

STATE OF ALABAMA)
SHELBY COUNTY)

RIGHT OF FIRST REFUSAL

This right of first refusal made this 29 day of May, 1991 by and between APPLGATE REALTY, INC. ("Applegate") and BUILDERS GROUP, INC. ("Group").

WHEREAS, Applegate and Group entered a real estate contract (the "Contract") dated April 30, 1991 concerning the sale of 12 lots located within the Berryhill Subdivision, Alabaster, Alabama; and

The contract provides for Group to have a right of first refusal on lots within the 3rd Sector of Berryhill. The 3rd Sector of Berryhill has not been subdivided at this date;

The parties are desirous of setting forth their agreements in writing with regard to the said 3rd Sector.

NOW, THEREFORE, in consideration of the premises, Group's closing on the contract and the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The 3rd Sector of Berryhill as defined herein is described as the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 3, Township 21 South, Range 3 West, Shelby County, Alabama, less and except any portion thereof which is a roadway and less and except Berryhill 1st and 2nd Sectors as those Sectors appear for record with the Probate Office of Shelby County, Alabama.

2. In the event Applegate causes the said 3rd Sector to be

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James Buford

2783

3rd Draft

developed and a map to be recorded within the time this right of first refusal is in effect, Group shall have the right of first refusal to buy lot(s) within the said 3rd Sector according to the provisions of paragraph 3 of this agreement. All costs associated with the development and recording of the said 3rd Sector shall be borne by Applegate (or assigns).

3. With regard to developed lots within the said 3rd Sector:

(a) The price shall be the lesser of \$15,000.00 per lot or the price set forth in a bona fide offer acceptable to Applegate (or assigns) for any such lot(s).

(b) Within 7 days of written notice from Applegate (or assigns) to Group of such acceptable offer, Group shall affirmatively notify Applegate (or assigns) in writing of its intention to exercise its right of first refusal as to any such lot Group had received notice on. Failure by Group to timely notify Applegate (or assigns) shall be deemed a waiver of the rights herein as it applies to the lot(s) contained in Applegate's (or assigns') notice.

(c) In the event Group timely and affirmatively notifies Applegate (or assigns) of Group's exercise of the right as it applies to any such lot(s), Group shall close on such lot(s) within 15 days of Applegate's (or assigns') initial notice to Group, for cash at the price determined by paragraph 3(a) above. At such closing, Applegate (or assigns) shall provide title insurance and prorate applicable taxes and otherwise convey

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unencumbered fee simple title to Group subject to easements, restrictions and rights-of-way of record. Any other costs associated with such closing shall be borne by Group. (d)

Group's right of first refusal with regard to developed lots shall be in effect from the time period beginning 90 days from the date of this agreement to September 1, 1992 after which time all of Group's rights under this agreement shall expire and be null and void. Applegate will not sell any developed lot(s) within the said 3rd Sector prior to 90 days from the date of this agreement.

4. In addition to the other rights set forth in this agreement, Group shall have the right of first refusal to purchase the undeveloped land which is 3rd Sector from the date of this agreement until September 1, 1992 from the date of this agreement upon the same price and terms as any bona fide acceptable offer received by Applegate for the purchase of the said undeveloped 3rd Sector. Upon notice from Applegate to Group of any such offer, Group shall have 7 days from the date of such notice to agree to purchase the undeveloped 3rd Sector according to the same price and terms as set forth in such bona fide offer. In the event Group fails to timely exercise its right as set forth herein, Group shall still retain the right of first refusal granted hereunder pursuant to paragraph 3 which right of first refusal runs with the land during the term of this agreement.

5. Notices. All notices required by this agreement shall be in writing and shall be delivered by hand or by certified mail

return receipt requested and such notice shall be effective the date of such communication and shall be sufficient if delivered as follows:

If to Group:

BUILDERS GROUP, INC.

#1 OFFICE PARK CIRCLE SUITE 330

BIRMINGHAM, AL. 35223

If to Applegate:

150 OLOE TOWNE ROAD

BIRMINGHAM, AL. 35216

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 29 day of MAY, 1991.

BUILDERS GROUP, INC.

By:
Its:

[Signature]
President

APPLGATE REALTY, INC.

By:
Its:

[Signature]
Randall H. Goggans
President

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STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that THOMAS A. DAVIS, whose name as PRESIDENT of BUILDERS GROUP, INC., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this 29 day of MAY, 1991.

[Signature]
Notary Public
My Commission Expires: 3-1-94

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that RANDALL H. GOGGANS, whose name as President of APPLGATE REALTY, INC., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this 29 day of MAY, 1991.

[Signature]
Notary Public
My Commission Expires: 3-1-94

STATE OF ALA. SHELBY L.
I CERTIFY THIS
INSTRUMENT WAS FILED

91 JUN 10 AM 11:44

[Signature]
JUDGE OF PROBATE

1. Doc. Tax	—
2. Mig. Tax	—
3. Recording Fee	—
4. Notary Fee	—
5. Sub. Fee	—
6. Total	16.80