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FILED FOR RECORD

BY-LAWS

At 1:03 O'Clock P.M.

SIMSBERRY PLACE PROPERTY OWNERS ASSOCIATION

MAR 05 2002

ARTICLE I  
DEFINITIONS

SUE HODGES  
Clerk and Recorder  
Benton County, ARK.

Section 1. Simsberry Place Property Owners Association. An Arkansas non-profit corporation formed to promote the collective and individual property and civic interests of all persons owning property in Simsberry Place, being a subdivision in Benton County, Arkansas, the Plat being filed for record on see below, in Drawer \_\_\_\_\_ at Pages \_\_\_\_\_ in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas and to own, operate, and maintain the area designated as Common Area thereon.

PHASE 1 RECORDED 2-4-2000 PLAT RECORD P2-749  
PHASE 2 " 7-3-2000 " " P3-127

ARTICLE II  
LOCATION

Section 1. The principal office of the Property Owners Association shall be located at 1165 Joyce Boulevard, Fayetteville, Arkansas.

ARTICLE III  
MEMBERSHIP

Section 1. A person shall become a member of the Property Owners Association upon the recordation of the instrument of conveyance whereby he acquires title to a Lot in Simsberry Place. Each Lot shall constitute one membership in the Property Owners Association.

Section 2. The rights of membership are subject to the payment of all assessments, the obligation of which assessments is imposed against each Owner of, and becomes a lien upon the Lot against which such assessments are made.

Section 3. The Property Owners Association membership of each Owner shall be an appurtenant right to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void.

Attn: Denise

Lindsay J Assoc.  
3801 B. Walnut  
Rogers Ar 72756 4814

**ARTICLE IV**  
**VOTING RIGHTS**

Section 1. The Owners of each Lot shall be entitled to one vote on each matter submitted to a vote of the members. A member shall have one vote for each Lot of which he is the owner, and for any Lot which is resubdivided, this shall mean one vote for each Lot as resubdivided.

Section 2. The voting rights of any Owner whose Lot is subject to assessments shall be suspended during the period when the assessments are delinquent in excess of 30 days; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Elements (including the provisions of these by-laws), they may, in their discretion, upon majority vote, suspend the voting rights of any Owner for a violation of such until the violation is corrected.

Section 3. The vote of each Lot may be cast only as a Lot. In the event that joint Owners of a lot are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. No Owner other than the person designated to the Board may vote for a Lot and when such person casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such person was acting with the authority and consent of all other Owners of the same Lot. All voting rights shall be exercised by Owners and no lessee, sublessee, or other person shall be entitled to exercise voting rights notwithstanding lease provisions to the contrary.

**ARTICLE V**  
**PROPERTY RIGHTS AND RIGHTS OF**  
**USE OF COMMON ELEMENTS**

Section 1. Each Owner shall be entitled to the use of the Common Elements.

Section 2. Each Owner shall abide by all rules and regulations pertaining to the use of the Common Elements.

**ARTICLE VI**  
**BOARD OF DIRECTORS**

Section 1. The affairs of Simsberry Place Property Owners Association shall be administered by a board of not less than two (2) nor more than five (5) directors, who need not be Owners. The initial Board of Directors shall consist of three (3) persons, who shall hold office for three (3) years, and until election of their successors. Beginning with the third annual meeting, the Owners, at every annual meeting, shall

elect new directors to replace those directors whose terms have expired. Directors may succeed themselves. When the Board of Directors is expanded, the terms of each additional director shall be three (3) years.

Section 2. Vacancies in the Board of Directors shall be filled by appointment by a majority of the remaining directors, though less than a quorum; any such appointed director shall hold office through the unexpired remainder of the predecessor's term or until his successor is elected by the Owners, who may make such election at the next annual meeting of the Owners or at a special meeting called for that purpose.

Section 3. Members of the Board of Directors may be removed by the vote of 66-2/3% of the Owners.

Section 4. Directors shall not receive any salary for their services.

Section 5. The officers of the Board of Directors shall be a president, a secretary, a treasurer, and such officers or assistants as the Board of Directors may deem desirable. More than one office may not be held by the same person except that one person may hold the office of secretary and treasurer.

Section 6. The officers of the Board of Directors shall be chosen by a majority vote of the directors.

Section 7. All officers shall hold office for a term of one (1) year but may succeed themselves.

Section 8. The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all written instruments to be executed by the Property Owners Association.

Section 9. The secretary shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. The secretary shall also keep the records of Simsberry Place Property Owners Association. He/she shall record in a book kept for that purpose the names and addresses of all Owners.

Section 10. The treasurer shall receive and deposit in appropriate bank accounts all the monies of Simsberry Place Property Owners Association and shall disburse such funds as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursement made in the ordinary course of business conducted within the limits of a budget adopted by the Board.

Section 11. The treasurer shall keep proper books of account and cause an annual audit of the books at the completion of each fiscal year. He/she shall prepare an annual budget and an annual balance sheet statement, and the budget and balance sheet statement shall be presented to the Owners at the annual meeting.

**ARTICLE VII**  
**ELECTION OF DIRECTORS**

Section 1. Election of the Board of Directors shall be by written ballot of the members. The candidate(s) receiving the largest number of votes shall be elected.

Section 2. Nominations for election to the Board of Directors shall be in writing and may be made by any member and shall be delivered to the secretary of Simsberry Place Property Owners Association not less than twenty (20) days prior to the election date. Nominations shall thereafter be closed.

Section 3. The secretary shall cause a ballot to be prepared containing the names of all nominees and one ballot shall be distributed to each member not less than five (5) days prior to the election date. Election shall be upon written ballot submitted to the secretary at the annual meeting.

**ARTICLE VIII**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. The Board shall have the following powers and duties:

(i) to call special meetings of the Owners whenever it deems necessary and it shall call a meeting at any time upon written request of one-half of the voting membership of Owners as defined in Article IV, Section 1 hereof;

(ii) to appoint and remove, at its pleasure all agents and employees, including a manager, of Simsberry Place Property Owners Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these by-laws shall be construed to prohibit the employment of any Owner, officer or director in any capacity whatsoever;

(iii) to establish, levy, assess, and collect the assessment or charges;

(iv) to adopt and publish rules and regulations covering the use of Common Elements and the conduct of the Owners and their guests, invitees, and employees thereon;

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(v) to exercise for Simsberry Place Property Owners Association all powers, duties, and authority vested in or delegated to Simsberry Place Property Owners Association;

(vi) in the event that any member of the Board of Directors shall be absent from five (5) consecutive regular meetings of the Board of Directors, the Board may, by action taken by the meeting during which said fifth absence occurs, declare the office of such director to be vacant;

(vii) to hire and contract for the administration of the Common Elements and their care, repair, upkeep, and security;

(viii) to establish such committees as the Board deems desirable.

### Section 2.

(i) to cause to be kept a complete record of all its acts and to present a statement thereof to the Owners at the annual meeting of the members or at any special meeting called for that purpose when such is requested;

(ii) to supervise all agents and employees of Simsberry Place Property Owners Association and see that their duties are properly performed;

(iii) to collect for the payment of common expenses in connection therewith to:

(a) adopt an annual budget and fix and levy the amount of the assessment against each Lot for each assessment period;

(b) prepare a roster of the Lots and the assessments applicable thereto which shall be kept by the secretary and shall be open to inspection by any Owner; and

(c) send written notice of each assessment to every Owner subject thereto;

(iv) to issue, or to cause an appropriate official to issue, upon demand by any Owner, mortgagee or prospective mortgagee of a Lot, a certificate setting forth whether any assessment has been paid; such certificate to be conclusive evidence of the payment of any assessment therein stated to have been paid; and

Section 3. The Board shall pay all taxes, real and personal, and assessments, bonds and levies which are or would become a lien on the Common Area.

Section 4. Regular Assessment.

A. Regular assessment. As soon as is reasonably practicable after the election of the first Board, the Board shall set the assessments to be assessed for the initial fiscal year against each Lot for the purposes hereinafter specified. The total of such assessments for all Lots for each fiscal year shall equal (i) the estimated expenses of the Board in carrying out the obligations described herein for such fiscal year, other than for a reserve for the maintenance, repair, or replacement of the Common Area (the "Maintenance Fund Requirement"), plus (ii) an amount to be determined by the Board, to be set aside during the fiscal year to provide for a reserve fund for the maintenance, repair or replacement of the Common Area (the "Reserve Fund Requirement").

B. December assessment. In December of each year the Board shall meet and determine the regular monthly assessment for the succeeding fiscal year.

C. Fiscal year. The initial fiscal year shall run from the date on which the Final Plat of Simsberry Place is filed with the Circuit Clerk of Benton County, Arkansas, to the next succeeding December 31, the succeeding fiscal years of the Property Owners Association shall run from January 1 through December 31.

D. Increase in assessments. For each fiscal year, the regular assessment may be increased prior to, but effective as of, the beginning of such fiscal year, by the Board without a vote of the Owners. The term "regular assessment," as used herein, shall mean that assessment set at the beginning of the fiscal year by the Board.

E. Certificate of payment. The Board shall, upon demand, furnish to any Owner, mortgagee of an Owner, or prospective purchaser of any Lot, a certificate in writing signed by an officer of the Board setting forth whether the assessments on the specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid, subject to collection in the case of recent payments by check or draft.

F. Mortgagee Protection. Notwithstanding any other provisions hereof:

(i) The liens created hereunder upon any lot shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by a recorded prior mortgage or deed of trust upon such lot made in good faith and for value to the extent expended prior to the recordation of notice of lien pursuant

to these By-Laws; provided, that after the foreclosure of any such mortgage or deed of trust, there may be a lien created pursuant to the provisions of these By-Laws on the interests of the purchaser at the foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner and after the date of such foreclosure sale.

(ii) No amendment to this Article shall affect rights of holders of any mortgage or deed of trust recorded prior to the recordation of any such amendment unless the holder joins in the execution thereof.

Section 5. Special emergency assessments. In the event that the Board shall determine that its budget for any current month is or will become inadequate to meet all expenses for any reason, including nonpayment of any Owner's assessment on a current basis, it shall immediately determine the appropriate amount of such inadequacy for such month and may levy an emergency assessment against all Owners for the amount required to meet all such expenses on a current basis. Emergency assessments levied in accordance with this section shall be due and payable within ten (10) days of written notice thereof by the Board.

Section 6. Payment of assessments. Each payment of regular and emergency assessments made by an Owner shall first be applied to that portion of such Lot's assessments allocable to the Maintenance Fund Requirement, and the remainder of such payment shall be applied to that portion of such Lot's assessments allocable to the Reserve Fund Requirement.

Section 7. Maintenance fund. All collected assessment charges shall be properly deposited in a commercial bank account in a bank to be selected by the Board. The Board shall have control of said account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times.

Section 8. Reserve fund. All collected assessment charges allocable to the Reserve Fund Requirement shall be properly deposited in a commercial bank account in a bank to be selected by the Board. The Board shall have control over such account and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. The funds in such account may be expensed only for expenses incurred for the maintenance, repair, or replacement of the Common Area.

Section 9. Non-payment of assessments; lien rights, remedies. Every Owner is deemed to covenant and agree to pay the assessments provided herein and further agrees to the enforcement of such assessments in the manner provided for herein and by the laws of Arkansas.

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A. Delinquency. Any assessment levied by the Board which is not paid when due shall become delinquent on the date on which such assessment is due (the "date of delinquency"). A late charge of ten percent (10%) per month for each delinquent assessment shall be payable with respect to such assessment not paid when due, and the Board, its attorney or other authorized representative may, at its option, at any time after such period, and in addition to other remedies herein or by law or in equity provided, enforce the obligation to pay assessments in any manner provided by law or in equity and, without limiting the generality of the foregoing, by any or all of the following procedures:

(i) Enforcement by suit. The Board may cause a suit to be commenced and maintained in the name of the Board against any Owner or Owners, or any of them, delinquent in the payment of assessments. Any judgment rendered in any such actions shall include the amount of the delinquent assessment, together with late charges and interest thereon at the rate of ten percent (10%) per annum or the maximum lawful rate of interest, whichever is less, from and after the date of delinquency, as provided for herein, court costs and reasonable attorneys' fees in such amounts as the court may award. Suit to recover a money judgment for unpaid assessments shall be maintainable by the Board, or its authorized agent, without foreclosing or waiving the lien hereinafter described and established.

(ii) Enforcement of lien. Any assessment which remains unpaid on the date on which such assessment is due shall be a lien on the Lot for which such assessment is made and on all appurtenances thereto. Such lien may be foreclosed by a suit instituted by the Board, its attorney or duly authorized agent. The Board, or its duly authorized agent, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot acquired at such sale. Provided, however, in any such foreclosure sale the Board may not bid an amount in excess of any judgment rendered in its favor in such foreclosure action and satisfiable out of the proceeds of such sale.

(iii) Additional costs secured by lien. In the event the lien described above is foreclosed, reasonable attorneys' fees as the court may award, and court costs, title insurance premiums, interest on all sums due at the rate of ten percent (10%) per annum or the maximum lawful rate of interest, whichever is less, from the date of delinquency, and all other costs and expenses shall be allowed to the Board.

(iv) Rights of Board. Each Owner hereby vests in and delegates to the Board or its duly authorized representative the right and power to bring all actions at law or equity against any Owner or Owners for the collection of delinquent assessments in accordance herewith.



(v) Purchaser at foreclosure sale. Any purchaser of a Lot at a foreclosure sale pursuant to an action to foreclose the lien herein provided shall take title to such Lot subject to all the terms, provisions, and restrictions contained herein. There shall be a lien on the Lot of the purchaser which may be foreclosed in accordance with the provisions contained herein and which shall secure all assessments which become due after the date of such sale. For the purposes of this section, a sale of a Lot shall occur on the date any judicial sale is held.

(vi) Purpose of assessments. The assessments levied by the Board shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners, their guests, invitees, and employees, and in particular shall be used for the purpose of improving, protecting, operating, repairing, and maintaining the Common Area and the facilities, improvements, landscaping and structures located thereon, and providing for the acquisition and maintenance of property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the property.

**ARTICLE IX**  
**DIRECTORS MEETINGS**

Section 1. Regular meetings of the Board of Directors shall be held once each six (6) months at such time and place as the Board of Directors may designate.

Section 2. If the day for the meeting shall fall upon a holiday or weekend, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 3. Special meetings of the Board of Directors shall be held when called by a majority of directors, after not less than three (3) days notice to each director.

Section 4. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made in a meeting duly held after regular call and notice if (i) a quorum is present, or (ii) after the meeting, enough of the directors not present sign a written waiver or notice, and a consent to the holding of such meeting, and an approval of the action taken at such meeting so that when added to the directors present at the meeting and voting for the action taken, a majority of the Board has approved the meeting and action. All such waivers, consents, or approvals shall be filed with the corporate records and made part of the minutes of the meeting.

Section 5. A majority of the Board of Directors shall constitute a quorum thereof.

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Section 6. Any action which could be taken at a meeting of the Board of Directors may be taken by a written memorandum and record of action signed by all the directors and filed with the records and made part of the minutes.

### **ARTICLE X** **MEETING OF OWNERS**

Section 1. The regular annual meeting of the Owners shall be held in December at a time and date set by the Directors upon five (5) days' prior notice to all Owners. If the date for the annual meeting of the members shall fall upon a holiday, the meeting will be held at the same hour on the first day following which is not a holiday.

Section 2. Special meetings of the Owners for any purpose may be called at any time by a majority of the Board of Directors, or upon the written request of the Owners who have a right to vote one-half of all votes described in Article IV, Section 2.

Section 3. All meetings of the Owners shall be presided over by the president of the Board of Directors or, if the President is absent, by the vice president.

Section 4. Notice of any meeting of Owners shall be given in writing to the Owners by the secretary. Notice shall be given to the Owners by sending a copy of the notice through the mail, postage prepaid, to the addresses appearing on the books of the secretary. Each Owner shall register his address with the secretary and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed at least five (5) days in advance of the meeting and shall set forth in general the nature of the business to be transacted.

Section 5. The presence at the meeting of Owners entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes of the membership shall constitute a quorum for any action governed by these by-laws, and the approval of fifty one percent (51%) of the votes represented at the meeting shall be required to adopt decisions unless a different percentage is specified elsewhere herein.

### **ARTICLE XI** **PROXIES**

Section 1. At all meetings of Owners, each Owner may vote either in person or by proxy.

Section 2. All proxies shall be in writing, signed and filed with the secretary prior to the meeting. No proxy shall extend beyond the designated meeting. Any proxy may be revoked by the Owner's presence at the meeting. Every proxy given by

an Owner shall automatically cease upon sale by the Owner of his Lot or any part thereof.

**ARTICLE XII**  
**BOOKS AND PAPERS**

Section 1. The books, records, and papers of Simsberry Place Property Owners Association shall at all times during reasonable business hours be subject to the inspection of any member.

**ARTICLE XIII**  
**AMENDMENTS**

Section 1. These By-laws may be amended, at a regular or special meeting of the members, by a vote of the members having 66-2/3% of the votes described in Article IV.

**ARTICLE XIV**  
**CONDUCT OF MEETINGS**

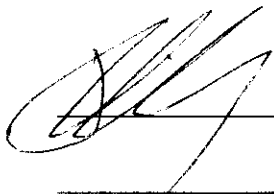
Section 1. All meetings shall be conducted pursuant to Roberts Rules of Order.

**ARTICLE XV**  
**EXCULPABILITY OF BOARD OF OFFICERS**

Section 1. Neither the Board, as a body, nor any individual member thereof nor any officer shall be personally liable to any Owner or any third party for any action or lack of action arising out of the execution of his or her office or for negligence while acting in such official capacity except as set forth herein. Each Owner shall be bound by the good faith actions of the Board and the officers in the execution of the duties of said Directors and officers. Unless acting in bad faith, no Director or officer shall be liable to any Owner or any other person for misfeasance or malfeasance in office or for negligence. The representation and defense of any officer or Director against claims asserted against such officer or Director arising out of or in connection with the discharge of official duties as such shall be a Common Expense unless a final judgment is entered in a court of competent jurisdiction determining that said officer or Directors acted in bad faith.

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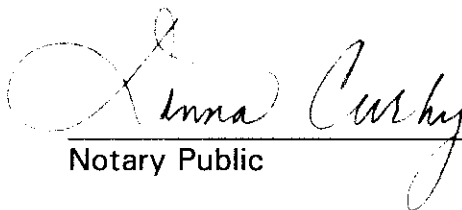
IN WITNESS WHEREOF, these By-laws have been approved and adopted this 1<sup>st</sup> day of December, 2000, by action of the undersigned, constituting 100% of the Owners of Lots in Simsberry Place.

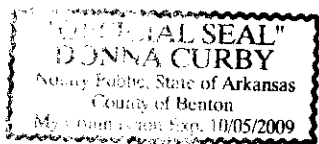


_____	_____
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_____	_____
_____	_____

SUBSCRIBED AND SWORN to before me, a Notary Public, this 1<sup>st</sup> day of December, 2000.

My Commission Expires:

  
\_\_\_\_\_  
Notary Public



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FILED FOR RECORD  
At 1:09 O'Clock P M

DECLARATION OF COVENANTS AND RESTRICTIONS MAR 06 2002  
FOR  
BLOCK 4 AND BLOCK 5  
SIMSBERRY PLACE

SUE HODGES  
Clerk and Recorder  
Benton County, ARK.

THIS DECLARATION is made this 15<sup>th</sup> day of DECEMBER, 2000, by R & L Properties, a Limited Partnership, an Arkansas limited partnership (herein "Developer").

**WITNESSETH:**

WHEREAS, Developer, as owner of certain real property located in Bentonville, Arkansas, known as Block 4 and Block 5, Simsberry Place (herein "Development") as more particularly described in Exhibit "A" attached hereto; and

WHEREAS, Developer desires to provide for the preservation and enhancement of value of the Development and desires that it be subject to certain covenants and restrictions as hereinafter set forth, each and all of which are hereby declared to be for the benefit of the Development and each and every owner of lots in the Development, and

WHEREAS, Developer has caused or will cause to be incorporated under the laws of the State of Arkansas, **Simsberry Place Property Owners' Association, Inc.**, an Arkansas nonprofit corporation, for the purpose of exercising the above functions and those which are more fully set out hereafter;

NOW, THEREFORE, the Developer subjects the Development property to the terms of this Declaration and declares that the same is and shall be held, transferred sold, conveyed, occupied and used, subject to the covenants and restrictions (sometimes herein "Covenants") hereinafter set forth. These Covenants shall touch and concern and run with the property and each lot thereof.

**ARTICLE 1**  
**ARCHITECTURAL CONTROL**

**1.01 ARCHITECTURAL AND DESIGN REVIEW.** In order to establish and preserve a harmonious design for the Development, to promote and protect the property values, to insure that all dwellings and accessory buildings constructed or erected shall have good quality materials and workmanship and are compatible with other dwellings and accessory buildings constructed or to be constructed in the Development, the Developer or the Architectural Control Committee of the **Simsberry Place Property Owners' Association** shall approve the details of construction plans including dwelling placements.

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*Kindley J Assoc*  
*3801 W. Walnut*  
*Rogers Ar 72756*  
*Attn: Bonnie 4814*

**1.02 APPROVAL REQUIREMENTS.** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure on the lot have been approved by the Developer or Simsberry Place Architectural Control Committee.

Should any plans submitted hereunder fail to be approved or disapproved within thirty (30) days of the date on which they are submitted to the Developer or Simsberry Place Architectural Control Committee (the time period herein provided), or in any event, if no suit to enjoin the construction proposed is commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**1.03 APPROVAL GUIDELINES AND LIMITATIONS.** Approval of any proposed plans submitted shall be withheld unless such plans and specifications comply with the applicable Covenants. Approval of plans and specifications by the Developer or Simsberry Place Architectural Control Committee is for the mutual benefit of all Simsberry Place property owners and is not intended to be, and shall not be construed as, an approval or certification that the plans and specifications are technically sound or correct from an engineering or architectural viewpoint. Each property owner shall be individually responsible for the technical aspect of such owner's plans and specifications.

**ARTICLE II**  
**COVENANTS, USES AND RESTRICTIONS**

**2.01 RESIDENTIAL USE.** All lots within the Development shall be governed by the provisions of the City of Bentonville codes and regulations governing single-family residences.

**2.02 BUILDING LIMITATIONS.** The building codes of the City of Bentonville, as they presently exist or are hereinafter amended, shall be and are hereby made applicable to the Development. All dwellings and other improvements shall comply with said ordinances as they exist on the date of such construction. Any conflict between such ordinances and the provisions of these Covenants shall be resolved in favor of the more restrictive provisions. The minimum square footage of heated and cooled living space within the Development shall not be less than (a) 2,000 square feet on lots numbered 36 through 84; (b) 2,500 square feet on lots numbered 1 through 17 and 30 through 35; and (c) 3,000 square feet on lots numbered 18 through 29, without the approval of the Developer or the Simsberry Place Architectural Control Committee. Further, each dwelling shall have a private garage for not less than two (2) cars and shall be a minimum of 21' x 21' with a concrete drive. Each structural dwelling on lots numbered 1 through 71 shall have a roof pitch of no less than 10/12 and each structural dwelling on lots 72 through 84 shall have a roof pitch of no less than 8/12. Each dwelling must be at least 75% brick and use architectural roofing shingles or another roofing material specifically approved by the Developer or Simsberry Place Architectural Control Committee.

**2.03 HOME OCCUPATIONS.** Home occupations as defined by the City of Bentonville shall be prohibited.

**2.04 SETBACKS.** No building shall be erected on any lot in the Development nearer than:

- (1) twenty-five (25) feet to the front lot lines;
- (2) twenty (20) feet to the rear lot line;
- (3) twenty (20) feet to an exterior lot line;
- (4) seven and one-half (7.5) feet to an interior side lot line.

For the purposes of this covenant, eaves, steps, and open porches shall not be considered as part of the building, providing however, this shall not be construed to permit any portion of the building on a lot to encroach upon another lot. Should any building setback lines shown upon the Plat of the Development vary from the setback requirements required herein, the building setback lines shown upon said Plat shall control and take precedence over those stated herein.

**2.05 FENCES.** Security gate and fences will be built and maintained after the Property Owners' Association is established. No fences will be allowed until approved by the Developer of Simsberry Place Architectural Control Committee. The approval requirements outlined in subsection 1.02 for buildings shall also apply to fences. Fencing of front yards is prohibited. Fencing on corner lots shall not infringe on neighboring lots' front yard setbacks. No fences shall exceed six (6) feet in height. All fencing materials shall be approved by the Developer of Simsberry Place Architectural Control Committee. Chain link and other forms of wire fencing are specifically prohibited.

**2.06 VEHICLE PARKING.** All vehicles except recreational vehicles and equipment, owned by lot owners, shall be parked only in the lot owner's garage or driveway. Recreational vehicles and equipment, including but not limited to boats, motor homes, travel trailers, campers and the like shall not be parked or stored within twenty-five (25) feet of the front lot line for a period of time exceeding three (3) days. Provided, however, recreational vehicles and equipment may be parked in backyards for a period exceeding three (3) days so long as they are screened by proper fencing, or a hedge composed of shrubs at least six (6) feet in height, so as to reasonably screen the sight of said vehicle or equipment from neighbors.

**2.07 SIGNS.** No signs, either permanent or temporary of any kind, shall be placed or erected on any property, without the consent of the Developer or Simsberry Place Architectural Control Committee unless signage upon property advertises the same for sale or rent, and does not exceed six (6) square feet in area.

Provided, however, that the Developer and approved builders may erect signs to advertise the Development and model homes.

**2.08 TEMPORARY STRUCTURES.** No trailer, tent, shack, garage, barn or other outbuilding or structure erected on a building site within the Development shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. This restriction does not prohibit the storing of recreational vehicles or equipment on the lots when done in accordance with subsection 2.06. This restriction does not prohibit the Developer or approved builders from placing temporary construction trailer and/or storage facilities on lots as deemed necessary.

**2.09 ACCESSORY STRUCTURES.** Accessory buildings, in-ground swimming pools, cabana structures and gazebos may be built within the building area on any lot subject to the approval of the Developer or Simsberry Place Architectural Control Committee. The approval requirements outlined in subsection 1.02 for buildings shall apply to these structures. Accessory buildings shall be restricted to one (1) per lot, no larger than twenty (20) by fourteen (14) feet, and designs that are compatible with the existing dwelling. In-ground swimming pools, cabana structures and gazebos shall be restricted on one (1) each per lot and designs that are compatible with the existing dwelling. The interior area of outbuildings and cabana structures shall not be included in the determination of the minimum dwelling sizes. Permanent and semi-permanent above-ground swimming pools shall be prohibited.

**2.10 ANTENNAS.** No television antenna, satellite dish exceeding 18" in diameter, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any dwelling or other structure within the Development without the approval of the Developer or Simsberry Place Architectural Control Committee; nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Development lot which may unreasonably interfere with the reception of television or radio signals upon any other Development properties.

**2.11 ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept and maintained provided that they not be kept, bred or maintained for any commercial purposes. Household pets shall be maintained in a clean and sanitary situation and shall not be noxious or a nuisance to the surrounding owners. Each household is limited to not more than three (3) dogs and/or cats. Dogs must be considered tame. No reptiles shall be kept as pets.

**2.12 EASEMENTS.** Perpetual easements have been reserved, as shown on the approved Plat, for the construction and maintenance of utilities and drainage, and no permanent structure of any kind shall be erected or maintained upon or over said easements.

**2.13 NUISANCES.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or a nuisance to the neighborhood. Grass, trees, and various vegetation shall be kept neatly cut and maintained. Lawns shall not be allowed to exceed six (6) inches from the ground surface. Fences or other outside structures or outdoor decorations shall be maintained so as not to become unsightly or any



annoyance or a nuisance to the neighborhood. Upon an owner's failure to comply with this subsection, the Developer or Simsberry Place Architectural Control Committee may perform, or have performed, the necessary action to remedy the problem, and shall be entitled to recover the expense associated with such remedial action from the offending owner.

**2.14 BUILDING MATERIALS.** No building material of any kind or character shall be placed or stored upon any lot until the owner is ready to commence construction of the improvements requiring such materials. Building materials shall not be placed or stored in the street or between the curb and property lines.

Upon completion of the improvements requiring such materials, all remaining building materials and refuse shall be removed from the subdivision.

**2.15 INOPERATIVE VEHICLES.** No vehicle, bus, tractor, or other conveyance or rig, other than a lawn grass apparatus shall be left inoperative on any lot for a period of more than three (3) days.

**2.16 SIGHT DISTANCE AT INTERSECTIONS.** No fence, wall, hedge or shrub which obstructs sight line at intersections within the subdivision shall be permitted.

**2.17 SOUND DEVICES.** No exterior speaker, horn, whistle, bell, or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used or placed upon lots in the subdivision. The playing of loud music from porches or decks shall be considered offensive, obnoxious activity constituting a nuisance.

**2.18 LAUNDRY.** The hanging of laundry from any area within or outside a residence which places the laundry within public view is prohibited.

**ARTICLE III**  
**COMMON PROPERTIES**

**3.01 COMMON PROPERTIES DEFINED.** "Common Properties" shall mean and refer to those tracts of land and any improvements thereon which are deeded to the Simsberry Place Property Owners' Association and designated in said deed as "Common Properties," and any personal property acquired by the Simsberry Place Property Owners' Association if said property is designated as "Common Property." All Common Properties are intended for and are to be devoted to the common use and enjoyment of the owners of lots within the respective areas in which such Common Properties are situated, as set forth herein, and their guests. The Common Properties shall include but not be limited to the following:

Common Properties for Owners of Lots 1 through 71 (hereinafter referred to as Group 1):

1. Private Streets known as Not private, including curbs, guttering, and street lighting;
2. Gates, gate controllers, fences, and landscaping at entrances from S.W. Brighton Street.  
*Attribution of Gates would be of to the P.O.A.*
3. Drainage area located between Lot 8 and Lot 9.

Common Properties for Owners of Lots 72 through 84 (hereinafter referred to as Group 2):

1. Alleys as shown on plat.
2. Privacy fence along South side of Lots 72 and 84 and South side of alley.

**ARTICLE IV**  
**ASSESSMENTS**

**4.01 ASSESSMENTS.** On or before the first day of December of each year, the Simsberry Place Property Owners' Association Board (or the Developer if the transfer of governing authority from the Developer to the property owners' association has not yet taken place as described in the Simsberry Place Property Owners' Association Bylaws) will adopt a budget for the upcoming year. The budget will establish the total amount of annual assessments on all lots in Group 1 and Group 2 of the Development. The amount of annual assessments for each lot within each group will then be determined in the following manner:

- A. Expenses for, operation, maintenance, repair, replacement, insurance and taxes on Common Properties within Group 1 shall be assessed prorata among such lots, with each lot owner bearing 1/71 of such expenses;
- B. Expenses for operation, maintenance, repair, replacement, insurance and taxes on Common Properties within Group 2 shall be assessed prorata among such lots, with each lot owner bearing 1/13 of such expenses;
- C. Expenses for operation of the Property Owners Association, including postage, office supplies, and similar costs shall be assessed prorata among all lots in the Development, with each lot owner bearing 1/84 of such expenses.

**4.02 ALLOCATION OF ASSESSMENTS.** Subject to the limitations set forth in Section 4.03, the amount of the annual assessments on all lots may be increased or decreased by the affirmative vote of at least seventy-five percent (75%) of the lot owners who are in attendance or represented by proxy at any annual or special meeting of the Simsberry Place Property Owners'

Association duly called for such purpose. At any such meeting, the Developer shall have two (2) votes for each lot then owned by the Developer.

**4.03 VOTING BY GROUP.** Issues relating to Common Properties in Group 1 shall be voted on only by persons owning lots within Group 1. Issues relating to Common Properties in Group 2 shall be voted on only by persons owning lots within Group 2.

**4.04 COMMENCEMENT OF ASSESSMENTS.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Developer to be the date of commencement, but not earlier than Dec 1<sup>st</sup>, 2000.

**4.05 PRO RATA ASSESSMENTS.** The amount of the first annual assessment shall be based pro rata upon the balance of the calendar year and shall become due and payable on the closing of the lot. The assessments for any year, after the first year, shall become due and payable the first day of said year.

**4.06 STATEMENTS.** On the first business day after adoption of the budget for the upcoming year (or as soon as practicable thereafter) the Simsberry Place Property Owners' Association or Developer shall mail a statement to each owner informing him or her of their annual assessment and the due date for payment thereof.

**4.07 LATE FEES.** The Developer or Simsberry Place Property Owners' Association shall be authorized to charge a late fee to any lot owner who fails to pay any assessment on or before the due date thereof.

**ARTICLE V**  
**GENERAL PROVISIONS**

**5.01 DURATION OF COVENANTS.** These Covenants shall run with and bind the land and shall inure to the benefit of and be enforceable by the Simsberry Place Property Owners' Association, the Developer or owners, their respective legal representatives, heirs, successors and assigns, and shall be effective for a period of twenty (20) years following the effective date hereof, and may be continued thereafter as provided by Arkansas law.

**5.02 BINDING EFFECT AND AMENDMENTS.** These Covenants may be amended at any time upon the affirmative vote of 2/3 of the then existing lots in Block 4 and 5 Simsberry Place. It is expressly required that each lot owner be given one vote and a vote of 2/3 of the then existing lots shall be deemed sufficient to amend said Covenants. The Developer shall be entitled to two (2) votes for each lot then owned by the Developer. Further, no amendments shall be allowed which would be in violation of any federal, state, city or county regulations.

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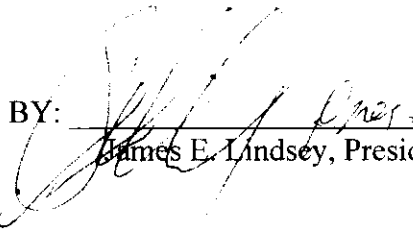
**5.03 SEVERABILITY.** Invalidation of any restriction set forth herein, or any part thereof, by any order, judgment or decree of any court or otherwise, shall not invalidate or affect any of the other restrictions, or any part thereof, as set forth herein, but they shall remain in full force and effect.

**5.04 VIOLATIONS.** In the event of any violation or attempt to violate any of the Covenants herein, it shall be lawful for any person, persons or entity owning any lots in Blocks 4 and 5 Simsberry Place, including the Developer and Simsberry Place Architectural Control Committee, to prosecute any proceedings at law or in equity against a person or persons violating or attempting to violate such Covenants, and either prevent him or them from doing and/or to recover damages for such violations. Provided further, however, that the Developer or Simsberry Place Architectural Control Committee shall first advise any violator of said violations prior to legal action being taken. The Developer or Simsberry Place Architectural Control Committee shall receive from residents any complaints as to violations of the Covenants, and shall reasonably notify any violator prior to legal actions being taken.

Signed, sealed and delivered this 1<sup>st</sup> day of December, 2000.

R & L PROPERTIES, A LIMITED PARTNERSHIP

BY: R & L PROPERTIES MANAGEMENT COMPANY,  
INC., GENERAL PARTNER

BY:  \_\_\_\_\_  
James E. Lindsey, President

**ACKNOWLEDGMENT**

State of Arkansas )  
County of Benton )

On this 1st day of December, 2000, came before the undersigned, a Notary Public within and for the State and County aforesaid, duly commissioned and acting, **James E. Lindsey**, to me well known as the **President of R & L Properties Management Company, Inc., the General Partner of R & L Properties, a Limited Partnership**, an Arkansas limited partnership, and executed the above and foregoing Declaration of Covenants and Restrictions for Block 4 and Block 5 Simsberry Place on behalf of the Partnership.

WITNESS my hand and seal this 1st day of December, 2000.

My Commission Expires:

Donna Curby  
Notary Public

