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FILED FOR RECORD

DECLARATION OF COVENANTS AND RESTRICTIONS FOR At 10:45 O'clock A.M.

APPLEGATE SUBDIVISION

AUG 19 1993

TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS

SUE HODGES

Clerk and Recorder
BENTON COUNTY, ARK.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, M. P. G. Enterprises, Inc., an Arkansas corporation, hereinafter called "Owner," has caused certain lands owned by it to be platted into an addition to be known as Applegate Subdivision, City of Bentonville, Benton County, Arkansas, and the plat thereof appears of record in the Office of the Circuit Clerk and Recorder of Benton County, Arkansas, in Plat Book 18 at Page 38; and,

WHEREAS, the Owner desires to provide for the use of the property for the highest of residential uses and to restrict its uses as such;

NOW, THEREFORE, the Owner hereby adopts the covenants stated herein and agrees that the stated covenants and restrictions shall apply to all of the property now platted as Applegate Subdivision to the City of Bentonville, Benton County, Arkansas, as protective covenants and restrictions running with the land.

1. Scope of Application. These covenants shall apply in their entirety to the area known and described as Applegate Subdivision to the City of Bentonville, Arkansas, as shown on the recorded plat thereof, and more particularly described as follows:

All of Lot Three and part of Lot Two in Block Two of Braithwaite Park Addition to the City of Bentonville, Arkansas, described as beginning at the Northeast Corner of Lot 3 in Block 2 of said Braithwaite Park Addition, which is also the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 19, Township 20 North, Range 30 West, Benton County, Arkansas, thence South 858 feet; thence West 504.20 feet; thence North 207.59 feet; thence West 420 feet to the Easterly right of way of Bella Vista Road; thence along the right of way thereof North 05° 16' 46" West 653.18 feet; thence East 984.3 feet to the Point of Beginning, containing 16.6511 acres, more or less.

Ret. to Clark & Clark, atty.

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2. Land Use and Building Types: No lot in the subdivision shall be used for any other purpose than single family or duplex residential use as that term is defined in the Municipal Zoning Ordinance. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family or duplex dwelling, not to exceed two stories, with a basement, and each such unit shall have at least a single car garage. No business or commercial use shall be carried on or permitted in any structure or in any portion of this subdivision in keeping with this general plan to develop the property for the highest class of residential occupancy; however, home offices shall be permitted so long as they do not violate the zoning ordinances of the City of Bentonville.

3. Dwelling Size and Quality: Size, design, location and site development of all residences and permitted accessory buildings in this subdivision shall be subject to the prior approval of an Architectural Control Committee, hereinafter designated. The Architectural Control Committee shall approve no plans which provide for construction of residences of less than 2,000 square feet of heated and livable floor space, measured by the outside wall dimensions. In addition, garages shall have a minimum of 240 square feet of space. All residences shall be of the highest class of workmanship and best quality material. Brick exteriors shall be the standard. However, variances may be granted by the Architectural Control Committee. Approval of plans for construction of residences and permitted accessory buildings shall not be unreasonably withheld by the Architectural Control Committee, based upon the style of design of the exterior of such proposed residences as long as the same are designed, in whatever style, in accordance with the highest standards of architectural design.

4. General Restrictions. The following covenants and restrictions shall apply to all structures in the subdivision:

(a) **Roofs.** Roofs shall be constructed at a pitch of six-twelve unless otherwise approved by the Architectural Control Committee. Roofing materials shall consist of tile, wood shakes, composition shingles or other materials approved by the Architectural Control Committee.

(b) **Garages, Driveways and Sidewalks.** Each living unit shall include at least a single-car garage, containing not less than 240 square feet, served by a concrete driveway. All garages shall be fully enclosed with a garage door. Each living unit shall further be served by a concrete sidewalk running parallel to the adjacent road or street and being four feet in width with trowel cuts at four-foot intervals. Approval of the Architectural Control Committee shall be required with respect to the plans and specifications, location and layout of garages, driveways and sidewalks prior to construction.

(c) Outbuildings. Outbuildings and other improvements such as cabanas, gazebos and swimming pools shall be allowed within the building area of any lot so long as they are incidental and related to the residential use of the premises and their design is compatible with the residential structure. All such outbuildings must receive the prior approval of the Architectural Control Committee as to the plans and specifications and proposed location.

(d) Temporary Structures. No structures of a temporary character, trailer, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

(e) Setbacks. No building shall be placed closer to the front, side or rear lot lines than the set back lines shown therefor on the recorded subdivision plat; provided, however, that where such requirements create an undue hardship upon the lot owner, setbacks may be modified by approval of the Architectural Control Committee and the Planning Commission of the City of Bentonville, Arkansas, to the extent necessary to prevent the hardship.

(g) Completion Time. Structures shall be completed according to plans and specifications and all applicable permits, codes, standards, rules and regulations applicable thereto, both as to exterior and interior, within such time as shall be fixed by the Architectural Control Committee when the plans and specifications for the particular structure are approved by the ACC. Unless otherwise specified thereby, the exterior of any living unit shall be completely finished within six months of the start of construction and the interior shall be completely finished within 12 months of the start of construction. The owner, contractor and builder will subject all structures to inspection by the ACC as required to determine compliance with completion dates as herein provided, or as may be provided by the ACC.

(h) Sight Distance at Intersections. No fence, wall, tree, hedge, shrub, or other planting, or any other structure which obstructs sight lines at elevations between three and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the road or street property lines and a line connecting them at points 25 feet from the intersection of the road or street property lines, or in the case of a rounded property corner, from the intersection of the road or street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a road or street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(i) Signs. All signs shall be prohibited except signs erected by the developer or a public authority for identification of the project, roads or streets, recreational amenities, or traffic control and directional purposes; signs of a temporary nature advertising property for sale or rent and construction signs, so long as such signs do not exceed six square feet in area, which shall be limited to one such sign per lot, must be placed upon the specific property involved, and may not be placed for the purpose of advertising that such property is already sold or rented; and signs erected by the developer in connection with its sales program, so long as such signs are no more than 75 square feet in area. All other signs shall require the prior approval of the Architectural Control Committee.

(j) Fences. Except for fencing constructed by the developer to set off and identify the project, retaining walls and fencing of any portion of a lot located between the road or street adjacent to the front yard and a line drawn from the side lot line across the rear foundation of the residential structure shall not exceed three feet in height without approval of the Architectural Control Committee, and may only be constructed with decorative or ornamental wood, brick or natural stone materials. Rear yard retaining walls and fencing shall be permitted, however, it is the intention of this covenant to require permitted fencing to be of a decorative nature and not solely utilitarian. Dog pens properly screened by walls, fences or planting may be constructed and maintained in the rear yard portion of any lot.

(k) Off Street Parking. Parking on the streets and roads within the project shall be prohibited. All vehicles other than recreational vehicles shall be parked in the garage or driveway of the respective lots. Recreational vehicles, including but not limited to, boats, motor homes, travel trailers and campers shall not be parked or stored on any portion of the lot located between the street and a line drawn from the side lot lines across the rear foundation of the residential structure, for a period of time exceeding three days; provided, however, the same may be parked or stored in excess of such time if maintained in a closed garage area or within a rear yard screened area.

(l) Satellite Dishes. Satellite television receiver dishes are permitted, provided that such are located only in rear yard building areas and are screened from view in accordance with the provisions hereof for fences.

(m) Pets, Livestock or Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot or parcel of land of the project except that dogs, cats or other usual household pets which are not considered inherently frightening to the general public may be kept, provided that there are no more than two such pets for any living unit and they are not kept, bred or maintained for any commercial purposes. Reptiles and wild or exotic animals shall under no circumstances be construed to be usual household pets.

(n) Garbage and Refuse. No lot or parcel of land of the project shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste material shall be kept in a clean and sanitary container and disposition of same shall be made promptly.

(o) No building materials of any kind or character shall be placed or stored upon any lot in the addition 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. No privy, cesspool, septic tank field or disposal plant shall be installed or maintained on any lot in the addition, and all residences and any permitted accessory buildings shall have the plumbing connected to the City sanitary sewer system.

(p) Inoperative Vehicles. No automobile, truck, bus, tractor or other vehicle shall be left inoperative on any lot for a period of more than 14 days except in accordance with the provisions hereof for off street parking.

(q) Mailboxes and Yard Lights. The installation of any mailboxes or yard lights shall require the prior approval of the Architectural Control Committee as to design and location. The ACC may require that the same be only installed pursuant to specific design plans and specifications as provided by the ACC in order to achieve consistency with respect to such items within the project.

5. Architectural Control Committee. No residence, permitted accessory building, fence, wall or other structure shall be constructed, created or maintained upon any lot in the addition, or shall any modification, alteration or change be made in the exterior of any existing residence or permitted accessory building until the construction, grading and drainage and landscape plans and specifications showing the nature, size, shape, dimensions, materials and location of the same shall have been submitted to and approved, in writing, by the Architectural Control Committee, or the committee has waived its rights in the manner hereinafter provided.

(a) The Architectural Control Committee shall consist of three members, one of whom shall be a representative of the developer, and the other two who shall be property owners appointed by the developer. In the event of the death, resignation or disqualification of a member of the Architectural Control Committee, the developer shall designate a replacement. Each of the members of the committee appointed by the developer shall serve a term of one year but may be reappointed.

(b) Any property owner in the addition seeking to obtain the required approval of any plans for construction,

modification or alteration, or improvements on his or her property, shall submit the same in two copies to any member of the Architectural Control Committee. A written receipt from any member of the committee shall be prima facie evidence of the delivery of such plans and the date thereof. If, within 30 days from the date of delivery of such plans to a member of the committee, the committee has not stated to the owner deficiencies in the proposal for such construction, or alteration or improvements, the owner may proceed with such construction or alterations as though affirmative approval had been received from the Architectural Control Committee. Notice shall be given to the owner at the address for the owner indicated in the City telephone directory, or as otherwise indicated by the owner in writing to the Architectural Control Committee. If deficiencies are noted and called to the owners attention in the proposed plan within a 30-day period following the delivery thereof to a member of the committee by the owner, the owner shall not proceed with any such construction or alteration until such deficiencies have been corrected to the satisfaction of the committee. The committee shall have full power to enforce the provisions and restrictions herein by legal action for an injunction.

(c) The ACC shall have the right to set reasonable charges and fees within its discretion necessary to offset expenses incurred in connection with the performance of its duties hereunder and the failure to pay same shall be grounds for withholding approval. The ACC, through its members or duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot at reasonable hours for the purpose of the performance of its functions hereunder. The owner and any contractor or builder therefor will subject all construction activities to such inspections as are required by the ACC to determine compliance with ACC requirements and these covenants.

6. Easements. Utility and drainage easements are reserved by the developer upon all property in this subdivision and, unless shown otherwise on the plat, all lots have a 10-foot utility and drainage easement on the interior or all lot lines, such easements to be parallel with corresponding adjoining lot lines.

7. Utilities. All utilities in this subdivision shall be placed beneath the ground.

8. Persons Bound. All persons or corporations who now own or shall hereafter acquire any of the lots in the addition shall be deemed to have agreed and covenanted with the owners of all other lots in this subdivision and with their heirs, successors and assigns, to conform to and observe the restrictions, covenants and stipulations contained herein for a

period of 25 years from the date these covenants are recorded. These covenants shall thereafter automatically extend for successive periods of 10 years each, unless prior to the end of the original term or any successive term, 80 percent of the then owner of lots in the subdivision agree to amendment or removal of these covenants in whole or in part. These covenants may be amended at any time with the approval of the owners of 80 percent of the lots in the subdivision. No changes in these covenants shall be valid unless the same shall be placed of record in the office of the Circuit Clerk and Ex-Officio Recorder of Benton County, Arkansas, duly executed and acknowledged by the requisite number of owners.

9. Right to Enforce. The covenants, agreements and restrictions herein set forth shall run with the title to the lots in this subdivision and bind the present owners, their heirs, successors and assigns, future owners and their heirs, successors and assigns, and all parties claiming by, through or under them. Any owner of lots in this addition shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, any of the covenants, agreements or restrictions contained herein, together with any other rights to which they may otherwise be entitled under the laws of the State of Arkansas.

10. Severability. If any of the provisions of these protective covenants, or any section, clause, phrase, word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of such instruments and the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

11. Notices. Any notice required to be sent to any owner under the provisions of these protective covenants shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person or entity who appears as the owner of record at the time of such mailing.

12. Assignment by Developer. The developer reserves and shall have the right to assign, transfer or convey any reservation, right or obligation of the developer hereunder, and upon such assignment, transfer or conveyance, the developer shall immediately be released and discharged as to any and all liability incident to such reservations, rights or obligations.

13. Genders and Plurals. Whenever the context so requires, use of any gender shall be deemed to include all genders, use of the singular shall include the plural, and use of the plural shall include the singular. The provisions of these

protective covenants shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the subdivision.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed by its duly authorized corporate officers this 8th day of ~~January~~, 1993.

MARCH

M.P.G. ENTERPRISES, INC., BY:

[Signature]
MARK SCHWARTZ, PRESIDENT

ATTEST: [Signature]
KARLA SCHWARTZ, SECRETARY

ACKNOWLEDGMENT

STATE OF ARKANSAS]
COUNTY OF BENTON]

BE IT REMEMBERED, that on this day appeared before the undersigned Notary Public, within and for the County and State aforesaid, duly commissioned and acting, Mark Schwartz and Carla Schwartz, and stated that they are the President and the Secretary respectively of M. P. G. Enterprises, Inc., and that they have executed the above protective covenants for Applegate Subdivision, for the consideration and purposes therein set forth.

WITNESS my hand and seal as such Notary Public this 18 day of ~~January~~, 1993.

10-1-2002
My Commission Expires

[Signature]
Notary Public

