



STATE OF ALABAMA )

COUNTY OF SHELBY )

1960

DECLARATION OF RESTRICTIVE COVENANTS FOR  
CROSSBROOK FARMS

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, Rexgate Properties, an Alabama general partnership (herein "the Developer") comprised of Applegate Realty, Inc. and Rex Alexander, has heretofore acquired fee simple title of certain real property situated in Shelby County, Alabama and has subdivided such property into fourteen (14) lots (herein "Lots") as described in map and survey of Crossbrook Farms as recorded in Map Book 12, Page 86, in the Probate Office of Shelby County, Alabama (herein "the Property");

WHEREAS, the Developer desires to develop the Property into a residential estate subdivision to be known as Crossbrook Farms subject to the restrictions and covenants set forth in this Declaration of Restrictive Covenants for Crossbrook Farms (herein "the Declaration");

NOW, THEREFORE, the Developer does, upon recording hereof, declare and make the Property and each of the Lots included in the subdivision of the Property subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all parties

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having or acquiring any right, title or interest in the property or any part thereof, and shall be for the benefit of each such owner of property or interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the owners thereof.

#### ARTICLE I

##### Land Use

1. The Property will be used for residential purposes only and not for any business or trade.

#### ARTICLE II

##### Building Requirements

1. MINIMUM STRUCTURE SIZE OF PRIMARY DWELLING. No Lot shall contain more than one primary dwelling ("the dwelling") and no primary dwelling shall be erected on any Lot which dwelling contains less than 1850 square feet of living space, for a single story dwelling, and not less than 1300 square feet of living space on the main level of a one and one-half or two story dwelling. Living space is defined as heated and finished area and does not include porches, garages, basements, carports or attics. For the purpose of these restrictions, "Lot" shall mean any Lot contained in the map recorded at Map Book 12, Page 86, Office of the Judge of Probate, Shelby County, Alabama and any further subdivided Lot as specifically authorized by this Declaration.

2. EXTERIOR MATERIAL. No dwelling or out building as hereinafter allowed shall use the following materials which shall be visible on the exterior of any such building; (a) concrete block; or (b) stucco over concrete block.

3. DRIVEWAYS. All driveways servicing any Lot shall be gravel, asphalt or concrete.

4. BUILDING LOCATION. No structure, other than fences, shall be located any closer than 100 feet to the front property line of any Lot, or any property line fronting a paved street, nor shall any structure other than fences be located any closer to any side line of any Lot or any rear line of any Lot than 50 feet.

5. FENCES. All fences fronting any street located within the subdivision shall be made of wood and all fences located within 50 feet of any Lot line fronting any street within the subdivision shall be made of wood. The Architectural Control Committee shall approve any proposed fencing.

6. TEMPORARY STRUCTURES AND OUTBUILDINGS. No mobile homes, temporary dwellings, stables or other buildings shall be built and used for residential purposes prior to the completion of the primary dwelling. After completion of the primary dwelling on any Lot, stables, barns or other outbuildings shall, subject to the approval of the Architectural Control Committee, be allowed. Subject to the approval of the Architectural Control Committee,

prior to the completion of the primary dwelling, a stable or barn may be constructed so long as such stable or barn is not used for residential purposes.

7. DESIGN CRITERIA. The objective of the Architectural Control Committee hereinafter established is to provide for the harmonious development of all of the Lots within the subdivision.

8. SEPTIC TANKS. All septic tanks must be of an improved type, such tanks together with adequate field lines must be approved and completely acceptable to the Shelby County Health Department. No septic tank or field line shall be constructed within 20 feet of an adjoining property line. No sewer or drainage lines shall be constructed or laid which shall empty on or become a nuisance to any adjoining Lot or property line.

### ARTICLE III

#### Architectural Control Committee

1. APPROVAL OF ARCHITECTURAL CONTROL COMMITTEE. No structure, building, or fence shall be commenced, erected, placed, moved onto or permitted to remain on any Lot within the Property, nor shall any existing structure upon any Lot within the Property be altered in any way which materially changes the exterior appearance thereof until the same is submitted to and approved by the Architectural Control Committee (herein "the Committee"). The Committee will be provided with such plans and specifications which will be in a form and shall contain such information, as may be required by the Architectural Control Committee and shall include, but not necessarily be limited to:

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A. a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot; and

B. a grading, and drainage plan for the Lot.

2. COMPOSITION OF THE COMMITTEE. The Architectural Control Committee ("the Committee") shall be composed of three individuals designated from time to time by the Developer. The affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit, authorization or approval pursuant to the directives or authorizations set forth herein.

3. EVIDENCE OF APPROVAL. The approval of the Committee shall be evidenced by written permit executed by one or more of the members of the Committee and counter-signed by the applicant therefor. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

4. BASIS FOR DISAPPROVAL OF PLANS.

A. The scope of review by the Committee shall be limited to appearance only. THE COMMITTEE DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.

B. The Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:

- (1) failure of such plans and specifications to comply with the covenants and restrictions herein set forth;
- (2) failure to include information in such plans and specifications as may have been reasonably requested by the Committee;
- (3) reasonable objection to the exterior design, appearance or materials proposed to be used in any proposed structure;
- (4) incompatibility of any proposed structure or improvement or use thereof with existing structures or uses upon other Lots in the Property;
- (5) objection to the site plan, clearing plan, drainage plan for any parcel;
- (6) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environ of the Lot;
- (7) any other matter which, in the judgment of the Committee, would render the proposed structure, improvement or uses inharmonious with the general plan of improvement of the Property or with structures, improvements, or uses located upon other Lots in the Property.

C. In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In

any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

5. RETENTION OF COPY OF PLANS. Upon approval by the Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

6. FAILURE TO OBTAIN APPROVAL. If any structure or improvement shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Committee pursuant to the provisions of this Article III, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, and, upon written notice from the Committee, any such structure or improvement as altered, erected, placed or maintained be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Developer shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish violation and the cost thereof



shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this covenant shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County prior to the recordation among the Land Records of Shelby County of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

7. CERTIFICATE OF COMPLIANCE. Upon completion of the construction or alteration of any structure or improvement in accordance with the plans and specifications approved by the Committee, the Committee shall, upon written request of the owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement and the Lot on which such structure or improvement is placed, and stating the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon have been approved and that such structure or improvement complies with the requirements of the Committee. Preparation and recording of such certificate shall be at the expense of such owner. Any certificate of compliance issued in accordance with the provisions of this Article III, Paragraph 7 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all

structures or improvements on the Lot, and the use or uses described therein comply with all the requirements of this Article III, and with all other requirements of this Declaration as to which the Committee exercises any discretionary or interpretive powers.

8. INSPECTION RIGHTS. Any agent of Developer or the Committee may at any reasonable time or times enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither Developer nor the Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

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9. WAIVER OF LIABILITY. Neither the Committee nor any architect nor agent thereof, nor Developer, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for any failure of structures or improvements to comply with requirements of this Declaration, although a certificate of compliance has been issued, any defects in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this

Section 9 for any cause arising out of the matters referred to in this Section 9 and further agree to and do hereby release said entities and persons for any and every such cause.

10. DURATION. The obligations of the Developer as to the Architectural Control Committee and the Committee's rights and obligations relative to the Property and the Lots within the subdivision shall terminate upon the earlier of:

A. the date that a primary dwelling has been constructed and completed on the last Lot in the subdivision, that is to say, all Lots within the subdivision shall at that time have primary dwellings constructed upon them; or

B. five years from the date of this Declaration.

11. DEVELOPER'S OPTION TO EXTEND. Notwithstanding the foregoing Article III, Paragraph 10 A and B, the Developer may, in its sole discretion, and upon written notice to the then fee owners of the Lots, extend the Developer's control of the Committee for a period of time not to exceed the initial term of these restrictions. The Developer shall also record with the Judge of Probate of Shelby County, Alabama a document indicating such extension.

12. EFFECT OF TERMINATION OF COMMITTEE ON BUILDING REQUIREMENTS. In the event the Developer's obligations as to the Committee are terminated pursuant to Article III, Paragraph 10 A

and B above, the building requirements as set forth hereinabove in Article II inclusive shall remain in place and binding upon the Property and the Lots and shall be enforceable by the Property owners as hereinafter set out.

#### **ARTICLE IV**

##### **Further Subdivision**

1. The following Lots shall not be further subdivided: Lots 1, 3, 4, 5, 7, 8 and 14.

2. The following Lots, subject to approval of the appropriate governmental authorities and the restrictions set forth in this Declaration may be further subdivided: Lots 2, 6, 9, 10, 11, 12 and 13. After such further subdivision, all resulting parcels of any further subdivided Lots shall contain a minimum of 4.25 acres.

#### **ARTICLE V**

##### **Miscellaneous**

1. ANIMALS. No dog kennels for commercial purposes will be allowed, and no more than one horse per acre of any given Lot shall be allowed on each Lot. No cows will be allowed, and no commercial breeding of any animals shall be allowed.

2. No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property.

3. No sign of any kind shall be displayed to the public view on any Lot except, one sign of not more than 5 square feet advertising the Property for sell or rent, or signs used by a builder to advertise the Property during construction and sale period.

4. GRANTEE'S ACCEPTANCE. The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained.

5. INDEMNITY FOR DAMAGES. Each and every Lot owner and future Lot owner, in accepting a deed or contract for any Lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such owner, or the contractor, agent, or employees of such owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer, or for which Developer has responsibility, at the time of such damage.

6. SEVERABILITY. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions.

Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

7. RIGHT OF DEVELOPER TO MODIFY RESTRICTIONS WITH RESPECT TO UNSOLD LOTS. With respect to any unsold Lot, Developer may include in any contract or deed hereafter made or entered into such modifications and/or additions to this Declaration as Developer in his discretion desires.

8. NO REVERTER. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

9. DURATION AND AMENDMENT. The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Developer, the Architectural Committee, and the owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December, 2008, after which time said restrictions shall be automatically extended for successive periods of ten years. With the exception of the rights of Developer contained in Article V, Paragraph 7 hereinabove, this Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 51% of the Lot owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2008,

this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 51% of the Lot owners which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recordings as may be appropriate at the time of the execution of such instrument.

10. ENFORCEMENT. In the event of a violation or breach of any of these restrictions or any amendments thereto by any owner of a Lot, or employee, agent, or lessee of such owner, the owner(s) of Lot(s), Developer, their successors and assigns, or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled

specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Lot owner may be awarded a reasonable attorney's fee against such Lot owner.

11. NO WAIVER. The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

IN WITNESS WHEREOF, the undersigned as the owner of the Property has caused this Declaration to be executed as of the 25<sup>th</sup> day of October, 1988.

REXGATE PROPERTIES, An  
Alabama General Partnership  
By Its Partners:

APPLGATE REALTY, INC.

BY:

Randall H. [Signature]  
Its President

Rex Alexander  
Rex Alexander



STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Randall H. Loggans, whose name as President of Applegate Realty, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 25<sup>th</sup> day of October, 1988.

Mary Catherine McCluskey  
Notary Public

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Rex Alexander, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 25<sup>th</sup> day of October, 1988.

Mary Catherine McCluskey  
Notary Public

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STATE OF ALA. SHERIFF  
I CERTIFY THIS  
INSTRUMENT WAS FILED

88 OCT 31 AM 8:20

James H. Sanderson, Jr.  
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ <u>40.00</u>
Index Fee	<u>1.00</u>
TOTAL	<u>41.00</u>

