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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR SIMMONS POINTE II SUBDIVISION
and
FIRST AMENDMENT TO BY-LAWS OF SIMMONS POINTE II SUBDIVISION**

WHEREAS, this is the Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Simmons Pointe II Subdivision and First Amendment to By-Laws of Simmons Pointe II Subdivision (“Amendment”).

WHEREAS, the Simmons Pointe II Property Owners Association, Inc. (“Association”) is constituted to provide and charged with the operation, care, upkeep and maintenance of the Association and its property, and is also responsible for exercising for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by the law or provisions of the Declaration of Covenants, Conditions, Restrictions and Easements for Simmons Pointe II Subdivision (“Declaration”) and the By-Laws of Simmons Pointe II Subdivision (“Bylaws”) recorded November 5, 1993 in Book K234 at Page 388 with the Register of Deeds for Charleston County, South Carolina. The Declaration was amended by that Addendum to Declaration of Covenants, Conditions, Restrictions and Easements for Simmons Pointe II Subdivision recorded May 3, 1994, in Book L242 at Page 420, and that Amendment recorded June 15, 1994, in Book J244 at Page 500. The Declaration as amended by the foregoing hereinafter referred to collectively as “Declaration”. The following is also pertinent: Simmons Pointe II Rules & Regulations recorded January 10, 2019, in Book 0771 at Page 775 with the Charleston County Register of Deeds. The Articles of Incorporation, Declaration, Bylaws, the Rules & Regulations, and all promulgated rules, regulations, guidelines, policies and the like, as each may be amended or supplemented, hereinafter collectively referred to as the “Governing Documents”.

WHEREAS, the Association has determined it is in its best interests to amend the Declaration and Bylaws.

WHEREAS, the Board passed a resolution approving the proposed amendment and its submission to the membership for approval.

WHEREAS, Section 8.5(b) of Article VIII of the Declaration provides that the Declaration may be amended upon the approval “of Owners holding at least three quarters (3/4) of the total votes in the Association.”

WHEREAS, Article XV of the Bylaws states that the Bylaws may be amended “by a majority vote of the Association.”

WHEREAS, Section 2.6 of Article II of the Bylaws provides that a "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."

WHEREAS, the Declaration and Bylaws are silent as to voting by written consent or electronic ballot by Members in lieu of a meeting and therefore, the South Carolina Nonprofit Corporation Act, 33-31-101, et seq., South Carolina Code of Laws, as amended, controls. The Act provides the following pertinent sections. Section 33-31-708 permits action without a meeting and by written ballot if the "corporation delivers a written . . . ballot to every member entitled to vote on the matter." Subsection (b) states the written ballot shall: "(1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action." Subsection (c) provides that "[a]pproval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot." Subsection (d) further requires that solicitations for votes by written ballot shall (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted.

WHEREAS, by written/electronic ballot in lieu of a meeting, this Amendment was put to a vote of the Owners/Members. The required quorum was present and this Amendment was approved by the requisite number of the Owners/Members on FEBRUARY 15, 2023, and the vote was certified as having been duly adopted in Exhibit A, attached hereto and incorporated herein.

NOW, THEREFORE, in order to protect and preserve a safe, secure, valued and attractive community, to maintain good order and property values, and to promote the common good, the Declaration and the Bylaws, and any prior amendments to either, are hereby amended as follows.

1. The foregoing recitals are and shall be deemed material and operative provisions of this Amendment and not mere recitals, and are fully incorporated herein by this reference.

2. All capitalized terms used herein shall have the same meaning ascribed to them in the Declaration and Bylaws.

Amendments to Declaration

3. Section 3.2 of Article III of the Declaration is hereby amended by the deletion of the language of such section and its replacement in its entirety with the following new language, in bold:

The Board shall have the authority to make, modify, repeal and enforce rules, regulations, policies, guidelines and the like (collectively, "Rules") concerning the use and enjoyment of, and conduct on, the Common Easement Areas, Amenities,

Lots and Subdivision and for the use and enjoyment of the Association or common services (including utilities), including the establishment of suspensions, sanctions, penalties and fines.

4. Subsection (b) of Section 5.3 of Article VI of the Declaration is hereby amended by the deletion of the last sentence of such subsection and its replacement in its entirety with the following new language, in bold:

In addition to such cost being added to the assessment and becoming a lien against such Lot, such Owner shall also be responsible for all interest, charges and costs (including, without limitation, reasonable attorney's and paralegal fees and expenses) for any enforcement, collection or other actions of the Association, whether or not suit is filed. Such foregoing sums shall be also be added to the assessment and become a lien against such Lot. Further, all such foregoing sums shall be collectible in the same manner as an Assessment.

5. Section 8.1 of Article VIII of the Declaration is hereby amended by the deletion of the heading and language of such section and its replacement in its entirety with the following new heading and language, in bold:

Authority and Enforcement. The Board shall have the authority to make, modify, repeal and enforce reasonable Rules concerning the use and enjoyment of, and conduct on, the Common Easement Areas, Amenities, Lots and Subdivision and for the use and enjoyment of the Association or common services, including the establishment of suspensions, sanctions, penalties and fines. Such Rules shall be deemed to be reasonable and enforceable so long as they bear any relationship to the safety, health, happiness and enjoyment of the Owners, and in furtherance of a plan to provide for the congenial occupation and use of the Common Easement Areas, Amenities, Lots and Subdivision, to promote and protect the cooperative aspects of ownership, the value of the Common Easement Areas, Amenities, Lots and Subdivision, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, rules, policies, liens and charges now or hereafter imposed by the Articles of Incorporation, Declaration, Bylaws, Rules & Regulations, and all promulgated rules, regulations, guidelines, policies and the like, as each may be amended or supplemented, hereinafter collectively referred to as the "Governing Documents".

Upon a violation of the Governing Documents, including without limitation, the failure to timely pay any assessment, the Board shall have the power, in its sole discretion, (a) to impose reasonable monetary fines; (b) to suspend, in whole or in part, the right to use of and/or receipt of any of the Association services, common services, Common Easement Areas and Amenities (including, without limitation, the swimming pool, tennis, Architectural Review Board services, landscaping services,

provision of water, sewer and other utilities); provided, however, an Owner's access, ingress and egress to his Lot shall not be suspended thereby; and/or (c) to suspend the right to vote. The amount, form and manner of fines and penalties may be determined by the Board, from time to time and in its sole discretion, except that any suspension of rights under (b) shall continue until any sum due is paid in full and/or until the violation is cured (as determined by the Board in its sole discretion). The Board shall have the right to charge a fine or penalty for each violation, with repeat and continuing violations subject to additional fines and penalties as determined by the Board in its sole discretion, including without limitation, a daily fine until such time as the violation is cured or removed. The Owner shall be responsible for any fine, penalty and/or sanction for any violation caused by or arising out of an act or omission related to the Lot, or to the Owner, tenant, occupant or resident, or any of their family, residents, tenants, occupants, guests, invitees, licensees or any person permitted by any of them to be on the Property. An Owner shall be notified of a violation by written notice informing the Owner of the date and nature of the violation, how to cure or abate the violation, the deadline for the same, and the amount/manner of the fine, sanction and/or penalty which may be imposed. Fines, penalties and/or sanctions shall also be issued by written notice and include the date and nature of the violation, how to cure or abate the violation, if applicable, and the amount/manner of the fine, sanction and/or penalty. Fines shall be due and payable upon receipt, or as may otherwise be determined by the Board, in its sole discretion. Unpaid fines shall bear interest at eighteen percent (18%) per annum, or the maximum permitted by law, whichever is greater, from the due date until paid in full, and shall be deemed an assessment, a lien and the personal obligation of the applicable Owner, and shall be collectible in the same manner as an assessment. Except with respect to the failure to pay any assessment, an Owner shall have the right to appeal any violation. Any such appeal must be in writing and must be submitted to the Board within fourteen (14) days of the date of the issuance of the first notice of the violation. The Board will consider all timely appeals at its next regularly scheduled meeting, or early as may be determined by the Board, in its sole discretion. The Board shall issue a decision thereon in writing to the appealing Owner thereafter and its decision on such appeal shall be final.

In addition, the Board shall have: the right and authority, but not the obligation, to exercise self-help to enforce the Governing Documents and/or cure violations; the right to enjoin any violation by suit at law or in equity; the right to recover monetary damages; and/or the right to all or some of the foregoing, all without the necessity of the prior compliance with the procedure above.

Nothing herein shall be construed to prevent the Association from pursuing any other remedy under the Governing Documents or applicable law for violations of or to enforce the Governing Documents, or from combining a fine and/or sanction with any other remedy or requirement to redress any violation or enforcement to the extent permitted by the law. Failure by the Association, or any Owner, to enforce any covenant, condition, restriction or easement shall in no event be deemed a waiver of the right to do so thereafter. For any violation, enforcement or breach of

the Governing Documents, including, without limitation, the failure to timely pay any assessment or charge, or self-help, abatement or cure by the Association, the Association shall be entitled to recover, whether or not suit is filed, all of its costs and expenses associated with the violation, breach, enforcement and/or abatement/cure, including, without limitation, collection costs, late charges, interest and attorneys', paralegal and legal fees and costs, from the violating or breaching Owner, and all such foregoing sums shall be deemed a lien against the Lot, the personal obligation of the Owner, an assessment and collectible as such.

Amendments to Bylaws

6. Subsection (e) of Section 4.1 of Article IV of the Bylaws is hereby amended by the deletion of the language of such section and its replacement in its entirety with the following new language, in bold:

(e) To make, modify, repeal and enforce reasonable rules, regulations, policies, guidelines and the like (collectively, "Rules") concerning the use and enjoyment of, and conduct on, the Common Easement Areas, Amenities, Lots and Subdivision and for the common services, including the establishment of suspensions, sanctions, penalties and fines;

7. Subsection (l) of Section 4.1 of Article IV of the Bylaws is hereby amended by the deletion of the language of such section and its replacement in its entirety with the following new language, in bold:

(l) Reserved;

8. Subsection (m) of Section 4.1 of Article IV of the Bylaws is hereby amended by the deletion of the language of such section and its replacement in its entirety with the following new language, in bold:

(m) To suspend the right to vote and the right to use of and/or receipt of any of the Association or common services, and/or the use and enjoyment of the Common Easement Areas and Amenities during any period in which such member shall be in default in the payment of any assessment or charge levied by the Association. Such rights may also be suspended upon a violation by a member as provided in the Declaration.

9. Except as expressly modified by this Amendment, the Declaration and Bylaws shall remain in full force and effect. In the event of a conflict between the Declaration and Bylaws and this Amendment, this Amendment shall control.

Signatures on next page.

WITNESS our hands and seals this 31 day of JULY, 2023.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SIMMONS POINTE II PROPERTY
OWNERS ASSOCIATION, INC.

[Signature]
Witness #1

[Signature]
By: PRESIDENT
Its: Authorized Board Member

[Signature]
Witness #2 / Notary Public

[Signature]
By:
Its: Authorized Board Member

[Signature]
Witness #1
[Signature]
Witness #2 / Notary Public

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named, BARBARA KICHARSKI, Authorized Board Member, and DEBORAH REINHOLD, Authorized Board Member, of Simmons Pointe II Property Owners Association, Inc., sign, seal, and as his/her act and deed, deliver the within the Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Simmons Pointe II Subdivision and First Amendment to By-Laws of Simmons Pointe II Subdivision for the uses and purpose therein mentioned, that s/he is not a party to or beneficiary of the transaction, and that s/he with the other witness witnessed the execution thereof.

[Signature]
Witness #1

SWORN and subscribed to before me this
31st day of July, 2023.

[Signature]
Notary Public for South Carolina
Printed Name of Notary: Dawn M. Lord
My commission expires: 2-24-2032

EXHIBIT A

CERTIFICATION

Personally appeared before me, the undersigned authorized Board members of Simmons Pointe II Property Owners Association, Inc., who, being duly sworn, allege and state as follows:

1. I/we am/are duly authorized Board members of Simmons Pointe II Property Owners Association, Inc., am/are over eighteen (18) years of age, competent and make this Affidavit on personal knowledge.

2. Via written/electronic ballot in lieu of a meeting, the foregoing Second Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Simmons Pointe II Subdivision and First Amendment to By-Laws of Simmons Pointe II Subdivision, to which this Exhibit A is attached, was put to a vote of the Owners/Members. The required quorum was present and such Amendment was approved by the requisite number of Owners/Members on FEB 15, 2023.

3. I/we have certified, and am/are hereby certifying, the vote of the membership of Simmons Pointe II Property Owners Association, Inc., I/we certify the vote to have been as stated herein, and I/we state that the agreement of the required parties was lawfully obtained.

FURTHER THE AFFIANT SAYETH NOT.

Barbara Kucharski - PRESIDE
Authorized Board Member

Deborah Reinhold - vice-pres.
Authorized Board Member

SWORN and subscribed to before me
this 31st day of July, 2023.

Dawn M. Lord
Notary Public for South Carolina
Printed Name of Notary: Dawn M. Lord
My Commission Expires: 2-24-2032

2/24/2032

RECORDER'S PAGE



NOTE: This page **MUST** remain with the original document

Filed By:

SIMONS & DEAN ATTY AT LAW
 147 WAPPOO CREEK DR
 STE 604
 CHARLESTON SC 29412 (MAILBACK)

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RECIPIENT:

NA

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