

BKA 151PG796

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

MASTER DEED  
FOR  
SIMMONS POINTE  
HORIZONTAL PROPERTY REGIME

KNOW ALL MEN BY THESE PRESENTS that this Deed is made on the date hereinafter set forth by Dailey and Associates, Inc. hereinafter called "Developer", a corporation organized and existing under and by virtue of the laws of the State of South Carolina;

W I T N E S S E T H

WHEREAS, Developer is the sole owner in fee simple of real property and buildings and improvements thereon which property is located in Charleston County, South Carolina, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

WHEREAS, Developer desires to submit the property to the provisions of the Horizontal Property Act of South Carolina, South Carolina Code of Laws 1976, §27-31-10, et seq., (hereinafter sometimes referred to as the "Act") thereby creating a Horizontal Property Regime known as Simmons Pointe Horizontal Property Regime; and

WHEREAS, Developer desires to publish a plan for the individual ownership of the several Condominium Units and the

ownership of individual interests in that real property hereinafter defined as "Common Area and Facilities" and "Limited Common Area and Facilities"; and

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

NOW THEREFORE, Developer hereby submits the Property to the provisions of the Horizontal Property Act of South Carolina, South Carolina Code of Laws 1976, creating a Horizontal Property Regime known as Simmons Pointe Horizontal Property Regime, and hereby publishes its plans as to the division of the property, the imposition of covenants, conditions, restrictions, liens and charges thereon and the individual ownership thereof. Developer hereby specifies that this Deed shall constitute covenants, conditions and restrictions which shall run with the property and shall bind and inure to the benefit of Developer, its successors and assigns, and all subsequent owners of any interest in the property, their grantees, successors, heirs, executors, administrators, devisees or assigns.

#### ARTICLE I

##### DEFINITIONS

Unless defined herein or unless the context requires otherwise, the words defined in §27-31-20 of the Act, South

BKA 151PG798

Carolina Code of Laws, 1976, when used in this Deed or any amendment hereto shall have the meaning therein provided. The following words when used in this deed or any amendment thereto, unless the context requires otherwise, shall have the following meanings:

Section 1.1 Act. "Act" means the Horizontal Property Act of South Carolina, South Carolina Code of Laws 1976, §27-31-10, et seq., and as may be further amended from time to time.

Section 1.2 Assessment. "Assessment" means an owner's share of the common expenses and his contribution to the Reserve Fund assessed against such owner and his Unit from time to time by the Homeowners Association in the manner hereinafter provided.

Section 1.3 Home Owners Association. "Home Owners Association" means the Simmons Point Homeowners Association, Inc., hereinafter called the Co-Owners Council, Council, Association, Corporation, or Home Owners Association being an organization of and limited to Owners of the condominium units located at Simmons Pointe Horizontal Property Regime at Mount Pleasant, Charleston County, South Carolina, in the form of a South Carolina corporation in which each Owner shall own stock.

Section 1.4 Simmons Pointe. "Simmons Pointe" shall mean and refer to that certain real property now owned by Developer together with improvements described in attached

Exhibit "A" and such additions thereto as may from time to time be designated by Developer.

Section 1.5 Board of Directors. "Board of Directors" or "Board" means the Board of Directors of the Homeowners Association, and "director" or "directors" means a member or members of the Board.

Section 1.6 Common Area and Facilities. "Common Area and Facilities" and "Common Elements" means and includes all of the Condominium Property, after excluding the Condominium Units and Limited Common Area and Facilities. "Common Elements" shall have the same meaning as "General Common Elements" under the Act.

Section 1.8 Common Expenses. "Common Expenses" means and includes (a) all expenses incident to the administration, operation, maintenance, repair and replacement of the Common Area and Facilities and the Limited Common Area and Facilities, after excluding therefrom such expenses which are the responsibility of the Unit Owner as set forth in Section 2 of Article VIII hereof; (b) expenses determined by the Council to be Common Expenses and which are lawfully assessed against Unit Owners, and (c) expenses declared to be Common Expenses by the Horizontal Property Act or the Condominium Documents.

Section 1.9 Condominium Documents. "Condominium Documents" means and includes the Master Deed for Simmons Pointe Horizontal Property Regime, the By-Laws of the Council

(Exhibit "D"), and Rules and Regulations (Exhibit "E"), all as amended from time to time.

Section 1.10 Condominium Property. "Condominium Property" or "Property" means and includes all property submitted to the Act by this Deed and such additional property as may in the future be submitted to the Horizontal Property Regime hereby created. ALL ACTIVITIES ON OR OVER AND ALL USES OF THE SUBMERGED LAND OR OTHER CRITICAL AREAS ARE SUBJECT TO THE JURISDICTION OF THE COASTAL COUNCIL, INCLUDING, BUT NOT LIMITED TO, THE REQUIREMENT THAT ANY ACTIVITY OR USE MUST BE AUTHORIZED BY THE SOUTH CAROLINA COASTAL COUNCIL. ANY OWNER IS LIABLE TO THE EXTENT OF HIS OWNERSHIP FOR ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY SUBMERGED LAND, COASTAL WATERS, OR ANY OTHER CRITICAL AREA.

Section 1.11 Deed. "Deed" shall mean the Master Deed for Simmons Point Horizontal Property Regime.

Section 1.12 Developer. "Developer" shall mean and refer to Dailey and Associates, Inc., a corporation organized under the laws of the State of South Carolina, its successors and assigns.

Section 1.13 Limited Common Area and Facilities. "Limited Common Area and Facilities" includes those areas so designated in Exhibit "D" attached hereto and incorporated herein by this reference, and related drawings. Covered

parking areas including areas under buildings are assigned by the Board and shall be considered Limited Common Area. Porches, balconies and stoops are part of the Limited Common Area as shall be maintained by the Association but their use shall be limited to the owner and guest or occupant of the unit to which they are attached. Elevators shall also be considered Limited Common Area maintained by the Association. Elevator use shall be limited to the owners, guests and occupants of the units they serve. If in the Developer's discretion, ten (10) detached single family lots are added to the Regime, the yards shall be maintained by the Association, but their use shall be restricted to the owners, guests or occupants of such single family detached dwelling.

Section 1.14 Mortgage. "Mortgage" shall include mortgages, security agreements and financing statements and any and all other similar instruments used to secure the payment of an indebtedness. Purchase money mortgage, purchase money mortgagee, first mortgage, first mortgagee, or purchase money lien shall refer to a first mortgage made for the purpose of purchasing a unit or units together with the proportionate share of the common areas and limited common areas, and shall also specifically include any mortgage guaranteed by the Veterans Administration, guaranteed by the Federal Housing Administration, or any FNMA mortgage.

Section 1.15 Owner. "Owner", "Co-Owner", "Unit Owner", or "Condominium Owner" means the record owner, whether one or

more persons or corporations, of fee simple title or leasehold estate in and to any Condominium Unit excluding, however, those persons having such interest merely as security for the performance of an obligation.

Section 1.16 Occupant. "Occupant" means any person, firm or corporation having a leasehold interest or estate in a Condominium Unit.

Section 1.17 Percentage Interest. "Percentage Interest" means the percentage of undivided interest each Unit Owner owns as tenant in common in the Limited Common Areas, Common Area, and Facilities.

Section 1.18 Unit Plans. "Unit Plans" means and includes the architectural plans of the Units erected and to be erected on the Condominium Property which plans were prepared by Talridge Lewis, Registered Architect, entitled Simmons Pointe Horizontal Property Regime, plus site plan, which will be filed of record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina, simultaneously with the filing for record of this Deed, designated as Exhibit "C" and incorporated herein by reference. Developer reserves the right to construct additional condominium units on adjacent property (flats, townhouses, and detached single family residences) and submit them to the Regime.

Section 1.19 Survey. "Survey Plat" or "Survey" means and includes the survey of the Condominium Property, Units, and

Limited Common Area and Facilities by Enwright and Associates which will be filed for record in the office of the Register of Mesne Conveyances for Charleston County, South Carolina, simultaneously with the filing for record of this deed. Developer reserves the right to add additional tracts to the Regime.

Section 1.20 Trustee "Trustee" means the financial institution, if any, selected by Developer or the Association to hold certain funds of the Council.

Section 1.21 Property. "Property" means and include the land, the buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto.

Section 1.22 Condominium Unit Boundaries. "Condominium Unit Boundaries" means each apartment shall include the elements of the Regime which are not owned in common with the owners of other apartments. The boundary lines of each apartment are the interior of the partitions of its perimeter walls, load-bearing walls, floors, ceilings, windows and window frames, doors and door frames and trim and any attic space defined as above in applicable units, and includes both the portions of the building so described and the air space so encompassed.

Section 1.23 Unit. "Condominium Unit" or "Unit" means a part of the property intended for any type of independent use



BK3 L5 6RG0-04  
including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building, and with a direct exit to a public street or highway, or to a common area or limited common area leading to such a street or highway. The description of the individual units is more particularly described in Exhibit attached hereto and incorporated herein by reference.

Section 1.24 Reserve Fund. "Reserve Fund" shall mean a fund for maintenance, operation, repair and replacement of common elements and limited common elements as well as special and emergency assessments necessary for the above purposes.

## ARTICLE II

### SIMMONS POINTE HOME OWNERS ASSOCIATION, INC.

Section 2.1 Responsibility for Administration. The administration of the Simmons Pointe Horizontal Property Regime shall be the responsibility of a council of co-owners organized as a South Carolina corporation known as Simmons Pointe Homeowners Association, Inc. (hereinafter called the "Council"), having its principal office in Mount Pleasant, Charleston County, South Carolina, which shall act by and on behalf of the co-owners of the Condominium Units in the Regime in accordance with this instrument, the By-laws of the Association annexed hereto as Exhibit "D" and in accordance with the Act as amended. The Council is hereby vested with the rights, powers, privileges and duties necessary or incidental

to the proper administration of the Regime as contemplated by the provisions of this deed, as well as the provisions of the Act and the By-Laws of the Council as they may from time to time be amended.

Section 2.2 Membership. The owner or co-owners of a Condominium Unit shall automatically, upon becoming the owner thereof, be Stockholders in the council and shall retain ownership therein until such time as his, hers or its unit ownership ceases for any reason, at which time such stock ownership shall automatically cease. Other than as an incident to a lawful transfer of the title to a Condominium Unit, neither stock in the co-owners council nor any share in the assets thereof shall be transferable, and any attempted transfer shall be null and void.

Section 2.3 Management Agreements. The council may employ a managing agent, management company or manager to whom it may delegate such duties and responsibilities as it may deem appropriate. The Board of Directors shall have the authority to formulate the terms and conditions of any Management Agreement and all matters related thereto. The council shall be further authorized to enter into such agreements as may be deemed necessary or desirable for the administration and operation of the development. Each owner by acquiring or holding an interest in any Condominium Unit thereby agrees to be bound by the terms and conditions of such agreements entered

by the Board of Directors on behalf of the council. A copy of all such agreements shall be made available at the office of the council for review by each owner. Provided, however, any management agreement entered during the period the Board of Directors is controlled by the Developer may be abrogated by the Homeowner's Council upon ninety (90) days notice without penalty. Any subsequent agreement must be acceptable by the Homeowner's Council for cause upon thirty (30) days written notice to the managing agent, management company or manager. Such agreement must be for a period of not less than one (1) year nor more than three (3) years and must be renewable upon the mutual consent of the Homeowner's Council and the managing agent, management company or manager.

Section 2.4 Regulations. Reasonable regulations concerning the use of the property may be made and amended from time to time by the co-owners council through its Board of Directors. A copy of such regulations and amendments hereto shall be furnished by the Board of Directors to all co-owners upon request.

### ARTICLE III

#### PROPERTY RIGHTS

Section 3.1 Development Plan. The Developer has constructed or caused to be constructed on the property residential buildings containing ten (10) Condominium Units.

An additional eighty-eight (88) flat and townhouse type units and twelve (12) detached single family home units may be added to the Regime in the future in the sole discretion of the Developer. The buildings have been constructed substantially in accordance with the Unit Plans and Survey, all of which are contained in Exhibit "A" attached hereto and incorporated herein by this reference, and show the buildings, number and identity of Units and the materials of which Units are to be constructed. Each building shall contain the number of units designated in Exhibit "B" units containing the approximate square footage as set forth in Exhibit "G". Each building is of an architectural style as described in the description of units as set forth in Exhibit "C" which is hereby incorporated by reference or if not described will be compatible with such architecture.

Section 3.2 Units. Each Unit, together with its stock and Percentage Interest in the Common Area and Facilities, shall for all purposes constitute a separate parcel of real property which, subject to the provisions of this Deed, may be owned in fee simple and which may be conveyed, transferred, leased and encumbered in the same manner as any other real property. Each owner, subject to the provisions of the Act and this Deed, shall be entitled to the exclusive ownership and possession of his Unit.

Section 3.3 Common Area and Facilities.

(a) Percentage Interest. The Unit Owners shall own the Common Area and Facilities and Limited Common Area and Facilities as tenants in common with each Unit having appurtenant thereto the Percentage Interest in the Common Area and Facilities and Limited Common Area and Facilities as set forth in Exhibit "C" attached hereto; provided, however, the use of the Limited Common Area and Facilities shall be restricted as set forth in section 3.3(e) of this Article III.

(b) Inseparability of Percentage Interests. The percentage interest in the Common Area and Facilities and the Limited Common Area and Facilities and stock in the Home Owners Association cannot be separated from the Unit to which it appertains and shall be automatically conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the deed or other instruments.

(c) No Partition. The Common Area and Facilities and Limited Common Area and Facilities shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Act, the By-Laws and this Deed.

(d) Use of Common Area and Facilities. The Unit Owners may use the Common Area and Facilities in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. The Board of Directors shall, if any question arises, determine the purpose for which a part of the Common Area and

Facilities is intended to be used. The Board shall have the right to promulgate rules and regulations limiting the use of the Common Area and Facilities to Unit Owners and their guests and tenants as well as to provide for the exclusive use of a part of the Common Area and Facilities by a Unit Owner and his guests for special occasions which exclusive use may be conditioned, among other things, upon the payment of a fee. Any Owner may delegate, in accordance with the provisions of this Deed and the By-Laws, his right to use the Common Area and Facilities to the immediate members of his family, and a limited number of guests accompanying him, or to his tenants who reside in his Condominium Unit.

(e) Limited Common Area and Facilities. Ownership of each Condominium Unit shall entitle the Owner or Owners thereof to the use of the Limited Common Area and Facilities adjacent and appurtenant to such Unit and so designated in Exhibit "B"; which exclusive use may be delegated by such Owner to the immediate members of his family, and a limited number of guests accompanying him, or to his tenants who reside in his Condominium Unit.

#### ARTICLE IV

##### ASSESSMENTS

Section 4.1 Creation of Lien and Personal Obligation for Assessments. Each Condominium Unit is and shall be subject

to a lien and permanent charge in favor of the Homeowners Association for the annual and special Assessments set forth in Sections 2 and 3 of this Article IV. Each Assessment together with interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the Condominium Unit against which it relates and shall also be the joint and several personal obligation of each Owner of such Condominium Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner acquiring or holding an interest in any Condominium Unit thereby covenants to pay such amount to the Homeowners Association when the same shall become due. The purchaser of a Condominium Unit at a judicial or foreclosure sale or by deed in lieu of foreclosure shall be liable only for the Assessments coming due after the date of such sale.

Section 4.2 Annual Assessments. No later than August 1 of each calendar year, the Board of Directors shall set the annual Assessments by estimating the Common Expenses and Reserve Fund Requirements to be incurred during the immediately succeeding calendar year and shall prorate such Common Expenses and Reserve Fund Requirements among the Owners of the Condominium Units according to their respective Percentage Interest and shall give written notice to each Unit Owner of the annual Assessment fixed against his Unit for such

immediately succeeding calendar year. A copy of the new budget will be mailed to each owner prior to September 1. The annual Assessments levied by the Homeowners Association shall be collected by the Treasurer as provided in Section 4.4 of this Article IV.

The annual Assessments shall not be used to pay for the following:

- (a) Casualty insurance of individual Owners on their possessions within the Units and liability insurance of such Owners insuring themselves and their families individually, which shall be the sole responsibility of such Owners;
- (b) Telephone, cable service, gas, or electrical utility charges for each Unit which shall also be the sole responsibility of the Owners of such Units;
- (c) Ad valorem taxes assessed against Unit Owners;
- (d) Private Mortgage Insurance.

Developer anticipates that ad valorem taxes and other governmental assessments, if any, upon the property will be assessed by the taxing authority upon the Unit Owners, and that



BK1 151PG812

each assessment will include the assessed value of the Condominium Unit and of the undivided interest of the Unit Owner in the Common Area and Facilities and the Limited Common Area and Facilities. Any such taxes and governmental assessments upon the property which are not so assessed shall be included in the Homeowners Association's budget as a recurring expense and shall be paid by the Homeowners Association as a Common Expense. Each Unit Owner is responsible for making his own return of taxes and such return shall include such Owner's undivided interest in the Common Area and Facilities and Limited Common Area and Facilities as such undivided interest is determined by law for purposes of returning taxes. If no provision is made by law or the taxing authorities for the determination of an Owner's share of the undivided interest in the Common Area and Facilities and Limited Common Area and Facilities, each Owner shall return that percentage of the undivided interest in the Common Area and Facilities and Limited Common Area and Facilities attributable to his Unit under Exhibit "A". In the event the Board of Directors shall determine that the annual budget is insufficient to defray all common expenses and Reserve Fund requirements the Board of Directors is hereby authorized to make such supplemental assessments as may be required to cover all costs of management and operation of the Regime and Reserve Fund requirements.

Section 4.3 Special Assessments. In addition to the annual Assessments, the Homeowners Association may levy in any calendar year, special assessments for the purpose of supplementing the annual Assessments and Reserve Fund if the same are inadequate to pay the Common Expenses and of defraying, in whole or in part, the cost of any construction or reconstruction, repair, maintenance, or replacement of the Limited Common Area and Facilities, and/or the Common Area and Facilities including the necessary fixtures and personal property related thereto; provided, however, that any such special Assessments shall have the assent of a majority of the votes represented, in person or by proxy, at a meeting at which a quorum is present, duly called for the express purpose of approving such expenditure. Written notice of which shall be sent to all Owners not less than ten (10) days nor more than thirty (30) days in advance of the meeting, which notice shall set forth the purpose of the meeting. An itemized breakdown justifying the special assessment shall accompany the special notice. The period of the Special Assessments and manner of payment shall be determined by the Board.

Section 4.4 Date of Commencement of Annual Assessments; Due Dates. Although the annual Assessment is calculated on a calendar year basis, each Owner of a Condominium Unit shall be obligated to pay the Treasurer of the Homeowners Association such Assessment in equal monthly installments on or before the

first day of each month during such calendar year, or in such other reasonable manner as the Board of Directors shall designate.

The Annual Assessments provided for in this Article IV shall as to each Condominium Unit commence upon the recordation of the deed except as provided in Section 4.7. The first monthly payment of the annual Assessment for each such Unit shall be an amount equal to the monthly payment for the fiscal year in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Homeowners Association shall, upon demand at any time, furnish to any Condominium Owner liable for any such Assessment a certificate in writing signed by an Officer of the Homeowners Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment stated to have been paid.

Section 4.5. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of Developer. If an Assessment is not paid on the date when due, as hereinabove provided, then such Assessment together with such interest thereon and any cost of collection thereof as hereafter provided, shall be a charge and continuing lien on

the Unit to which it relates, and shall bind such property in the hands of the Condominium Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Condominium Owner to pay such Assessment, however, shall remain his personal obligation and if his successor in title assumes his personal obligation such prior Condominium Owner shall nevertheless remain as fully obligated as before to pay to the Homeowners Association any and all amounts which he was obligated to pay immediately preceding the transfer; and such prior Condominium Owner and his successor in title if he assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Condominium Owner and his successor in title creating the relationship of principal and surety as between themselves other than one by virtue of which such prior Condominium Owner and his successor in title would be jointly and severally liable to pay such amounts.

In the event any such Assessment is not paid by the 10th day of the month, interest in the form of a service fee to be set by the Board of Directors shall be added to the Assessment. The service fee will continue to accrue until the Assessment is paid and shall be compounded semiannually, at the option of the Board. The Homeowners Association may bring legal action against the Condominium Owner personally obligated

to pay the same or foreclose its lien against the Condominium Unit to which it relates or pursue either such course at the same time or successively. In any event, the Homeowners Association shall be entitled also to recover attorney's fees actually incurred, but not exceeding fifteen (15%) percent of the amount of the delinquent Assessment, and all other costs of collection. Each Condominium Owner, by his acceptance of a deed or other conveyance to a Condominium Unit, vests in the Homeowners Association or its agent the right and power to bring all actions against him personally for the collection of such charges including prior assessments if assumed by him as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. The Homeowners Association shall have the power to bid in the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Condominium Owner may be relieved from liability from the Assessment provided for herein by abandonment of his Condominium Unit or otherwise.

Section 4.6. Subordination of the Charges and Liens to Mortgages.

(a) The lien and permanent charge for the annual and special Assessments (together with interest thereon and any cost of collection) authorized herein with respect to any Unit is hereby made subordinate to the lien of any purchase money mortgage, its holder or assigns placed on such Condominium

Unit if, and only if, all such Assessments with respect to such Condominium Unit having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale under power contained in such mortgage. This subordinated lien may be extinguished by a foreclosure action brought by the holder of the mortgage; otherwise, it is not affected by the sale or other transfer of the unit.

(b) Such subordination is merely a subordination and shall not relieve the Condominium Owner of a mortgaged property of his personal obligation to pay all Assessments coming due at a time when he is the Condominium Owner; shall not relieve such property from the lien and permanent charge provided for herein (except as to the extent a subordinated lien and permanent charge is extinguished as a result of such subordination or against a purchase money mortgage or such mortgagees, assignee, or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure or by sale under power); and no sale or transfer of such property to the

mortgagee or to any other person pursuant to a foreclosure sale, or pursuant to a sale under power, shall relieve any existing or previous Condominium Owners from liability for any Assessment coming due before such sale or transfer, and shall not relieve any subsequent taker from the creation of a lien for Assessments made subsequent to his taking of the property.

Section 4.7 Exempt Property. Each Condominium Unit shall be exempt from the Assessments created herein until such unit is conveyed by the Developer to the Owner or the Owner has occupied such unit, whichever first occurs. Provided, however, the Developer shall pay assessments as follows: When the first unit in each Building is sold the Developer will begin paying assessments for all units owned by it in said buildings beginning on the first day of the next succeeding month. The first payment on each unit shall be in an amount equal to the monthly payment for the fiscal year in progress divided by the number of days in the month and multiplied by the number of days remaining in such month after the recording of the deed conveying such first unit. At such time as other units in said buildings are sold, the Developer will prorate the assessments with the purchaser of said unit as set forth above to the date of recording of a deed.

#### ARTICLE V

#### INSURANCE AND CATASTROPHY LOSSES

Section 5.1. Insurance. The Board of Directors or its authorized agent shall obtain insurance for all of the improvements on the property (excepting the personal property of the Condominium Unit Owners, their guests and lessees) and all improvements and betterments made by such Owners at their expense against loss or damage by fire or other hazards, including extended coverage for vandalism and malicious mischief, in an amount sufficient to cover the full cost of any repair, reconstruction or replacement in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering the Common Area and Facilities, Limited Common Areas and Facilities and all damage or injury caused by the negligence of the Homeowners Association or any of its agents which public liability policy shall have reasonable limits set by the Board of Directors. Premiums for all such insurance coverage obtained by the Board of Directors shall be written in the name of the Homeowners Association for the Owners of the Units. Such insurance policies shall comply with the provisions hereinafter set forth.

(a) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of "A+" or above and financial size of Class 10 or above as established by Best Key Rating Guide.

(b) All policies shall be for the benefit of the Unit Owners and their mortgagees as their interests may appear.



(c) Provision shall be made for the issuance of a certificate of insurance to each Owner or his mortgagee, if any which shall specify the proportionate amount of such insurance attributable to the particular Owner's Unit.

(d) The original of all policies and endorsements thereto shall be deposited with the Trustee which shall hold them subject to the primary rights of any Mortgagee whose mortgage constitutes a lien upon the Common Areas and at least one Condominium Unit and to the provisions of Section 3 of this Article V.

(e) Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Board of Directors or its duly authorized agent; provided, however, that exercise of such authority shall be subject to the primary rights of any mortgagee having an interest in such losses.

(f) In no event shall any recovery or payment under the insurance coverage obtained and maintained by the Board of Directors hereunder be affected or diminished by insurance purchased by individual owners or their mortgagees.

(g) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Board of Directors may have in force on the property at any particular time.

(h) Any Owner who obtains an individual insurance policy covering any portion of the property, other than on personal property belonging to such Owner at his expense, shall file a copy of such policy with the Board of Directors within 30 days after purchase of such insurance.

(i) Each Owner at his own expense may obtain on his Unit or the contents thereof title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss.

(j) The Board of Directors shall conduct an annual insurance review for the purposes of determining the full insurable value of the entire property including all dwellings, the Limited Common Area and Facilities and the Common Area and Facilities without respect to depreciation of all improvements on the property (with exception of improvements and betterments made by the respective owners at their expense) by one or more qualified persons.

(k) The Board of Directors or its duly authorized agent shall make reasonable efforts to secure insurance policies that will provide for the following: (1) fire and extended coverage insurance, insuring all of the buildings including the interior partitions and painted surfaces, the carpeting, the bathroom and kitchen fixtures, the service equipment, but not including drapes, wall coverings, furniture, furnishings, and personal property supplied by the individual owners or any

BA 151PG822

property not initially installed by Developer in accordance with the original condominium plans and specifications; (2) a waiver of subrogation by the insurer as to any claims against the Board of Directors, its duly authorized agents and the Owners and their respective servants, agents and guests; (3) a waiver of insurer's right to repair or reconstruct instead of paying cash; (4) a waiver of insurer's right to cancel, invalidate or suspend the policy on account of the acts of fewer than five Owners or the conduct of any director, officer or employee of the Homeowners Association or its duly authorized agent without prior demand in writing delivered to the Homeowners Association to cure the defect and a reasonable time for the Homeowners Association, its agent, any owner or mortgagee to cure the defect; and (5) that any "other insurance" clause in the master policy exclude individual owners' policies from consideration. (6) The policy shall also contain liability coverage for all official actions on behalf of the Homeowners Association by its Board, its officers, or any of its employees or agents.

(1) Each Owner shall be required to notify the Board of Directors of all improvements made by such Owner to his Unit, the value of which is in excess of One Thousand (\$1,000.00) Dollars.

Section 5 No Partition. There shall be no judicial partition of the property or any part thereof, and Developer

and every person acquiring any interest in the property or any part thereof shall acquire the same subject to this Deed and shall be deemed to have waived any right to seek any such judicial partition until the happening of the conditions set forth in Section of this Article V in the case of damage or destruction or until the property has been removed from the provisions of the Act as provided for in this Deed.

Section 5.3 Trustee. (a) Subject to the primary rights of any Mortgagee whose mortgage constitutes a lien upon the Common Areas and at least one Condominium Unit, all insurance policies purchased by and in the name of the Board of Directors shall provide that proceeds covering property losses shall be paid jointly to the Homeowners Association and Trustee. Immediately upon the receipt by the Homeowners Association of such proceeds, the Homeowners Association shall endorse the instrument by means of which such proceeds are paid and deliver such instrument to Trustee. The Trustee shall not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to collect any insurance proceeds. Nor shall the Trustee have any obligation to inspect the property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(b) Among other things, the duty of Trustee shall be to receive proceeds delivered to it and to hold such proceeds in

trust for the benefit of the Owners and their mortgagees. 15102824An  
undivided share of such proceeds on account of damage or  
destruction to the Common Area and Facilities and Limited  
Common Area and Facilities shall be allocated and assigned for  
the Owners (and their mortgagees, if any), in accordance with  
the Percentage Interest appurtenant to their Units. Proceeds  
on account of damage or destruction to Units shall be allocated  
and assigned for the Owner (and their mortgagees, if any) of  
the damaged or destroyed Units in proportion to the cost of  
repairing or reconstructing the damage or destruction suffered  
by each such Owner. In the event that a mortgagee endorsement  
has been issued as to any particular Unit, the share of such  
Unit Owner shall be held in trust for such Owner and his  
mortgagee as their interests may appear.

(c) Proceeds of insurance policies received by the  
Trustee shall be disbursed as follows:

(i) If the damage or destruction for which the proceeds  
are paid is to be repaired or reconstructed, the proceeds, or  
such portion thereof as may be required for such purposes,  
shall be disbursed in payment for such repairs or  
reconstruction as hereinafter provided. Any proceeds remaining  
after defraying such costs shall be paid into the trust Fund  
for the benefit of all Owners and their respective mortgagees,  
if any, as their interest may appear.

(ii) If it is determined, as provided in Section 4 of  
this Article V, that the damage or destruction for which the

proceeds are paid shall be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.

(11) Subject to the primary rights of any Mortgagee whose mortgage constitutes a lien upon the Common Areas and at least one Condominium Unit, any and all disbursements of funds by the Trustee for any purpose whatsoever shall be made pursuant to and in accordance with a certificate of the Homeowners Association issued by the President or Vice President and attested by the Secretary or Assistant Secretary directing the trustee to make the disbursements.

If damage or destruction is to the Common Area and Facilities and/or to the Limited Common Area and Facilities, and is to be repaired or reconstructed, said certificate shall also be signed by or on behalf of the mortgagee known by the Trustee to have the largest interest in or lien upon such Common Area and Facilities and/or Limited Common Area and Facilities. If the damage or destruction is to one or more Units and is to be repaired or reconstructed, said certificate shall also be signed by the mortgagee or mortgagees, if any, known by the Trustee to have an interest in or lien upon such Unit or Units. The Trustee shall not incur liability to any Owner, Mortgagee or other person for any disbursements made by it pursuant to and in accordance with any such certificates or written authorizations.

Section 5.4 Damage and Destruction. (a) Immediately after all or any part of the property covered by insurance

written in the name of the Board of Directors is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property and shall notify any mortgagee having an interest in the damaged property of its action. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty. With each Unit, the Common Area and Facilities and the Limited Common Area and Facilities having the same vertical and horizontal boundaries as before.

(b) Any such damage or destruction to a Condominium Unit which does not render such Unit untenable shall be repaired unless all the Owners unanimously agree in writing not to repair, reconstruct or rebuild the damaged or destroyed property in accordance with provisions of the Act. Any such damage which requires the reconstruction of the whole or more than two-thirds ( $2/3$ ) of the "Property" as defined herein, shall not be compulsory unless unanimously agreed upon by the co-owners. If not reconstructed, the insurance or damage proceeds shall be delivered in accordance with the provisions of sub-paragraph (c). Any such damage or destruction which renders any Condominium Unit untenable or uninhabitable, or

any such damage or destruction to the Common Area and Facilities and/or Limited Common Area shall be repaired and reconstructed unless a unanimous vote of the Homeowners Association, evidenced by a written agreement, within 60 days after the casualty, it is agreed not to repair or reconstruct. If for any reason, the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction are not made available to the Homeowners Association within said period of 60 days after the casualty, then such period shall be extended until information shall be made available to the Homeowners Association; provided, however, that said extension of time shall not exceed 90 days. No mortgagee shall have the right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it is determined by the Homeowners Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then and in that event (i) the Unit Owner or Owners, and their respective mortgagees, if any, of the damaged or destroyed property shall be compensated for their damaged or destroyed property through insurance proceeds or otherwise, (ii) after satisfying item (i) above, the damaged or destroyed property shall be deemed to be owned by the Unit Owners of property not damaged or destroyed as tenants in common, (iii) the undivided interest of each Unit



Owner of property not damaged or destroyed in the damaged or destroyed property shall be the percentage of Percentage Interest appurtenant to each Unit not damaged or destroyed plus a percentage which shall be computed by multiplying a fraction, the numerator of which shall be the Percentage Interest of the Unit Owner in the property, and the denominator of which shall be a percentage equal to one hundred (100%) percent minus the Percentage Interest represented by the damaged or destroyed property times the Percentage Interest held by all Unit Owners whose interests have been damaged or destroyed, (iv) any liens in favor of the Homeowners Association affecting any of the damaged or destroyed Units shall be deemed to be transferred to the Unit Owners of the property not damaged or destroyed in an amount equal to the percentage set forth in (iii) above, and (v) the damaged or destroyed property shall be subject to an action for partition at the instance of any Unit Owner of Property not damaged or destroyed, in which event the net proceeds of sale, together with the net proceeds of insurance on the damaged or destroyed property (remaining after application as provided in item (i) of this paragraph c), shall be considered as a fund which, after paying all expenses of the Trustee, shall be divided among all of the Unit Owners of property not damaged or destroyed in amounts equal to the percentages set forth in (iii) above. Disbursements to such owners shall be made pursuant to certificates provided for in Section 3 of this Article V.

Section 5.5 Repair and Reconstruction.

(a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special Assessment against the Owners of damaged or affected Units in sufficient amounts to provide funds to pay such excess costs of repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction. That portion of such Assessments levied against each Unit Owner shall be equal to that percentage computed by dividing the Percentage Interest appurtenant to such Owner's Unit by the total of the Percentage Interests appurtenant to all Units affected.

(b) Any and all sums paid to the Homeowners Association under and by virtue of those special Assessments provided for in paragraph (a) of this Section shall be deposited by the Homeowners Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee shall be disbursed as provided in Section 3 of this Article V.

ARTICLE VI

CONDEMNATION

Section 6.1 General. Whenever all or any part of the property shall be taken by any authority having the power of

condemnation or eminent domain, each Owner and Mortgagee shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. Subject to the primary right of any mortgagee, the award made for such taking shall be payable to the Trustee. Unless otherwise required by law at the time of such taking, any award made therefor shall be disbursed by the Trustee, as hereinafter provided in this Article VI.

Section 6.2 Common Area. If the taking is confined to the Common Area and Facilities on which improvements shall have been constructed and if at least seventy-five (75%) percent of the total vote of the Homeowners Association with the concurrence of any Mortgagee whose mortgage constitutes a lien upon the Common Areas and at least one Condominium Unit, shall decide within 60 days after such taking to replace said improvements, or any part thereof, on the remaining land included in the Common Area and Facilities and according to plans therefore to be approved by the Homeowners Association, then the Board of Directors shall arrange for such replacement and the Trustee shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed as provided for in Article V hereof; subject, however, to the right hereby reserved to the Homeowners Association which may be exercised by a majority of

the total vote hereof and any such Mortgagee to provide for the disbursement by the Trustee of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Owners or any one or more of them in amounts disproportionate to the Percentage Interest appurtenant to their Units established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Owners or any one or more of them and their respective mortgagees as their interests may appear as the Homeowners Association may determine. If at least seventy-five (75%) percent of the total vote of the Homeowners Association shall not decide within 60 days after such taking to replace such improvements or if the taking is confined to the Common Area and Facilities on which no improvements shall have been constructed, then the Homeowners Association or the Trustee, as the case may be, shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of the improvements taken, including the right reserved to the Homeowners Association to provide for the disbursement by the Trustee of the remaining proceeds held by it to the Owners in disproportionate amounts and their respective mortgagees as their interests may appear.

Section 6.3 Units. If the taking includes one or more Units, any part or parts thereof or the Limited Common Area and

BKA 151PG832

Facilities, or parts thereof, to which a Unit has exclusive use then the award shall be disbursed and all related matters, including, without limitation, alteration of the Percentage Interest appurtenant to each Unit, shall be handled pursuant to and in accordance with the consent of all Owners expressed in a duly recorded amendment to this deed. In the event that such an amendment shall not be recorded within 90 days after the taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired or reconstructed as provided for in Section 4 of Article V herein, whereupon the Regime will be terminated in the manner therein prescribed; provided, however, in the event the Regime is not terminated and such Unit or Units are replaced, the proceeds shall be paid to the Unit Owner or Owners and their respective mortgagee as their interests may appear.

#### ARTICLE VII

##### ARCHITECTURAL CONTROL

Section 7.1 Approval Required for Changes. To preserve the original architectural appearance of the Simmons Pointe Horizontal Property Regime, after the purchase of a Condominium Unit from Developer, its successors, or assigns, no exterior construction of any nature whatsoever, except as specified in the Condominium Documents, shall be commenced or maintained upon any building, including without limitation, the Limited

Common Area and Facilities nor shall there be any change,  
modification or alteration of any nature whatsoever of the  
design and appearance of any of the exterior surfaces, or  
facades, nor shall any Owner paint gate, fence or roof, nor  
shall any Owner change the design, or color of the exterior  
lights, nor shall any Owner install, erect or attach to any  
part of the exterior any addition or change until after the  
plans and specification showing the nature, kind, shape,  
height, materials, color and location of the same shall have  
been submitted to and approved in writing as to the harmony of  
exterior design, color and location in relation to the  
surrounding structures by the Board of Directors of the  
Homeowners Association or by an architectural committee  
composed of three or more representatives appointed by the  
Board. Plans for glassing in any patio or porch or installing  
a stair case or other access to the attic area must also be  
submitted to the Board for approval prior to the time any work  
commences. No screening additions can be made without prior  
approval by the Board. Failure of the Board, or its designated  
committee, to approve or disapprove such plans and  
specifications within 30 days after their being submitted to it  
shall constitute approval. Provided, however, Developer  
reserves the right to construct additional condominium units on  
adjacent property (flats, townhouses, and detached single  
family dwellings) and submit them to the Regime.

## ARTICLE VIII

EXTERIOR MAINTENANCESection 8.1 Responsibility of Homeowners Association.

Except as specifically provided to the contrary herein, the Homeowners Association shall maintain, repair, or replace, at its expense, all parts of the Common Area and Facilities and Limited Common Area and Facilities whether located inside or outside of a Condominium Unit, the cost of which shall be charged to the Unit Owners as a Common Expense subject to the provisions of Section 1 of this Article VIII. The Homeowners Association shall have the irrevocable right, to be exercised by the Board of Directors, or its agent, to have access to each Condominium Unit from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the Common Area and Facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area and Facilities, Limited Common Area and Facilities or to other Units.

Section 8.2 Responsibility of Owner. In the event that the Board of Directors should determine that the need for maintenance or repairs by the Homeowners Association as provided for in Section 1 of this Article VIII is caused through the willful or negligent act of any Owner, his family, guests or invitees, the cost of which is not covered or paid for by insurance, then the cost, both direct or indirect, of

BKA 151P6835

such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and his Unit is subject. Each Owner shall maintain, repair or replace at his own expense all portions of his Unit which may become in need thereof, including the heating and air-conditioning system for such Unit, all bathroom and kitchen fixtures and appliances, light fixtures, interior load-bearing walls, carpeting, drapes, windows, screens, and other items within the Unit. Further, each Owner shall, at his own expense, maintain, repair, and replace, when necessary, that portion of the air-conditioning system servicing his Unit which is located adjacent to his Unit and each Owner shall, at his own expense, keep the Limited Common Area and Facilities to which his Unit has exclusive access and to which he has exclusive use clean and neat. If the Owner does not make the repairs to be made by him within thirty days from written demand from the Homeowners Association, the same may be repaired by the Homeowners Association and the cost thereof shall be assessed against the Unit owned by such Owner and shall constitute a lien thereon.

#### ARTICLE IX

##### UNIT RESTRICTION

Section 9.1 Residential Purpose. Buildings and all Units contemplated in the development shall be, and the same hereby are, restricted exclusively to residential use. No



structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other outbuilding shall be used as a residence on any portion of the property at any time.

Section 9.2 Sale Period. Anything contained herein to the contrary notwithstanding, it shall be permissible for Developer to maintain, during the sale period of sold Units, upon such portion of the property as the Developer may deem necessary, such facilities as in the sole opinion of the Developer may be reasonably required, convenient or incidental to the sale of said Units, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 9.3 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, kept on any part of the property, except that dogs, cats or other household pets may be kept by the respective Owner inside their respective Units provided that they are not bred or maintained for any commercial purpose and do not endanger the health or, in the sole discretion of the Board of Directors, unreasonably disturb the Owner of any Unit or any resident thereof. All such pets shall be leashed when in the Common Area and/or Facilities or Limited Common Area or Facilities.

Section 9.4 Clotheslines, Garbage Cans, Etc. No outside clothesline shall be permitted, and all garbage cans and similar items shall be kept screened so as to conceal them

from view of neighboring units. No towels, bathing suits, etc. shall be hung from windows or balconies.

Section 9.5 Signs and Business Activities. No advertising signs, billboards, unsightly objects, or nuisances, except for "For Sale", "For Rent", or other signs of like nature as shall be approved by the Board, shall be erected, placed or permitted to remain on the property, nor shall the property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any tenant thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the property, provided, however the foregoing covenants shall not apply to the business activities during the sale period, nor to the project permanent sign.

Section 9.6 Exterior Antennas. No exterior television or radio antennas shall be placed on any improvements without prior written approval of the Board of Directors.

Section 9.7 Leasing of Units. Any Owner shall have the right to lease or rent his Unit. Provided, however, all leases shall be in writing and the Homeowners Association may require a lease with a term of not less than thirty (30) days to six (6) months as it may determine. No restrictions may be placed on any lease with an initial term of six (6) months or more with the exception that said leases are subject to the rules and regulations of the Homeowners Association then in effect

BKA 151PG838

and as amended from time to time as to all units and the Recorded Condominium Documents as they may be amended to apply to all units.

ARTICLE X

EASEMENTS

Section 10. Encroachments. If any portion of the Common Area and Facilities and/or Limited Common Area and Facilities encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Area and Facilities and/or Limited Common Area and Facilities as a result of settling or shifting of a building, an easement for the encroachment and for the maintenance of the same so long as the building stands shall exist. If any building, any Unit, any adjoining part of the Common Area and Facilities and/or Limited Common Area and Facilities shall be partially or totally destroyed as a result of fire or other casualty or result of eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Area and Facilities and/or Limited Common Area and Facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Area and Facilities and/or Limited Common Area and Facilities, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

Section 10.2 Utilities, Etc. There is hereby granted a blanket easement upon, across, over and under all the property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, gas, sewers, cablevision, telephones and electricity and for ongoing development and operation of the project. Such easements shall give to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the property and to affix and maintain utility wires, circuits and conducts on, above, across and under the roofs and exterior walls of the Units.

Section 10.3 Other. There is hereby granted to the Homeowners Association, its directors, officers, agents and employees, to the managing company, and to all policemen, firemen, ambulance personnel and all similar emergency personnel, an easement to enter upon the property or any part thereof in the proper performance of their respective duties including repairs. Except in the event of emergencies, the rights under Section 3 of Article X shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

Section 10.4 Easements retained by the Developer. Developer hereby retains an easement over and upon the Common Elements and upon lands appurtenant to the condominium for the

... those of completing improvements for which provision is made in the declaration including future development, but only if access thereto is otherwise not reasonably available as well as an easement over the Common Elements for the purpose of making repairs required pursuant to the terms of contracts of sale made with unit purchasers. Developer also retains the right to maintain facilities in the Common Areas which are reasonably necessary to market the units. These include sales and management offices, model units, parking areas, and advertising signs.

#### ARTICLE XI

##### GENERAL PROVISIONS

Section. 11.1 Adherence to Provisions of Deed, By-Laws and Rules and Regulations. Every Owner who rents his unit must post inside his Unit a list of the rules and regulations of the Homeowners Association. Any rental agency handling his rentals must further agree to abide by the published rules and regulations and shall be responsible for informing and correcting any breaches of the policies by persons renting through his agency. Should a particular agency or person continue to not take corrective action against the renters he has contracted with, refuse to cooperate with the Homeowners Association in the enforcement of its rules and regulations along with provisions of the Master Deed and By-Laws, the

BKA 151PG841

Homeowners Association can require the Condominium Owner to cease using the services of that particular rental agency and/or eject such tenant. Refusal to do so can result in fines against the Condominium Owner in an amount to be determined by the Board of Directors.

Section 11.2 Amendment. Amendments to this Deed, except as herein expressly provided to the contrary, shall be proposed by the Board of Directors or by any member of the Homeowners Association in accordance with the following procedure:

(a) Notice. Notice of the subject matter of the proposed amendment or amendments shall be included in the notice to the Owners and to any Mortgagee whose mortgage constitutes a lien upon the Common Areas and at least one Condominium Unit of the meeting of the Homeowners Association at which such proposed amendment or amendments are to be considered.

(b) Adoption. With the consent of any affected mortgagee this Deed may be amended at any time and from time to time after notice as hereinabove provided has been given, by a vote during the first twenty (20) years after the recording of this instrument of not less than ninety (90%) percent of the total vote of the Homeowners Association; thereafter a vote of not less than seventy-five (75%) percent of the total vote of the Homeowners Association shall be required; provided,

however, that a change in the Unit Participation and Ownership Percentage, other than the change outlined in Exhibit "C", shall require the written consent of one hundred (100%) percent of the Owners and their mortgagees. Should the Homeowners Association vote to amend its By-Laws in any respect, such amendment must be set forth in an amendment to this Deed and shall be valid only when approved by a vote of the Homeowners Association as set forth above and any affected first mortgagees.

(b) Recording. A copy of each amendment provided for in this section 2 shall be certified by the Board of Directors of the Homeowners Association as having been duly adopted and shall be effective when recorded.

Section 11.3 Termination. The Regime may be terminated and the property removed from the provisions of the Act in the following manner:

(a) Agreement. All of the Unit Owners may remove the property from provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred so as to affect and be a lien upon only the Condominium Unit and upon the Percentage Interest appurtenant to the Unit subject to such lien.

(c) Destruction. In the event it is determined in the manner provided in Section 4 of Article V hereof, that the

damaged property shall not be repaired or reconstructed after casualty, the Regime will be terminated and the Condominium Documents revoked. The determination not to repair or reconstruct after casualty shall be evidenced by a certificate of the Homeowners Association certifying as to facts effecting termination, which certificate shall become effective upon being recorded.

Section 11.4 Term, Covenants Running with the Land.

All provisions of this Deed shall be construed to be covenants running with the land and with every part thereof and interest therein including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of the Deed shall bind and inure to the benefit of all Unit Owners and claimants of the land or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns. The restrictions set forth in Article IX shall continue with full force and effect against the property and the Owner thereof and all persons claiming under them for a period of twenty-five (25) years from the date of the execution hereof. After which time said restrictions shall be automatically extended for successive periods of ten (10) years unless not less than two (2) years prior to the expiration of any successive ten (10) year period thereafter, a written agreement shall be recorded in the office of the Register of Mesne Conveyances for Charleston County, by the terms of which



any of said restrictions may be changed, modified or extinguished in whole or in part as to all of the property or such part thereof as may be described in the said agreement, in the manner and to the extent set forth in said agreement, which shall be duly executed and acknowledged by Simmons Pointe Homeowners Association, its successors or assigns, and by the then Owners of record of more than one-third (1/3) in area of the premises which are then subject to this Master Deed and subject to the payment of the assessments created by said Master Deed. In the event any such written agreement of change or modification be duly executed and recorded, the original restrictions as therein modified shall continue in force for successive periods of ten (10) years each unless and until further changed, modified or extinguished in the manner herein provided.

Section 11.5 By-Laws. A true copy of the By-Laws of the Homeowners Association, which together with this Deed shall govern the administration of the Condominium is attached hereto as Exhibit "D" and, by reference, made a part hereof.

Section 11.6 Enforcement. Each Owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Deed or in the deed to his Unit. Failure to comply with any of the same shall

be grounds for an action to recover sums due, for damages or injunctive relief, or both maintainable by the Board of Directors on behalf of the Homeowners Association or by an aggrieved Owner. Failure by the Homeowners Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.7 Severability. Invalidity of any covenant, condition, restriction or other provision of this Deed or the By-Laws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 11.8 Perpetuities and Restraints on Alienation. If any of the covenants, conditions, restrictions or other provisions of this Deed shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Ronald Reagan, President of the United States, or James Carter, former President of the United States.

Section 11.9 Gender and Grammar. The singular whenever used herein shall be construed to mean plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 11.10. Agent for Service of Process. In accordance with the provisions of this Act, W. C. Dailey is hereby designated to give service of process. The address of the said W. C. Dailey is 518 West Palmetto Street, Florence, South Carolina 29501. In the event of said agent's death, resignation or removal, his successor shall be appointed by the Board of Directors of the Homeowners Association by an instrument duly recorded in the Office of the Secretary of State of South Carolina.

Section 11.11 Rights of Mortgagees. First mortgagees, provided each mortgagee informs the association in writing of its appropriate address, shall be entitled to the following rights:

Prior approval of all first mortgagees, who request in writing to be so notified, shall be required before the association can:

- (1) Abandon condominium status, or partition or subdivide a unit or the common elements;
- (2) Change the percentage interest of unit owners;
- (3) Materially amend the legal documents.

b. Timely written notice shall be given to first mortgagee, insurers and guarantors who request in writing to be notified, of:

- (1) Any condemnation or eminent domain proceeding;
- (2) Any substantial damage or destruction to the common elements or any unit estate on which such mortgagee holds a mortgage.

c. First mortgagees, lenders, holders, insurers, and guarantors shall also have the right to examine the books and the records of the association, to receive annual audited

BKA 151PG847

financial statements, to be given notice of association meetings, and to be entitled to send a representative provided such rights are reserved in writing.

d. Upon written request to the Owners Association, identifying the name and address of the holder, insurer or guarantor and the unit estate number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

- (1) Any delinquency in the payment of assessments or charges owed by an owner of a unit estate subject to a first mortgage held, insured or guaranteed by such holder, insurer or guarantor, which remains uncured for a period of 60 days;
- (2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owner Association;
- (3) Any proposed action which would require the consent of a specified percentage of mortgage holders.

## ARTICLE XII

### ASSIGNED VALUE AND UNIT VOTE

Section 12.1 Unit and Property Values. The Master Plan contained in Exhibit "C" attached hereto shows the value assigned to each Unit as of the date this Deed is recorded and the percentage of undivided interest in the Common Area and Facilities and Limited Common Area and Facilities appurtenant to such Unit for all purposes. The value of the Property is equal to the total value of all Units together with the Value of the Percentage Interest in the Common Area and Facilities and Limited Common Area and Facilities. If additional units are added to the Regime, which additions shall be in the sole discretion of the Developer, the percentage of undivided interest shall change as set forth in Exhibit "C".

BKA 15126848

Section 12.2 Unit Votes. Each Unit shall be entitled to stock in the Homeowners Association and for all other purposes herein equivalent to the Percentage Interest appurtenant to such Unit and such vote shall be exercisable by the Owner or Owners of such Unit through the member assigned to represent such Unit pursuant to Section 3 of Article 1 of the By-Laws.

ARTICLE XIII

CONVEYANCE BY DEVELOPER

All delivery of deeds of Conveyances of Developer, all tender of consideration by Owner, all execution of mortgages, all other documents necessary for the purchase and financing and acceptance of title to the Condominium Units shall take place at the office of the Developer at 518 West Palmetto Street, Florence, South Carolina 29501 or at such other location as Developer might designate.

IN WITNESS WHEREOF, Developer has executed this Deed this 10<sup>th</sup> day of JAN, 1986.

WITNESS:

DAILEY & ASSOCIATES, INC.

J. L. Brule  
Ralph C. Horn

BY: W. C. Dailey (SEAL)  
W. C. DAILEY, PRESIDENT  
W. C. Dailey (SEAL)  
W. C. DAILEY, SECRETARY

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

BKA 101 PG849

PERSONALLY appeared before me T. Furman BROOIE  
who being first duly sworn, deposes and says that s/he saw the  
within-named Dailey & Associates, Inc. by W. C. Dailey, its  
President and Secretary sign, seal, and as its act and deed  
deliver the within-written Master Deed and that s/he  
with ANGELA BROOIE witnessed the execution thereof.

T. Furman Brooie

Subscribed to before me this  
10 day of January, 1986.

Ralph C. Wood  
Notary Public for South Carolina  
My Commission Expires: 6-28-88

## EXHIBIT A

All that certain piece of parcel, or lot of land situate, lying and being in Charleston County, shown and designated as Tract 1 containing 4.90 acres as shown on the phasing plat for Simmons Pointe by Enwright Associates dated January 8, 1985 and attached hereto and incorporated by reference; together with rights of ingress and egress over and across Tracts 2, 3, and 4 for installation, maintenance and use of utilities and drainage as shown on said plat, and such other rights and easements across Tracts 2, 3, and 4 as are necessary, convenient, or useful for the use of Tract 1 as set forth herein.

This conveyance is subject to rights of ingress and egress over and across the roads shown on said plat to provide access to Tracts 2, 3, and 4 as shown on said plat as well as rights of ingress and egress over and across Tract 1 for installation, maintenance and use of utilities and drainage for Tracts 2, 3, and 4 as shown on said plat and such other tracts as may be added to the Regime, and such other rights and easements as are necessary, convenient, or useful for the development and use of Tracts 2, 3, and 4 and such other tracts as may be added to the Regime including, but not limited to, the rights of the owners, tenants and occupants, including their guests and invitees, on such tracts as may be added to the Regime, to use the Common Area and Facilities.