lots shown on the Subdivision plat. The Property shall also include certain ingress/egress easements, utility systems, drainage systems and other improvements serving the Lots to the extent the same are, from time to time, existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. For so long as Developer owns any Lot primarily for the purpose of sale of the Lot, Developer shall have the right, but not the obligation, to make improvements and changes to any or all Lots or any other property owned by the Developer including but not necessarily limited to the following: (i) changes in the location of the boundaries of any Lots owned by Developer (ii) installation and maintenance of any water, sewer and other utility systems and facilities.

Section 2.2 Interest Subject to Plan of Development.

Every purchaser of a Lot shall purchase such Lot and every Mortgagee and lienholder holding an interest with respect thereto, with notice of Developer's plan of development as set forth herein, and, with respect to each Lot to convey to the purchaser thereof the title to the Lot and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

ARTICLE III

THE ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS

Section 3.1 The Association. The Developer has established or will establish the Association for the purpose of exercising powers of maintaining, administering and providing common services, administering and enforcing covenants, conditions and restrictions contained herein, and levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the rights to convey to the Association and the Association agrees to accept any or all of the Developer's rights and obligations set forth herein. The Association shall be authorized but not required to provide the following services:

- ✓(a) ~~Clean-up, maintenance, landscaping of all lots and open space within the Subdivision or in a reasonable proximity to the Subdivision such that their deterioration would affect the appearance of the Subdivision as a whole.~~
- (b) To contract for and/or maintain utility services for the subdivision to include but not be limited to water and sewer services.
- (c) To maintain common easement areas.
- (d) To contract for the use of amenities with Simmons Pointe HPR.
- (e) To take any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision.
- (f) To provide or obtain administrative services including, but not limited to, legal, accounting and financial communication services informing members of activities, notice of meetings, referendums, etc., incident to the above listed services.

- (g) To provide directors and officers liability insurance for the Association and its duly elected Directors and Officers.
- (h) To borrow money and mortgage its real property.
- (i) To foster community relations within the Subdivision among Lot Owners and among the property owners in the adjacent community known as Simmons Pointe Horizontal Property Regime.
- (j) To provide any and all services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligation and business under the terms of this Declaration.

Section 3.2 Rules and Regulations. The Association may adopt from time to time additional reasonable rules and regulations governing the use of Common Easement Areas, common services, and/or leased amenities.

✓ Section 3.3 Membership. Every person or entity who is an Owner of any Lot which is subjected to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessments.

Section 3.4 Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners excepting the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.3 above. When more than one person holds such interest or interests in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The sole Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership under Section 3.3 above.

Section 3.5 Transfer Fee. The members of the Association, by an affirmative vote of a majority of members voting, may elect to charge a transfer fee in an amount not to exceed one-fourth percent (0.25%) of the sales price of any Lot sold, excluding the sale of any Lot by the Developer. In the event the Association elects to charge a transfer fee, the transfer fee shall be paid to the Association and used by the Association for its regular operations and/or reserves. In the event of non-payment of such transfer fee the amount due shall bear interest and shall be collectible as an assessment as set forth in Article VI hereof. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

ARTICLE IV

PROPERTY RIGHTS IN THE EASEMENT AREAS

Section 4.1 Owners' Easements of Enjoyment. Subject to the provisions herein, including Section 3.1 and 4.3, every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Easement Areas and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 4.2 Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association, to grant, reserve and accept easements and rights of way through, under, over and across the Common Easement Areas for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, other utilities and services, and the right of the Developer to grant and reserve easements and rights of way through, over and upon and across the Common Easement Areas for the completion of the Subdivision, and for the operation and maintenance of the utilities servicing the subdivision.

(b) The rights of the Association, to establish rules and regulations for the Subdivision and to prescribe mandatory fees and charges from time to time for use of the amenities of Simmons Pointe Horizontal Property Regime, if applicable.

Section 4.3 Additional Structures. ~~The Association or any Owner or any group of Owners shall not, without the prior written approval of the Architectural Review Board, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Easement Areas.~~

Section 4.4 Easements for Developer. During the period that Developer owns any real property within the Subdivision, or owns any Lot primarily for the purpose of sale, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Easement Areas for the purpose of constructing or improving Lots, any improvements to the Common Easement Areas and for installing, maintaining, repairing and replacing such other improvements to the Subdivision as are contemplated by this Declaration or as Developer desires in its sole discretion, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

Section 4.5 Changes in Boundaries; Additions to Common Easement Areas. Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of any Lots owned by Developer, including the realignment of boundaries between adjacent Lots and/or other property, owned by Developer and to adjust the boundaries of the common easement areas provided such adjustment does not unreasonably materially affect an owner's use or enjoyment of the property.

Section 4.6 Easements for Utilities. There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Easement Areas; (ii) an area across every Lot ten (10') feet in width along the front boundary lines thereof, and five (5') feet in width along the side and rear boundary lines of lots; for the purpose of installing, replacing, repairing, maintaining all utilities. Such easements may be granted or accepted by Developer, its successors and assigns or by the Board of Directors; provided however that for so long as Developer owns any real property within the Subdivision, owns any Lot primarily for the purpose of sale the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. By virtue of any such easement and facilities, it shall be expressly permissible for the holder of the easement rights with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities, and systems.

Section 4.7 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant.

Section 4.8 Environmental Easements. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 4.9 No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

Section 4.10 South Carolina Coastal Council Jurisdiction. Notice is hereby given of the restriction that as to any portion of any Lot within the Subdivision which may contain submerged land or other critical areas, all activities on or over and all uses of such land or other critical areas are subject to the jurisdiction of the South Carolina Coastal Council. Any Owner is liable to the extent of such Owner's Ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or other critical areas.

ARTICLE V
RIGHTS OF ASSOCIATION WITH RESPECT TO
COMMON EASEMENT AREAS AND PORTIONS OF LOTS

Section 5.1 Common Expenses. The Association shall have the right to make or cause to be made such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Easement Areas and the cost thereof shall be assessed as common expenses and collected from the Owners on an equal basis.

Section 5.2 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of residences or other structures located on a lot for primary use by the occupants of said lot thereon or therein shall be the responsibility of the Owner(s) of such Lot. Developer shall be responsible for Developer-owned properties. Each Owner shall be responsible for maintaining such Owner's Lot, as the case may be, in a neat, clean and sanitary condition, (except as to such lawn care and landscaping as shall be the responsibility of the Association) and such responsibility shall include the maintenance and care of all exterior surfaces of all buildings and other structures. As provided in Section 5.3 hereof, each Owner shall also be obligated to pay for the costs incurred by the Association or Developer for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a structure or fence or improvement on any Lot unless such decoration, change or alteration is first approved in writing by the Architectural Review Board as otherwise provided herein, or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board and the Owners and Mortgagees of the Lots directly affected thereby or benefitting from such easement or hereditament.

Section 5.3 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Easement Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all Common Easement Areas, and other improvements situated within the Common Easement Areas or within easements encumbering Lots, the private road and entrance way, and (ii) such utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Easement Areas and which are not maintained by the Developer or a public authority, public service district, public or private utility or other person. The Association shall also be responsible for maintaining all lawns, landscaping and grounds on the lots. The Association shall not be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person; (b) resulting from any rain or other surface water which may leak or flow from any portion of the Common

Easement Areas, or (c) caused by any pipe, plumbing, drain, conduit, appliance, equipment, or utility line or facility, the responsibility of the maintenance of which is that of the Association, becoming out of repair. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner. The Developer intends that all roads providing access to Lots within the Subdivision shall be a private road maintained by the Association in conjunction with the Simmons Pointe HPR.

(b) In the event that the Board of Directors determines that: (i) an Owner(s) has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees and is not covered or paid for by insurance in whole or in part, then, in either event, the Association, except in the event of an emergency situation, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the assessment to which such Owner and his Lot are subject and shall become a lien against such Lot. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

(c) In the event that the Developer determines that: (i) an Owner or the Association has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder then, the Developer, except in the event of an emergency situation, may give such Owner written notice of the Developer's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner or the Association and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner or the Association shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner or the Association to comply with the provisions hereof after such notice, the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner or the Association and said cost shall be added to and become a part of the assessment to which such Owner and his Lot are subject and shall become a lien against such Lot or in the case of the Association, shall be added to and become a part of the assessments for all Owners and shall be a lien against all non-exempted Lots. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Improved Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) monthly assessments or charges for the upkeep and maintenance of the lawns and landscaping of the lots and maintenance of the Common Easement Areas, including but not limited to the private road, including such reasonable reserves as the Association may deem necessary, and use of the amenities of Simmons Pointe HPR, if applicable, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due.

Section 6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their respective families, guests, tenants and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Easement Areas and for the upkeep and maintenance of the lawns and landscaping for the lots, and use of the amenities of Simmons Pointe HPR, if applicable and for the provision of various forms of insurance for the Association, its property members, directors, officers, employees and agents, and for the provision of necessary and reasonable services, and for the other expenses of the Association. The assessment shall be based on an annual budget presented by the Board of Directors of the Association.

Section 6.3 Special Assessments. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, additional expenses incurred or to be incurred by the Association in excess of the Monthly Assessments, or the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Easement Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.4 Notice and Quorum for Special Assessments. Written notice of any meeting called for the purpose of voting on any proposed Special Assessment authorized under Section 6.3 above shall be sent to all members not less than 10 days nor more than 30 days in advance of the meeting; unless the Board of Directors determines in its sole discretion that the matter concerns an emergency in which case 2 days prior notice shall be sufficient. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be thirty percent (30%) of all the votes of each class of membership. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6.5 Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots (whether improved or unimproved) and may be collected on a monthly, quarterly or annual basis in the discretion of the Board of Directors.

Section 6.6 Due Date for Assessments. The monthly assessments provided for herein shall commence as to each Lot on the day of the conveyance of that Lot by the Developer to an Owner. The first monthly assessment shall be adjusted according to the number of days remaining in the month. At the closing of the sale of a Lot by the Developer, the Owner shall pay in advance the pro rata assessment for the month in which closing takes place and the assessment for the following month. The Board of Directors shall fix the amount of the monthly assessment annually on or before August 1st and said new assessment shall become effective September 1st. Written notice of any monthly assessment change shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.7 Working Capital. In addition to any other assessments described herein, there shall be levied against each Lot, to be due and owing at the time of conveyance of such Lot by Developer to a purchaser, a one time working capital assessment of Two hundred and no/100 (\$200.00) Dollars per Lot for the use and benefit of the Association. The purpose of such working capital fund is to insure that the Association will have cash available to meet unforeseen expenditures.

Section 6.8 Effect of Nonpayment of Assessments: Remedies of the Association. ~~Any monthly assessment not paid within ten (10) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate provided by applicable law.~~ The Board of Directors shall annually determine the amount of the penalty to be added and consistently applied to all delinquent assessments in addition to the interest charge. Any annual or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate provided by applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot (as in the foreclosure of a mortgage), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

Section 6.9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII
USE RESTRICTIONS AND ARCHITECTURAL REVIEW BOARD

Section 7.1 Conformity and Approval of Structures. No structure, fence, sidewalk, drive, or other improvement shall be placed or altered on any Lot nor shall any change in topography or landscape except in accordance with the provisions of this Declaration.

Section 7.2 Architectural Review Board. No building, fence, wall or other structure, and no change in topography, landscaping, grading, filling, or any other item shall be commenced, erected or maintained upon any portion of the Subdivision, nor shall any exterior addition to or change be made until the plans and specifications (including but not necessarily limited to all elevations, a complete tree survey of the Lot) showing the grading, filling, nature, kind, size, shape, height, materials, color and location of the same on the Lot shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Architectural Review Board. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval.

Three (3) copies of said plans and specifications shall be submitted. The Architectural Review Board reserves the right to refuse the approval upon any ground including purely aesthetic conditions which in the sole and uncontrolled discretion of the Architectural Review Board shall seem sufficient.

The Architectural Review Board shall be comprised of not less than three (3) representatives to be appointed by the Developer for so long as the Developer owns any Lots within the Subdivision. Upon the sale of all of the Developer's Lots, the Board of Directors of the Association shall appoint not less than three (3) representatives. The Developer shall have the right to transfer all or part of its rights of such appointments to the Association at any time prior to the sale of all of its Lots. The

Architectural Review Board shall have the power and authority to require a minimum application fee with each request or submission of plans or specifications. The Architectural Review Board shall have the power and authority to adjust the application fee from time to time.

In the event that the Architectural Review Board fails to approve or disapprove or request additional information with respect to any application within thirty (30) days after complete written plans and specifications have been submitted to it, the same shall be deemed approved, and this article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provisions of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Architectural Review Board may deem sufficient. No member of the Architectural Review Board shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Review Board, nor for any structural defects in any work done according to such plans or specifications approved by the Architectural Review Board. Further, no member of the Architectural Review Board shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Review Board for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against the Developer, or any member of the Architectural Review Board, to recover for any such damage. No approval of plans, location or specifications shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good workmanlike manner. Neither the Developer, the Association or the Architectural Review Board shall be responsible or liable for any defects in any plan or specification submitted, revised or approved under these covenants nor for any defects in construction pursuant to such plans and specifications. The Owner shall have sole responsibility for compliance with approved plans and does hereby hold Architectural Review Board and the Developer harmless for any failure thereof caused by the Owner's architect or builder.

Section 7.3 Objectives of the Architectural Review Board.

Architectural and design review shall be directed towards attaining the following objectives for the Subdivision:

(1) Houses with designs compatible with the existing single family residences in Simmons Pointe HPR.

(2) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural land forms.

(3) Insuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the Lot and with surrounding Lots and structures, and does not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.

(4) Insuring that the architectural design of structures and their materials and colors are visually harmonious with the Subdivision's overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans, officially approved by the Owner, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located.

(5) Insuring the plans for landscaping provide visually pleasing settings for structures on the Lots and on adjoining or nearby Lots which blend harmoniously with the natural landscape.

(6) Insuring that any structure, building or landscaping complies with the provisions of these covenants.

(7) Promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

The listing of specific requirements in no way limits the right and authority of the Architectural Review Board to require any other specific requirements to be included in the plans and specifications, including the landscaping plans.

Section 7.4 Residential Use of Lots. All Lots shall be used

for single-family residential purposes exclusively and no structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one

(1) detached single-family dwelling and such accessory structures as may be approved by the Architectural Review Board, provided, however, that nothing contained herein shall be construed to prevent the Developer from maintaining one sales office in the Subdivision for the purpose of selling Lots or other property in the Subdivision.

Section 7.5 Size Requirements. The living space of the main structure on any Lot shall not be less than 1,700 square feet of heated space. Houses of less than the stated minimum living space (not to exceed a 5% reduction) may be approved by the Architectural Review Board if in the opinion of the Architectural Review Board the design and construction of the house would be in keeping with the adjoining properties and the lowering of the minimum living space requirement for such Lot would not depreciate the value of the adjoining properties subject to this Declaration.

Section 7.6 Height Limitation. No residence or structure shall be built or erected which exceeds 35 feet above the level of the private road in front of the lot in question.

Section 7.7 Tree Removal. No trees or bushes of any kind having a diameter of six (6") inches or more (measured from a point two (2') feet above the ground level) shall be removed from any Lot without the express written authorization of the Architectural Review Board. The Architectural Review Board shall further have the authority to require any person removing a tree in violation of this clause to replace same at such Owner's cost. The Architectural Review Board reserves the right to have specimen trees preserved and to have site planning provide for their preservation.

Section 7.8 Fences. No fences whatsoever shall be erected or allowed to remain in the Subdivision except as shall be approved by the Architectural Review Board. No fences shall be permitted which obstruct the view of any marsh, stream or other body of water when viewed from inside any adjacent Lot.

Section 7.9 Prohibition of Open Outdoor Storage. No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure or in a manner that is visible from any other Lot, street, easement or amenity area. Firewood, trash cans, and bicycles may be stored outside in side yards or rear yards only, which are not visible from inside any lot or street unless otherwise approved by the Architectural Review Board.

Section 7.10 Prohibition of Accessory Structures. No clotheslines, drying yards, dog houses, treehouses, swimming pools, sheds, or any other accessory structure shall be constructed upon any Lot unless approved by the Architectural Review Board prior to installation or construction.

Section 7.11 Uniform Mail Boxes. All mail boxes located within the Subdivision shall be uniform and if not provided by the Developer shall be provided by the Association at an initial cost of \$ 75.00 subject to the right of the Association to increase the cost in the future.

Section 7.12 Flood Lights. All lights erected on any lot or onto any dock or residence or accessory thereto shall be hooded so that the light is reflected downward and does not shine onto any other lots, residences or docks.

Section 7.13 Additional Restrictions for Lots or Common Areas Fronting Marsh.

(a) No foliage or vegetation on the marsh shall be removed or altered without permission of the Architectural Review Board and South Carolina Coastal Council.

(b) No dock, pier, or wharf shall be constructed on the marsh without the approval of the Architectural Review Board. In order to obtain such approval, it will be necessary to submit plans specifying the location, color, height, finish and other details of such proposed facility. The Architectural Review Board shall have the right to require uniformity of design and to require submission of approved designs for docks, piers, or wharfs. The Architectural Review Board has the right to disapprove such plans on any grounds including aesthetic consideration. Any approved dock, pier, or wharf must be well maintained by the Owner and, if not maintained as required, enforcement of this requirement may be enforced as provided herein in cases of violations of these covenants.

Notwithstanding the approval of the Architectural Review Board

- (1) All docks must be of normal elevation with no extension over four (4') feet above the walkway or dock head;
- (2) All lights on docks must be hooded to prevent the shining of lights onto adjacent lots or docks; and
- (3) Permits must be obtained from all requiring governmental agencies.

Section 7.14 Sign Controls. No signs of any character shall be erected on any Lot or displayed to the public on any Lot except "For Sale" sign or signs indicating the name of the contractor or subcontractors during the period of sale or construction only, provided said signs shall not exceed two square feet in size. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor to signs for selling Lots during the development and construction period, which period shall not exceed two (2) years from the date hereof, provided such signs are approved by the Architectural Review Board.

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Section 7.15 Water Systems. No individual water supply system shall be permitted upon any Lot with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing in all respects, including the pump and the covering or screen thereof and method of operation by Architectural Review Board, prior to installation.

Section 7.16 Sewer System. No surface toilets or septic tanks are permitted in the Subdivision. Plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to the central sewer system of the Subdivision.

Section 7.17 Exclusion of Above Ground Utilities. All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit underground and no outside electrical lines shall be placed overhead unless approved by the Architectural Review Board. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Subdivision except those facilities approved by the Architectural Review Board. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Subdivision. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 7.18 Communication System. There shall not be permitted or maintained any type of radio or communications system antenna or satellite disc on any exterior portion of a dwelling or on any Lot.

Section 7.19 Timely Construction Progress. Once construction of improvements on a residence is started on any Lot, the improvements must be substantially completed within twelve (12) months from commencement of construction and all landscaping must be completed within ninety (90) days after completion of the improvements or residence. All construction sites must be maintained in an orderly fashion and all construction debris must be placed in a trash container or removed within forty-eight (48) hours.

Section 7.20 Re-Building Requirement. Any dwelling or out-building on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a natural condition with reasonable promptness, provided, however, that in no event such debris remain longer than three (3) months.

Section 7.21 Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of the Subdivision shall be made on the premises without the prior written approval of the Architectural Review Board nor shall any fill be used to extend any property beyond any boundary line of any waterfront property.

Section 7.22 Replatting of Lots. No Lot shall be subdivided by an Owner, or its boundary lines changed, except as herein provided. The Developer hereby expressly reserves to itself, its successors and assigns, the right to replace any one or more Lots owned by the Developer shown on the plat of said Subdivision in order to create a modified Lot or Lots. The Developer also reserves the right to amend and modify the Subdivision Plat to change road locations and lot configurations prior to transfer of such lots, provided that the number of Lots is not increased from the number shown on the Subdivision Plat. Property lines between Lots may be adjusted and modified with the consent of the Adjacent Owners and the Architectural Review Board.

Section 7.23 Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Lot. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales and lease or management of Lots in the Subdivision. Provided, however, that nothing herein contained shall prevent the Developer from erecting and maintaining sales and marketing signs in Common Easement Areas or on other property owned by Developer.

Section 7.24 Prohibition Against Time-Sharing. No Lot or structure shall be "time shared", as defined by the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. Sections 27-32-10 et seq. (1986 Supp.), as the same may be amended from time to time.

Section 7.25 Temporary Structures. No structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by a contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or permitted to remain on the Lot after completion of construction. No trailer, mobile home, double-wide, park model trailer, motor home, tent, barn, bus, or other similar vehicle, out-building or structure shall be placed on any Lot at any time either temporarily or permanently.

Section 7.26 Mining and Drilling Prohibition. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained, or permitted in the Subdivision.

Section 7.27 Junk or Disabled Vehicles. No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part thereof, shall be permitted to be parked or kept in the Subdivision.

Section 7.28 Storage of Vehicles, Boats, etc. The Association shall have the authority to prohibit or regulate the use or maintenance or storage of motorcycles, campers, trailers, trucks, commercial vehicles, boats or boat trailers in the Subdivision. Campers, trailers, trucks (other than pickup trucks), commercial vehicles or boats shall not be stored on any owners lot except directly under the dwelling itself. The Association shall also have the right to regulate the parking of vehicles on any lot.

Section 7.29 Nuisances. No noxious or offensive activity shall be carried on upon on in any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance. No trash, leaves or rubbish may be burned on any Lot or within the Subdivision nor shall there be maintained anything of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the Subdivision by the Owner thereof.

Section 7.30 Special Hazards. Each Owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Lot, including but not limited to its proximity to any recreational facility or Common Easement Area or the marsh and other bodies of water. Specifically, the Developer does hereby disclaim any and all liability for any property damage or personal injury resulting from erosion along the bank of the marsh, and all ditches, streams, lakes, lagoons or other bodies of water or watercourses located in the Subdivision.

Section 7.31 Perimeter Access. There shall be no access to any Lot on the perimeter of the Subdivision except from designated roads within the Subdivision, provided, however, that Developer reserves the right to construct and operate temporary construction roads during the construction and development period.

Section 7.32 Rental Period. No Owner shall lease or rent any Lot more than three (3) times in any given twelve month period nor shall any single rental be for less than 30 days.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 Enforcement. The Developer, the Association, or any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. In the event that a court of competent jurisdiction shall determine that an Owner has breached the terms of this Declaration, such Owner shall pay for the cost of bringing the enforcement action, including all attorney fees. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of right to do so thereafter. The Developer and the Association, as the case may be, shall have the right to establish, assess, and collect reasonable fines and penalties to violations of this Declaration, which shall be liens against the Lots as provided herein. Such fines shall not exceed \$50.00 per violation per day.

Section 8.2 Severability. Invalidation of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 8.3 Duration. The Covenants and Restrictions of this Declaration shall run with and bind the property constituting the Subdivision, and shall inure to the benefit of and be enforceable by the Developer, the Association, or any Owner for a period of twenty (20) years from the date hereof and thereafter shall continue automatically in effect for additional periods of twenty (20) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Lots.

Section 8.4 Assignment. The Developer shall have the right to assign to any one or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration.

Section 8.5 Amendment.

(a) Amendments by Developer. For a period of two (2) years from the date of recording of this Declaration, Developer may amend this Declaration in any particular by an instrument in writing filed and recorded in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina, all without the approval of any Owner or Mortgagee: (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of

the then existing Owners affected thereby; or (ii) in the event that such amendment would materially and adversely affect the security, title, and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 8.5(a) shall be certified by Developer as having been duly approved by Developer and by such Owners and Mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 8.5(a) and further agrees that if requested to do so by Developer, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision, (A) if such amendment is necessary to bring any provision hereof or thereof into governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender, insurer or purchaser of mortgage loans, including for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, or Federal Housing Administration, to enable to such Lender or purchaser to make or purchase mortgage loans on any Lot, or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots or other improvements subject to this Declaration.

(b) Amendments by Association. Amendments to this Declaration, other than those authorized by Section 8.5(a) above, shall be proposed and adopted in the following manner:

(1) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(2) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least three quarters (3/4) of the total votes in the Association; provided, however, that during any period in which Developer owns a Lot primarily for the purpose of sale, such amendment must be approved by Developer.

(3) The agreement of the required percentage of the Owners and, where required, Developer, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded at such later date as may be specified in the amendment itself.

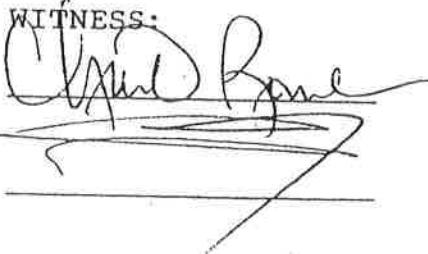
Section 8.6 No Dedication of Common Areas, Etc. Every Common Easement Area, private road and entrance roads or facility, and other amenity within the Subdivision is a private facility or amenity and neither the Developer's recording of any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any said Common Easement Areas, other than as reflected therein. An easement for the use and enjoyment of each of said areas designated as Common Easement Areas is reserved to the Developer, its successors and assigns; to the persons who are, from time to time, members of the Association; to the residents, and to the invitees of all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by the Association, if the Association is the Owner of the facility or Property involved.

Section 8.7 Time is of the Essence. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

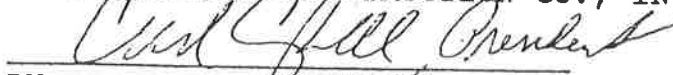
Section 8.8 Rule Against Perpetuities, Etc. The Developer herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

WITNESS the execution hereof this 1st day of April, 1993.

WITNESS:



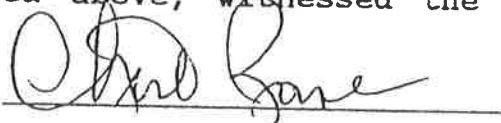
C.R. CAMPBELL CONSTRUCTION CO., INC.



BY: COLIN R. CAMPBELL
ITS: PRESIDENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named C.R. CAMPBELL CONSTRUCTION CO., INC. by Colin R. Campbell, its President, sign, seal and deliver the within Declaration of Covenants and Restrictions and that deponent, with the other witnesses subscribed above, witnessed the execution thereof.



SWORN to before me this 1st
day of August 1993

Notary Public for South Carolina
My Commission Expires: 1-29-96

EXHIBIT "A"
BY-LAWS OF
SIMMONS POINTE II SUBDIVISION

ARTICLE I

MEMBERS

Section 1.1. Definitions. All defined terms used in these By-Laws shall mean and refer to such terms as defined in the Covenants described in Section 2 below, unless otherwise specifically provided herein.

Section 1.2. Membership in the Association. The Members of the Simmons Pointe II Subdivision (hereinafter referred to as "Association") shall be every Owner of the property subject to the provisions of the Declaration of Covenants and Restrictions applicable to Simmons Pointe II Subdivision (hereinafter referred to as the "Covenants" or "Declaration"), as the same may be amended from time to time, all such Covenants having been made by C. R. Campbell Construction Co., Inc., (hereinafter referred to as the "Developer"). Every Owner, including the Developer, shall be a member of the Association, provided, however, that in the case of multiple ownership of any Lot, there shall be a maximum of one Member.

Section 1.3. Voting Rights. All Members of the Association, other than the Developer, shall be entitled to one (1) vote for each Lot, whether improved or unimproved, owned by such Member. The Developer shall have three (3) votes for each Lot, whether improved or unimproved, owned by the Developer. When any property entitling the Owner thereof to membership in the Association is owned of record in the name of a corporation, trust, partnership or two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, or in any other manner of joint or common ownership, one (1) officer, trustee, person or entity shall be designated the Voting Member to bind all the others. Written evidence of such designation in a form satisfactory to the Association shall be delivered to the Secretary of the Association prior to the exercise of a vote by the Voting Member.

~~The Members of the Association shall have the right to vote for the election and removal of Directors and upon such other matters with respect to which a vote of the Members is required under the Covenants or these By-Laws. Members may cast their votes as set forth in the Covenants and these By-Laws.~~

Section 1.4. Power of Referendum. The Members of the Association shall have the power, by referendum, to approve or reject certain actions proposed to be taken by the Association as more particularly set forth in the Covenants and these By-Laws.

Section 1.5. Proxy. All Members may vote and transact business at any meeting of the Association by proxy authorized in writing, provided, however, that proxies shall not be permitted for any action which is subject to a referendum, in which case the votes of all Members polled shall be made by specially provided ballots mailed or delivered to the Association Members.

ARTICLE II

MEETINGS OF MEMBERS

Section 2.1. Annual Meeting. The annual meeting of the Members shall be held on the third Tuesday in November of each year commencing with November, 1994, or at such other time as the Board of Directors shall determine. Such annual meetings shall be held for the purpose of electing Directors of the Association and for the transaction of such other business as may be, pursuant to the Covenants and these By-Laws, properly the subject of action by the Members.

Section 2.2. Special Meetings. Special meetings of the Members may be called by the President, a majority of the Board of Directors or, subsequent to the first annual meeting, Members of the Association holding not less than ten percent (10%) of the votes.

Section 2.3. Place of Meeting. The President or the Board of Directors may designate any location within Charleston County, South Carolina, as the place for any annual or special meeting. If no designation is made or if a special meeting is called by the Members of the Association, the place of meeting shall be the principal office of the Association within Charleston County, South Carolina.

Section 2.4. Notice of Meeting. Unless otherwise provided in the Covenants, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed or delivered not less than ten (10) days or more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Secretary or the person calling the meeting, to each Member of the Association at the address as shown on the records of the Association. If mailed, such notice shall be deemed delivered when deposited with postage prepaid in the U.S. Mail. A Member may, in writing, signed by him, waive notice of any meeting before or after the date of the meeting stated therein. Attendance of a Member at a meeting, in

person or by proxy, shall of itself constitute a waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 2.5. Informal Action by Members. Any action required or permitted by law to be taken at a meeting of the Members of the Association may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by the Members of the Association which hold a majority of the votes, which consent shall be filed with the Secretary of the Association as part of the Association's records.

Section 2.6. Quorum. Unless otherwise provided in the Covenants, the quorum required for any action which is subject to a vote of the Members at an open meeting of the Association shall be as follows: The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast forty (40%) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) percent of the total vote of the membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference herein to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association.

Section 2.7. Manner of Acting. Unless otherwise provided herein or the Covenants, a majority of the votes cast at a duly called meeting of the Association shall be the vote required to adopt and make decisions.

Section 2.8. Conduct of Meetings. The Directors may make such regulations as they deem advisable for any meeting of the Members, including proof of membership in the Association, evidence of the right to vote and the appointment and duties of inspectors of votes. Such regulations shall be binding upon the Association and its Members.

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ARTICLE III

DIRECTORS

Section 3.1. General Powers. The Association shall be governed and the business and affairs of the Association shall be managed by a Board of Directors.

Section 3.2. Number and Tenure. The Board of Directors shall consist of three (3) Members. The Directors shall be elected by the Members at the annual meeting of the Association, except for the initial Board of Directors which shall be appointed by the Developer. Except for the initial Board of Directors, which shall serve until the first annual meeting of the membership, the term of office shall be fixed at two (2) years; provided, however, that each Director shall hold office until his successor is elected or until his death or until he shall resign or be removed from office. The terms of the Directors shall be staggered in order to provide continuity and experience.

Section 3.3. Ex officio Director. The Board of Directors shall designate a director or member of the association to serve as an ex officio member on the Board of Directors of Simmons Pointe Horizontal Property Regime. In addition Simmons Pointe Horizontal Property Regime shall designate a director or member to serve as an ex officio member on the Board of Directors of Simmons Pointe II Property Owners Association.

Section 3.4. Vacancy. Vacancies shall be filled on an interim basis by a majority vote of the Board of Directors. The Director so chosen shall hold office until the next annual election and until his successor is duly elected by the membership of the Association.

Section 3.5. Terms of the Initial Board of Directors. The Declarant shall appoint the initial Board of Directors who shall manage the affairs of the Association until the first annual meeting of the Association is held and new Directors are elected.

Section 3.6. Annual Meetings. Annual meetings of the Board of Directors shall be held immediately following the annual meeting of the Association. The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings of the Board.

Section 3.7. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors by giving notice thereof to the Members of the Board as provided herein.

Section 3.8. Notice. When notice of any meeting of the Board of Directors is required, such notice shall be given at least two (2) days previous to such meeting by written notice delivered personally or sent by mail to each Director at his address as shown on the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited postage prepaid in the U.S. Mail in a sealed envelope properly addressed. Any Director may waive notice of any meeting before or after the time of the meeting stated herein, and attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, or the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically provided by law, the Articles of Incorporation, these Bylaws or the Covenants.

Section 3.9. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board.

Section 3.10. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.11. Compensation. Directors shall not receive any salaries for their services, but by resolution of the Board of Directors, any Director may be reimbursed for his actual expenses incurred in the performance of his duties as a Director. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 3.12. Informal Action by Directors. Any action required or permitted by law to be taken at a meeting of Directors may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by a majority of the Directors, which consent shall be filed with the Secretary of the Association as part of the Association's records.

Section 3.13. Removal of Directors. Any Director may be removed from the Board of Directors, with or without cause, by a two-thirds (2/3) vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created or the vacancy may be filled by the Board of Directors.

ARTICLE IV

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 4.1. Powers. The Board of Directors shall manage and direct the affairs of the Association and may exercise all of the powers of the Association subject only to approval by the Owners, as designated and defined in the Declaration, when such is specifically required by these By-Laws. The Board of Directors shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Declaration or these By-Laws, or as it may deem necessary or appropriate in the exercise of its powers and shall include, without limitation the generality of the foregoing, the following:

- (a) To prepare and adopt a budget, make, levy and collect assessments against members and members' Lots to defray the cost of the Common Areas and facilities of the Subdivision, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;
- (b) To carry out the maintenance, care, upkeep, repair, replacement, operation, surveillance and the management of the Common Areas, services and facilities of the Subdivision wherever the same is required to be done and accomplished by the Association for the benefit of its members;
- (c) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;
- (d) To grant easements on, over or across the Common Properties owned by the Association;
- (e) To make and amend regulations governing the use of the property, real and personal, in the Subdivision so long as such regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Declaration;
- (f) To acquire, operate, lease, manage, mortgage, sell, transfer, and otherwise trade and deal with property, real and personal, including Lots in the Subdivision, as may be necessary or convenient in the operation and management of the Association, except to the extent that the Declaration requires approval from the membership of the Association;
- (g) To enforce by legal means the provisions of the Certificate of Incorporation and By-Laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the property in the Subdivision;

(h) To pay all taxes and assessments which are liens against any part of the Subdivision other than Lots and the appurtenances thereto, and to assess the same against the members and their respective Lots subject to such liens;

(i) To carry insurance for the protection of the Subdivision, the members of the Association, and the Association against casualty, liability and other risks;

(j) To pay all costs of power, water, sewer and other utility services rendered to the Association and not billed to the Owners of the separate Lots; and

(k) 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.

(l) To adopt and publish rules and regulations governing the use of the Common Areas and facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(m) To suspend the voting rights and right to use of the Common Areas and facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(n) To exercise for the Association all powers, duties and authority vested in or delegated to this Association by the Declaration and not reserved to the membership by other provisions of these By-Laws or the Certificate of Incorporation;

(o) To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(p) To employ a manager, a managing agent, an independent contractor, or such other employees or agents as they deem necessary, and to prescribe their duties.

Section 4.2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs, have the same available for inspection at the offices of the Association, and present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in advance in writing by a one-fourth (1/4) majority of the Members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and see that their duties are properly performed;

(c) perform all duties set forth in the Covenants, including without limitation:

(1) fixing the amounts of all assessments as provided in the Covenants;

(2) sending written notices of all assessments to every Owner subject thereto;

(3) in the discretion of the Board, foreclosing the lien against any Lot for which assessments are not paid within thirty (30) days after the due date or bringing an action at law against the Owner personally obligated to pay the same;

(4) issuing, or causing an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive of evidence of such payment;

* (5) { preparing an annual budget for the Association, outlining anticipated receipts and expenses for the following fiscal year;

(6) causing the Common Areas to be maintained, improved or repaired; and

(8) periodically defining a minimum level of services as set forth in the Covenants.

* (d) procure and maintain adequate liability and hazard insurance on property owned or leased by the Association; and

(e) cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate.

Section 4.3. Indemnity. The Association shall indemnify every Director and every officer, their heirs, executors and administrators, against all loss, damages, costs or expenses of any type reasonably incurred by him in connection with any action, suit, or proceeding to which he is made a party by reason of his being or having been a Director or officer of the Association, except as to such matters wherein he shall be finally adjudged liable of gross negligence or willful misconduct. The Board may obtain for the Association Directors and Officers liability insurance coverage in such amounts as the Board deems necessary and appropriate.

ARTICLE V

MERGER

Section 5.1. To the extent and in the manner provided by law, the Association may participate in mergers and consolidation with other nonprofit associations organized for the same purpose, provided, however, that any such merger or consolidation shall require approval by the vote of two-thirds (2/3) of the Members at a meeting duly called for such purpose.

Section 5.2 Upon merger or consolidation of the Association with another association of associations, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Common Areas, together with the covenants and restrictions established upon any other property as one plan. No merger or consolidation shall effect any revocation, change or addition to the Covenants, including, without limitation, the maximum limits on assessments of the Association, or any other matter substantially affecting the interest of Members of the Association.

MORTGAGES

Section 6.1. To the extent provided by law and by the Covenants, the Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions.

ARTICLE VII

OFFICERS

Section 7.1. Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and to perform the duties prescribed in these By-laws and prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person except the offices of President and Secretary. The President shall be a Director of the Association. Other officers may be, but need not be, Directors of the Association.

Section 7.2. Election, Term of Office and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 7.3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 7.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors or these By-Laws.

Section 7.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Interim Officers. The initial Board of Directors appointed by the Declarant shall elect interim or acting officers to serve until the first annual meeting of the Board of Directors.

Section 7.7. President. The President shall be the chief executive officer of the Association. He shall execute on behalf of the Association all instruments requiring such execution except to the extent the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent. The President shall preside at all meetings of the Association and the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of President of a property owners association, including the power to appoint committees.

Section 7.8. Vice President. The Vice President shall act under the direction of the President and shall perform such duties as may be imposed by the Board. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President.

Section 7.9. Secretary. The Secretary shall act under the direction of the President. Subject to the direction of the President, the Secretary shall attend all meetings of the Board of Directors and meetings of the Association and record the proceedings. He shall give, or cause to be given, notice of all meetings of the Association and of the Board of Directors as required by these By-Laws, and shall perform such other duties as may be prescribed by the President or the Board of Directors.

Section 7.10. Treasurer. The Treasurer shall act under the direction of the President and shall keep or be responsible for keeping the accounts of the Association. He shall disburse the funds of the Association as may be ordered by the President or the Board of Directors and shall render on request or at the regular meetings of the Board of Directors an account of all his transactions as Treasurer and of the financial condition of the Association. The Treasurer shall be responsible for mailing all assessment notices to Members of the Association.

ARTICLE VIII

COMMITTEES

Section 8.1. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of one or more Directors, which committees, to the extent provided in the resolution, shall have and exercise the authority of the Board of Directors in the management of the affairs of the Association; provided, however, that no such committee shall have the authority of the Board of Directors as to the following matters: (a) the dissolution, merger or consolidation of the Association; (b) the amendment of the Articles of Incorporation of the Association; (c) the sale, lease or exchange of all or substantially all of the property of the Association; (d) the designation of any such committee or the filling of vacancies in the Board of Directors or in any such committee; (e) the amendment or repeal of these By-Laws or the adoption of new By-Laws; (f) the amendment or repeal of any resolution of the Board of Directors which by its term shall not be so amendable or repealable; and (g) the declaration of dividends or other corporate distributions or issuance of stock.

Section 8.2. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the Association may be designated by a resolution adopted by the Board of Directors. Such committees may include or be entirely composed of Members or other persons who are not Directors and shall perform such duties and have such powers as may be provided in the resolution.

Section 8.3. Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

ARTICLE IX
INSPECTION

Section 9.1. The books and records of the Association shall at all times be subject to inspection by any Member during reasonable business hours. The Covenants, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association.

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ARTICLE X

PROXIES

Section 10.1. Proxy Allowed. Each Member entitled to vote may vote in person or by proxy at any meeting of the Association.

Section 10.2. Form and Effect. Each proxy shall be executed in writing by the Member or by his duly authorized attorney-in-fact, shall state the meeting for which such proxy is given and shall be filed with the Secretary; provided, however, that proxies shall not be permitted for any action which is subject to a referendum. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date.

ARTICLE XI

CONSTRUCTION

Section 11.1. The Covenants, By-Laws and Articles of Incorporation shall be read and construed together. In the event of a conflict between the Covenants and the Articles of Incorporation or the By-Laws, the Covenants shall control; and in the case of any conflict between the Articles of Incorporation and the By-Laws that the Covenants do not resolve, the Articles of Incorporation shall control.

ARTICLE XII

ASSESSMENTS

Section 12.1. As more fully provided in the Covenants, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which such assessments are made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date a penalty in an amount to be determined annually by the Board of Directors and consistently applied shall be added to such assessment, and such assessment shall, unless waived by the Board of Directors, bear interest from the due date at the rate provided in Section 6.8 of the Covenants. The Association may further bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by suspension from or nonuse of the Common Areas or abandonment of the property owned by him.

ARTICLE XIII
CORPORATE SEAL

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Section 13.1. The Association shall have a seal in circular form having within its circumference the words: On The Harbor Property Owners Association, Inc., State of South Carolina.

ARTICLE XIV
PARLIAMENTARY RULES

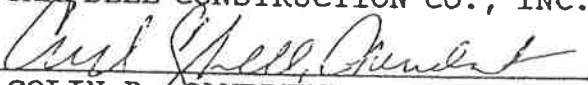
Section 14.1. Roberts Rules of Order (Latest Edition) shall govern the conduct of the Association meetings when not in conflict with these By-Laws, the Articles of Incorporation, the Declaration or the statutes of the State of South Carolina.

ARTICLE XV
AMENDMENTS

Section 15.1. These By-Laws may be altered, amended, or repealed by, and new By-Laws may be adopted by a majority vote of the Association.

IN WITNESS WHEREOF C.R. Campbell Construction Co., Inc. has caused these presents to be executed in its name by Colin R. Campbell, its President, and its seal to be hereto affixed this 4th day of November in the year of our Lord one thousand nine hundred and ninety-three, and in the two hundred and eighteenth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:


C.R. CAMPBELL CONSTRUCTION CO., INC.

BY: COLIN R. CAMPBELL
ITS: PRESIDENT