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FRANK BORISKIE
County Clerk, Brazos County, ~~Oryol~~, ~~Texas~~
By _____ Deputy

Correction
Declaration of Covenants, Conditions, and Restrictions
Of
Southwest Crossing Townhomes
Brazos County, Texas

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Covenants, Conditions, and Restrictions of
Southwest Crossing Townhomes

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CORRECTION
DECLARATION OF COVENANTS, CONDITIONS AND REGULATIONS
FOR
SOUTHWEST CROSSING TOWNHOMES

THE STATE OF TEXAS)(
COUNTY OF BRAZOS)(

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made on the date hereinafter set forth by SOUTHWEST CROSSING TOWNHOMES J. V. 7, a Texas Joint Venture, composed of CRUSE CORPORATION and JAN-WIC, INC., Texas Corporations, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the County of Brazos, State of Texas, known as SOUTHWEST CROSSING TOWNHOMES and which is more particularly described on the attached Exhibit "A".

NOW THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and be binding on all parties having or acquiring any right, title or interest in the above described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

- 1.1 **ASSOCIATION.** "Association" shall mean and refer to SOUTHWEST CROSSING TOWNHOMES OWNERS ASSOCIATION, INC., its successors and assigns.
- 1.2 **CONSTRUCTION AND SALE PERIOD.** "Construction and Sale Period" shall mean that period of time during which Declarant is developing the Premises and selling the Townhouses, which time period shall extend from the date hereof until such time as the Declarant transfers title to all of the Lots.

- 1.3 LIENHOLDER OR FIRST MORTGAGEE. "Lienholder" or "First Mortgagee" shall mean the holder of a first mortgage lien on any Townhouse in the development.
- 1.4 LOT. "Lot" shall mean and refer to those forty-two (42) certain tracts or parcels of land within the existing Property and more particularly shown in Exhibit "B" hereto on which there is or will be constructed a single-family Townhouse which is to be individually and separately owned. Declarant shall be the Owner of all of said Lots SAVE AND EXCEPT only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof.
- 1.5 MEMBER. "Member" shall mean and refer to every person or entity who holds membership in the Association.
- 1.6 OWNER. "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Mortgagee or Lienholder who retains fee simple title to any Lot which is a part of the Property, through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure.
- 1.7 PROPERTY, PREMISES OR DEVELOPMENT. "Property" shall mean and refer to that certain real property hereinbefore described.
- 1.8 TOWNHOUSE OR TOWNHOME. "Townhouse" or "Townhome" shall mean a single-family residential Unit constructed on a Lot.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

- 2.1 MEMBERSHIP. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject, by covenants of record, to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one (1) membership. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any Mortgagee or Lienholder who acquires title to any Lot which is part of the Property, through judicial or non-judicial foreclosure, shall be a Member of the Association.
- 2.2 VOTING RIGHTS. The Association shall have two (2) classes of voting membership:

- a. CLASS A. Class A Members shall be all Owners, with the exception of SOUTHWEST CROSSING TOWNHOMES J. V. 7, the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds interests in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
 - b. CLASS B. The Class B Member(s) shall be SOUTHWEST CROSSING TOWNHOMES J. V. 7, the Declarant, and its successors, and shall be entitled to three (3) votes for each Lot owned, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
 - (2) Three (3) years from the filing date hereof in the Deed Records of Brazos County, Texas
- 2.3 NO CUMULATIVE VOTING. At all meetings of the Owners Association there shall be no cumulative voting.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

- 3.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessment to be fixed, established and collected as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them
- 3.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property and in particular for the improvement and maintenance of the Property and of the Townhomes situated thereon. Assessments shall include, but are not limited to, funds to cover actual

Association costs for all exterior maintenance of the Lots or Townhomes, as herein authorized or as may from time to time be authorized by the Board of Directors; legal and accounting fees, costs incurred in any condemnation hearing, as provided in Paragraph 9.7, and any fees for management services; and the cost of other facilities and service activation, including, but not limited to, mowing grass, grounds care, sprinkler system, landscaping, roofs and exterior walls and fences of the Townhomes, carports and storage facilities, garbage pickup areas, water and sewage service furnished to Townhomes by the Association, and other charges required by this Declaration of Covenants, Conditions and Restrictions or that the Board of Directors of the Association shall determine to be necessary to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein.

3.3 . BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

- a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$440.00 per Lot.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be set effective January 1 of each year without a vote of the membership by an amount not to exceed one hundred and twenty percent (120%) of the budget of the proceeding year.
- c. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be set above one hundred and twenty percent (120%) only by the written approval of the Owners entitled to cast two-thirds (2/3) of the votes of the Members of each class.
- d. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

3.4 NOTICE QUORUM FOR ANY ACTION AUTHORIZED UNDER

PARAGRAPHS 3.3. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 3.3 shall be sent to all Members not less than thirty (30) days nor more fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership entitled to be cast by the Members of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements. In lieu of a meeting, a door to door canvass may be used to get the written consent of two-thirds (2/3) of the Class A Owners and two-thirds (2/3) and the Class B Owners.

3.5 UNIFORM RATE OF ASSESSMENT Annual assessments shall be fixed at a uniform rate for all Lots regardless of location, and shall commence and be due in accordance with the provisions of Paragraph 3.6 hereof.

3.6 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.

- a. As to each Lot owned by an Owner other than Declarant, the annual assessment shall commence on the date that such Lot is conveyed by Declarant to Owner.
- b. As long as Declarant holds any Class B voting rights as set out in Article II, Paragraph 2.2 herein, Declarant shall not be liable for annual assessments as set out in Paragraph 3.3a of this Article III. However, Declarant shall be responsible for the difference in the cost of maintenance borne by the Association and the assessments received from the Unit Owners holding Class A votes.
- c. The annual assessment shall be due and payable in advance by each Owner to the Association in monthly installments.
- d. The annual assessments for the first assessment year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first assessment year, the Association shall fix the amount of the annual assessment at least thirty (30) days in advance of each assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the annual assessment upon thirty (30) days' written notice given to each Owner as long as any such adjustment does not exceed the maximum permitted hereunder. Written notice of the annual assessment shall be sent as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the annual assessments on a specified Lot have been paid and the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3.7 EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.

- a. All payment of the assessments shall be made to the Association at its principal place of business in Brazos County, Texas, or at such other place as the Association may otherwise direct or permit. Payment shall be made in full regardless of whether any Owner has any dispute with the Declarant, the Association, or any other Owner or any other person or entity regarding any matter to which this Declaration relates or pertains. Payment of the assessments shall be both a continuing affirmative covenant personal to the Owner (other than the Declarant) and a continuing covenant running with the land. Each Owner, and each prospective Owner, is hereby placed on notice that such provision may operate to place upon him the responsibility for the payment of

assessments attributable to a period prior to the date he purchased his Townhome.

- b. Any assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such assessment is not paid within thirty (30) days after the date of delinquency, the assessment shall bear interest from the date of delinquency, until paid, at the rate of ten percent (10%) per annum. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same; or, upon compliance with the notice provisions set forth in Subparagraph "C" of this Paragraph 3.7, foreclose the lien against the Lot, as provided in Subparagraph "d" of this Paragraph 3.7. There shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all action at law or lien foreclosing against such Owner of the collection of such delinquent assessments. Under no circumstances, however, shall the Declarant of the Association be liable to any Owner or to any other person or entity for failure or inability to enforce or attempt to enforce any assessments. In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without recourse, a vendor's lien against each Lot to secure payment of a common assessment which is levied pursuant to the terms hereof. Such liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including interest, costs, and reasonable attorney's fees shall be chargeable to the Owner in default.
- c. No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date a notice of claim of lien is deposited with the postal authority, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of Brazos County; said notice of claim must cite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at the legal rate, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.
- d. Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Article 3810 of the Revised Civil Statutes of the State of Texas, or in any other manner permitted by law. Each Owner, by accepting a deed to his Lot, expressly grants to the Association a power of sale, as set forth in said Article 3810, in connection with the assessment lien. The Association, through duly authorized agents, shall

have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

- e. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed Fifteen Dollars (\$15.00), to cover the costs of preparing and filing or recording such release.
- f. Upon written request by a First Mortgagee, the Association shall provide the Mortgagee with written notice of any default by the Owner-Mortgagor in the performance of such Owner's obligations hereunder, including payment of assessments, which is not cured within thirty (30) days after default; provided that any such requirement of notice shall not impair or affect any rights or remedies of the Association, including exercise of the same, provided for in this Declaration.
- g. The assessment lien and the right to foreclose sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

- 3.8 SUBORDINATION OF THE LIEN TO MORTGAGES. The lien securing the assessments provided for herein shall be subordinate to the lien of any duly recorded purchase money or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer, except for its pro-rata share resulting from a reallocation among all Lot Owners. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due, according to the terms herein provided.
- 3.9 EXEMPT PROPERTY. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein, exempt no land or improvements devoted to dwelling use shall be exempt from said assessments.
- 3.10 MANAGEMENT AGREEMENTS. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled with or without cause and without penalty by either party with thirty (30) days' written notice. Such termination will be authorized by a majority vote of Members of the Association. In no event shall such management agreement be canceled prior to execution by

the Association or its Board of Directors of a new management agreement unless the new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed three (3) years and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Members of the Association may terminate the professional management of the Property and assume self-management by the Association upon written agreement executed by Members entitled to cast sixty-seven percent (67%) of the votes of the Association and First Mortgagees which have mortgages on Lots holding fifty-one percent (51%) of the votes of the Association.

3.11. INSURANCE REQUIREMENTS.

- a. The Association shall obtain blanket insurance coverage on the Townhouses by a reputable insurance company licensed to do business in the State of Texas in an amount equal to the replacement cost of the Townhouses, affording protection against loss or damage from fire or other hazards covered by the standard extended coverage endorsements. In the event of damage or destruction of a Townhouse, the Townhouse shall be rebuilt to its former condition. The Association is hereby authorized to undertake to rebuild or repair the Townhouse and assess said Owner for the cost in excess of the insurance proceeds of such repair or replacement. Such assessment shall become the personal obligation of said Owner and shall be enforceable as if it were a maintenance assessment as herein provided.
- b. The Association through the Board of Directors, or its duly authorized agent, shall obtain a policy of fidelity coverage to protect against dishonest acts on the part of officers, Directors, trustees and employees of the Association and all others who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall be of a kind and in an amount the Association deems necessary for the protection of the Owners.
- c. Premiums for all such insurance authorized by this Paragraph 4.12 shall be a Common Expense payable from property assessments. Liability and personal property insurance for Lots and the contents of Townhouses shall be the responsibility of and the expense of each individual Owner. In the event of damage or destruction by fire or other casualty to a property in the Common Area or Lots covered by insurance written in the name of the Association, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property to their former condition. All such insurance proceeds shall be deposited in a bank or other financial institution in which the accounts are insured by a Federal government agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of

Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding to the condition formerly existing, the Board of Directors shall levy a special assessment against all Owners, as herein provided, to make up any deficiency.

- d. Upon written request to the Association, First Mortgagees shall be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- e. Any decision to not maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis of one hundred percent (100%) of the insurable value shall require the approval of two-thirds (2/3) of the First Mortgagees (based upon one vote for each mortgage owned).

ARTICLE IV ARCHITECTURAL CONTROL

- 4.1 PHYSICAL RESTRICTIONS. No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot after the purchase of any Lot from Declarant, its successors or assigns, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same are submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required; and this Article will be deemed to have been fully satisfied. Approval, once given, shall be irrevocable.

ARTICLE V MAINTENANCE

- 5.1 ASSOCIATION RESPONSIBILITIES. The Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, enclosed patio areas, window and door fixtures and hardware, air conditioning equipment and Owner landscaping.

- 5.2 OWNER RESPONSIBILITY. All fixtures and equipment installed within a Townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse, shall be maintained and kept in repair by the Owner thereof. In addition, all exterior as well as interior air conditioning systems will be maintained and kept by the Owner thereof. In the event the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. Notwithstanding anything contained herein, Owner's liability for maintenance and repair is limited to that liability Owner would have under Texas Law.
- 5.3 AUTHORITY OF ASSOCIATION. In the event an Owner is responsible for certain exterior maintenance, as set forth in Paragraph 5.2, and such Owner shall fail to maintain the premises and improvements in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore said Lot and improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI
PARTY WALLS

- 6.1 GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the Townhomes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions 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. If the party wall is on one (1) Lot or another due to an error in construction, such wall shall, nevertheless, be deemed to be on the dividing line and constitute a party wall for purposes of this Article. Reciprocal easements shall exist upon and in favor of the adjoining Townhouse Lots for the maintenance, repair and reconstruction of party walls.
- 6.2 SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared in equal proportions by the Owners who make use of it. If other Owners thereafter make use of the wall, they shall contribute to the cost of any restoration necessary in proportion to such use. This provision is not intended to prejudice the right of any Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- 6.3 WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act causes the party wall to be exposed to

the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

- 6.4 RIGHT TO CONTRIBUTUION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 6.5 ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one (1) arbitrator. Those arbitrators shall in turn choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board of Directors of the Association shall select an arbitrator for the refusing party.

ARTICLE VII USE RESTRICTIONS

- 7.1 RESIDENTIAL USES AND LIMITATIONS. The Property is hereby restricted to residential dwellings for residential use only. All Buildings or structures erected upon said Property shall be of new construction. No Buildings or structures shall be moved from other locations onto said Property, and no subsequent Buildings or structures other than Townhouses shall be constructed. No structures of a temporary character, including trailers, motor vehicles, tents, shacks, garages, barns or other outbuildings, shall be used on any portion of said Property at any time as a residence either temporarily or permanently.
- 7.2 FREEHOLD ESTATES. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.
- 7.3 DECLARANT EXEMPTION. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain, during the Construction and Sale Period, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhouses. This shall include, but shall not be limited to, a business office, storage area, construction yards, model Units and sales office.
- 7.4 DOMESTIC ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that a reasonable number, consistent with a residence, of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.
- 7.5 SIGNS. No advertising signs (except not more than one [1] five [5] square foot "for rent" or "for sale" sign per parcel), billboards, unsightly objects or nuisances

shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any Townhouse or any resident thereof. Declarant, however, shall have the sole right to erect identifying signs of any size at each entrance to the Property. The Board of Directors reserves the right to approve the design and wording of all signs, and reserves the right to enter in and upon any Lot for the purpose of removing any sign being maintained thereon which has not been approved. No business activities of any kind whatever shall be conducted in any Building or in any portion of said Property. However, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of Buildings, if any, of Declarant, its agents and assigns during the Construction and Sale Period, or of the Association as incorporated or to be incorporated under the laws of the State of Texas, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

- 7.6 Visual Controls. All clotheslines, equipment, service yards or storage piles shall be kept within the patio areas or other screened areas so as to conceal them from view of neighboring Townhouses and streets. All rubbish, trash and garbage shall be kept in containers within the area provided with each Townhouse and designated by the Association for collection purposes.
- 7.7 Specific Uses. Except in the individual patio areas appurtenant to a Townhouse, no planting or gardening shall be done; and no fences, hedges or walls shall be erected or maintained upon said Property, except such as are installed in accordance with the initial construction of the Buildings located thereon or as approved by the Association's Board of Directors or their designated representative. Except for the right of Ingress and egress, the Owners of the Lots are hereby prohibited and restricted from using any of said Property outside the exterior building lines, except as herein provided or as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this Paragraph is for the mutual benefit of all Owners of Lots in the SOUTHWEST CROSSING TOWNHOMES Development, and is necessary for the protection of said Owners.
- 7.8 STRUCTURAL INTEGRITY OF TOWNHOUSES. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.
- 7.9 ANTENNAS. Without prior written approval of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements upon the Property, not upon any structure situated upon the Property other than an aerial for a master antenna system.

- 7.10 PARKING AND STORAGE AREA RESTRICTIONS. No parking space on the Property shall, without express permission of the Association, be used for storage of boats, trailers, campers, unused or inoperable automobiles or any other items which the Association deems unsightly or inappropriate.
- 7.11 ANNOYANCE. No activity shall be carried on upon any Lot which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Property as a residential neighborhood, even though such activity is in the nature of a hobby and not carried on for profit. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes an annoyance.
- 7.12 NO DISCRIMINATION. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

ARTICLE VIII
EASEMENTS

- 8.1 ENCROACHMENTS. Each Townhouse shall be subject to an easement for minor encroachments created by construction, settling, overhangs, brick ledges, balconies, fences or other protrusions designed or constructed by Declarant and for the maintenance (if any) of same, so long as it exists. In the event a multi-family structure containing two (2) or more Townhouse Units is partially or totally destroyed and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments onto parts of the adjacent Townhouse Units due to construction or repair shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.
- 8.2 RESERVATION OF VARIANCE. In the original construction of Townhomes upon the Property, Declarant expressly reserves the right, in order to facilitate construction and to avoid monotony of design, to extend front or back walls of Townhomes into adjoining Lots and create a valid permanent easement for the maintenance of same, and for the repair or rebuilding of such encroaching wall in the event of partial or total damage or destruction thereof. Conveyance of the Lot, plot or tract upon which any such home is erected shall, without specific mention thereof, serve as a conveyance of the easement for such encroachment.
- 8.3 ADDITIONAL EASEMENTS. There is hereby created a blanket easement upon, across, over and under said Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones, electricity and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the electric and/or telephone company to erect and maintain the necessary poles and other necessary equipment

on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roof and exterior walls of said Townhouses. An easement is, in addition, specifically granted to the United States Post Office, its agents and employees to enter upon the Lots in the performance of mail delivery or any other United States Post Office services. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Lots in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees or any management company duly selected by the Association, to enter in or to cross over the Lots and Townhomes to perform the duties of maintenance and repair provided for herein. Notwithstanding anything to the contrary contained in this Paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property, except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right during the Construction and Sale Period to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article VIII shall in no way affect any other recorded easement on said Premises.

- 8.4 UNDERGROUND ELECTRIC SERVICE. Underground single phase electric service may be available to all residential Townhouses on the aforesaid Lots, and the metering equipment shall be located on the exterior surfaces of walls at points to be designated by the utility company. For so long as such underground service is maintained, the electric service to each Townhouse shall be uniform and exclusively of the type known as single phase, 120/240 volt, 3 wire, alternating current. Easements for the underground service may be crossed by driveways, walkways and patio areas, provided the Declarant makes prior arrangements with the utility company furnishing such service. Such easements for the underground service shall be kept clear of all buildings and neither the Declarant nor the utility company using the easement shall be liable for any damage done by either of them or their assigns, their agents or employees to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

ARTICLE IX GENERAL PROVISIONS

- 9.1 ENFORCEMENT. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the By-Laws and Articles of Incorporation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.2 SEVERABILITY. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no else affect any other provisions which shall remain in full force and effect.

9.3 AMENDMENT.

- a. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefits of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by Owners of not less than eighty percent (80%) of the Lots now in the Development, and thereafter by an instrument signed by Owners of not less than sixty-seven percent (67%) of the Lots now in the Development. Any amendment must be properly recorded in the Deed Records of Brazos County, Texas.
- b. However, notwithstanding the above, any amendment hereto or to the By-Laws or to the Articles of Incorporation hereof (i) to change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner, or (ii) to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior maintenance of the Lots and improvements thereon, or the upkeep of lawns and plantings have the additional approval of sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each mortgage owned).
- c. Any material amendment, including any amendment affecting any of the following must have the additional approval of fifty-one percent (51%) of the First Mortgagees (based upon one vote for each mortgage owned):
 - (1) Voting;
 - (2) Reserves for maintenance, repair and replacement of the project;
 - (3) Insurance of fidelity bonds;
 - (4) Rights to use of the Property;
 - (5) Responsibility for maintenance of the Property;
 - (6) Expansion or contraction of the Project or the addition or withdrawal of property to or from the Project;
 - (7) Boundaries of any Lot;
 - (8) The interests in the Property;
 - (9) Convertibility of Lots into Common Areas or of Common Areas into Lots;
 - (10) Leasing of Townhomes;
 - (11) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot;

- (12) A decision by the owner's association to establish self management when professional management had been required previously by an eligible mortgage holder:
 - (13) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
 - (14) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
 - (15) Any provisions which are for the express benefit of mortgage holders, or eligible insurers or guarantors of first mortgages on Lots.
- d. The Declarant reserves the right during the Construction and Sale Period, without joinder or consent of any Owner or Mortgagee, to amend this Declaration or the By-Laws by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veteran's Administration, or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Townhome Owner.

9.4 MORTGAGE E RIGHTS.

- a. Upon written request to the Owner Association any holder of a first mortgage lien will be entitled to: (i) inspect the books and records of the Association during normal business hours, (ii) receive annual financial statements audited and otherwise, within ninety (90) days following the end of the Association's fiscal year, (iii) receive notice of the Association's meetings and designate a representative to attend such meetings, (iv) receive notice of any default in the performance of its mortgagor of any obligation under this Declaration or the By-Laws which is not cured within sixty (60) days, and (v) receive notice of any proposed action which requires the constant of a specified percentage of eligible mortgage holders.
- b. The Association shall immediately reimburse First Mortgagees who may, jointly or singly pay overdue premiums on fidelity insurance policies.

9.5 LEASES. Any lease agreement between an Owner and a lessee shall be in writing and provide that the terms of the lease are subject to the provisions of the Declaration, By-Laws and Articles of Incorporation, and any violation of any provision of said documents will be a default under the terms of the lease.

9.6 SUBSTANTIAL TAKING OR DESTRUCTION. Any holder of a first mortgage lien will be entitled to timely written notice of substantial damage to or destruction of any Unit on which it holds the mortgage.

9.7 CONDEMNATION. If all or any part of the Property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all Owners and to all First Mortgagees known to the Association to have an interest in any Lot. The expense of participation in such proceedings by the Association may be borne by the Common Fund. The Association is specifically authorized to obtain any pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings.

9.8 : 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, men or women, in all cases shall be assumed as though fully expressed in each case.

9.9 ANNEXATIONS.

9.10 FHA/VA APPROVAL. As long as there is Class B Membership, the following actions shall require the prior approval approval of the Federal Housing Administration or the Veteran's Administration: Dedication of Common Area, and any amendments hereto.

This Declaration of Covenants, Conditions and Restrictions of Southwest Crossing Townhomes is made in place of and as a correction of a Declaration of Covenants, Conditions, and Restrictions of Southwest Crossing Townhomes executed by the parties hereto, dated July 13, 1983 and recorded in Volume 588, page 126, Deed Records of Brazos County, Texas, wherein by error or mistake Declarant was incorrectly identified as a corporation instead of a joint venture, the two corporations composing the joint venture were incorrectly identified on the signature page, and Exhibit "A" was not attached to the document. This instrument is made by the parties hereto and accepted in order to correct said mistakes, and in all other respects confirming said former Declaration of Covenants, Conditions and Restrictions of Southwest Crossing Townhomes.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand and seal this 13th day of July, 1983.

ATTEST:

T. A. Co. Inc.

CRUSE CORPORATION

BY:

Ronald Cruse
RONALD CRUSE, President

ATTEST:

Linda B. Robison

JAN-WIC, INC.

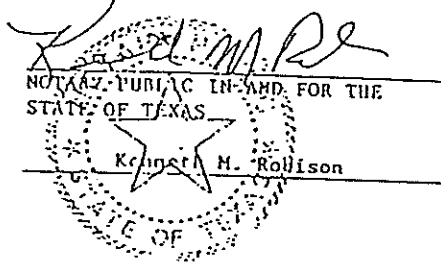
BY:

W. A. McKean
W. A. McKEAN, President

THE STATE OF TEXAS I
COUNTY OF BRAZOS I

This instrument was acknowledged before me on the 11th day of August, 1983, by W. A. McKEAN, President of JAN-WIC, INC., a Texas Corporation, on behalf of such corporation.

My Commission Expires:
6/1/85



THE STATE OF TEXAS I
COUNTY OF BRAZOS I

This instrument was acknowledged before me on the 11 day of August, 1983, by RONALD CRUSE, President of CRUSE CORPORATION, a Texas Corporation, on behalf of such corporation.

My Commission Expires:
6-1-85

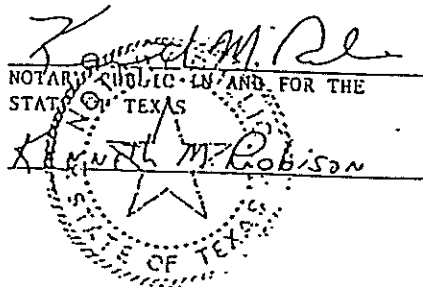


EXHIBIT "A"

All those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas, and being All of Lot Numbers One (1) through Twenty-Three (23), Block Number One (1), and Lot Numbers One (1) through Nineteen (19), Block Number Two (2), SOUTHWEST CROSSING, an addition to the City of College Station, Brazos County, Texas, according to the Plat thereof recorded in Volume 523, page 433, Deed Records of Brazos County, Texas.

Southwest Crossing Rules & Regulations

1. All unit owners will be required to have their residents/tenants sign a copy of the rules and regulations and return said copy to the Condominium Association and /or Managing Agent for record keeping.
2. The landscaped areas and walkways around the buildings and the entrances of the buildings/resident units shall not be obstructed or used for any purpose other than ingress to and egress from the resident units.
3. No articles shall be placed at or allowed to remain at the entrances, on the walkways or landscaped areas around the building. No clothing or other articles shall be hung in or from any windows or boardwalk handrails.
4. Unit owners, family members, guests, residents/tenants, agents, employees, etc., shall not use sidewalks, driveways, and entrances as play or recreational areas.
5. No vehicles belonging to or under the control of a unit owner, family member, guest, resident/tenant, agent, employee, etc. shall be parked in such a manner as to impede or prevent ready access to any entrance or exit from a building. Vehicles shall only be parked within the designated parking areas.
6. No vehicle shall be left standing in a parking space in a non-operative condition, nor shall there be any repairs done to vehicles in a parking space or in the driveways.
7. No trailers, boats, recreational vehicles, campers, or non-registered vehicles are to be permitted.
8. No owner shall produce or permit to be made any noise or noxious odors that will disturb or annoy the occupants of other units or do or permit anything to be done therein which will interfere with the rights, comforts, or convenience of other owners/residents.
9. Disposition of garbage and trash shall only be in a securely tied plastic bag and placed inside the appropriate trash bins. Garbage placed outside of the appropriate trash bins on the ground are subject to a fine from the City of College Station and the Condominium Association.
10. All residents shall keep their unit in a good state of preservation and cleanliness, and shall not sweep or throw, permit to be swept or thrown, dirt, and/or other substance or debris from the doors or windows.
11. No work of any kind shall be done upon the exterior building walls or upon the common elements by any unit owner or resident. Such work is the responsibility of the Condominium Association.
12. No owner/ or resident/tenant shall permit any sign, notice, advertisement or decoration to be inscribed or imposed on or projected from any window, door or other part of the building, except those approved in writing by the Association Board or Managing Agent.
13. Tenant/Owner shall report any damage to interior or exterior of property. Also the owner must be notified of any interior repairs in a timely fashion.

14. No radio or television aerial or satellite dish shall be attached to or hung from the exterior of the buildings without prior written consent from the Association Board or Managing Agent.
15. No owner, family member, guest, resident/tenant, agent, employee, etc. shall use or permit to be brought into or stored in the building any inflammable oils or fluids such as gasoline, kerosene, naphtha, benzine or other explosive or articles deemed hazardous to life, limb or property.
16. Any damage to the common elements or common property caused by a unit owner, family member, guest, resident/tenant, agent, employee, etc. shall be repaired or replaced at the expense of the unit owner.
17. Owners shall be held responsible for the actions of their family members, guests, residents/tenants, agents, employees, etc.
18. Complaints regarding the service of the building and/or grounds or regarding actions of other unit owners shall be made in writing to the Condominium Association Board of Directors.
19. All pets allowed outside of the condominium unit must be kept on a leash. Failure to keep all pets on a leash while on the property's common grounds shall result in a fine of \$100 to unit owner if said owner, family member, guest, resident/tenant, agent, employee, etc. is in violation of this rule.
20. Owners, family members, guests, residents/ tenants, agents, employees, etc. shall not at any time or for any reason whatsoever, climb or attempt to climb on the roof of a building. A \$100 fine will be imposed against unit owner if said owner, family member, guest, resident/tenant, agent, employees, etc. is in violation of this rule. This fine can be recuperated from tenant.
21. Any consent or approval given under these rules and regulations by the Condominium Association shall be revocable at any time on a per case basis.
22. These community rules and regulations may be added to, amended, or repealed at any time by the Condominium Association Board of Directors.

Owner

Resident

Unit #

Date