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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Circuit Court Case No. 2019-CP-07-01246
Appellate Case No. 2021-000375

Greg Marcus Simmons and Jermaine Robinson, both individually and derivatively on behalf of Simmons Family Holdings, LLC, a South Carolina Limited Liability Company,
Respondents,

v.

Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken,
Appellants,

and

Simmons Family Holdings, LLC,

as a nominal Defendant.

RECORD ON APPEAL

Volume I

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 Individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
 Plaintiffs,)
 v.)
)
 PALMER E. SIMMONS and)
 CHARLESETTA S. AIKEN,)
)
 Defendants.))
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER GRANTING
 TEMPORARY INJUNCTION RELIEF IN PART

This matter is before the Court on Plaintiffs’ Amended Motion for a Temporary Injunction e-filed with the Beaufort County Clerk of Court. At an *ex parte* hearing on June 10, 2019, this court granted Plaintiff’s Motion for Temporary Restraining Order and in the Order set for a hearing on Plaintiffs’ Motion for Temporary Injunction. At a hearing on June 19th, 2019, it appeared the parties had reached an agreement; however, it appears that certain matters remain unresolved. A hearing on Plaintiff’s Amended Motion for Temporary Injunction was held on July 3, 2019. In attendance were Plaintiffs, Jermaine Robinson and Gregory Marcus Simmons, counsel for Plaintiff, Stacey S. Collins, Esq. and Robert J. Arundell, Esq., Defendants Palmer E. Simmons and Charlesetta S. Aiken, and counsel for Defendants, Mark Berglind. After the presentation of testimony in the form of Affidavits from Defendant Palmer Simmons and oral testimony by Plaintiff, Jermaine Simmons, various Exhibits, and arguments by counsel, it appears to the Court that there is just cause for granting the amended motion in part.

IT IS THEREFORE HEREBY ORDERED AS FOLLOWS:

- A) Defendants shall continue to issue distributions to the Plaintiffs in the amount of One Thousand and No/100 (\$1,000.00) Dollars per month each;

- B) Defendant Charlesetta S. Aiken shall likewise receive a distribution of One Thousand and No/100 (\$1,000.00) Dollars per month;
- C) Defendants shall not make any other distributions to themselves, other than in such amounts and at such intervals as has been the usual and customary practice of the Company but in no event greater than one-third ($1/3^{\text{rd}}$) of the total distributions and only to the extent Plaintiffs' also receive such distributions;
- D) Defendants shall not sell or otherwise transfer any membership interest in the Company;
- E) Defendants shall not file tax returns for 2018 without further leave of court;
- F) That all such distributions shall be subject to reapportionment or disgorgement upon a final determination of the membership interests in Simmons Family Holdings, LLC;
- G) That Defendants provide counsel for Plaintiffs copies of the Company's financial statements, bank or brokerage account statements, checks, tax returns, minutes, operating agreement, resolutions, mortgages, deeds, contracts, and assignments of membership interests of the Company from January 2016 to the present on or before August 2, 2019;
- H) That Defendants continue to provide Plaintiffs' counsel with copies of the Company's future bank or brokerage account statements, checks, minutes, and resolutions, as and when made available by its bank or brokerage;
- I) That the parties shall use their best efforts to coordinate and communicate with one another in advance with regard to all financial matters in the ordinary course of business;
- J) That this Order shall expire at the earlier of full execution by all parties of a written agreement disposing of all issues between the parties, or a subsequent ruling of this or another Court of competent jurisdiction; and

K) That the entry of this Consent Order is without prejudice to the parties' rights to contest the respective membership interests in Simmons Family Holdings, LLC, or other matters pertaining to this action.

IT IS SO ORDERED. THIS CASE SHALL CONTINUE.

Marvin H. Dukes, III, Beaufort County Master-in-Equity
and Special Circuit Court Judge

Beaufort, South Carolina
July _____,

2019



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Temporary Injunction

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2019-07-08 15:34:23 page 4 of 4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
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 PALMER E. SIMMONS and)
 CHARLESETTA S. AIKEN,)
)
 Defendants.)
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 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

**ORDER ON RULE TO SHOW CAUSE
 GRANTING PLAINTIFFS’ MOTIONS FOR
 THE APPOINTMENT OF A RECEIVER,
 ACCOUNTING AND OTHER INJUNCTIVE
 RELIEF**

This matter came before the Court for a hearing upon a Motion by the Plaintiffs, Greg Marcus Simmons and Jermaine Robinson (“Plaintiffs”), for Injunctive Relief, Accounting, Rule to Show Cause and for Appointment of a Receiver for nominal Defendant Simmons Family Holdings, LLC (“SFH”). The Motions were heard via WebEx by the Court on August 24, 2020, with all counsel of record present. Also present at the hearing of the motions were Plaintiffs and Defendant, Palmer E. Simmons. The Rule to Show Cause was issued and argued via WebEx hearing on September 1, 2020. Defendant Palmer E. Simmons and his counsel were present, along with counsel for Plaintiffs.

Upon reviewing the record, the affidavits and memoranda submitted, the evidence, and the applicable law and hearing statements and representations of counsel, I find that Plaintiffs' Motions should be granted and a receiver should be appointed with authority to order a full accounting of the financial records of SFH, pursue discovery from Defendants and third parties, require the production of documents and other evidence, make recommendations to this Court regarding the affairs of SFH, and take possession of SFH's non-exempt assets and secure them, save for the payment of: a) real estate taxes, real property insurance and assessments, as and when due for property owned by SFH; b) previously ordered regular monthly distributions to Defendant Charlesetta S. Aiken and Plaintiffs in the amount of \$1,000.00 each, as previously ordered; and c) payment for legal services rendered to SFH by its counsel of record; pending further Order of the Court, upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.

FINDINGS OF FACT

1. On July 9, 2019, the Court entered an Order Granting Temporary Injunction Relief (the "Interim Order") in favor of Plaintiffs which provided, among other things:

a) that Defendants not make any distributions to themselves, other than in the ordinary course of its business, but in no event greater than one-third (1/3rd) of the total distributions and only to the extent the Plaintiffs also receive such distributions;

b) that Defendants provide counsel for Plaintiffs with, among other things, bank or brokerage account statements, checks, tax returns, and deeds on an ongoing basis as and when available; and

c) that the parties use their best efforts to coordinate and communication with one another in advance with regard to all financial matters in the ordinary course of business.

2. In violation of this Court's Interim Order, Defendant Palmer E. Simmons failed to regularly and timely supply account statements and checks.

3. Defendant Palmer E. Simmons also made substantial payments from SFH to himself, his family, and others for his benefit, the benefit of his family, or the benefit of his company, Carolina Trucking HH, LLC, the total amount of which have yet to be fully determined, but which the evidence and testimony indicate will be in a substantial amount; all without consulting with Plaintiffs or their counsel and without providing matching distributions to Plaintiffs in violation of the Interim Order.

4. By his own admissions, Defendant Palmer E. Simmons' sworn testimony reflects that the majority of these expenditures were in the nature of loans, not evidenced by any written agreement, not secured transactions, and (with the exception of a \$3,500.00 payment to one Anthony Dickerson) have not been repaid in whole or in part.

5. Defendant Palmer E. Simmons had an ongoing duty, under the Interim Order, to inform Plaintiffs of all financial matters pertaining to SFH, including advising them of (i) the existence of the previous settlement of that certain civil action, J&W of Greenwood v. Simmons Family Holdings, LLC, Civil Action No. 2015-CP-07-2284, (ii) the entry of the Final Order filed in that case dated April 28, 2020 (the "J&W Order"), and (iii) the subsequent signing of a Confession of Judgment in accordance therewith, but failed to do so.

6. That despite the requirement that SFH convey to J&W Corporation of Greenwood a ½ acre portion of the land located at 11 Simmons Road, free and clear, Defendant Palmer E. Simmons had not contacted the mortgagee of the property regarding a partial release of mortgage or made application for alternative financing prior to the taking of his deposition on July 28, 2020.

7. That Defendant Palmer E. Simmons made woefully inadequate preparations with respect to the fulfillment of the conditions set forth in the J&W Order are partially to blame for SFH's current inability to timely comply with the original terms thereof and its inability to satisfy the Confession of Judgment in the amount of Two Hundred Twenty-Six Thousand Four Hundred and No/100 (\$226,400.00), which is being held by counsel for J&W Corporation of Greenwood as provided for in that Order.

8. That due to Defendant Palmer E. Simmons' actions and/or inactions there is a substantial likelihood that the rents and profits of SFH will continue to be materially dissipated or the property thereof materially impaired in the absence of the appointment of a receiver to preserve the assets of SFH.

9. That if true, the allegations of the Verified Complaint, the affidavits of record, the memoranda and arguments of counsel, and the admissions of Defendant Palmer E. Simmons provide adequate reason to believe the Plaintiffs are entitled to the relief granted herein.

10. That Plaintiffs seek for the Court to appoint Michael Hawanczak of Diamond Management, Inc., as receiver for SFH, that he is qualified and willing to serve in such capacity, and that his appointment is appropriate.

11. That SFH is a limited liability company organized for the purpose of holding real estate, collecting rents thereon, and paying the legitimate expenses associated therewith.

12. That given the limited nature of the business and the qualifications of Mr. Hawanczak, no bond is necessary.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. A receiver may be appointed prior to judgment at the Court's discretion. See S.C. Code Ann. §15-65-10 et seq.

3. South Carolina law allows for the appointment of a receiver under the facts of this case.

4. The Court concludes that Plaintiffs are entitled to the appointment of a receiver in order to prevent any further material dissipation of the property or material impairment thereof.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS ORDERED that:

1. Michael Hawanczak of Diamond Management, Inc. (hereinafter "Receiver") is hereby appointed as Receiver to exercise such authority and take such actions as are more particularly set forth hereinbelow.

2. Within seven (7) business days following the entry of this Order, and on an ongoing basis as long as this Order remains in effect, SFH and Defendant Palmer E. Simmons shall surrender and deliver possession to Michael Hawanczak all of the assets, property, and records relating to thereto, that he may possess, own or control, directly or indirectly, legally or equitably, including but not limited to:

- a) all banking records for SFH, including: all checkbooks, savings books, and/or safe deposit boxes;
- b) all assets of SFH;
- c) all records of SFH that relate to or may lead to the discovery of assets, property, and income of SFH including but not limited to the names, addresses, telephone numbers, and email addresses, for anyone leasing, managing, collecting or paying rents associated with property belonging to SFH, whether acting pursuant to contract or otherwise;
- d) all assets and property that SFH hereafter receives or acquires, directly or indirectly, legally or equitably, while the Order is in effect;
- e) all receipts, invoices, or other evidence in his possession which he contends support his assertion that those payments made from SFH to himself, his company Carolina Trucking HH, LLC, his family members, the Trust, or others on their behalf or for their benefit; and

f) within seven (7) days following a request for same, such additional information in his possession as the Receiver may request, in writing.

3. Effective as of and from the date of the entry of this Order, all funds or other property that are received by SFH or collected on its behalf, shall be delivered to the Receiver and deposited with a bank of Receiver's choice, or otherwise secured by Receiver, pending further Order of this Court, save and except such authorized expenses as are expressly permitted herein, which shall be paid in accordance herewith.

4. The Receiver will be and hereby is authorized and directed to take immediate possession of SFH's assets and to exercise full control over SFH's assets, and the Receiver in so doing will have all powers generally available to receivers under the laws of the State of South Carolina, and will have, among others, the following specific powers:

(a) The power and authority to take possession of property owned or leased by SFH. All parties in possession of any such property are to surrender it to the Receiver upon demand. This property shall include, but not be limited to the following:

- i. Real property
- ii. Goods
- iii. Inventory
- iv. Equipment
- v. Chattel Paper and Accounts
- vi. Securities and Instruments, including but not limited to Stocks, Membership Interests, Bonds, and Promissory Notes
- vii. Investment Property
- viii. Contracts and other Documents

- ix. Commercial Tort Claims
- xi. Money
- xii. Letter of Credit Rights
- xiii. General Intangibles
- xiv. Supporting Obligations
- xv. All Cash or Equivalents, Savings Accounts, Brokerage Accounts
any other bank accounts of SFH; and
- xvi. All proceeds and products, including but not limited to rent, of
above.

- (b) Gather all books and records of SFH, and subpoena or otherwise require production of books and records of third parties, to the extent necessary to show any asset transfers, payments, loans, dispositions or other distributions by Palmer E. Simmons, to himself, his companies, his family members, or affiliated entities, either directly or for their benefit, from property or assets belonging to SFH;
- (c) To control all bank, brokerage, and trust accounts owned by or for the benefit of SFH, including the right to change the location thereof. No other person shall have any authority or control over any funds in the accounts, including but not limited to authority or control to disburse funds;
- (d) With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an additional insured on the policies for the period that the Receiver shall be in possession of the property insured.

- (e) The Receiver is hereby authorized to demand and receive any rents due under any leases of SFH, as well as any dividends or distributions due to or to become due to SFH from any corporation or limited liability company in which SFH has a direct or indirect ownership or membership interest, including but not limited to Fish Camp, LLC; and any such corporation or limited liability company is hereby directed and enjoined, upon receipt of this Order, to make such distribution(s) only to the Receiver while this Order is in effect.
- (f) The Receiver is hereby authorized to pursue discovery from Defendants and third parties; require the production of documents and other evidence; investigate the affairs of SFH and make recommendations to this Court regarding same; hire professional services on behalf of SFH as he may deem necessary or advisable to carry out his duties as set forth herein; to pay, as and when due, the real estate taxes, real property insurance, mortgage payments, and assessments, on property owned by SFH; as well as the previously ordered regular monthly distributions to Defendant Charlesetta S. Aiken and Plaintiffs in the amount of \$1,000.00 each (hereinafter "Authorized Expenses"); and legal or other professional services reasonably incurred for the benefit of SFH.
- (g) The Receiver is further authorized and directed to order a full accounting of the financial records of SFH from the date of the Interim Order through the date on which Receiver has assumed control of same and to file a report of such accounting with this Court as soon as such accounting may be completed, for the purpose of identifying, to the extent possible, all expenses, payments, withdrawals or other withholdings by Defendant Palmer E. Simmons, for himself, his other business interests, his family members, the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 6, 2016 (the

“Trust”), which Trust is administered by Defendant Palmer E. Simmons in his capacity as Trustee, or to others on their behalf (the “Unauthorized Expenses”).

- (h) The Receiver is further authorized and directed to pay: a) the legitimate business expenses of SFH arising in the ordinary course of business, including the real estate taxes, real property insurance and assessments as and when they become due for property owned by SFH; b) previously ordered regular monthly distributions to Defendant Charlesetta S. Aiken and Plaintiffs in the amount of \$1,000.00 each; and c) payment for legal services rendered to SFH by its counsel of record.
- (i) The Receiver is also further authorized and directed to arrange for the refinancing of that certain mortgage encumbering the Property in the original principal amount of \$400,509.50, recorded in the Office of the Register of Deeds for Beaufort County on May 14, 2009, in Book 2844 at Page 1811, as amended (the “Mortgage”); and to satisfy the conditions, if he can, of the J&W Order.

5. The Receiver will furnish to the Court and to the parties, a report detailing his findings with respect to the Unauthorized Expenses, and making recommendations as to the ongoing business operations of SFH, as soon as such report is available.

6. An expedited hearing shall be scheduled at the Court’s earliest available hearing date, but not sooner than ten (10) days following the filing of the Receiver’s report, to determine the total amount of Unauthorized Expenses, whereupon the sum so determined shall be paid to the Receiver for deposit in the SFH account(s).

7. The Receiver will also furnish to the Court and to the parties, quarterly statements itemizing property that has been secured by Receiver pursuant to this Order. Such report will be filed within thirty (30) days after the end of each calendar quarter, the first such report to be due thirty (30) days after the end of the first quarter after this Order is entered

and quarterly thereafter. The parties to this litigation will be entitled to inspect the books and records of the Receiver concerning assets held by it pursuant to this Order at reasonable time and with reasonable notice.

8. Without further Order of the Court, SFH shall pay to the Receiver his professional fees and expenses incurred as a result of this appointment. Nothing in this Order shall prevent the parties from later seeking an apportionment of Receiver's fees and expenses in this matter. Receiver's professional fees shall be charged at \$75.00 per hour for Receiver's time and, if applicable, at such lesser rates as he ordinarily charges for administrative services. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at costs. All fees and expenses of the Receiver shall be accounted for in the Quarterly Statement of Operations.

9. The Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.

10. Plaintiffs and Receiver shall have no obligation to pay for accrued wages, benefits, and taxes, payroll or other amounts accrued in advance of the date of this Order, whether currently due or owing.

11. The Receiver and his employees, agents, and attorneys shall be exempt from personal liability or obligation to the fullest extent permitted by law.

12. The Receiver may, in his discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of the Receiver shall terminate except with regard to liabilities which arise prior to the date of the notice. The Court may then appoint a new receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

13. In the event that Defendant, Palmer E. Simmons fails to turn over the property and other items required by this Order within seven (7) business days, the appropriate County Sheriff is hereby ordered to take all necessary actions and appropriate force to give full effect to the terms of this Order.

14. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.

15. All providers of insurance with respect to the Property are prohibited and enjoined from cancelling such insurance policies provide that the Receiver pays the applicable premiums for any prospective exposure going forward under the receivership, and such premiums may be paid from assets secured by the Receiver pursuant to this Order.

16. The Receiver is not responsible for filing any federal, state or local tax returns including those relating to any activities during the receivership, but is entitled to collect any tax refunds payable to SFH.

17. The Receiver and the parties to this case may, at any time and on an expedited basis, apply to this Court for instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties property.

18. The Receiver shall not, in the absence of further order of this Court or the written consent of the Parties and their counsel, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, or encumber, any real property owned by SFH.

19. That the entry of this Order is without prejudice to the parties' rights to contest the respective membership interests in SFH, or other matters pertaining to this action.

IT IS FURTHER ORDERED that pending further Order of this Court, no party to this case, including SFH and its respective agents, partners, managers, employees, assignees, heirs, representatives, affiliates or related entities and all other persons acting

in concert with them who have actual or constructive knowledge of this Order, and their agents and employees, shall:

A. Fail to Cooperate with Receiver

All parties to this case shall cooperate with the Receiver, to the fullest extent possible, in the conduct of his duties, including but not limited to, the undertaking of an accounting contemplated herein and in the refinancing of the Mortgage.

B. Commit Waste:

No party to this case may commit or permit any waste of the Property or any part thereof, or suffer or commit or permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures presently on the Property or any part thereof.

C. Divert Cash or Credit Card Receipts:

No party to this case may discount or in any other way divert or use any of the monies from the Property, including but not limited to, rents, cash from sales, or credit card receipts.

D. Interfere with Receiver:

No party to this case may, directly or indirectly, interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of the Property.

E. Transfer or Encumber the Property:

No party to this case may expend disburse, transfer, assign, sell convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property,

including but not limited to, the cash, rents, inventory, and fixtures without the express written consent of the Plaintiffs and their counsel or by prior Court Order; and

F. Impair Preservation of Property or Plaintiff's Interest:

No party to this case may do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, or the preservation of Plaintiffs' interest in the Property. SFH, or Defendants as Managers thereof, are further enjoined from making any payments or transfers of funds or property to or from any affiliates, insiders, directors, officers, family members, or any other person or entity controlled by or otherwise related to any affiliates, insiders, directors, and/or officers.

IT IS SO ORDERED.

Marvin H. Dukes, III
Master in Equity for Beaufort County

Beaufort, South Carolina
This _____ day of September, 2020



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Appointment of Receiver

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-09-21 16:20:08 page 14 of 14

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-07-01246

GREG MARCUS SIMMONS, ET AL
PLAINTIFF(S)

PALMER E. SIMMONS, ET AL
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
----------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

PLAINTIFF'S MOTION TO COMPEL IS GRANTED. DEFENDANTS MAY PREPARE A CONFIDENTIALITY ORDER. IF DEFENDANTS CONTEND THAT ANY DOCUMENT(S) SHOULD NOT BE PROVIDED, THEY SHALL SUBMIT IT TO THE COURT FOR IN CAMERA REVIEW. MR. HAIGHT TO PREAPRE A FORMAL ORDER. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED AS FOLLOWS: PLAINTIFFS ARE MEMBERS OF THE SIMMONS FAMILY LLC-- THE AMOUNT OF SHARES TO BE DETERMINED. ALSO, PALMER SIMMONS MADE UNAUTHORIZED DISTRIBUTIONS FROM THE SIMMONS FAMILY LLC TO HIMSELF OR TO HIS BUSINESS-- THE AMOUNT OF WHICH IS TO BE DETERMINED. MR. HAIGHT TO PREPARE A FORMAL ORDER. THE FORMAL ORDER SHALL SPECIFICALLY DISCUSS THE COURT'S AUTHORITY TO ISSUE THE ABOVE ORDER. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED IN ITS ENTIRETY.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-03-02 09:14:45 page 3 of 3

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-03-12 12:05:29 page 3 of 3

INTSTATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants.)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER FOR PAYMENT OF
 UNAUTHORIZED EXPENSES

THIS MATTER came before me on Tuesday, March 2, 2021 for a hearing to determine the amount of Unauthorized Expenses under this Court’s Order on Rule to Show Cause Granting Plaintiffs’ Motions for the Appointment of a Receiver, Accounting and other Injunctive Relief, dated September 22, 2020 (“Order of September 22, 2020”). Appearing before me via WebEx were counsel for Plaintiffs, Ehrick K. Haight, Jr., Esquire, Robert J. Arundell, Esquire and Stacey S. Collins, Esquire. Counsel for Defendants, Mark S. Berglind, Esquire, also appeared with Defendant Palmer E. Simmons. Thomas Pendarvis, Esquire, attorney for the Receiver, Michael Hawanczak, was also present.

In this Court's Order of September 22, 2020, the Receiver was directed to obtain a full accounting of the financial records of Simmons Family Holdings, LLC ("SFH") from the date of the Order Granting Temporary Injunction Relief ("Interim Order"), through the date on which the Receiver assumed control of the financial records. The Receiver was further directed to file a report of such accounting, identifying the Unauthorized Expenses, as defined in the Order of September 22, 2020. On January 28, 2021, counsel for the Receiver submitted the required report along with the accounting. The Unauthorized Expenses or Disbursements total \$188,386.48. There are also unexplained receivables of \$23,605.00. Defendant Palmer Simmons does not dispute the findings of the Receiver's report or its accompanying accounting. The parties agreed that the net amount of Unauthorized Expenses is \$164,781.48.

The Court heard testimony from Defendant Palmer Simmons regarding his alleged inability to reimburse Simmons Family Holdings, LLC for the Unauthorized Expenses made in violation of the Interim Order. Counsel for Plaintiffs cross examined Defendant Palmer Simmons regarding his various assets and sources of income. Defendant Palmer Simmons offered no evidence that the Unauthorized Expenses were, in fact, the legitimate business expenses of Simmons Family Holdings, LLC.

Under Paragraph 6 of the Order of September 22, 2020, the purpose of the hearing on March 2, 2021 is "to determine the total amount of Unauthorized Expenses, whereupon the sum so determined shall be paid to the Receiver for deposit in the SFH account(s)". (*Emphasis added*). The previous Order requires reimbursement and the Unauthorized Expenses are admitted. Having given due consideration to the testimony and the arguments of counsel,

IT IS HEREBY ORDERED AS FOLLOWS:

Defendant Palmer Simmons shall reimburse SFH for the Unauthorized Expenses totalling \$164,781.48 by making payment in that amount to the Receiver within thirty (30) days from the

date of this Order. The issue of attorney's fees to the Plaintiffs arising from Plaintiffs' motions is reserved.

AND IT IS SO ORDERED.

MARVIN H. DUKES, III
MASTER IN EQUITY
FOR BEAUFORT COUNTY

Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-03-12 10:52:16 page 4 of 4

STATE OF SOUTH CAROLINA)
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 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
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 Plaintiffs,)
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 v.)
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 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
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 Defendants.)
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 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER GRANTING
 MOTION TO COMPEL AND
 ORDER OF CONFIDENTIALITY

THIS MATTER came before the Court on March 1, 2021 on Plaintiffs' Motion to Compel Discovery. Appearing before me via Webex were Ehrick K. Haight, Jr., Esquire and Stacey S. Collins, Esquire, attorneys for the Plaintiffs, and Mark S. Berglind, Esquire, Stephen S. Meyer, Esquire, and Antonia Lucia, Esquire, attorneys for the Defendants. Thomas Pendarvis, Esquire, counsel for the Receiver for Simmons Family Holdings, LLC, the nominal Defendant, did not appear.

The Plaintiffs moved for an order compelling the Defendants to fully answer Plaintiffs' First Supplemental Request for Production dated September 25, 2020 ("Discovery Requests"). Defendants have failed to produce the following:

1. Copies of any correspondence between Defendant Palmer E. Simmons and the law firm of Vaux Marscher Berglind, P.A. regarding transfers of membership in Simmons Family Holdings, LLC, as requested in Paragraph 3 of Plaintiffs' Discovery Requests.
2. Copies of all assignments of membership interests, membership agreements, or other indicia of membership in Simmons Family Holdings, LLC, whether signed or unsigned, prepared on behalf of Simmons Family Holdings, LLC or Palmer E Simmons, as Manager, Co-Manager, or otherwise, regardless of whether such instrument was prepared as a draft, as requested in Paragraph 5 of Plaintiffs' Discovery Requests.
3. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or Defendant Palmer E. Simmons, as Manager or Co-Manager thereof, as requested in Paragraph 6 of Plaintiffs' Discovery Requests.
4. Copies of all documents purporting to transfer any membership interest in Simmons Family Holdings, LLC into or out of the Trust, as requested in Paragraph 10 of Plaintiffs' Discovery Requests.
5. A copy of the Trust as requested in Paragraph 12 of Plaintiffs' Discovery Requests.

The Defendants objected to the Discovery Requests on the basis of the attorney-client privilege, Defendants' dispute of the Plaintiffs' membership interests in Simmons Family Holdings, LLC and on relevancy. Defendants also claim to have already responded to Paragraph 10 of Plaintiffs' Discovery Requests.

Having reviewed the submissions of the parties and considered the arguments of counsel, the Court finds and concludes as follows:

1. Plaintiffs are entitled to examine and copy the business records of Simmons Family Holdings, LLC pursuant to S.C. Code Ann. §33-44-408 (2006), including any resolutions(s) purporting to transfer membership interests, and any correspondence from the Defendants, as Co-Managers, with counsel concerning such transfer(s). These documents are relevant and likely to lead to admissible evidence regarding the transfer of membership(s) and the Defendants' actions concerning membership interests.
2. Plaintiffs are entitled to examine and copy the attorney billing statements for work performed for Simmons Family Holdings, LLC or Defendant Palmer E. Simmons in his capacity as Manager or Co-Manager, including statements in J&W Corp. of Greenwood, LLC v. Simmons Family Holdings, LLC, C.A. No. 2015-CP-07-02284 and in all matters pertaining to membership interests in Simmons Family Holdings, LLC. These documents are relevant and likely to lead to admissible evidence regarding the Defendants' management of Simmons Family Holdings, LLC and the J&W lawsuit, the transfer of membership(s), and the Defendants' actions concerning membership interests.
3. Plaintiffs are entitled to examine and copy the Trust Agreement for the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust Dated May 5, 2016 as the Trust holds an interest in Simmons Family Holdings, LLC and the Trust Agreement is relevant and likely to lead to admissible evidence regarding the proper transfer of membership(s) and Defendants' actions concerning membership interests.

IT IS THEREFORE ORDERED AS FOLLOWS:

The Plaintiffs' Motion to Compel Discovery is granted and the Defendants shall respond within thirty (30) days from the date of this Order. The Defendants have prepared and the parties

have agreed to the following confidentiality provisions with regard to the documents to be produced pursuant to this Order:

Confidentiality. Documents designated confidential under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including appeal of that litigation). In the event a party seeks to file any material that is subject to this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the parties; (2) where appropriate, submitting the documents solely for *in camera* review; or (3) where the proceeding measures are not adequate, seeking permission to file the documents under seal pursuant to the South Carolina Rules of Civil Procedure or such other rule or procedure as may apply in the relevant jurisdiction. The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated confidential under the terms of this Order to any other person or entity except as set forth in subparagraphs (1) – (5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment in writing, that he or she has read and understands the terms of this Confidentiality Order, is bound by it, and will not disclose or permit the disclosure of any documents designated confidential. Subject to these to these requirements, the following categories of persons may be allowed to review documents which have been designated confidential pursuant to this Order:

1. Counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit, including the Receiver and counsel for the Receiver;
2. Court reporters engaged for the depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

3. Consultants, investigators or experts employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit;
4. The mediator hired by the parties for the mandatory mediation of this lawsuit; and
5. Other persons only upon consent of the producing party or upon order of the Court and on such conditions as are agreed and ordered.

Documents designated confidential shall include:

1. Copies of any billing statements reflecting work performed by Vaux Marscher Berglind, P.A. on behalf of Simmons Family Holdings, LLC, or the Defendants, as Manager(s) or Co-Manager(s) of Simmons Family Holdings, LLC.
2. Copies of the Trust Agreement for Charles E. Simmons, Jr. and Rosa G Simmons Trust Dated May 6, 2016.

If Defendants contend that any particular document(s) should not be provided, counsel shall submit said document(s) to the Court for an *in camera* review within thirty (30) days from the date of this Order.

AND IT IS SO ORDERED.

R. LAWTON McINTOSH
CIRCUIT COURT JUDGE

Anderson, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-03-18 11:35:53 page 6 of 6

STATE OF SOUTH CAROLINA)
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 COUNTY OF BEAUFORT)
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 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
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 as a nominal Defendant.)
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IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

ORDER DENYING DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT AND GRANTING
 IN PART, PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT

THIS MATTER came before the Court on cross motions for summary judgment pursuant to Rule 56, S.C.R.C.P. The record reflects that all discovery, with the exception of Plaintiffs' Motion to Compel¹, has been completed. The Verified Second Amended Complaint, the Answer thereto, the various affidavits and memoranda filed with this Court, and the deposition excerpts filed of record therewith, constitute the factual record of this case and that the Court may dispose of this case as a matter of law. Both motions were heard via WebEx by the Court on March 1, 2021.

¹ Plaintiffs' Motion to Compel was heard after the motions for summary judgment and is addressed by a separate Order.

Ehrick K. Haight, Jr., Esq. and Stacey S. Collins, Esq. appeared on behalf of Jermaine Robinson and Greg Marcus Simmons (“Plaintiffs”) and Mark S. Berglind, Esq., Steven Meyer, Esq. and Antonia T. Lucia, Esq., appeared on behalf of Palmer E. Simmons, individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 (the “Trust”), and Charlesetta Aiken (“Defendants”). Michael Hawanczek, the receiver appointed in this case did not appear, nor did Thomas A. Pendarvis, Esq. counsel for Simmons Family Holdings, LLC (“SFH”), the nominal Defendant in this action. Plaintiffs are seeking summary judgment as to all ten (10) enumerated causes of action set forth in their Second Amended Complaint. Defendants are seeking summary judgment on the claim that Plaintiffs are not members in SFH.

Upon reviewing the verified pleadings, the record, the affidavits and memoranda submitted, including the deposition excerpts, the evidence and the applicable law, and hearing statements and representations of counsel, the Court finds that Plaintiffs are entitled to partial summary judgment on their first cause of action in so far as it seeks a declaratory judgment establishing that they are members of SFH. Their percentage of interest is a fact to be determined at trial.

The Court further finds that Defendant Palmer E. Simmons made an unauthorized distribution to himself or to his company and that the Plaintiffs are entitled to partial summary judgment on their ninth cause of action for money had and received. The amount of unauthorized contributions is a fact to be determined at trial.

Plaintiffs’ Motion for Summary Judgment as to their claims for breach of contract, breach of fiduciary duty, conversion, breach of contract accompanied by fraud, interference with a contractual relationship and disassociation, are denied. Defendants’ motion for summary judgment is denied in its entirety.

FACTS

Simmons Family Holdings, LLC (“SFH”) is a real estate holding company. It was owned wholly by the late Charles E. Simmons, Jr. up until November 3, 2015, when he executed Amended Articles of Organization for SFH, adding Plaintiffs, as Members and Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers.

The record reflects that Defendants consistently acknowledged that their nephews², the Plaintiffs, were members of SFH throughout the four years preceding this litigation. Plaintiffs membership in SFH, is further supported by the following documents and testimony in the record:

- a. the Amended Articles of Incorporation, prepared by Palmer E. Simmons, signed by Charles E. Simmons, Jr. (as the sole member and manager of SFH) and subsequently filed with the Secretary of State, adding Plaintiffs as members and appointing Defendants as Co-Managers, which document was duly authenticated by Palmer E. Simmons;
- b. additional documents signed by Jermaine Robinson as owner of SFH during Charles E. Simmons, Jr.’s lifetime;
- c. the Inventory and Appraisal, filed by Ms. Lucia in the Estate of Charles E. Simmons, Jr., indicated decedent died possessed of a one-third interest;
- d. the Assignment prepared by Ms. Lucia, indicating Plaintiffs were the only remaining members of SFH;
- e. the Resolution prepared by Ms. Lucia indicating Charles E. Simmons, Jr. owned a one-third interest in SFH and Plaintiffs were the “remaining members”;
- f. deposition testimony of Palmer E. Simmons indicating that he did not own any interest in SFH prior to his father’s death;

² Plaintiff G. Marcus Simmons is also the brother, by adoption, of Defendants.

- g. tax returns filed by SFH showing Plaintiffs as Members of SFH, signed by Palmer E. Simmons under penalties of perjury;
- h. Palmer E. Simmons sworn testimony, given before the filing of this action, in which he stated that they were members; and
- i. Plaintiffs' receipt of regular distributions from SFH.

The Defendants argued in the hearing and in their memoranda that the addition of new members requires strict adherence with the provisions of SFH's Operating Agreement. Specifically, the Defendants argued the individual Plaintiffs have no membership interest in SFH because the Amended Articles of Organization relied on by the Plaintiffs as their basis for membership do not comply with Section 3.1 of SFH's Operating Agreement. That section states in relevant part the following: "Additional Persons may be admitted to the Company as a Member and Memberships may be created and issued to those Persons and to the Member at the direction of the Member, on such terms and conditions as the Member may determine and the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to such Person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Company, as appropriate, a document including the new Member's notice address, its agreement to be bound by the terms of an Operating Agreement which reflects the existence of at least two Members, and its representation and warranty that the representation and warranties required of the new Members are true and correct with respect to the Member."

The Defendants argued the 2015 Amended Articles of Organization state only that Greg M. Simmons and Jermaine Robinson are added as Members of SFH. There is no other direction given in the Amended Articles of Organization or percentage of interest in SFH. There is no statement of net profit and net loss allocable to Greg Simmons and Jermaine Robinson. In addition, there is no capital contribution set forth pertaining to their addition as members, nor is there any evidence that either Plaintiff contributed financially. There is no documentation indicating that Plaintiffs Simmons or Robinson ever provided written indication of a notice address or an agreement to be bound by the terms of the operating agreement.

Further, the Defendants argued absent strict compliance with the Operating Agreement, any subsequent conduct allegedly consistent with a membership interest has no relevance.

Finally, the Defendants argued there is at least a scintilla of evidence to support a denial of Plaintiffs' motion for summary judgment. The Defendants presented at the hearing and in their memoranda the 2016 deposition testimony of Charles E. Simmons, Jr. in an unrelated case. In the course of the deposition, Charles E. Simmons, Jr. testified that the members of SFH are himself, his wife, Rosa Simmons, his daughter, Charlesetta Simmons, and Palmer Simmons.

The Plaintiffs objected to the admissibility of this deposition testimony based on South Carolina Code of Laws Section 19-11-20, which is commonly known as the "Dead man's Statute."

The Court finds that strict compliance with the Operating Agreement is not a prerequisite of membership. Considering all the facts in the light most favorable to the Defendants, the Court further finds that there is no issue of material fact as to Plaintiffs' status as member of SFH, but that there is an issue of material fact as to their percentage of ownership

Having found that Plaintiffs are, and have been since the date of the Articles of Amendment of SFH, members of SFH, Defendant Palmer E. Simmons made unauthorized payments and/or distributions to himself, his business, his family members, and others, for his

personal benefit. The full extent of the amount of those distributions and payments is yet to be determined by a full accounting.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56 (c), SCRCP. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). “It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine.” *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). “A complete failure of proof concerning an essential element of the [nonmoving] party’s case necessarily renders all other facts immaterial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

LAW/ANALYSIS

By applying the summary judgment standard to the instance case, I find that there is no genuine issue of material fact that must be submitted to the fact finder, and that the undisputed evidence establishes as a matter of law, that Plaintiffs are member of SFH, but the extent of their membership is to be determined at the trial of this case. Plaintiffs sought a declaratory judgment as against the Defendants, asking that this Court declare their rights, status and legal relationship vis-à-vis membership in and to SFH.³ The Plaintiffs have presented a real and substantial controversy in regard to their rights as members and have standing to bring their action. Pursuant to the Uniform Declaratory Judgments Act (“Declaratory Judgment Act”), this Court has the power

³ 2nd Am.Compl., P.10.

to declare Plaintiffs are members of SFH, "whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20 (2005). Such declaration has the same force and effect as a final judgment or decree. *Id.*

Partial Declaratory Judgment as to Membership

The granting of a declaratory judgment rests in the sound discretion of the Court, to be reasonably exercised in furtherance of the purposes of the Declaratory Judgment Act. *Guimarin & Doan, Inc. v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 567, 155 S.E.2d 618, 621 (1967). The Declaratory Judgments Act should be liberally construed to accomplish its purposes, one of which is to remove uncertainty and insecurity from legal relationships. *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 6, 56 S.E.2d 576, 578 (1949). As the Declaratory Judgment Act authorizes this Court to make determinations of questions regarding writings that constitute a contract, this Court may evaluate the terms of the Operating Agreement, the Articles of Amendment, and the related assignments and resolutions, and the other documentation presented in this case to determine the intent of the parties. S.C. Code Ann. §15-53-30, See: *Southern Atlantic Financial Services, Inc. v. Middleton*, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002), *aff'd as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003). (*In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties*).

In the instant case, the documentation provided, the testimony of the parties, and undisputed facts, conclusively establish that Plaintiffs are entitled to the declaratory relief they request as to the issue of their membership in SFH. However, giving due regard for all of the circumstances of this case, the Court declines to go further and determine the percentage of Plaintiffs' ownership interest and leaves that determination for the trier of fact. This Court denies Defendants' Motion for Summary Judgment for the same reasons that support the grant of partial declaratory judgment to the Plaintiffs.

Monies Had and Received

As early as 1839, South Carolina recognized a case of monies had and received: See *Marvin v. M'Rae*, 1 Rice 171 (S.C. 1839) (“if a party has money in his or her hand that belongs to another, that other party may sue the first in an action for monies had and received”). More recently, equitable relief based on this premise was granted in *Okatie River v. Southeastern Site Prep*, 577 S.E. (S.C. App. 2003). In *Okatie*, as in this case, the Court sought to determine whether the money held by one person was really a loan, advance, deposit, or sum to be repaid upon specific terms to another person. Having determined that Defendant, Palmer E. Simmons wrongfully expended monies belonging to SFH for the benefit of the Trust, in the form of mortgage payments, insurance payments, and real property taxes on property owned by it, and further determined that it would be inequitable for the Trust to retain such funds, SFH is entitled to summary judgment as to the issue of his liability for such payments under this cause of action. The full extent of the monies to be repaid is to be determined by the trier of fact.

CONCLUSION

The purpose of the Declaratory Judgment Act is to afford a speedy and inexpensive method of deciding legal disputes. *Thompson v. State*, 415 S.C. 560, 565, 785 S.E.2d 189, 191 (2016). By declaring Plaintiffs members, this Court preserves Plaintiffs’ rights with respect to SFH, and clarifies their status and legal relationship to Defendants, Palmer E. Simmons and Charlesetta S. Aiken, as co-managers. The result of this declaratory relief is that those monies wrongfully appropriated by Defendant, Palmer E. Simmons, must be repaid to SFH for further redistribution upon a final determination as to Plaintiffs’ percentage interests, as described herein. The issue of damages accruing as the result of Defendant, Palmer Simmons’ actions is reserved for further determination, as are Plaintiffs’ remaining causes of action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that (a) Defendants’ Motion for Summary Judgment is denied; (b) Plaintiffs are granted declaratory judgment as to their membership in Simmons Family Holdings, LLC; (c) Plaintiffs percentage of ownership is to

be determined by the trier of fact; (d) judgment is entered for Simmons Family Holdings, LLC for monies had and paid, brought derivatively on its behalf, with the amount of damages flowing therefrom to be determined by the trier of fact. Plaintiffs' remaining causes of action are unaffected by this Order.

AND IT IS SO ORDERED

R. Lawton McIntosh
Circuit Court Judge

Anderson, South Carolina



Beaufort Common Pleas

Case Caption: Greg Marcus Simmons , plaintiff, et al VS Palmer E Simmons ,
defendant, et al
Case Number: 2019CP0701246
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-03-18 11:57:09 page 10 of 10

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
 a South Carolina Limited Liability)
 Company,)
)
 Plaintiffs,)
)
 v.)
)
 PALMER E. SIMMONS, individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and CHARLESETTA S. AIKEN,)
)
 Defendants,)
)
 and)
)
 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

SUMMONS TO SECOND AMENDED
 COMPLAINT
 (Jury Trial Requested)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended and Verified Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office, 1000 William Hilton Parkway, The Clarendon Building, Suite 203, Village at Wexford, Post Office Drawer 6067, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, AND IF YOU FAIL TO APPEAR AND DEFEND THE ACTION AS REQUIRED BY LAW, JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

[SIGNATURE PAGE FOLLOWS]

MINOR, HAIGHT & ARUNDELL, P.C.

By: s/Stacey S. Collins
Ehrick K. Haight, Jr. S.C. Bar #2446
Stacey S. Collins S.C. Bar #73360
P. O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
rick@mhalawfirm.com
stacey@mhalawfirm.com
Attorneys for Plaintiffs

Hilton Head Island, South Carolina
This 27th day of October, 2020.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 GREG MARCUS SIMMONS and)
 JERMAINE ROBINSON, both)
 individually and derivatively on behalf)
 of Simmons Family Holdings, LLC,)
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 SIMMONS FAMILY HOLDINGS, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2019-CP-07-01246

SECOND AMENDED
 COMPLAINT
 (Jury Trial Requested)

The Plaintiffs, Greg Marcus Simmons and Jermaine Robinson (hereinafter “Marcus Simmons” and “Jermaine Robinson” respectively, or when referred to jointly, “Plaintiffs”) on their own behalf and derivatively on behalf of Simmons Family Holdings, LLC (“SFH”), complaining of the Defendants, Palmer E. Simmons, individually and as Trustee of the Charles S. Simmons, Jr. and Rosa G. Simmons Revocable Trust date May 5, 2016 (the “Trust”), and Charlesetta S. Aiken (hereinafter “Palmer Simmons” and “Charlesetta Aiken” respectively, or when referred to jointly, “Defendants”), would respectfully show this Court as follows:

This lawsuit centers upon the ownership and operation of SFH, a family owned South Carolina limited liability company. SFH was originally created by the family patriarch, Charles E. Simmons, Sr. as a real estate holding company, and was a single-member limited liability company up until his death, whereupon all of the membership interest therein transferred to his

son Charles E. Simmons, Jr. Like his father, Charles E. Simmons, Jr. operated SFH as a single-member limited liability company for the purpose of holding real estate, specifically, that certain property known as 11 Simmons Road, on Hilton Head Island on which the restaurant "Fish Camp on Broad Creek" now operates (the "Fish Camp Tract"). For several years, Charles E. Simmons, Jr.'s adopted son and biological grandson, Plaintiff Marcus Simmons, and another of his grandchildren, Plaintiff Jermaine Robinson, operated a bar and club on the Fish Camp Tract. In recognition of Plaintiffs' efforts with respect to improvements to the Fish Camp Tract, Charles E. Simmons, Jr. made Plaintiffs members of SFH and appointed Defendants, Palmer Simmons and Charlesetta Aiken as Co-Managers.

Subsequently, Plaintiff Jermaine Robinson entered into discussions with Brendan Reilley, a prominent Hilton Head Island restaurateur, regarding the establishment of a restaurant on the site and a lease of the Fish Camp Tract for that purpose. On or about August 2, 2016, a lease was signed with Camp Creek Partners, LLC and the new venture, Fish Camp on Broad Creek was formed. The venture has proven very successful and provides a significant source of income for SFH and its members.

Charles E. Simmons, Jr. died in May of 2016, a few months after adding Plaintiffs as members of SFH. His one-third interest in SFH, together with the remainder of his estate, was transferred to the Trust, for the care of his surviving spouse, Rosa G. Simmons. On information and belief, Rosa G. Simmons was the Trustee of the Trust initially. On further information and belief, Defendant Palmer Simmons has taken over that responsibility. This action was instigated following, what Plaintiffs allege, was an attempt by Defendant Palmer Simmons, to wrest them of their membership interest in SFH. It also addresses various actions and/or inactions on the part of Defendants, in particular Defendant Palmer Simmons, in their capacity as Co-Managers of SFH.

PARTIES

1. The Plaintiffs are citizens and residents of Beaufort County, South Carolina.
2. The Defendants are citizens and residents of Beaufort County, South Carolina.
3. That the Trust is domiciled in Beaufort County, South Carolina and owns real property therein.
4. That this honorable court has jurisdiction over the parties hereto and the subject matter hereof.
5. That Nominal Defendant, Simmons Family Holdings, LLC, is a single member South Carolina limited liability company.
6. That Plaintiffs, in addition to their individual claims against the Defendants, are suing derivatively on behalf of SFH, which is named as a nominal defendant in this action pursuant to S.C. Code Ann. §33-44-1101 (2006).

ALLEGATIONS PERTAINING TO PLAINTIFFS'
MEMBERSHIP IN SIMMONS FAMILY HOLDINGS, LLC

7. That on or about September 14, 2001, Charles E. Simmons, Jr., as organizer, formed SFH, by filing Articles of Organization with the South Carolina Secretary of State.
8. That at the time of its formation, the sole member of SFH according to that certain Single Member Operating Agreement for SFH dated September 14, 2001, a true and correct copy of which is attached hereto as **Exhibit "A"** (the "Operating Agreement"), was Charles E. Simmons, Sr.
9. That at the time the Articles of Organization for SFH were filed, the manager of SFH was Charles E. Simmons, Jr., the son of the sole member, Charles E. Simmons, Sr.
10. On information and belief, Charles E. Simmons, Sr. died and his estate was probated in Beaufort County in 2005.

11. On information and belief, Charles E. Simmons, Sr. was the sole member of SFH at the time of his death and all of his interest therein transferred to his son, Charles E. Simmons, Jr.

12. On or about November 9, 2015, Charles E. Simmons, Jr., as the sole member and manager of SFH, executed and filed Amended Articles of Organization for SFH, a true and correct copy of which is attached hereto as **Exhibit "B"**, naming Plaintiffs as additional members and appointed Defendants as Co-Managers of SFH.

13. That immediately prior to executing and filing the foregoing Amended Articles of Organization, Charles E. Simmons, Jr. was the sole member and manager of SFH.

14. The Amended Articles of Organization for SFH granted the Plaintiffs each a one-third interest in the company, with Charles E. Simmons, Jr., retaining a one-third interest therein.

15. That the Plaintiffs and Charles E. Simmons, Jr. collectively owned one hundred (100%) percent of the membership interests in SFH at the time of Charles E. Simmons, Jr. death on May 26, 2016.

16. That on June 21, 2016, Rosa G. Simmons, spouse of decedent, Charles E. Simmons, Jr., filed a Petition for Informal Probate of Will and Appointment (the "Petition"), prepared by Antonia Lucia, Esq. of the law firm, Vaux Marscher Berglind, P.A. A true and correct copy of said Petition, with birth date information redacted, is attached hereto as **Exhibit "C"**.

17. That said Petition included what purports to be the original Last Will and Testament of Charles E. Simmons, Jr. executed on or about May 5, 2016 (the "Will"), just two weeks prior to his death on May 16, 2016, due to cancer.

18. That Charles E. Simmons, Jr. was in hospice care at the time the purported Will was executed and, on information and belief, was prescribed morphine for his pain.

19. That the purported Will was prepared by Vaux Marscher Berglind, P.A. and witnessed by persons affiliated with that firm.

20. That as of the date of execution of the purported Will, Charles E. Simmons, Jr. had four living children, to wit: Defendants, Palmer E. Simmons and Charlesetta S. Aiken, Benjamin Elliot, and Plaintiff, Greg Marcus Simmons.

21. In the purported Will, Charles E. Simmons, Jr. failed to correctly identify all of his living children, specifically, he failed to mention Benjamin Elliot and Plaintiff, Greg Marcus Simmons.

22. Likewise, the Petition failed to identify Benjamin Elliot and Plaintiff, Greg Marcus Simmons, as intestate heirs.

23. That the purported Will bequeathed all of the assets of his estate, including his one-third (1/3rd) interest in SFH, to the Trust.

24. That Palmer Simmons was appointed by the Probate Court as the Personal Representative of the Estate of Charles E. Simmons, Jr. on or about June 24, 2016.

25. That the Inventory filed in the administration of Charles E. Simmons, Jr. identified that his estate owned a one-third interest in SFH. A true and correct copy of the Inventory is attached hereto as **Exhibit "D"**.

26. That on June 30, 2017, the Plaintiffs, as the surviving members of SFH, together with the Defendants in their capacity as Co-Managers of SFH, executed that certain SFH Assignment and Transfer of Membership Interest, a true and correct copy of which is attached hereto as **Exhibit "E"** (the "Assignment").

27. The Assignment was prepared by Vaux Marscher Berglind, P.A.

28. The Assignment transferred the one-third (1/3rd) interest in SFH belonging to the decedent, Charles E. Simmons, Jr., to the aforementioned Trust.

29. On information and belief, from the date of the Assignment to the time of the filing of this action, SFH has been comprised of three members, to wit: the Plaintiffs and the aforesaid Trust.

30. On or about March 13, 2018, at the instruction and direction of the Defendants, SFH filed that certain U.S. Return of Partnership, Form 1065, a true and correct copy of which, with tax identification number redacted, is attached hereto as **Exhibit "F"** ("2017 Return").

31. That the 2017 Return, signed by Defendant Palmer Simmons under penalty of perjury, incorrectly showed Defendants each owning a one-third (1/3rd) interest in SFH, with Plaintiffs' interests being reduced to one-sixth (1/6th) each.

32. That Defendant Palmer Simmons has continued to file tax returns, again under penalties of perjury, showing Plaintiffs as owners of a one-sixth (1/6th) interest in SFH.

33. That, on information and belief, at no time relevant to this action have Defendants owned any membership interest in SFH.

34. That at no time relevant to this action have Defendants executed any membership subscription agreement or other agreement establishing their interest in SFH or otherwise indicating their agreement to be bound by the Operating Agreement for SFH.

35. That the Plaintiffs have never give written or verbal consent to the addition of Defendants as members of SFH.

36. That the 2017 Return further shows that Defendants received distributions from SFH.

37. That the 2017 Return was signed by Defendant Palmer E. Simmons under penalty of perjury.

38. That in April of 2018, Plaintiffs were presented with a document entitled “Simmons Family Holdings, LLC Resolution Authorizing Assignment and Transfer of Membership Interest”, a true and correct copy of which is attached hereto as **Exhibit “G”** (the “Proposed Assignment”).

39. That on information and belief, the Proposed Assignment was prepared by or at the behest of Defendant, Palmer Simmons.

40. That the Proposed Assignment was never fully executed by the members of SFH.

ALLEGATIONS PERTAINING TO DEFENDANTS’ DUTIES AS CO-MANAGERS

41. Plaintiffs bring this action, in part, as a declaratory judgment action pursuant to §15-53-10, et seq., Code of Laws of South Carolina (1976), for the purpose of determining questions in controversy between the parties as more fully set forth herein. Plaintiffs also bring this action pursuant to the common law and statutory general jurisdiction of this Court.

42. Under South Carolina Code Ann. §33-44-409(h)(2), the Defendants, as Co-Managers, owe a duty to SFH and to the Plaintiffs to:

- a) account to the company and to hold as trustee for it any property, profit or benefit;
- b) to refrain from dealing with the company in the conduct of the company’s business, as or on behalf of a party having an interest adverse to the company;
- c) to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law; and
- d) to discharge their duties consistently with the obligation of good faith and fair dealing.

43. Defendants owe a fiduciary duty to the Plaintiffs. A fiduciary duty is created in any situation in which one person justifiably places confidence and trust in someone else and seeks that person’s help or advice in some matter. The Defendants’ relationship with the Plaintiffs, is a

fiduciary one because the Plaintiffs, as members of SFH, trust that Defendants, as Co-Managers, will act properly in managing the affairs of SFH.

44. The Defendants have breached the foregoing duties in the following particulars:
- a) transferring, or purporting to transfer, membership interests in SFH from the Trust to themselves without the consent of the Plaintiffs in violation of South Carolina Code Ann. §33-44-404(c);
 - b) making unlawful distributions to themselves individually, as Managers and, in the case of Defendant Palmer Simmons, as Trustee of the Trust;
 - c) with respect to Defendant Palmer Simmons, engaging in willful misconduct by making payments and/or distributions directly to, or for the benefit of, himself, his family members, his company Carolina Trucking HH, LLC, and others;
 - d) with respect to Defendant Palmer Simmons, engaging in willful misconduct by making loans directly to, or for the benefit of, himself, his family members, his company Carolina Trucking HH, LLC, and others, without executing promissory notes or other indicia of the debt, without charging interest, and without making adequate provision for the repayment thereof;
 - e) with respect to Defendant Palmer Simmons, on information and belief, unilaterally discharging the foregoing indebtedness owed to SFH to the detriment of SFH;
 - f) knowingly violating the law by filing tax returns for SFH reflecting Defendants' membership interest in SFH, with the knowledge that the Plaintiffs had not consented to or otherwise authorized Defendants' acquisition of a membership interest therein;
 - g) by failing to hold annual meetings or maintain records; and

- h) by engaging in grossly negligent or reckless conduct by failing to make the necessary and proper arrangements to allow SFH to comply with that certain Final Order entered in the matter of J&W Corporation of Greenwood, LLC v. Simmons Family Holdings, LLC, Civil Action File No. 2015CP072284 (the "Litigation") placing SFH in jeopardy of a confession of judgment, whilst also causing SFH to have insufficient cash reserves to cover same, thereby placing SFH at risk of losing the Fish Camp Tract, its single largest source of income.

DERIVATIVE ACTION ALLEGATIONS

45. Pursuant to Rule 23(b)(1), SCRCPC, Plaintiffs bring this action derivatively on behalf of and for the benefit of SFH to redress injuries suffered and yet to be suffered by it as a direct and proximate result of the Defendants' conduct. SFH is a named Defendant solely as party necessary to effectuate complete relief to the Plaintiffs in their representative capacities.

46. Plaintiffs will adequately and fairly represent the interests of SFH and its similarly situated members in this litigation.

47. At all times relevant to this action, Plaintiffs have been and continue to be members of SFH.

48. The wrongful acts complained of herein subject SFH to harm.

49. Plaintiffs are the proper parties to enforce the rights of SFH, where, as here, SFH and Defendants failed to enforce such rights. In particular, Plaintiffs have asserted that SFH has a duty to file proper tax returns and to fulfil its obligations under various Court orders, to no avail. Moreover, their assertions were futile and further efforts would have been futile because the Defendants responsible for the acts complained of herein remain in control of SFH and have steadfastly denied the relief requested for the benefit of Plaintiffs.

50. The Defendants' actions complained of herein were not authorized under South Carolina law and are therefore ultra vires, unlawful, and unauthorized. As a result, the actions complained of herein are not subject to protection under the business judgment rule, and any reasonable, good faith inquiry into the wrongdoing would conclude that Plaintiffs' claims are legitimate and in the best interests of SFH.

51. The acts complained of herein are and will continue to be to the detriment of the SFH and its members.

52. Defendants' wrongful actions set out herein were willful, in bad faith, and beyond the scope of the authority granted to Defendants and served no legitimate business purpose. As a result, the acts described herein were not, nor could have been, the product of a reasonable, valid, or good faith exercise of business judgment.

53. The Defendants are antagonistic, adversely interested, and have continued and/or initiated the improper practices complained of herein.

54. In order to bring this suit, the Defendants would be forced to sue themselves, which they will not do, thereby excusing a specific demand on them.

55. That the Plaintiffs are entitled to recover their attorneys' fees and costs in bringing the derivative claims asserted herein on behalf of SFH pursuant to S.C. Code Ann. §33-44-1104 (2006).

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment as to Membership Interests – Pursuant to S.C. Code Ann. §15-53-10 et seq. and Rule 57, SCRCP as to all Defendants)

56. For this cause of action, Plaintiffs incorporate all allegations set forth in Paragraphs 1 through 55 above as if fully set forth herein.

57. Plaintiffs bring this cause of action against Defendants pursuant to S.C. Code Ann. §15-53-10 through §15-53-140, Rule 57, SCRCP, and the common law of the State of South Carolina, seeking declarations pertaining to the membership interests in SFH:

- a. That Defendants are not now, nor have they ever been, members of SFH;
- b. That pursuant to the Amended Articles of Organization, Plaintiffs were made members of SFH;
- c. That at the time of his death, Charles E. Simmons, Jr. owned a one-third interest in SFH and Plaintiffs owned the remaining two-thirds;
- d. That Rosa G. Simmons, acting as the Personal Representative of the Estate of Charles E. Simmons, Jr. prepared, or had prepared, an Inventory (see **Exhibit "D"**), indicating decedent's estate held a one-third interest in SFH, which Inventory was not amended by Defendant Palmer Simmons when he took over as Personal Representative of the Estate;
- e. That Defendant Palmer Simmons, acting as Personal Representative of the Estate of Charles E. Simmons, Jr., prepared, or had prepared, an Assignment of that Membership Interest from the Estate of Charles E. Simmons, Jr. (see **Exhibit "E"**) transferring decedent's one-third interest in SFH to the Trust;
- f. That pursuant to the aforesaid Assignment, the Trust is the holder of a one-third membership interest in SFH; and
- g. That in light of said filings and under South Carolina common law theories of waiver and estoppel, Defendants cannot now deny that (i) Plaintiffs hold a membership interest in SFH; (ii) Plaintiffs, together with Charles E. Simmons, Jr., were the exclusive members of SFH at the time of Charles E. Simmons, Jr.'s death; (iii) Charles E. Simmons, Jr. was possessed of a one-third (1/3rd) interest in SFH at

the time of his death; and (iv) the Trust received no more than a one-third (1/3rd) interest in SFH.

58. Accordingly, Plaintiffs are entitled to a declaratory judgment, ruling that they, together with the Trust, have been the exclusive members of SFH and that they each hold a one-third (1/3rd) interest each. Plaintiffs are further entitled to a true and accurate accounting of all loans, distributions and/or payments made to Defendants Palmer Simmons and Charlesetta Aiken and an order directing that all such distributions and/or payments be reimbursed to SFH.

59. Plaintiffs are further entitled to have amended Federal and State Tax Returns filed on behalf of SFH for the years 2016 through present reflecting the correct membership interests in SFH.

FOR A SECOND CAUSE OF ACTION

(Conversion as to Defendants in their Individual Capacity)

60. That the allegations of Paragraphs 1 through 59 of this Complaint are realleged as fully as if repeated verbatim herein.

61. That at least as early as 2017, Defendants unilaterally and without the required written consent of the Plaintiffs, did name themselves members of SFH and did each take for themselves a purported one-third (1/3rd) ownership interest, as evidenced by the 2017 Return.

62. That 2017 Return further shows that Defendant, Palmer Simmons, received the sum of Thirty-Two Thousand Five Hundred and Thirty-Two and No/100 (\$32,532.00) Dollars in withdrawals and distributions from SFH.

63. That the 2017 Return also shows that Defendant, Charlesetta Aiken received the sum of Twelve Thousand Four Hundred Eighty and No/100 (\$12,480.00) Dollars in withdrawals and distributions from SFH.

64. That the taking of a membership interest in SFH by the Defendants, without the written consent of the members including Plaintiffs, constituted an illegal taking of the Plaintiffs' property.

65. That Defendant Palmer Simmons, individually and as Trustee, has further made significant payments directly to or for the benefit of, himself, his family members, his company Carolina Trucking HH, LLC, the Trust, and others.

66. That such payments and/or distributions taken by the Defendants also constitute an illegal taking of the Plaintiffs' property.

67. That as a result of the foregoing actions, Plaintiffs suffered damages for the loss of their respective membership interest in SFH, as well their respective shares of the distributions paid to Manager/Plaintiffs.

68. That the actions of the Manager/Plaintiffs were willful, wanton, and undertaken with a conscious indifference to the rights of the Plaintiffs.

69. That by reason of and as a consequence of the aforementioned conduct of the Defendants, the Plaintiffs suffered financial losses in such amounts as may be determined by a full accounting, are entitled to judgment against the Defendants for actual and punitive damages, and are further entitled to have their respective membership interests restored to their rightful percentage, to wit: a one-third (1/3rd) interest each.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract as to Defendants in their Individual Capacity)

70. That the allegations of Paragraphs 1 through 69 of this Complaint are realleged as fully as if repeated verbatim herein.

71. That the Operating Agreement does not permit the addition of members without the written consent of all of the members of SFH.

72. That in purportedly granting themselves a membership interest in SFH without the written consent of the Trust and the Plaintiffs, the Defendants did breach the express terms of the Operating Agreement.

73. That by reason of and as a consequence of the aforementioned breach of the Defendants, the Plaintiffs suffered financial losses in such amounts as may be determined by a full accounting, are entitled to judgment against the Defendants for actual damages, and are further entitled to have their respective membership interests restored to their rightful percentage, to wit: a one-third (1/3rd) interest each.

FOR A FOURTH CAUSE OF ACTION

**(Breach of Contract Accompanied by Fraudulent Act
As to Defendant Palmer Simmons Individually)**

74. That the allegations of Paragraphs 1 through 73 of this Complaint are realleged as fully as if repeated verbatim herein.

75. That in an attempt to legitimize his membership interest in SFH, and that of Defendant Charlesetta Aiken, Defendant Palmer Simmons did further breach the Operating Agreement and his duties to Plaintiffs thereunder, by preparing, or directing the preparation of, the Proposed Assignment.

76. That, on information and belief, Defendant Palmer Simmons did arrange for his son Rory Rice, to take the Proposed Assignment to Plaintiffs, together with legitimate documents necessary and proper for the business of SFH, for their signature.

77. That on information and belief, Defendant Palmer Simmons instructed Mr. Rice to advise Plaintiffs that the documents were necessary for certain dock repairs on that certain Six acre (more or less) piece of property owned by SFH and located at 11 Simmons Road, Hilton Head Island, South Carolina (hereinafter, the "Fish Camp Tract") in a deliberate attempt to

unlawfully appropriate an even greater share of the membership interest in SFH for himself and his sister, Defendant Charlesetta Aiken.

78. That Defendant Marcus Simmons did execute the Proposed Assignment in reliance on the aforesaid representation, but upon learning of its import withdrew his execution.

79. That Defendant Jermaine Robinson questioned the Proposed Assignment and refused to sign.

80. That Plaintiffs are entitled to actual and punitive damages as against Defendant Palmer Simmons as a result of his breach of the Operating Agreement and unlawful dealing for the purpose of appropriating Plaintiffs' membership interests in and to SFH.

FOR A FIFTH CAUSE OF ACTION

(Breach of Duty as to Defendants in their Individual Capacity)

81. That the allegations of Paragraphs 1 through 80 of this Complaint are realleged as fully as if repeated verbatim herein.

82. That in their capacity as the Co-Managers of SFH, Defendants owed various duties to Plaintiffs, including a fiduciary duty, duty of loyalty and duty of good faith and fair dealing.

83. That Defendants used their position as Co-Managers, to illegally and without the consent of the Plaintiffs, grant themselves an interest in SFH and to take distributions from the income therefrom in violation of the Operating Agreement, S.C. Code Ann. §33-44-405 and the common law of South Carolina.

84. That in making such distributions, Defendants caused Plaintiffs to receive less than their equal distributional interest in and to SFH.

85. That Defendant Palmer Simmons, in his capacity as Co-Manager, did prepare, or cause to be prepared State and Federal tax returns based on the purloined membership interests with full knowledge of the falsity of such representations.

86. That the filing of a false or inaccurate return will necessitate the filing of amended corporate returns by SFH and may result in the assessment of additional taxes, penalties, and interest, as against Plaintiffs.

87. That by reason of and as a consequence of the aforementioned conduct of the Defendants, jointly, and/or by Defendant Palmer Simmons, individually, the Plaintiffs suffered financial losses in such amounts as may be determined by a full accounting, are entitled to judgment against the Defendants for actual and punitive damages, and are further entitled to have their respective membership interests restored to their rightful percentage, to wit: a one-third (1/3rd) interest each.

88. That by reason of and as a consequence of the aforementioned conduct of Defendant Palmer Simmons, individually, in preparing false or inaccurate tax returns, the Plaintiffs will sustain damages in the form of accounting expenses, interest, and possible penalties, in amounts as yet to be determined; and Plaintiffs are entitled to judgment against Defendant Palmer, individually for their actual damages arising therefrom.

**FOR A SIXTH CAUSE OF ACTION
DERIVATIVELY ON BEHALF OF SIMMONS FAMILY HOLDINGS, LLC**

(Breach of Duty as to Defendants in their Individual Capacity)

89. That the allegations of Paragraphs 1 through 88 of this Complaint are realleged as fully as if repeated verbatim herein.

90. That in their capacity as the Co-Managers of SFH, Defendants owed various duties to SFH, including a fiduciary duty, duty of loyalty and duty of good faith and fair dealing as set forth in Paragraph 42 hereinabove.

91. That Defendants breached said duties as more particularly described in Paragraph 44 hereinabove.

92. That as a result of such breach, SFH will incur additional expenses for filing amended corporate returns, which may result in the assessment of additional taxes, penalties, and interest, as against SFH.

93. That by reason of and as a consequence of the aforementioned conduct of the Defendants, jointly, and/or by Defendant Palmer Simmons, individually, SFH has suffered financial losses in such amounts as may be determined by a full accounting, and is entitled to judgment against the Defendants for actual and punitive damages.

**FOR A SEVENTH CAUSE OF ACTION
DERIVATIVELY ON BEHALF OF SIMMONS FAMILY HOLDINGS, LLC**

**(Interference with Contractual Relationship
as to Defendant Palmer Simmons Individually)**

94. That the allegations of Paragraphs 1 through 93 of this Complaint are realleged as fully as if repeated verbatim herein.

95. That SFH entered into a settlement agreement with J&W Corporation of Greenwood, LLC (hereinafter "J&W") resolving the Litigation.

96. That as part of that settlement agreement, SFH was to convey to J&W, a one-half acre portion of the Fish Camp Tract on or before August 31, 2020, all as reflected in the Final Order filed in the Litigation on or about April 28, 2020 (the "Final Order").

97. That having negotiated the terms of the settlement on behalf of SFH, Defendant Palmer Simmons was aware of the terms thereof.

98. That in order to fulfil the conditions of the Final Order, it was necessary for Defendant Palmer Simmons to seek approval of a plat of subdivision of the Fish Camp Tract from the Town of Hilton Head Island and to refinance or secure a partial release of that certain Mortgage in the original principal amount of \$400,509.50 in favor of Mary Lee Simmons, as Mortgagor, originally recorded in the Office of the Register of Deeds for Beaufort County, South

Carolina on May 14, 2009 in Book 2844 at Page 1811, as amended in Deed Book 3725 at Page 1463 and also Deed Book 3750 at Page 3061 and assigned to Marcus T. Hall, Jerome Michael Hall, Juanita Hall, Sabrina Hall, and Sarah Louisa Hall by Assignment recorded in Deed Book 3774 at Page 415 (the "Mortgage").

99. That on information and belief, Defendant Palmer Simmons did willfully cause the breach of the settlement agreement as set forth in the Final Order by failing to timely obtain and submit the plat of subdivision to the Town of Hilton Head Island.

100. That Defendant Palmer Simmons did further cause the breach of the settlement agreement by failing to take any action to secure a partial release of the Mortgage or to make timely application for the refinancing of same on such terms as would permit the conveyance of the half-acre parcel as contemplated in the Final Order.

101. That Defendant Palmer Simmons' actions and/or inactions were wholly unjustifiable.

102. That as a result of Defendant Palmer Simmons' actions and/or inactions, he has caused SFH to be in breach of the settlement agreement and exposed SFH to the potential filing of a confession of judgment in the amount of \$226,400.00 Dollars, as provided for in the Final Order.

103. That by making unauthorized distributions and/or payments, directly to, or on behalf of, himself, his family, his company Carolina Trucking HH, LLC, the Trust and others, Defendant Palmer Simmons further caused SFH to have insufficient funds with which to satisfy said confession of judgment.

104. That by reason of and as a consequence of the aforementioned conduct of Defendant Palmer Simmons, SFH has suffered financial losses in such amounts as may be

determined by a full accounting, and is entitled to judgment against the Defendants for actual and punitive damages.

**FOR AN EIGHTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND DERIVATIVELY
ON BEHALF OF SIMMONS FAMILY HOLDINGS, LLC**

(Accounting as to all Defendants)

105. That the allegations of Paragraphs 1 through 104 of this Complaint are realleged as fully as if repeated verbatim herein.

106. That due to the extent of the payments, loans, purchases, and/or distributions made by Defendants as set forth herein, and the complexity of evaluating the Federal and State tax returns for SFH to determine rightful membership and distributional interests therein, a full accounting for the years 2016 through present is required.

107. That the information necessary for such accounting either resides with Defendant Palmer Simmons and has not been produced in response to discovery or sufficient records do not exist for Plaintiffs, on behalf of SFH, to adequately determine the extent of such payments, loans, purchases, and/or distributions and/or distributions, loans, or evaluate the tax treatment thereof and therefore no adequate remedy at law exists and an accounting should be granted.

108. That SFH is entitled to recover the cost of such accounting from Defendant Palmer Simmons.

**FOR AN NINTH CAUSE OF ACTION
DERIVATIVELY ON BEHALF OF SIMMONS FAMILY HOLDINGS, LLC**

**(Money Had and Received – as to Defendant Palmer Simmons
Individually and as Trustee)**

109. That the allegations of Paragraphs 1 through 108 of this Complaint are realleged as fully as if repeated verbatim herein.

110. That Defendant Palmer Simmons, in his capacity as Co-Manager of SFH, was in sole possession and control of the bank account and debit card of SFH.

111. That Defendant Palmer Simmons was responsible for collecting the receivables belonging to SFH.

112. That Defendant Palmer Simmons, as Trustee of the Trust, did wrongfully take a portion of such funds and pay the expenses of the Trust, namely its insurance and tax expenses, mortgage payments and other expenses.

113. That Defendant Palmer Simmons, individually, did further wrongfully take cash and make payments to himself, all in an amount as yet to be determined, for his own use and benefit.

114. That Defendant Palmer Simmons is not entitled, in equity or good conscience, to retain the monies rightfully belonging to and inequitably taken from SFH, by him individually or as Trustee.

115. That SFH is entitled to recoup such monies from Defendant Palmer Simmons, individually and as Trustee, together with prejudgment interest thereon.

**FOR A TENTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND DERIVATIVELY
ON BEHALF OF SIMMONS FAMILY HOLDINGS, LLC**

(Dissociation Pursuant to §33-44-601(6) as to all Defendants)

116. That the allegations of Paragraphs 1 through 115 of this Complaint are realleged as fully as if repeated verbatim herein.

117. That Defendants have engaged in wrongful conduct, all as more particularly set forth herein, which conduct has materially affected the business of SFH.

118. That Defendants have willfully and persistently committed material breach of the Operating Agreement and their duties owed to SFH and the Plaintiffs under S.C. Code Ann. §33-44-409, all as more fully set forth herein.

119. That Defendants have further engaged in conduct relating to the business of SFH that makes it not reasonably practicable to carry on such business with them as members, individually or in any representative capacity.

120. That by reason of and as a consequence of such conduct, Plaintiffs and SFH are entitled to have Defendant Palmer Simmons, individually and as Trustee of the Trust, and Defendant Charlesetta Aiken, expelled by judicial determination.

121. That in determining the rights to distributions of Defendant Palmer Simmons, individually and as Trustee of the Trust, and of Defendant Charlesetta Aiken, Plaintiffs and SFH are entitled to have all payments, loans, and/or distributions made to them credited against their right of distribution, if any.

WHEREFORE, the Plaintiffs pray that this honorable court inquire into the matter set forth herein and

- A. Issue a declaratory judgment in favor of Plaintiffs affirming that from the date of the Amended Articles of Incorporation, they have each been possessed of a one-third (1/3rd) interest and are entitled to their equitable share of the distributions from SFH in accordance with such interest;
- B. order an accounting be performed at the expense of the Defendants and enter a judgment in favor of the Plaintiffs and SFH as against the Defendants for all payments, loans and/or distributions unlawfully taken by them;
- C. order that Defendant Palmer Simmons, individually and/or as Trustee, and Defendant Charlesetta Aiken, be dissociated and divested of any interest in SFH and that the Plaintiffs each be restored to their rightful interest therein;
- D. award punitive damages in favor of the Plaintiffs and against the Defendants;

- E. award a judgment in favor of the Plaintiffs and against Defendant Palmer Simmons for all expenses, interest and penalties incurred by Plaintiffs resulting from amended tax returns;
- F. award a judgment in favor of Plaintiffs and SFH as against Defendants, jointly and severally, for all attorneys' fees and costs sustained by them in the course of this litigation;
- G. award a judgment in favor of SFH and against Defendant Palmer Simmons, individually, for all expenses, interest and penalties incurred by it resulting from amended tax returns;
- H. set-off, as against any sums due to the Trust and/or Defendants as a result of such dissociation, such sums as may be awarded to Plaintiffs and/or SFH in this action; and
- I. for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.
By: s/Stacey S. Collins
Ehrick K. Haight, Jr.
S.C. Bar No. 2446
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Attorneys for Plaintiffs

Hilton Head Island, South Carolina
This 27th day of October, 2020.

EXHIBIT "A"
OPERATING AGREEMENT
FOR SIMMONS FAMILY HOLDINGS, LLC

Single Member Operating Agreement

Single Member / Term Operating Agreement

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OPERATING AGREEMENT

OF

SIMMONS FAMILY HOLDINGS, LLC

This Operating Agreement of Simmons Family Holdings, LLC (the "Company") dated October ____, 2001, is (a) adopted by the Manager (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Member (as defined below).

**ARTICLE I
DEFINITIONS**

As used in this Operating Agreement, the following terms have the following meanings:

A. "Act" means the Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

B. "Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which Simmons Family Holdings, LLC was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

C. "Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are closed.

D. "Capital Contribution" means any contribution by the Member to the capital of the Company.

E. "Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

F. "Company" means Simmons Family Holdings, LLC, a South Carolina Limited Liability Company.

G. "Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

H. "Distributional Interest" means all of the Member's interest in distributions by the Company.

I. "Dispose," "Disposing," or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

J. "Manager or Manager" means CHARLES SIMMONS, JR. or any Person hereafter elected as a Manager of the Company as provided in this Operating Agreement, but does not include any Person who has ceased to be a Manager of the Company.

K. "Member" means CHARLES SIMMONS, SR.

L. "Operating Agreement" has the meaning given that term in the introductory paragraph.

M. "Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

N. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrate or investigative.

O. "Property" means all real and personal property owned by the Company.

Other terms defined herein have the meanings so given them.

ARTICLE II ORGANIZATION

2.1 Formation.

The Company has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of South Carolina.

2.2 Name.

The name of the Company is Simmons Family Holdings, LLC and all Company business must be conducted in that name or such other names that comply with applicable law as the Manager may select from time to time.

2.3 Designated Office.

The designated office of the Company required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Manager, or Member if there is no Manager, may designate from time to time in the manner provided by law.

2.4 Registered Agent.

The registered agent of the Company in the State of South Carolina shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager, or Member if there is no Manager, may designate from time to time in the manner provided by law.

2.5 Principal Office In The United States Other Offices.

The principal office of the Company in the United States shall be at such place as the Manager, or Member if there is no Manager or the management of the Company is reserved to the Member, may designate from time to time, which need not be in the State of South Carolina. The Company may have such other offices as the Manager, or Member if there is no Manager, may designate from time to time.

2.6 Purposes.

The purposes of the Company are to acquire the Property by contribution and hold, lease, sell, rent, develop, operate, transfer, exchange or otherwise dispose of the Property and to engage in such other lawful business activities permitted to limited liability companies by the Act.

2.7 Foreign Qualification.

Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager, the Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.8 Term.

The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.9 Mergers.

The Company may merge with another business entity subject to the requirements of Sections 33-44-904 through 33-44-907 of the Act.

**ARTICLE III
MEMBERS**

3.1 Additional Members.

A. Additional Persons may be admitted to the Company as a Member and Memberships may be created and issued to those Persons and to the Member at the direction of the Member, on such terms and conditions as the Member may determine at the time of admission. The terms of admission or issuance must specify the percentage of Net Profit, Net Loss, allocable to such Person and the Capital Contribution applicable thereto and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Member shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Company, as appropriate, a document including the new Member's notice address, its agreement to be bound by the terms of an Operating Agreement which reflects the existence of at least two Members, and its representation and warranty that the representation and warranties required of new Members are true and correct with respect to the new Member.

3.2 Liabilities to third parties.

Except as otherwise expressly agreed in writing, no Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.3 Withdrawal.

No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

3.4 Intentionally deleted.

3.5 Intentionally deleted.

3.6 Intentionally deleted.

3.7 Assignment of distributional interest.

Unless otherwise provided by this Operating Agreement:

- A. a Distributional Interest is assignable in whole or in part;
- B. an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;
- C. an assignment entitles the assignee to receive distributions, to which the assignor was entitled, to the extent those items are assigned but does not allocate to the assignee the assignors profit or loss; and
- D. until the assignee becomes a Member, the assignor Member continues to be a Member and to have the power to exercise any rights or powers of a Member.

3.8 Right to distribution.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Company.

3.9 Limitation on distribution.

No distribution may be made if, after giving effect to the distribution:

- A. the Company would not be able to pay its debts as they become due in the usual course of business; or
- B. the Company's assets would be less than the sum of its liabilities plus, the amount that would be needed, if the Company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Member whose preferential rights are superior to those receiving the distribution. The Company may base a determination that a distribution is not prohibited upon the provisions of Section 33-44-406(b) and (c) of the Act.

3.10 Dissociating Member.

Except as otherwise provided herein, if, following the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member or the occurrence of any event which terminates the continued Membership of the Member in the Company, the dissociating Member shall be entitled to receive any distribution which the dissociating Member was entitled to receive prior to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any event which terminates the continued Membership of the Member in the Company. The Company shall have no obligation to purchase the dissociating Member's Membership until the date of the expiration of the specified term of the Company that existed on the date of the dissociation. The date of payment and fair market value, if any, of the Dissociating Member's Membership shall be determined by the Company. The death of the Member or the appointment of a guardian or general conservator for such Member shall not constitute an event of dissociation and the Member's Membership shall (i) in the case of death, pass to and may be voted by his estate and subsequent beneficiary under the terms of the Member's will or (ii) in the case of legal incompetency, be voted by the Member's guardian or general conservator.

**ARTICLE IV
CAPITAL CONTRIBUTIONS**

4.1 Initial Contributions.

The Member's initial Capital Contribution is described in Exhibit A. The value of the Capital Contributions is set forth on Exhibit A. No interest shall accrue on any Capital Contribution and the Member shall have no right to withdraw or be repaid any Capital Contribution except as provided in this Operating Agreement.

4.2 Return Of Contributions.

The Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account, or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. The Member is not required to contribute or to lend any cash or property to the Company.

4.3 Advanced By Member.

If the Company does not have sufficient cash to pay its obligations, the Member may advance all or part of the needed funds to or on behalf of the Company. An advance described in this section constitutes a loan from the Member to the Company from the date of the advance until the day of payment, and is not a Capital Contribution.

**ARTICLE V
MANAGER**

5.1 Management By Manager.

A. Except for situations in which the approval of the Member is required by nonwaivable provisions of applicable law, (i) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Manager, at his sole discretion; and (ii) the Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

1. entering into, making, and performing contracts, agreements, leases, management contract and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company, and making all decisions and waivers thereunder;
2. opening and maintaining bank and investment accounts and arrangements, and other orders for the payment of money and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
3. maintaining the assets of the Company in good order;
4. collecting sums due the Company;
5. to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;

6. acquiring, utilizing for Company purposes, and disposing of any asset of the Company;
7. selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
8. obtaining insurance for the Company; and
9. borrow money and secure such loans with Company assets.

5.2 Actions By Manager; Delegation Of Authority And Duties.

A. In Managing the business and affairs of the Company and exercising its powers, the Manager shall act in his sole discretion.

B. Any Person dealing with the Company, other than a Member, may rely on the authority of Charles Simmons, Jr. as Manager in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

5.3 Powers Of Manager.

The Manager is an agent of this Company for the purpose of its business or affairs and the act of the Manager, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company business or businesses of the kind carried on by the Company, binds the Company.

5.4 Number And Term Of Office.

The Manager of the Company shall be Charles Simmons, Jr. He shall serve as Manager of the Company until removal or upon resignation. Unless otherwise provided in the Articles, the Manager need not be a Member or resident of the State of South Carolina.

5.5 Removal.

The Manager may be removed, with or without cause, by the Member.

5.6 Resignations.

The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the other Manager, if any. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

5.7 Vacancies.

Any vacancy occurring in the position of Manager due to the death or legal incompetency of Charles Simmons, Jr. shall be filled by such person as may be designated by the Member. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

5.8 Intentionally deleted.

5.9 Intentionally deleted.

5.10 Intentionally deleted.

5.11 Intentionally deleted.

5.12 Action Without Meeting.

Any action required by statute to be taken at a meeting of Managers, or any action which may be taken at a meeting of Managers, may be taken without a meeting by the Manager.

5.13 Approval Or Ratification Of Acts Or Contracts By Members.

The Manager in his discretion may submit any act or contract for approval or ratification to the Member.

5.14 Interested Manager, Officers And Members.

A. INTERESTED MANAGER. No contract or transaction between this Company and the Manager, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which the Manager has a financial interest, shall be void or voidable solely for this reason, solely, because the Manager authorizes the contract or transaction, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Manager, and the Manager in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Member; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Manager or the Member.

B. This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

5.15 Compensation.

By resolution of the Member, the Manager shall be paid his expenses incurred on behalf of the Company and may be paid a stated fee as Manager. No such payment shall preclude the Manager from serving the Company in any other capacity and receiving compensation therefor.

**ARTICLE VI
INDEMNIFICATION**

6.1 Indemnification.

The Company shall indemnify the Member, Manager, and agents for all costs, losses, liabilities, and damages paid or accrued by the Member or the Manager or agents in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State.

**ARTICLE VII
DISSOLUTION, LIQUIDATION, AND TERMINATION**

7.1 Dissolution.

The Company shall dissolve and its affairs shall be wound up only upon the first to occur of the following:

A. the expiration of the period fixed for the duration of the Company set forth in the Articles; or

B. administrative dissolution as provided in Section 33-44-809 of the Act.

7.2 Winding Up And Termination.

On dissolution of the Company, the Manager shall act as liquidator. If there is no Manager, then the Member will act as Liquidator. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

A. as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed as applicable;

B. the liquidator shall cause the notice described in Section 33-44-807 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 33-44-808 of the Act;

C. the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

D. all remaining assets of the Company shall be distributed to the Member.

7.3 Articles Of Termination

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the Manager or the Member shall file Articles of Termination with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the Company.

**ARTICLE VIII
GENERAL PROVISIONS**

8.1 Books And Records.

A. The Company shall maintain those books and records as it may deem necessary or desirable.

B. The Company shall keep its books on the cash method of accounting.

8.2 Amendment Or Modification.

The Operating Agreement may be amended and modified from time to time by the Member.

8.3 Checks, Notes, Drafts, Etc.

All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by Charles Simmons, Jr. or by a successor manager appointed as provided herein.

8.4 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

8.5 Construction.

Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

A. The remainder of this Operating Agreement shall be considered valid and operative; and

B. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

8.6 Entire Agreement.

This Operating Agreement constitutes the entire agreement of the Member and the Manager relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

8.7 Effect Of Waiver Or Consent

A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

8.8 Binding Effect.

This Operating Agreement is binding on and inures to the benefit of the Member and its successors, and assigns.

8.9 Governing Law; Severability

THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF SOUTH CAROLINA EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) a mandatory provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Operating Agreement shall control. If any

provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

8.10 Further Assurances.

In connection with this Operating Agreement and the transactions contemplated hereby, the Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

8.11 Counterparts.

This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

8.12 Conflicting Provisions

To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager, in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager, in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to the Member or Manager.

The undersigned, being the Member and Manager, hereby certify that the foregoing Operating Agreement was unanimously adopted by the Manager and the Member, effective as of September 14, 2001, TO WITNESS WHICH we have hereunto affixed our signatures.

WITNESSES:

Yanina C. [Signature]

MEMBER

Charles Simmons Sr
Charles Simmons, Sr.

WITNESSES:

[Signature]

MANAGER

Charles Simmons Jr
Charles Simmons, Jr.

EXHIBIT A

Initial Capital Contributions

<u>MEMBER</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FAIR MARKET VALUE</u>
Charles Simmons, Sr.	Property located on Broad Creek off Marshland Road, Hilton Head Island, SC, as described in Beaufort County Record Book _____ at Page _____.	\$900,000.00

EXHIBIT "B"
AMENDED ARTICLES OF ORGANIZATION
FOR SIMMONS FAMILY HOLDINGS, LLC

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

NOV 09 2015

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

AMENDED ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-44-204(a), the undersigned limited liability company adopts the following Amended Articles of Organization:

1. The name of the limited liability company is Simmons Family Holding, LLC
2. The date the articles of organization were filed is 09/14/2001
3. The articles of organization are amended in the following respects, of which all amended provisions may lawfully be included in the articles of organization. If the space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph on this form.

Add the following people in their respective capacities: Palmer E. Simmons-Co-Manager, P O Box 21026
Hilton Head, SC 29925. Charlesetta S. Aiken-Co-Manager, P O Box 21414 Hilton Head, SC 29925

Greg M. Simmons-Member, Jermaine Robinson-Member

Charles E. Simmons, Jr
Signature (Please see the Filing Checklist below)

Charles E. Simmons, Jr
Print or Type Name

Capacity/Position of Person Signing (You must check one box.)

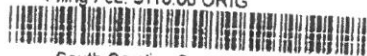
Date 11/03/2015

- Manager Member Organizer
 Fiduciary Attorney-in-Fact

Filing Checklist

- Amended Articles of Organization (filed in duplicate)
- \$110.00 made payable to the Secretary of State's Office
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S.C. Code of Laws §33-44-205(a))
Limited Liability Company forms filed with the Secretary of State must be signed in the name of the company by a:
 - (1) manager of a manager-managed company
 - (2) member of a member-managed company
 - (3) person organizing the company, if the company has not been formed or
 - (4) fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary
- Return all documents to:
 South Carolina Secretary of State's Office
 Attn: Corporate Filings
 1205 Pendleton Street Suite 525
 Columbia, SC 29201

151110-0172 FILED: 11/09/2015
SIMMONS FAMILY HOLDINGS, LLC
Filing Fee: \$110.00 ORIG



Mark Hammond South Carolina Secretary of State

EXHIBIT "C"
PETITION FOR PROBATE

STATE OF SOUTH CAROLINA

COUNTY OF: BEAUFORT

IN THE MATTER OF:
CHARLES E. SIMMONS JR.
(Decedent)

FILED

2016 JUN 21 PM 12:27

PROBATE COURT
BEAUFORT COUNTY, SC

IN THE PROBATE COURT

CASE NUMBER: 2016ES0700559

***COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

Petitioner(s)
vs.

Respondent(s)

APPLICATION FOR INFORMAL

- PROBATE OF WILL
- APPOINTMENT

(check any that apply)

***PETITION FOR FORMAL**

- TESTACY
- APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Applicant/Petitioner(s): Rosa G. Simmons
 Address: P.O. Box 22944, Hilton Head Island, SC 29925
 Telephone (Work): _____
 (Home): (843) 689-3416
 (Cell): _____
 Email: _____
 Relationship to Decedent: Spouse/PR

2. Decedent Information:

Full Legal Name
 (including all known names): Charles E. Simmons Jr.
 Date of Birth: December 6, 1928
 Date of Death: May 26, 2016
 Age at Date of Death: 87

3. Venue for this proceeding is proper in this County because:

- Decedent was domiciled in this County at date of death:
Address: 584 Spanish Wells Road, Bluffton, SC 29926; County: Beaufort, State: South Carolina.
- Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death at:
Address: _____ County: _____ State: South Carolina
- Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

4(a) Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Rosa G. Simmons	1930	P.O. Box 22944, Hilton Head Island, SC 29925	PR/Trustee

See attached for additional devisees (check if applicable).

4(b) Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Rosa G. Simmons		P.O. Box 22944, Hilton Head Island, SC 29925	Spouse
Palmer E. Simmons		P.O. Box 22944, Hilton Head Island, SC 29925	
Charlesetta S. Aiken		P.O. Box 21414, Hilton Head Island, SC 29925	Son
Benjamin C. Elliott		135 Jonesville Road, Hilton Head Island, SC 29926	Daughter
			Son

See attached for additional intestate heirs (check if applicable).

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

YES NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

NO YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

NO YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

NO YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

NO YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

NO YES If yes, please state details, including names and addresses on page 3.

10 Have more than ten (10) years passed since the Decedent's death?

NO YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a) Did the Decedent own probate real estate?

NO YES If yes, an approximate value of \$unknown (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b) Did the Decedent own probate personal property?

NO YES If yes, an approximate value of \$unknown (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s)?

NO YES If yes, then proceed to Section II.
If No, then proceed to Section III.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- The original is attached
- The original is in the Court's possession
- An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
- An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
- The original of the Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: May 5, 2016
Codicil(s):

3. Is there a memorandum that disposes of tangible personal property?

NO YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

YES NO If no, please explain on page 3

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?

NO YES If yes, please explain on page 3

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

- If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

- Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:
 - named as Primary Personal Representative in Will
 - named as Alternate Personal Representative in Will
 - nominee of Primary Personal Representative in Will
 - nominee of Alternate Personal Representative in Will
 - surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
 - other devisee of Decedent (describe): _____ or nominee of said devisee
 - surviving spouse of Decedent or nominee of said spouse
 - other heir of Decedent (describe): _____ or nominee of said heir
 - creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
 - other (describe): _____
- List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 16th day of June, 2016

Signature of Applicant/Petitioner: Rosalee Simmons

Antonia T. Lucia
Notary Public for South Carolina
My Commission Expires: Nov. 24, 2025

SWORN to before me this _____ day of _____, 20____

Signature of Co-Applicant/Co-Petitioner: _____

Notary Public for South Carolina
My Commission Expires: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed May 5, 2016

- Codicil executed _____ and
- Memorandum

be informally GRANTED DENIED.

Executed this 24th day of June, 2016



Probate Court Judge

For formal probate of Will, see separate order executed _____

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

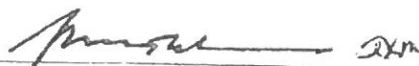
Bond

- Fiduciary Bond in the amount of \$ _____
- Bond not required for Personal Representative nominated by Will
- Bond not required as Personal Representative is sole heir or sole devisee
- Bond not required as Personal Representative is state agency, bank, or trust company
- Bond waivers filed
- See order dated _____
- Other: _____

Notice to Creditors

- Required
- Not Required

Executed this 24th day of June, 2016



Probate Court Judge

For formal appointment of Personal Representative, see separate order executed _____

EXHIBIT "D"
INVENTORY AND APPRAISEMENT

STATE OF SOUTH CAROLINA
COUNTY OF: BEAUFORT

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT: PROBATE PROPERTY
 ORIGINAL
 SUPPLEMENTARY, AMENDED OR CORRECTED #
(must restate the unchanged information from the original inventory)

IN THE MATTER OF:
CHARLES E. SIMMONS, JR
(Decedent)

2016 SEP 26 CASE NUMBER 2016ES0700559
ATT: 51

File the original Inventory and Appraisal with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. A Supplementary, Amended, or Corrected Inventory should be utilized for correcting, adjusting or adding to an original inventory, and must restate the unchanged information from the original Inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

RECAPITULATION

Schedule A - Real Estate	.....	\$867,100.00
Schedule B - Stocks and Bonds	.....	\$
Schedule C - Notes Due Decedent and Cash	.....	\$
Schedule D - Insurance on Decedent's Life - Payable to the Estate	.....	\$1,815,350.81
Schedule E - Jointly Owned Property	.....	\$
Schedule F - Other Miscellaneous Assets	.....	NA
Schedule G - Transfers During Decedent's Life Payable to the Estate	.....	\$420,620.00
Schedule H - Powers of Appointment Payable to the Estate	.....	\$
Schedule I - Annuities and Retirement Accounts Payable to the Estate	.....	\$
TOTAL GROSS VALUE OF PROBATE ESTATE	.....	\$3,103,070.81
ENCUMBRANCES	.....	(803,428.73)
TOTAL NET WORTH OF PROBATE ESTATE / PROBATE ESTATE VALUE	.....	\$2,299,642.08

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all probate real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 22nd day of September 2016
Antonia T. Lucia
Notary Public for South Carolina
My Commission Expires: Nov. 27, 2025

Personal Representative
Signature: Rosa G. Simmons
Print Name: Rosa G. Simmons
Address: P.O. Box 22944
Hilton Head Island, SC 29925
Telephone (Work): _____
(Home): (843) 689-3416
(Cell): _____
(Email): _____

Attorney: Antonia T. Lucia
Vaux Marscher Berglind, PA
Address: 16 William Pope Drive, Suite 202
Bluffton, SC 29909
Telephone: (843) 705-2888
Email: Antonia.lucia@vmblawfirm.com

Co-Personal Representative
Signature _____
Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
(Email): _____

(If none, so state)

	% Owned by Decedent	Fair Market Value of Decedent's Interest
A. REAL ESTATE in Decedent's name alone or tenants in common (not as joint with right of survivorship) Describe each property by listing its full address, tax map number, deed book and page and description consistently (house, lot, buildings, acreage). Also list oil / mineral rights and time shares, if it is real property. If the property is encumbered, list the full fair market value of the property here and the encumbrance on Encumbrance section below		
1. R800 021 000 0013 0000 Lot 11A Cooper River Plantation 3.95 acres Beaufort County, SC	100%	60,400.00
2. R510 011 000 0003 0000 8 Chisholm Place, Hilton Head Island, Beaufort County, SC .83 acres	100%	48,100.00
3. R510 010 000 0231 0000 Simmons Island 2.38 acres, Beaufort County, SC	100%	97,800.00
4. R510 010 000 0647 0000 Spanish Wells Road, Hilton Head Island, Beaufort County, SC .75 acres		
5. R510 010 000 0008 0000 584 Spanish Wells Road, Beaufort County, SC 8.2 acres	100%	144,100.00
6. R510 010 000 028B 0000 32 Diamond Back Road, Hilton Head Island, Beaufort County, SC 1.0 acres	100%	384,300.00
7. R510 010 000 0018 0000 718 Spanish Wells Road, Hilton Head Island, Beaufort County, SC	100%	51,000.00
B. STOCKS, BONDS in Decedent's name alone or tenants in common (not as joint with right of survivorship). List each type of security and number of shares.		
1.		
2.		
C. CASH, BANK ACCOUNTS, NOTES RECEIVABLES in Decedent's name alone or as tenants in common. List each separate account type and institution and the last two digits of each account. List all bank accounts owned by Decedent alone or as tenants in common (checking, savings, CDs, money market, brokerage, employment bonus, cash award, final paycheck etc.), cash on hand, notes payable to Decedent, and survival action proceeds.		
1. Note from Diane The Runner LLC dated March 1, 2012	100%	1,800,000.00
2. Wells Fargo Checking Acct #xxx-xx9074	100%	15,350.81
3.		
D. LIFE INSURANCE payable to the Decedent's estate.		
1.		
2.		
E. JOINTLY OWNED PROPERTY - REPORTING IS NOT REQUIRED		
ALL OTHER MISCELLANEOUS PERSONAL PROPERTY in Decedent's name alone or as tenants in common. List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled (Include year/make/model/VIN, if applicable), airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets		N/A
1. Simmons Family Holding, LLC	33.33%	355,500.00
2. 1998 Chevrolet GM4GC1	100%	5,875.00
3. 2010 Hyundai Genesis	100%	16,475.00
4. 2000 Rega Rosetta II	100%	42,770.00
G. TRANSFERS DURING DECEDENT'S LIFE PAYABLE TO ESTATE ONLY Any transfers intended to take effect at death if payable to the Estate shall be reported. A trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc.		
1.		
2.		
H. POWERS OF APPOINTMENT PAYABLE TO THE ESTATE ONLY List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate.		
1.		
I. ANNUITIES AND IRA, ETC. PAYABLE TO THE ESTATE ONLY List any annuities or retirement accounts owned by the Decedent and payable to the Estate.		
1.		
2.		

TOTAL PROBATE ESTATE VALUE

\$ 3,103,070.81

ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above schedule and describe the debt and the specific asset encumbered.

- Sch A Item #5 Nationstar Mortgage Loan #xxxxx9913

Sch A Item #5 South State Bank Mortgage Loan #xxxx8546
3. Sch F Item #1 Mortgage of Mary Lee Simmons Book 2844 Page 1811 Beaufort County, SC

156,321.79
400,509.50

TOTAL ENCUMBRANCES

\$ 803,428.73

EXHIBIT "E"
ASSIGNMENT OF MEMBERSHIP INTEREST

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**SIMMONS FAMILY HOLDINGS, LLC
ASSIGNMENT AND TRANSFER OF MEMBERSHIP INTEREST**

WHEREAS, Charles E. Simmons, Jr., (the "Decedent"), a Member of Simmons Family Holdings, LLC, a South Carolina limited liability company (the "Company"), died testate on May 26, 2016; and

WHEREAS, the Last Will and Testament of Charles E. Simmons, Jr. dated May 5, 2016 was admitted to Probate before the Beaufort County Probate Court as Case No: 2016ES0700559 (the "Estate"), and Palmer E. Simmons was appointed as Personal Representative on June 24, 2016; and

WHEREAS, Charles E. Simmons, Jr. is a Member of Simmons Family Holdings, LLC and holds a one-third (1/3) membership interest in the Company; and

WHEREAS, Greg M. Simmons and Jermaine Robinson are the remaining Members of the Company; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the Co-Managers of the Company; and

WHEREAS, pursuant to Section 3.10 of the Operating Agreement of the Company, a Member's membership, shall in the case of death, pass to the Member's estate and subsequent beneficiary under the terms of the Member's Will; and

WHEREAS, pursuant to the Last Will and Testament of Charles E. Simmons, Jr. dated May 5, 2016, Rosa G. Simmons, as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, is the sole beneficiary of said estate; and

WHEREAS, the Members of Simmons Family Holdings, LLC have adopted a resolution authorizing the assignment and transfer of one-third (1/3) interest of Charles E. Simmons, Jr. to Rosa G. Simmons, Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016.

NOW THEREFORE, the undersigned, being the acting co-managers of Simmons Family Holdings, LLC with the approval of all Members do hereby assign and transfer the one-third (1/3) interest of the Decedent, Charles E. Simmons, Jr. in Simmons Family Holding, LLC to Rosa G. Simmons, Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 with all the rights and obligations attendant thereto, and admit the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016 as a Member of Simmons Family Holdings, LLC with all the rights and obligations attendant thereto and subject to any and all restrictions of the Operating Agreement of Simmons Family Holding, LLC and of any further agreement with respect to the Company, which assignment and transfer of interest and admission as a Member shall be reflected in the Operating Agreement.

WITNESSETH the hand and the seals of the Members of the Company this 30th day of June, 2017

WITNESSES:

Myra S. Daniell

Antonia J. Lewis

Robert C. Adams

Antonia J. Lewis

Simmons Family Holdings, LLC

Palmer E. Simmons
By: Palmer E. Simmons, Co-Manager

Charlesetta S. Alken
Charlesetta S. Alken, Co-Manager

APPROVED BY:

Robert C. Adams

Antonia J. Lewis

Robert C. Adams

Antonia J. Lewis

Greg M. Simmons
Greg M. Simmons

Jermaine Robinson
Jermaine Robinson

ASSIGNMENT ACCEPTED BY:

Robert C. Adams

Antonia J. Lewis

Charles E. Simmons, Jr. and Rosa G. Simmons
Revocable Trust dated May 5, 2016

Rosa G. Simmons
By: Rose G. Simmons, Trustee

EXHIBIT "F"
2017 FEDERAL TAX RETURN FOR
SIMMONS FAMILY HOLDINGS, LLC
(Tax Id. No. redacted)

Form **1065**

Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2017, or tax year beginning

ending **2017**
Go to www.irs.gov/Form1065 for instructions and the latest information.

OMB No 1545-0123

2017

A Principal business activity

RENTAL PROPE

B Principal product or service
RENTAL

C Business code number

531120

Type or Print

Name of partnership

SIMMONS FAMILY HOLDINGS

Number, street, and room or suite no. If a P.O. box, see the instructions
PO BOX 21026

City or town, state or province, country, and ZIP or foreign postal code
HILTON HEAD ISLAND SC 29925

D Employer identification number

E Date business started
06/01/2016

F Total assets (see the instructions)
\$ **481,401**

- G Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return
 (6) Technical termination - also check (1) or (2)
- H Check accounting method: (1) Cash (2) Accrual
- I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year (3) Other (specify) ▶
- J Check if Schedules C and M-3 are attached

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income		1a	1b	1c
1a	Gross receipts or sales			
b	Returns and allowances			
c	Balance. Subtract line 1b from line 1a			
2	Cost of goods sold (attach Form 1125-A)			
3	Gross profit. Subtract line 2 from line 1c			
4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			
5	Net farm profit (loss) (attach Schedule F (Form 1040))			
6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			
7	Other income (loss) (attach statement)			
8	Total income (loss). Combine lines 3 through 7			
Deductions (see the instructions for limitations)				
9	Salaries and wages (other than to partners) (less employment credits)			
10	Guaranteed payments to partners			
11	Repairs and maintenance			
12	Bad debts			
13	Rent			
14	Taxes and licenses			
15	Interest			
16a	Depreciation (if required, attach Form 4562)			
b	Less depreciation reported on Form 1125-A and elsewhere on return	16a		
17	Depletion (Do not deduct oil and gas depletion.)	16b		
18	Retirement plans, etc.			16c
19	Employee benefit programs			17
20	Other deductions (attach statement)			18
21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20			19
22	Ordinary business income (loss). Subtract line 21 from line 8			20
				21
				22

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of partner or limited liability company member

Preparer's signature
MARK N JUNE, CPA

Date

03/13/18

May the IRS discuss this return with the preparer shown below (see instructions)? Yes No

Paid Preparer Use Only

Print/Type preparer's name
MARK N JUNE, CPA

Firm's name ▶ **JUNECPA**

Firm's address ▶ **99 MAIN STREET
HILTON HEAD ISLAND, SC 29926**

Check if self-employed PTIN **P00630869**

Firm's EIN ▶

Phone no. **843-842-6500**

For Paperwork Reduction Act Notice, see separate instructions.

Form **1065** (2017)

Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**
Schedule B Other Information

1 What type of entity is filing this return? Check the applicable box:

a <input type="checkbox"/> Domestic general partnership	b <input type="checkbox"/> Domestic limited partnership	Yes	No
c <input checked="" type="checkbox"/> Domestic limited liability company	d <input type="checkbox"/> Domestic limited liability partnership		
e <input type="checkbox"/> Foreign partnership	f <input type="checkbox"/> Other		

2 At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person?

X

3 At the end of the tax year:

a Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization, or any foreign government own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

X

b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," attach Schedule B-1, Information on Partners Owning 50% or More of the Partnership

X

4 At the end of the tax year, did the partnership:

a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below

X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below

X

(i) Name of Entry	(ii) Employer Identification Number (if any)	(iii) Type of Entry	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

5 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details

Yes	No
	X

6 Does the partnership satisfy all four of the following conditions?

a The partnership's total receipts for the tax year were less than \$250,000.

b The partnership's total assets at the end of the tax year were less than \$1 million.

c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.

d The partnership is not filing and is not required to file Schedule M-3

If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.

Yes	No
	X

7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?

Yes	No
	X

8 During the tax year, did the partnership have any debt that was cancelled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?

Yes	No
X	

9 Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?

Yes	No
X	

10 At any time during calendar year 2017, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). If "Yes," enter the name of the foreign country.

Yes	No
	X

Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**
Schedule B Other Information (continued)

	Yes	No
11 At any time during the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See instructions.		X
12a Is the partnership making, or had it previously made (and not revoked), a section 754 election? See instructions for details regarding a section 754 election.		X
b Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions.		X
c Is the partnership required to adjust the basis of partnership assets under section 743(b) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions.		X
13 Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (other than disregarded entities wholly owned by the partnership throughout the tax year).	<input type="checkbox"/>	X
14 At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property?	<input type="checkbox"/>	
15 If the partnership is required to file Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, enter the number of Forms 8858 attached. See instructions.		X
16 Does the partnership have any foreign partners? If "Yes," enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership.		
17 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return.		X
18a Did you make any payments in 2017 that would require you to file Form(s) 1099? See instructions.		
b If "Yes," did you or will you file required Form(s) 1099?		
19 Enter the number of Form(s) 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, attached to this return.	0	X
20 Enter the number of partners that are foreign governments under section 892.	0	
21 During the partnership's tax year, did the partnership make any payments that would require it to file Form 1042 and 1042-S under chapter 3 (sections 1441 through 1464) or chapter 4 (sections 1471 through 1474)?		
22 Was the partnership a specified domestic entity required to file Form 8938 for the tax year (See the Instructions for Form 8938)?		X
Designation of Tax Matters Partner (see instructions) Enter below the general partner or member-manager designated as the tax matters partner (TMP) for the tax year of this return:		X

Name of designated TMP

PALMER SIMMONS

Identifying number of TMP

[Redacted]

If the TMP is an entity name of TMP representative

Phone number of TMP

[Redacted]

Address of designated TMP

PO BOX 21026
HILTON HEAD ISLAND SC 29925

Form 1065 (2017) **SIMMONS FAMILY HOLDINGS**
Schedule K Partners' Distributive Share Items

		Total amount		
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1		
	2 Net rental real estate income (loss) (attach Form 8825)	2	227,639	
	3a Other gross rental income (loss)			
	b Expenses from other rental activities (attach statement)	3a		
	c Other net rental income (loss). Subtract line 3b from line 3a	3b		
	4 Guaranteed payments			
	5 Interest income	3c		
	6 Dividends: a Ordinary dividends	4		
	b Qualified dividends	5		
	7 Royalties	6a		
	6b			
8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	7			
9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	8			
b Collectibles (28%) gain (loss)	9a			
c Unrecaptured section 1250 gain (attach statement)	9b			
10 Net section 1231 gain (loss) (attach Form 4797)	9c			
11 Other income (loss) (see instructions) Type ▶	10			
Deductions	12 Section 179 deduction (attach Form 4562)	11		
	13a Contributions	12		
	b Investment interest expense	13a	11,175	
	c Section 59(e)(2) expenditures: (1) Type ▶	13b		
	d Other deductions (see instructions) Type ▶ (2) Amount ▶	13c(2)		
Self-Employment	14a Net earnings (loss) from self-employment	13d		
	b Gross farming or fishing income	14a		
	c Gross nonfarm income	14b		
Credits	15a Low-income housing credit (section 42(j)(5))	14c		
	b Low-income housing credit (other)	15a		
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	15b		
	d Other rental real estate credits (see instructions) Type ▶	15c		
	e Other rental credits (see instructions) Type ▶	15d		
	f Other credits (see instructions) Type ▶	15e		
Foreign Transactions	16a Name of country or U.S. possession ▶	15f		
	b Gross income from all sources			
	c Gross income sourced at partner level	16b		
	Foreign gross income sourced at partnership level	16c		
	d Passive category ▶			
	e General category ▶			
	Deductions allocated and apportioned at partner level	f Other ▶	16f	
	g Interest expense ▶			
	h Other			
	Deductions allocated and apportioned at partnership level to foreign source income	▶	16h	
	i Passive category ▶			
j General category ▶				
l Total foreign taxes (check one): Paid <input type="checkbox"/> Accrued <input type="checkbox"/> k Other ▶		16k		
m Reduction in taxes available for credit (attach statement)		16l		
n Other foreign tax information (attach statement)		16m		
Alternative Minimum Tax (AMT) Items	17a Post-1986 depreciation adjustment			
	b Adjusted gain or loss	17a		
	c Depletion (other than oil and gas)	17b		
	d Oil, gas, and geothermal properties - gross income	17c		
	e Oil, gas, and geothermal properties - deductions	17d		
	f Other AMT items (attach statement)	17e		
Other Information	18a Tax-exempt interest income	17f		
	b Other tax-exempt income	18a		
	c Nondeductible expenses	18b		
	19a Distributions of cash and marketable securities	18c		
	b Distributions of other property	19a	127,061	
	20a Investment income	19b		
	b Investment expenses	20a		
c Other items and amounts (attach statement)	20b			

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16i						1	216,464
2 Analysis by partner type:							
(i) Corporate		(ii) Individual (active)		(iii) Individual (passive)		(iv) Partnership	
(v) Exempt Organization		(vi) Nominee/Other					
a General partners		144,295		72,169			
b Limited partners							

Schedule L Balance Sheets per Books

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash				
2a Trade notes and accounts receivable		948		
b Less allowance for bad debts				63,200
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)	SEE STMT 2			
7a Loans to partners (or persons related to partners)		6,751		
b Mortgage and real estate loans				33,901
8 Other investments (attach statement)				
9a Buildings and other depreciable assets				
b Less accumulated depreciation				
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)		384,300		
b Less accumulated amortization				384,300
13 Other assets (attach statement)				
14 Total assets		391,999		481,401
Liabilities and Capital				
15 Accounts payable				
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement)				
18 All nonrecourse loans				
19a Loans from partners (or persons related to partners)				
b Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)		355,500		355,500
21 Partners' capital accounts				
22 Total liabilities and capital		36,499		125,901
		391,999		481,401

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return
Note. The partnership may be required to file Schedule M-3 (see instructions).

1 Net income (loss) per books	216,463	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$	
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16i, not charged against book income this year (itemize):	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16i (itemize):		a Depreciation \$	
a Depreciation \$		8 Add lines 6 and 7	
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	216,464
SEE STATEMENT 3	1		
5 Add lines 1 through 4	216,464		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	36,499	6 Distributions: a Cash	127,061
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	216,463	8 Add lines 6 and 7	127,061
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	125,901
5 Add lines 1 through 4	252,962		

Form **8825**
 (Rev. September 2017)
 Department of the Treasury
 Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation
 Attach to Form 1065, Form 1065-B, or Form 1120S.
 Go to www.irs.gov/Form8825 for the latest information.

OMB No. 1545-0122

Name **SIMMONS FAMILY HOLDINGS**

Employer identification number

1 Show the type and address of each property. For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions. See page 2 to list additional properties.

	Physical address of each property—street, city, state, ZIP code	Type—Enter code 1-8; see page 2 for list	Fair Rental Days	Personal Use Days
A	SIMMONS ROAD 11 SIMMONS ROAD HILTON HEAD ISLAND SC 29928	4 COMMERCIAL	365	
B				
C				
D				

	Properties			
	A	B	C	D
2 Rental Real Estate Income				
2 Gross rents	246,905			
Rental Real Estate Expenses				
3 Advertising	3			
4 Auto and travel	4			
5 Cleaning and maintenance	5	-20,177		
6 Commissions	6			
7 Insurance	7			
8 Legal and other professional fees	8			
9 Interest	9	13,000		
10 Repairs	10			
11 Taxes	11	8,633		
12 Utilities	12			
13 Wages and salaries	13			
14 Depreciation (see instructions)	14			
15 Other (list) ▶ SEE STATEMENT 4	15	17,810		
16 Total expenses for each property. Add lines 3 through 15	16	19,266		
17 Income or (loss) from each property. Subtract line 16 from line 2	17	227,639		
18a Total gross rents. Add gross rents from line 2, columns A through H	18a	246,905		
b Total expenses. Add total expenses from line 16, columns A through H	18b	19,266		
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19			
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a			
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed. (1) Name (2) Employer identification number				
21 Net rental estate income (loss). Combine lines 18a through 20a. Enter the result here and on: • Form 1065 or 1120S: Schedule K, line 2; or • Form 1065-B: Part I, line 4	21	227,639		

For Paperwork Reduction Act Notice, see instructions.
 DAA

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1 Amended K-1

651113
OMB No. 1545-0123

Partner's Share of Income, Deductions,
Credits, etc. **1** See back of form and separate instructions.

beginning ending

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
*	75,872		
3	Other net rental income (loss)	1E	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Uncaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction	19	Distributions
		A	32,532
13	Other deductions		
A	3,725		
14	Self-employment earnings (loss)	20	Other information

For IRS Use Only

*See attached statement for additional information.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

C IRS Center where partnership filed return
E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code
PALMER SIMMONS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I1 What type of entity is this partner? **INDIVIDUAL**

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	33.330000 %	33.330000 %
Loss	33.330000 %	33.330000 %
Capital	33.330000 %	33.330000 %

K Partner's share of liabilities at year end

Nonrecourse \$ _____

Qualified nonrecourse financing \$ _____

Recourse \$ **118,488**

L Partner's capital account analysis:

Beginning capital account \$ **6,773**

Capital contributed during the year \$ _____

Current year increase (decrease) \$ **72,147**

Withdrawals & distributions \$ **(32,532)**

Ending capital account \$ **46,388**

Tax basis GAAP Section 704(b) book

Other (explain)

M Did the partner contribute property with a built-in gain or loss?

Yes No

If "Yes," attach statement (see instructions)

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1 Amended K-1

651113
OMB No. 1545-0123

Beginning ending
Partner's Share of Income, Deductions,
Credits, etc. See back of form and separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
*	75,872		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction	A	12,480
13	Other deductions	A	3,724
14	Self-employment earnings (loss)		
19	Distributions		
20	Other information		

Part I Information About the Partnership

A Partnership's employer identification number
 B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
 PO BOX 21026
 HILTON HEAD ISLAND SC 29925
 C IRS Center where partnership filed return
E-FILE
 D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
 F Partner's name, address, city, state, and ZIP code
CHARLESETTA SIMMONS AIKEN
 PO BOX 21414
 HILTON HEAD ISLAND SC 29925

G General partner or LLC member-manager Limited partner or other LLC member
 H Domestic partner Foreign partner
 I1 What type of entity is this partner? **INDIVIDUAL**
 I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here
 J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	33.330000 %	33.330000 %
Loss	33.330000 %	33.330000 %
Capital	33.330000 %	33.330000 %

K Partner's share of liabilities at year end

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ 118,488

L Partner's capital account analysis:

Beginning capital account	\$ 19,600
Capital contributed during the year	\$
Current year increase (decrease)	\$ 72,147
Withdrawals & distributions	\$ (12,480)
Ending capital account	\$ 79,267

Tax basis GAAP Section 704(b) book
 Other (explain)

M Did the partner contribute property with a built-in gain or loss?
 Yes No
 If "Yes," attach statement (see instructions)

For IRS Use Only

*See attached statement for additional information.

**Schedule K-1
 (Form 1065)**

Department of the Treasury
 Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1 Amended K-1

651113
 OMB No. 1545-012

**Partner's Share of Income, Deductions,
 Credits, etc.**

See back of form and separate instructions

**Part III Partner's Share of Current Year Income,
 Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits
2	Net rental/real estate income (loss)		
			37,948
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction	19	Distributions
			40,642
13	Other deductions	20	Other information
	1,863		
14	Self-employment earnings (loss)		

Part I Information About the Partnership

A Partnership's employer identification number
 B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925
 C IRS Center where partnership filed return
E-FILE
 D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
 F Partner's name, address, city, state, and ZIP code
JERMAINE ROBINSON
10 CHISHOLM PLACE
HILTON HEAD ISLAND SC 29926
 G General partner or LLC member-manager Limited partner or other LLC member
 H Domestic partner Foreign partner
 I1 What type of entity is this partner? **INDIVIDUAL**

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	16.670000 %	16.670000 %
Loss	16.670000 %	16.670000 %
Capital	16.670000 %	16.670000 %

K Partner's share of liabilities at year end:

Nonrecourse \$ _____
 Qualified nonrecourse financing \$ _____
 Recourse \$ **59,262**

L Partner's capital account analysis:

Beginning capital account \$ **5,063**
 Capital contributed during the year \$ _____
 Current year increase (decrease) \$ **36,085**
 Withdrawals & distributions \$ **40,642**
 Ending capital account \$ **506**

Tax basis GAAP Section 704(b) book
 Other (explain)

M Did the partner contribute property with a built-in gain or loss?
 Yes No
 If "Yes," attach statement (see instructions)

*See attached statement for additional information.

For IRS Use Only

451121A 03/13/2016 10:04 AM
PARTNER# 4

Schedule K-1
(Form 1065)

Department of the Treasury
Internal Revenue Service

2017

For calendar year 2017, or tax year

Final K-1

Amended K-1

651113
OMB No. 1545-0123

Partner's Share of Income, Deductions,
Credits, etc.
See back of form and separate instructions.

Part III Partner's Share of Current Year Income,
Deductions, Credits, and Other Items

1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
4	Guaranteed payments		
5	Interest income		
6a	Ordinary dividends		
6b	Qualified dividends		
7	Royalties		
8	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)		
12	Section 179 deduction	19	Distributions
13	Other deductions	A	41,407
14	Self-employment earnings (loss)	20	Other information

Part I Information About the Partnership

A Partnership's employer identification number
[REDACTED]

B Partnership's name, address, city, state, and ZIP code
SIMMONS FAMILY HOLDINGS
PO BOX 21026
HILTON HEAD ISLAND SC 29925

C IRS Center where partnership filed return
E-FILE

D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
[REDACTED]

F Partner's name, address, city, state, and ZIP code
GREG M SIMMONS
584 SPANISH WELLS ROAD
HILTON HEAD ISLAND SC 29928

G General partner or LLC member-manager Limited partner or other LLC member

H Domestic partner Foreign partner

I1 What type of entity is this partner? **INDIVIDUAL**

I2 If this partner is a retirement plan (IRA/SEP/Keogh/etc.), check here

J Partner's share of profit, loss, and capital (see instructions)

	Beginning	Ending
Profit	16.670000 %	16.670000 %
Loss	16.670000 %	16.670000 %
Capital	16.670000 %	16.670000 %

K Partner's share of liabilities at year end

Nonrecourse \$ _____

Qualified nonrecourse financing \$ _____

Recourse \$ **59,262**

L Partner's capital account analysis

Beginning capital account \$ **5,063**

Capital contributed during the year \$ _____

Current year increase (decrease) \$ **36,084**

Withdrawals & distributions \$ **(41,407)**

Ending capital account \$ **-260**

Tax basis GAAP Section 704(b) book
Other (explain) _____

M Did the partner contribute property with a built-in gain or loss?
 Yes No
If "Yes," attach statement (see instructions)

*See attached statement for additional information.

For IRS Use Only

45167A 03-15-2018 10:06 AM

Form: **1065** **Rent and Royalty Schedule** 2017

For calendar year 2017, or tax year beginning _____ and ending _____

Partnership Name: **SIMMONS FAMILY HOLDINGS** Employer Identification Number: _____

Property Description SIMMONS ROAD 11 SIMMONS ROAD HILTON HEAD ISLAND SC 29928	Type of Activity Rental Real Estate <input checked="" type="checkbox"/> Other Rental Property <input type="checkbox"/> Royalty Property <input type="checkbox"/>
---	---

Type of property: **COMMERCIAL**

Number of days rented at fair rental value: _____

Number of personal use days: **365**

Is the net income (loss) from this property included in the computation of self employment income? Yes No

Is the net income (loss) from this property included in the computation of section 179 business income? Yes No

Income and Expenses

Income		
Gross rents		246,905
Gross royalties		
Other income		
Income from sale of property reported on Form 4797, Line 17		
Total gross income		246,905
Expense		
Advertising		
Auto and travel		
Cleaning and maintenance		
Commissions		
Insurance		
Legal and professional		
Interest		
Repairs		
Taxes		
Utilities		
Wages and salaries		
Depreciation		
Other expenses		
Total expenses		19,266
Less % personal use		
Net deductible expenses		19,266
Net income or loss from this property		227,639

4SIMFA Simmons Family Holdings

FYE: 12/31/2017

Federal Statements

3/13/2018 10:04 AM

Statement 1 - Form 1065, Schedule K, Line 13a - Contributions

Description	100%	50%	30%	20%	Total
CHARITABLE DONATION	\$	\$ 11,175	\$	\$	\$ 11,175
TOTAL	\$ 0	\$ 11,175	\$ 0	\$ 0	\$ 11,175

Statement 2 - Form 1065, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
RECEIVABLE FROM CAROLINA TRUC	\$ 6,000	\$
RECEIVABLE FROM F.A.	500	
RECEIVABLE	251	
NOTES RECEIVABLE		33,901
TOTAL	\$ 6,751	\$ 33,901

Statement 3 - Form 1065, Schedule M-1, Line 4 - Expenses Recorded on Books, Not on Sch K

Description	Amount
ROUNDING ADJUSTMENT	\$ 1
TOTAL	\$ 1

4SIMFA Simmons Family Holdings

Federal Statements

3/13/2018 10:04 AM

FYE: 12/31/2017

Statement 4 - Simmons Road - Form 8825, Line 15 - Other

<u>Description</u>	<u>Amount</u>
MISCELLANEOUS	
POSTAGE	\$ 50
PROFESSIONAL FEES	187
	<u>17,573</u>
TOTAL	\$ <u>17,810</u>

EXHIBIT "G"
PROPOSED ASSIGNMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**SIMMONS FAMILY HOLDINGS, LLC
RESOLUTION AUTHORIZING
ASSIGNMENT AND TRANSFER OF MEMBERSHIP INTEREST**

WHEREAS, Simmons Family Holdings, LLC is a South Carolina limited liability company (the "Company"); and

WHEREAS, Palmer E. Simmons, Charlesetta S. Aiken, Greg M. Simmons and Jermaine Robinson each hold a one-fourth (1/4) membership interest in the Company with all the rights and obligations attendant thereto; and

WHEREAS, Palmer E. Simmons and Charlesetta S. Aiken are the Co-Managers of the Company, and

WHEREAS, the members desire to redistribute the membership interest in the Company so that Palmer E. Simmons and Charlesetta S. Aiken each hold a one-third (1/3) percent membership interest in the Company and the remaining one-third (1/3) membership interest in the Company is shared by Greg M. Simmons and Jermaine Robinson with all the rights and obligations attendant thereto.

NOW THEREFORE, the undersigned, representing all Members of the Company, do hereby waive notice of time, place, and purpose of a meeting of the Members and take and adopt the following action in writing without meeting and do hereby certify that the following resolution is in full force and effect and has neither been amended or rescinded.

IT IS RESOLVED, that the membership interests in Simmons Family Holdings, LLC shall be redistributed so that Palmer E. Simmons and Charlesetta S. Aiken each hold a one-third (1/3) percent membership interest in the Company and the remaining one-third (1/3) membership interest in the Company is shared equally by Greg M. Simmons and Jermaine Robinson with all the rights and obligations attendant thereto; and that the Operating Agreement and books of the Company shall be amended to reflect this assignment and transfer.

WITNESSETH the hand and the seal of the Members of the Company this _____ day of _____, 2018.

WITNESSES:

Greg M. Simmons

Jermaine Robinson

Palmer E. Simmons

Charlesetta S. Aiken

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 Greg Marcus Simmons and Jermaine)
 Robinson, both individually and)
 derivatively on behalf of Simmons)
 Family Holdings, LLC, a South)
 Carolina Limited Liability Company,))
)
 Plaintiffs,)
)
 v.)
)
 Palmer E. Simmons, Individually)
 and as Trustee of the Charles E.)
 Simmons, Jr. and Rosa G. Simmons)
 Revocable Trust dated May 5, 2016,)
 and Charlesetta S. Aiken,)
)
 Defendants,)
)
 and)
)
 Simmons Family Holdings, LLC,)
)
 as a nominal Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE 14TH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-07-01246

**ANSWER TO SECOND
 AMENDED COMPLAINT**

The Defendants Paler E. Simmons, Individually and as Trustee of the Charles E. Simmons, Jr. and Rosa G. Simmons Revocable Trust dated May 5, 2016, and Charlesetta S. Aiken, above named, Answering the Second Amended Complaint of the Plaintiffs would show unto this Honorable Court:

The Defendants, deny each and every allegation contained in the Second Amended Complaint unless specifically admitted herein and demands strict proof thereof. Further, the Defendants deny that the Defendants are “members” of Simmons Family Holding, LLC as stated throughout the Complaint and demand strict proof thereof.

The Defendants deny any allegations in the opening paragraphs of pages 1-2 of the Second Amended Complaint and demand strict proof thereof. Further, the Defendants move to strike the paragraphs on pages 1-2 in the opening of the Second Amended Complaint as they are not properly pled.

1. The Defendants admit the allegations contained in Paragraph 1 of the Plaintiffs' Second Amended Complaint.
2. The Defendants admits the allegations contained in Paragraph 2 of the Plaintiffs' Second Amended Complaint.
3. The Defendants admit the allegations contained in Paragraph 3 of the Plaintiffs' Second Amended Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of the Plaintiffs' Second Amended Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of the Plaintiffs' Second Amended Complaint.
6. The allegations in Paragraph 6 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 6 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
7. The Defendants admit the allegations contained in Paragraph 7 of the Plaintiffs' Second Amended Complaint.
8. The Defendants admit the allegations contained in Paragraph 8 of the Plaintiffs' Second Amended Complaint.
9. The Defendants admit the allegations contained in Paragraph 9 of the Plaintiffs' Second Amended Complaint.
10. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiffs' Second Amended Complaint.
11. The Defendants admit the allegations contained in Paragraph 11 of the Plaintiffs' Second Amended Complaint.
12. Upon information and belief, the Defendants deny the allegations contained in Paragraph 12 of the Plaintiffs' Second Amended Complaint.
13. Upon information and belief, the Defendants deny the allegations contained in Paragraph 13 of the Plaintiffs' Second Amended Complaint.
14. Upon information and belief, the Defendants deny the allegations contained in Paragraph 14 of the Plaintiffs' Complaint.
15. Upon information and belief, the Defendants deny the allegations contained

in Paragraph 15 of the Plaintiffs' Second Amended Complaint.

16. As to Paragraph 16 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 16 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
17. As to Paragraph 17 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 17 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
18. The Defendants deny the allegations contained in Paragraph 18 of the Plaintiffs' Second Amended Complaint.
19. As to Paragraph 19 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 19 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
20. The Defendants admit the allegations contained in Paragraph 20 of the Plaintiffs' Second Amended Complaint.
21. As to Paragraph 21 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 21 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
22. As to Paragraph 22 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 22 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
23. As to Paragraph 23 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 23 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
24. As to Paragraph 24 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 24 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.

25. As to Paragraph 25 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 25 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
26. As to Paragraph 26 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 26 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
27. The Defendants admit the allegations contained in Paragraph 27 of the Plaintiffs' Second Amended Complaint.
28. As to Paragraph 28 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 28 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiffs' Second Amended Complaint.
30. As to Paragraph 30 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 30 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
31. As to Paragraph 31 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 31 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
32. As to Paragraph 32 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 32 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
33. The Defendants deny the allegations contained in Paragraph 33 of the Plaintiffs' Second Amended Complaint.
34. The Defendants deny the allegations contained in Paragraph 34 of the Plaintiffs' Second Amended Complaint.
35. The Defendants deny the allegations contained in Paragraph 35 of the Plaintiffs' Complaint.

36. As to Paragraph 36 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 36 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
37. As to Paragraph 37 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 37 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
38. As to Paragraph 38 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 38 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
39. As to Paragraph 39 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 39 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
40. The Defendants admit the allegations contained in Paragraph 40 of the Plaintiffs' Second Amended Complaint.
41. The allegations in Paragraph 41 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 41 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
42. The allegations in Paragraph 42 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 42 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
43. The allegations in Paragraph 43 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 43 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
44. The Defendants deny the allegations contained in Paragraph 44 of the Plaintiffs' Complaint.

45. The allegations in Paragraph 45 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 45 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
46. The Defendants deny the allegations contained in Paragraph 46 of the Plaintiffs' Complaint.
47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiffs' Complaint.
48. The Defendants deny the allegations contained in Paragraph 48 of the Plaintiffs' Complaint.
49. The Defendants deny the allegations contained in Paragraph 49 of the Plaintiffs' Complaint.
50. The Defendants deny the allegations contained in Paragraph 50 of the Plaintiffs' Complaint.
51. The Defendants deny the allegations contained in Paragraph 51 of the Plaintiffs' Complaint.
52. The Defendants deny the allegations contained in Paragraph 52 of the Plaintiffs' Complaint.
53. The Defendants deny the allegations contained in Paragraph 53 of the Plaintiffs' Complaint.
54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiffs' Complaint.
55. The Defendants deny the allegations contained in Paragraph 55 of the Plaintiffs' Complaint.
56. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
57. The Defendants deny the allegations contained in Paragraph 57 of the Plaintiffs' Complaint.
58. The Defendants deny the allegations contained in Paragraph 58 of the Plaintiffs' Complaint.
59. The Defendants deny the allegations contained in Paragraph 59 of the

Plaintiffs' Complaint.

60. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiffs' Second Amended Complaint.
62. As to Paragraph 62 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 62 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
63. As to Paragraph 63 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 63 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
64. The Defendants deny the allegations contained in Paragraph 64 of the Plaintiffs' Second Amended Complaint.
65. The Defendants deny the allegations contained in Paragraph 65 of the Plaintiffs' Second Amended Complaint.
66. The Defendants deny the allegations contained in Paragraph 66 of the Plaintiffs' Second Amended Complaint.
67. The Defendants deny the allegations contained in Paragraph 67 of the Plaintiffs' Second Amended Complaint.
68. The Defendants deny the allegations contained in Paragraph 68 of the Plaintiffs' Second Amended Complaint.
69. The Defendants deny the allegations contained in Paragraph 69 of the Plaintiffs' Second Amended Complaint.
70. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
71. As to Paragraph 71 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 71 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
72. The Defendants deny the allegations contained in Paragraph 72 of the Plaintiffs' Second Amended Complaint.

73. The Defendants deny the allegations contained in Paragraph 73 of the Plaintiffs' Second Amended Complaint.
74. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiffs' Second Amended Complaint.
76. The Defendants deny the allegations contained in Paragraph 76 of the Plaintiffs' Second Amended Complaint.
77. The Defendants deny the allegations contained in Paragraph 77 of the Plaintiffs' Second Amended Complaint.
78. The Defendants deny the allegations contained in Paragraph 78 of the Plaintiffs' Second Amended Complaint.
79. The Defendants deny the allegations contained in Paragraph 79 of the Plaintiffs' Second Amended Complaint.
80. The Defendants deny the allegations contained in Paragraph 80 of the Plaintiffs' Second Amended Complaint.
81. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
82. The allegations in Paragraph 82 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 82 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
83. The Defendants deny the allegations contained in Paragraph 83 of the Plaintiffs' Second Amended Complaint.
84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiffs' Second Amended Complaint.
85. The Defendants deny the allegations contained in Paragraph 85 of the Plaintiffs' Second Amended Complaint.
86. The Defendants deny the allegations contained in Paragraph 86 of the Plaintiffs' Second Amended Complaint.

87. The Defendants deny the allegations contained in Paragraph 87 of the Plaintiffs' Second Amended Complaint.
88. The Defendants deny the allegations contained in Paragraph 88 of the Plaintiffs' Second Amended Complaint.
89. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
90. The allegations in Paragraph 90 of the Plaintiffs' Second Amended Complaint calls for a legal conclusion and therefore no response is required. To the extent that Paragraph 90 of the Plaintiffs' Second Amended Complaint requires a response, the Defendants deny the allegations contained therein and demand strict proof thereof.
91. The Defendants deny the allegations contained in Paragraph 91 of the Plaintiffs' Second Amended Complaint.
92. The Defendants deny the allegations contained in Paragraph 92 of the Plaintiffs' Second Amended Complaint.
93. The Defendants deny the allegations contained in Paragraph 93 of the Plaintiffs' Second Amended Complaint.
94. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
95. As to Paragraph 95 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 95 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
96. As to Paragraph 96 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 96 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
97. The Defendants admit the allegations contained in Paragraph 97 of the Plaintiffs' Second Amended Complaint.
98. As to Paragraph 98 of the Second Amended Complaint, the Defendants crave reference to the named document. To the extent Paragraph 98 alleges a claim against Defendants, Defendants deny the same and demand strict proof thereof.
99. The Defendants deny the allegations contained in Paragraph 99 of the

Plaintiffs' Second Amended Complaint.

100. The Defendants deny the allegations contained in Paragraph 100 of the Plaintiffs' Second Amended Complaint.
101. The Defendants deny the allegations contained in Paragraph 101 of the Plaintiffs' Second Amended Complaint.
102. The Defendants deny the allegations contained in Paragraph 102 of the Plaintiffs' Second Amended Complaint.
103. The Defendants deny the allegations contained in Paragraph 103 of the Plaintiffs' Second Amended Complaint.
104. The Defendants deny the allegations contained in Paragraph 104 of the Plaintiffs' Second Amended Complaint.
105. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
106. The Defendants deny the allegations contained in Paragraph 106 of the Plaintiffs' Second Amended Complaint.
107. The Defendants deny the allegations contained in Paragraph 107 of the Plaintiffs' Second Amended Complaint.
108. The Defendants deny the allegations contained in Paragraph 108 of the Plaintiffs' Second Amended Complaint.
109. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
110. The Defendants admit the allegations contained in Paragraph 110 of the Plaintiffs' Second Amended Complaint.
111. The Defendants admit the allegations contained in Paragraph 111 of the Plaintiffs' Second Amended Complaint.
112. The Defendants deny the allegations contained in Paragraph 112 of the Plaintiffs' Second Amended Complaint.
113. The Defendants deny the allegations contained in Paragraph 113 of the Plaintiffs' Second Amended Complaint.
114. The Defendants deny the allegations contained in Paragraph 114 of the Plaintiffs' Second Amended Complaint.

115. The Defendants deny the allegations contained in Paragraph 115 of the Plaintiffs' Second Amended Complaint.
116. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
117. The Defendants deny the allegations contained in Paragraph 117 of the Plaintiffs' Second Amended Complaint.
118. The Defendants deny the allegations contained in Paragraph 118 of the Plaintiffs' Second Amended Complaint.
119. The Defendants deny the allegations contained in Paragraph 119 of the Plaintiffs' Second Amended Complaint.
120. The Defendants deny the allegations contained in Paragraph 120 of the Plaintiffs' Second Amended Complaint.
121. The Defendants deny the allegations contained in Paragraph 121 of the Plaintiffs' Second Amended Complaint.
122. The Defendants deny that the Plaintiffs are entitled to the relief sought in the Second Amended Complaint.

WHEREFORE, having answered the Complaint, the Defendants pray that it be dismissed with costs and attorney's fees for defending this action, and for such further and other relief as this Honorable Court deems just and appropriate.

Affirmative Defenses

1. The Defendants incorporate herein all the paragraphs of this Answer as if more fully set forth at length herein.
2. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief may be granted against this Defendants under Rule 12(B)(6) of the South Carolina Rules of Civil Procedure.

3. Plaintiffs' Second Amended Complaint is barred by the Doctrine of Unclean Hands.
4. The Plaintiffs' Second Amended Complaint should be dismissed due to the sworn testimony of Charles Simmons, Jr., naming the members SFH.
5. The Plaintiffs' Second Amended Complaint is barred due to the terms of the SFH Operating Agreement.
6. Plaintiffs' Second Amended Complaint is barred by the Doctrines of Estoppel, Waiver and Laches.
7. The Plaintiffs' derivative action fails to comply with Rule 23, SCRCP, and therefore, should be dismissed.
8. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus raises all affirmative defenses.
9. The Plaintiffs lack standing to bring this action, and therefore, their Second Amended Complaint must be dismissed.
10. The Defendants reserve the right to Amend their Answer to the Second Amended Complaint as additional information is learned throughout the discovery of this case.

VAUX MARSCHER BERGLIND, P.A.

By: S/MARK S. BERGLIND
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and as Trustee of the Charles E.
Simmons, Jr. and Rosa G. Simmons
Revocable Trust dated May 5, 2016,

and Charlesetta S. Aiken
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