

DECLARATION OF COVENANTS AND RESTRICTIONS

"The Crossing"
 A Replat of Lot 105 of a Replat
 of a portion of Lot 5 of the C.
 W. Kenner Subdivision to the City
 of Abilene, Taylor County, Texas
 and Lot 102, Block A, Replat of
 a part of Lot 1 and all of Lots
 2 and 3, C. W. Kenner Subdivision
 to the City of Abilene, Taylor
 County, Texas.

THE STATE OF TEXAS *

COUNTY OF TAYLOR *

THIS DECLARATION, made on the date hereinafter set forth by HERRON CONSTRUCTION COMPANY, INC., a Texas corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article III of the Declaration and desires to create thereon a residential community with designated lots, for the benefit of the present and future owners; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said Common Facilities, and, to this end, desires to subject the real property described in Article III, to the covenants, restrictions, and easements, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

NOW, THEREFORE, the Declarant declares that the real property described in Article III is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, and easements, hereinafter set forth.

ARTICLE I

Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "The Subdivision" shall mean and refer to The Crossing, a Replat of Lot 105 of a Replat of a portion of Lot 5 of the C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas and Lot 102, Block A, Replat of a part of Lot 1 and all of Lots 2 and 3, C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas.

(b) "The Property" shall mean and refer to the property described in Article III hereof which is the subject of this Declaration.

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(c) "Subdivision Plat" shall mean and refer to the map or plat of a Replat of Lot 105 of a Replat of a portion of Lot 3 of the C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas and Lot 102, Block A, Replat of a part of Lot 1 and all of Lots 2 and 3, C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas.

(d) "Lot" and/or "Lots" shall mean and refer to each of the lots shown upon the Subdivision Plat. References herein to "The Lots (each Lot) in The Subdivision" shall mean and refer to Lots as defined respectively in this Declaration.

(e) "Common Facilities" shall mean and refer to the alley ways and private drives shown on the Subdivision Plat.

(f) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to "The Owners in the Subdivision" shall mean and refer to Owners as defined in the Declaration.

ARTICLE II

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such certain streets and easements shown thereon, and such Subdivision Plat further established dedications, limitations, reservations and restrictions applicable to the Property. All dedications, limitations, limitations, restrictions and reservations shown on the Subdivision Plat affecting the Property are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes, (including, without limitation, gas, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Property.

Section 3. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supply service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property within the public utility easements from time to time existing and from

service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Property until approved by Declarant. The utility companies furnishing service shall have the right to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

Section 4. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, and other service vehicles to enter upon the Property in the performance of their duties.

Section 5. Surface Areas. The surface of easement areas for underground utility service may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of the, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Section 6. Easement for Heating-Cooling Units and compressors. In the event that all or any portion of a Lot Owners heating-cooling unit and/or compressor unit should be located upon an adjoining Lot, the adjoining Lot Owner hereby grants and conveys to said Lot Owner an easement for the location of pad, installation and maintenance of said unit and same shall not be deemed an encroachment.

ARTICLE III

Property Subject to this Declaration

Section 1. Description. The real property which is and shall be, held, transferred, sold, conveyed, and occupied subject to the Declaration consists of the following:

"The Crossing" A Replat of Lot 105 of a Replat of a portion of Lot 5 of the C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas and Lot 102, Block A, Replat of a part of Lot 1 and all of Lots 2 and 3, C. W. Kenner Subdivision to the City of Abilene, Taylor County, Texas.

ARTICLE IV

Property Rights to Private Streets and Alley ways

Section 1. Owners Easements of Enjoyment. Every Owner shall have a common right and easement of enjoyment in and to Private streets and alley ways in the Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in The Subdivision.

ARTICLE V

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions

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of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance.
The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty.
If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right to Contribution Runs With Lot.
The rights of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to choose an arbitrator within ten (10) days after written request therefor, the Judge of any District Court of Taylor County, Texas, shall select an arbitrator for the refusing party.

ARTICLE VI

Building and Use Restrictions

Section 1. Residence Buildings and Garages. No Buildings or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single family residence, with appurtenances, and no structure shall be occupied or used until the exterior construction thereof is completed. Each single family residence situated on a Lot shall have an enclosed, attached garage for not less than two (2) nor more than four (4) automobiles. No carport shall be built, placed constructed or reconstructed on any Lot. No garage shall ever be changed, altered, reconstructed on any Lot. No garage shall ever or otherwise converted for any purpose inconsistent with the garaging of automobiles.

Section 2. Nuisance. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Facilities, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. No trucks larger than three-quarters of a ton, motor vehicles not currently licensed, boats, trailers, campers, motor or mobile homes or other vehicles shall be permitted to be parked on any Lot, except in a closed

garage, or on any street, except passenger cars and trucks smaller than three-quarters of a ton may be parked on the street in front of the Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. No repair work, dismantling, or assembling of motor vehicles or other machinery or other portion of the Common Facilities. The use or discharge of firearms, firecrackers, or other fireworks in the Property is prohibited.

Section 3. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the Common Facilities, except that dogs, cats, or other common household pets (not to exceed three (3) adult animals) may be kept, but they shall not be bred or kept for commercial purposes.

Section 4. Garbage and Refuse Storage and Disposal. All Lots and the Common Facilities shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Facilities shall be used or maintained as a dumping ground for garbage, trash, junk, or other waste matters. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

Section 5. Lot Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no even use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash or rubbish of any kind thereon and shall not burn anything (except by use of an incinerator and then only during such hours as permitted by law). The drying of clothes in full public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds, waterfront or other facilities where the rear yard or portion of the Lot is visible to full public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant or its successors and assigns may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration in order to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant,

as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof.

Section 6. Prohibition of Altering Exterior Surface and Color of Buildings. No owner or occupant of any lot shall change or alter any exterior surface, texture, or change any exterior color from that originally established for "The Crossing Addition."

ARTICLE VII

General Provisions

Section 1. Duration and Enforcement. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any land subject to this Declaration their respective legal representatives, heirs, successors, and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2015. During such initial term the covenants and restrictions of the Declaration may be changed or terminated only by an instrument signed by the then Owners of all records of Taylor County, Texas. Upon the expiration, of such initial term, said covenants and restrictions (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten(10) year extension periods, the covenants and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty one percent (51%) of all the Lots in the Subdivision and properly recorded in the appropriate records of Taylor County, Texas. Declarant and any Owner shall have the right to enforce, by proceedings at law or inequity all provisions of Article VI. Failure to take action shall not be deemed a waiver of any right of enforcement upon any subsequent breach or default.

Section 2. Amendments by Declarant. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner of his mortgagee.

Section 3. Interpretation. If this Declaration or any work, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 4. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in the Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

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Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case full expressed.

Section 6. Severability. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned being the Decarant herein have executed the Declaration to be effective the 14th day of December, 1981.

HERRON CONSTRUCTION CO., INC.

By 

Michael Herron, President

THE STATE OF TEXAS *

COUNTY OF TAYLOR *

BEFORE ME, the undersigned authority, on this day personally appeared Michael Herron, President of Herron Construction Co., Inc. known to me to be the person whose nam is subrscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6 day of January, 1982.




Notary Public, Taylor County, Texas

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Sherron Conat. Co., Inc.

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FILED FOR RECORD
OFFICIAL

MAY 6 1962

JANICE LYONS
County Clerk, Taylor County, Texas
Deputy

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Sherron Conat
4141 Douglas
JS



STATE OF TEXAS } DEED RECORDS
COUNTY OF TAYLOR }

I hereby certify that this instrument was
FILED on the date and at the time stamped
hereon by me and was duly RECORDED in the
Volume and Page of the named RECORDS of
Taylor County, Texas, as stamped hereon by
me.

Janice Lyons
County Clerk,
Taylor County, Texas