

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
SUMMIT CROSSING**

THE STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS           §

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SUMMIT CROSSING (the "Declaration"), is made effective as of the 10th day of February, 2015, by DWS DEVELOPMENT, INC., (hereinafter sometimes referred to as "Declarant").

WHEREAS, Declarant is the owner and developer of certain residential Lots and other parcels within a tract of land now or hereafter commonly known and described as Summit Crossing, (which lots are more particularly described on the plat of Summit Crossing Phase 2A, an addition to city of College Station, Texas, according to plat recorded in Volume 12476, Page 18 of the Official Records of Brazos County, Texas), and which land subject to this Declaration is part of a 5.607 acre tract of land described in Exhibit "A", attached hereto and made a part hereof. Declarant desires to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations.

The purposes of this Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Subdivision; provide use, maintenance and repair of compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Property now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Summit Crossing project. The restrictive covenants herein will preserve the best interests of the Declarant and the Owners and Residents of Summit Crossing after completion of all development and construction therein.

WHEREAS the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

WHEREAS the Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens, and charges, which are for the purpose of preserving the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof; and (ii) that each contract or deed that

may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract, or deed.

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings hereinafter specified:

- 1.01 **Additional Land**. Declarant, or Declarant's assigns, may create additional phases or sections of Summit Crossing, and adopt the same or similar restrictions, rules, and regulations for such phases or sections, and make the additional phases or sections subject to the Association.
- 1.02 **Architectural Committee**. "Architectural Committee" shall mean the committee created by the Board to review and approve plans for the construction of Improvements on the Property. If the Board does not appoint an Architectural Committee, the Board shall serve as the Architectural Committee.
- 1.03 **Architectural Committee Rules**. "Architectural Committee Rules" shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.
- 1.04 **Articles**. "Articles" shall mean Articles of Incorporation of Summit Crossing Owners Association, Inc., as that instrument may be amended from time to time, which instrument is filed in the office of the Secretary of State of the State of Texas.
- 1.05 **Assessment**. "Assessment" or "Assessments" shall mean such assessments as may be levied by the Association under the terms and provisions of the Declaration.
- 1.06 **Association**. "Association" shall mean Summit Crossing Owners Association, Inc., a Texas nonprofit corporation, which shall have authority and responsibility for all of the communities and subdivisions of Summit Crossing, as hereafter defined.
- 1.07 **Board**. "Board" shall mean the Board of Directors of the Association. Board members may, but need not, be Members of the Association.
- 1.08 **Bylaws**. "Bylaws shall mean the Bylaws of the Association as adopted by the Board, and from time to time amended.
- 1.09 **Summit Crossing Residential Restrictions**. "Summit Crossing Residential Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Summit Crossing Rules, Architectural Committee Rules and the Articles and Bylaws of the Association as the same are in effect from time to time.

- 1.10 **Summit Crossing Rules.** "Summit Crossing Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.
- 1.11 **Declarant.** "Declarant" shall mean DWS Development, Inc., its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of DWS Development, Inc., as Declarant, must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignments of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.
- 1.12 **Declaration.** "Declaration" shall mean this instrument as it may be amended from time to time.
- 1.13 **Improvement.** "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, pole signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.
- 1.14 **Lot.** "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.
- 1.15 **Member.** "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights to the Association.
- 1.16 **Mortgage.** "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.
- 1.17 **Mortgagee.** "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.
- 1.18 **Owner.** "Owner" or "Owners" shall mean a person or persons, entity or entities, including Declarant, holding a fee simple interest in any Lot on the Property, but shall not include a Mortgagee.
- 1.19 **Person.** "Person" or "Persons" shall mean an individual or individuals, entity or entities having the legal right to hold title to real property.
- 1.20 **Plans and Specifications.** "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

- 1.21 Property. "Property" shall mean the real property in Brazos County, Texas which is described in Exhibit "A", and additional lands.

## **ARTICLE 2 DEVELOPMENT OF THE PROPERTY**

- 2.01 Development or Sale by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of the restrictions set forth in this Declaration.
- 2.02 Addition of Land. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as they are with respect to the lands originally covered by the Declaration. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a Notice of Addition of Land containing the following provisions:
- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
  - (2) A statement that the provisions of this Declaration shall apply to the added land; and
  - (3) A legal description of the added land.
- 2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw areas from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property hereunder, Declarant shall be required only to record in the Official Records of Brazos County, Texas, a Notice of Withdrawal of Land containing the following provisions:
- (1) A reference to this Declaration, which reference shall state the book and page numbers of the Official Records of Brazos County wherein this Declaration is recorded;
  - (2) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
  - (3) A legal description of the withdrawn land.

## **ARTICLE 3 GENERAL RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

3.01 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Property without the prior approval of the Architectural Committee.

3.02 Antennas.

Antennas may be installed and maintained on any Lot, provided they are to the greatest reasonable extent, screened from view from Owners of adjacent Lots, according to reasonable Summit Crossing Rules to be established from time to time by the Architectural Committee or Board.

"Antenna" means any exterior antenna, aerials, satellite dishes or other apparatus (a) of one meter or less in diameter that is used to receive direct broadcast satellite service or to receive or transmit fixed wireless signals via satellite; (b) of one meter or less in diameter that is used to receive video programming services via multipoint distribution services or to receive or transmit fixed wireless signals via other than satellite; or (c) that is used to receive television broadcast signals.

3.03 Insurance Rates. Nothing shall be done or kept on the Property that would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

3.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

3.05 Signs. No sign of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Committee except the following permitted signs:

- (1) signs advertising the Lot for sale;
- (2) not more than two (2) political signs;
- (3) school spirit signs; or
- (4) security signs.

Any sign advertising the Lot for sale by owner or by a real estate broker shall be allowed only within the Improvement through windows. Builders may advertise a new home for sale by one sign in the Front Lawn of the Lot. No permitted sign shall exceed five (5) square feet without the prior written approval of the Architectural Committee. Declarant or the Architectural Committee shall have the right to enter and remove any unapproved sign, advertisement, billboard or structure which is placed on any Lot without the Declarant or the Architectural Committee's consent, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

3.06 Clotheslines, Garbage Cans, Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise

therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or its occupants. No clotheslines shall be erected or installed on the exterior portion of any Lot and no clothing, linens or other material shall be aired or dried on the exterior portion of any Lot. All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and properly located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers approved by the Board and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

- 3.07 Noise. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.
- 3.08 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Committee.
- 3.09 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement on any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.
- 3.10 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.
- 3.11 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement, which in any way alters the exterior appearance of said Improvement, shall be performed only with the prior written approval of the Architectural Committee.
- 3.12 Roofing Materials. The surface of all roofs of principal and secondary structures shall be uniform throughout the Property, and shall be a material approved by the Architectural Committee. The Architectural Committee shall have authority to approve other roof treatments and materials when in its determination such treatment and materials in the form utilized will not be a detriment to the quality of the neighborhood.
- 3.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the Architectural Committee and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

- 3.14 **Driveway.** The Architectural Committee shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property.
- 3.15 **Tanks.** The Architectural Committee shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG. (No elevated tanks of any kind shall be erected, placed or permitted on any Lot). All tanks shall be screened so as not to be visible from any other portion of the Property.
- 3.16 **Underground Utility Lines.** No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the Architectural Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the Architectural Committee.
- 3.17 **Drainage.** There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee.
- 3.18 **Hazardous Activities.** No activities shall be conducted on the Property and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted on a Lot except in contained barbeque units while attended and in use for cooking purposes, or within safe and well-designed (i) interior fireplaces, (ii) exterior fireplaces, or (iii) outdoor chimneys (or chimineas).
- 3.19 **Mining and Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No well, pump, shaft, casing or other facilities for the removal of subsurface water shall be placed or maintained on any Lot, and no boring, drilling, removal or exploration for subsurface water or the injection of water or waste water shall be conducted on any Lot.
- 3.20 **Machinery and Equipment.** Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private

residence or appurtenant structures or recreational facilities maintained by the Association; provided, however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by any public utility, in the performance of its legitimate functions.

3.21 Temporary Structures or Out Buildings. No outbuilding, tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the Architectural Committee; provided, however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on a Lot during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures.

3.22 Unightly Articles; Vehicles; Garage Doors. No trailer, recreational vehicle, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard, in front of the building line of the permanent structure, and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. Garage doors shall be kept closed at all times except for reasonable time periods when such doors are in use. The Association may establish rules and regulations regarding the definition of "reasonable time periods."

3.23 Mobile Homes, Travel Trailers, Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time. No travel trailers or recreational vehicles may be kept on any Lot unless enclosed in a garage or parked so as not to be visible from adjoining property or public or private thoroughfares. This restriction regarding travel trailers and recreational vehicles shall not apply to guests staying at any Lot for less than forty-eight (48) hours.

3.24 Fences.

(A) No fence, wall, or hedge shall be built or maintained forward of the front wall line of the main structure. Notwithstanding the foregoing, the Architectural Committee is empowered to waive the aforesaid limitation, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall or retaining wall will not detract from the general appearance of the neighborhood, or in the case where a Lot has a side yard which is adjacent to the backyard of an adjacent Lot. No chain-link fences may be built or maintained on any Lot.

(B) Unless otherwise approved by the Architectural Committee or as provided below, any fence built or maintained on any Lot shall be constructed only of standard grade 1" by 6" cedar privacy fence materials, six (6') feet in height, with the finished (smooth) side facing streets, or adjoining properties which are not part of Summit Crossing, and the rough side facing the interior of any Lot. Fences may be constructed of wrought iron material only upon written approval by the Architectural Committee. All wood fences shall be



stained on the side facing streets with a stain product and color to be approved by the Architectural Committee. The Architectural Committee may require a uniform stain color on all wood fences. However, Declarant, in its sole and absolute discretion, may erect wrought iron fencing on the boundary of any Lot, and the Owner of the Lot shall be responsible for maintenance and repair of the fence once erected. On any Lot where Declarant erects such a fence, all fencing on that Lot subsequently built by the Owner of the Lot on the adjacent, connecting boundary lines shall be wrought iron material.

- 3.25 Animals – Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on Lot. No domestic household pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than two (2) adult dogs and two (2) adult cats may be kept on a single Lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.
- 3.26 Maintenance of Lawns and Plantings. The Association shall have the sole authority and responsibility for all lawn, landscape, trees, shrubs, grass and plantings of every kind on the front portion of all Lots, from the front boundary line to the front wall line of the main structure on each Lot (the Front Lawns). The Association shall have, and is hereby granted, an easement across the Front Lawns for the purpose of planting, mowing, irrigating (with automatic sprinkler systems), watering, replacing, cultivating and maintaining the Front Lawns in such manner as the Association in its sole discretion shall determine to be necessary or prudent. Each owner shall keep all other portions of such Owner's Lot cultivated, pruned, and free of trash and other unsightly material. Trees, shrubs, vines and plants that die shall be promptly removed. Declarant, the Association and the Architectural Committee shall have the right at any reasonable time, after giving not less than ten days' notice to Owner, to cure any violation of this provision, to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, and to charge the cost thereof to the Owner of the Lot as provided in Section 5.04(E) below.
- 3.27 Landscape Design. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design.
- 3.28 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal

construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence The Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, the Architectural Committee may grant a temporary waiver of the applicable provision, for a period of time to be determined by the Architectural Committee in its sole and absolute discretion. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

3.29 Mailboxes. Mailboxes shall be brick or other materials approved by the Architectural Committee, and shall be located in a cluster location or locations determined by the Board.

3.30 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot within the area defined by a line drawn between two points located twenty (20) feet from the point of intersection of the street right-of-way property lines immediately adjacent to the Lot, as reasonably located by the Architectural Committee. Measurements shall be by chord, and not arc. No tree shall be permitted to remain within such areas, unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines.

3.31 Garage Conversions. No garage or any portion thereof, may be constructed into enclosed living space unless an alternative garage of at least equal size is constructed and the Architectural Committee first approves the Plans and Specifications for conversion and construction in writing.

3.32 Recreational Amenities and Other Public Areas. Any recreational amenities or other improvements in public areas constructed on the Property by Declarant or the Association shall be governed by rules and regulations for use or prohibitions against use established by the Board from time to time.

3.33 Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garage or driveway serving a Lot, or in such other paved areas as have been approved by the Board for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving a Lot. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on a Lot four (4) or more hours per day, four (4) or more days in any seven (7) day period. The Board may authorize on-street parking on a temporary basis for visitors and guests, subject to reasonable rules and regulations. Garage doors visible from any street within the Properties shall remain closed except during ingress and egress or

when the garage is actively being used by the Owner or occupant. No vehicles shall be parked within the public or private alley right of ways.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors (excluding vehicles with lettering or logos confined to the front door on each side), vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Vehicles that become inoperable while on the Properties must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed by the Association.

- 3.34 Doors and Windows. No "burglar bars," steel or wrought iron bars, or similar fixtures, whether designated to decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. No signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of any dwelling, either temporarily or permanently, except that the Board may, in its discretion, permit house numbers to be written temporarily on a single window of a dwelling while occupants are moving in, provided such numbers are removed within seventy-two (72) hours after the occupants have taken occupancy. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time, not to exceed fourteen (14) days, after taking occupancy of the dwelling, as determined in the sole discretion of the Board. Foil shall not be used as window coverings at any time.
- 3.35 Registered Sex Offenders. No Lot shall be occupied in whole or in part by any person who is a registered sex offender on the Texas Public Sex Offender Registry, or any similar registry in another state.
- 3.36 Compliance with Provisions of Summit Crossing Residential Restrictions. Each Owner shall comply strictly with the provisions of the Summit Crossing Residential Restrictions as the same may be amended from time to time. Failure to comply with any of the Summit Crossing Residential Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggravated Owner. Declarant, for itself, its successor or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

- 3.37 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article 3 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more such restrictive covenants, terms or provisions shall assume all the risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold the Declarant harmless therefrom.

#### **ARTICLE 4 RESIDENTIAL RESTRICTIONS**

- 4.01 **Residential Use.** All Lots shall be improved and used solely for residential purposes inclusive of a garage, fencing, and other such improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than the private residence. All Lots within the Property shall be used and improved as single-family residential dwellings, with no more than one (1) residential dwelling unit per Lot. Anything herein to the contrary notwithstanding, any Lot may be used or improved for a greenbelt, open space and/or drain field purposes. No Improvement may be constructed upon any Lot that would unreasonably obstruct the view from any other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to Architectural Committee review. The Architectural Committee may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot. The Architectural Committee may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the Architectural Committee nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.
- 4.02 **Garages.** No Lot shall have Improvements erected which do not provide for a two-vehicle garage, except that the Architectural Committee may grant variances to permit an Owner to have a one car garage, in the Architectural Committee's sole discretion. All garage doors shall have additional detail above and beyond standard panel garage doors, in accordance with standards to be established from time to time by the Architectural Committee. Garages may not be converted or used for occupancy by Owners or other occupants, or any other purpose other than storage of vehicles, equipment or other incidental related property.
- 4.03 **Building Height.** No Improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed Improvement to the ridgeline of the roof of the proposed Improvement.

**4.04 Building Materials; Dwelling Size; Chimney Construction.**

All single family dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows and similar openings) shall be constructed with a minimum of 60% masonry or other material specifically approved in writing by the Architectural Committee. Masonry includes stucco, brick, rock and all other materials commonly referred to in the College Station, Texas area as masonry. Masonry does not include concrete hardy-board siding. Unless an exception is granted by the Architectural Committee, all single family dwellings shall contain no less than 1,540 square feet of enclosed living space, exclusive of all porches (open or covered), decks and garages. Each residence shall include an enclosed attached garage or other structure sufficient to meet the requirements of Sections 3.22 and 4.02 above. A minimum of 8 and 12 roof pitch is required on all dwellings or other buildings. All roofs shall be the same color and shall be composed of 30 year dimensional shingles to match current and existing roofs. Chimneys are subject to approval by the Architectural Committee.

**4.05 Construction in Place.** The use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

**4.06 Party Walls.** Party walls shall exist along the interior lot line of each Lot where the original construction of each residence is located. Party walls in Summit Crossing shall be governed by the following:

- (A) General Rules. Each wall which is built as a part of the original construction of a residence upon the Property 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 section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The owner of a residence shall not cut through or make any penetration through a party wall for any purpose whatsoever.
- (B) 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 equal proportions.
- (C) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, either because they share the wall along a boundary line or they own Lots within the group of attached residences where the damaged wall was located, they shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from one or more of the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (D) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, 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.

- (E) Right to Contribution 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.
  - (F) Insurance. Each Owner of Lot shall be required to keep and maintain an insurance policy insuring against loss for fire and other casualty in an amount equal to at least its total property value appraised by the Brazos County Central Appraisal District, or such other amount as the Board may determine and declare annually by written notice published on a public website or delivered by U.S. mail to each Owner.
- 4.07 Setback Requirements. Building setbacks shall be in compliance with the most current edition of the City of College Station's Unified Development Ordinance.

## **ARTICLE 5 SUMMIT CROSSING OWNERS ASSOCIATION**

- 5.01 Organization. The Declarant has caused, or will cause the formation and incorporation of the Association as a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- 5.02 Membership. Any Person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest, which qualifies the Owner thereof for membership, and membership may not be severed from, or in anyway transferred, pledged, mortgaged, or alienated except together with title to the said property interest.
- 5.03 Voting Rights. The right to cast votes and the number of votes which may be cast, for election of directors to the Board and on all other matters to be voted on by the Members shall be calculated as follows:
- (A) The Owner, whether one or more (including Declarant), of each Lot within the Property shall have one vote for each Lot so owned. In addition, Declarant shall have one vote for each lot reflected on the preliminary plats of the portions of the Property which have not been platted.
  - (B) In addition to the votes to which Declarant is entitled by reason of Subparagraph (A) of this Section, for every such vote, Declarant shall have three (3) additional votes until such time as the votes described in Subparagraph (A) of this section, owned by Owners other than Declarant, total in the aggregate (90%) of the total number of votes outstanding under Subparagraph (A) (the "Transition Date"). Thereafter Declarant shall only have votes if any, to which it is entitled under Subparagraph (A) of this section.

5.04 **Powers and Authority of the Association.** The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of its power as are expressly set forth in this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:

- (A) **Summit Crossing Rules and Bylaws.** To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Summit Crossing Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions. The Association shall have the authority to establish committees pertaining only to specific sections of Summit Crossing. Any committee, which elects to oversee a particular section, shall have the power to establish section rules, which shall apply only to sections over which the committee has oversight. Any such section rules may be more restrictive than the provisions hereof, but shall not be less restrictive.
- (B) **Insurance.** To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.
- (C) **Records.** To keep books and records of the Association's affairs.
- (D) **Assessments.** To levy Assessments as provided in Article 7 below.
- (E) **Right of Entry and Enforcement.** To enter at any time in an emergency, or in a non-emergency, after ten (10) days' written notice, without being liable to any Owner, upon any Lot and into any Improvement thereon for the purpose of enforcing the Summit Crossing Residential Restrictions or for the purpose of erecting, maintaining or repairing any Improvement to conform to the Summit Crossing Residential Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon (i) shall be a personal obligation of the Owner of the Lot entered upon, (ii) shall be a lien upon the Lot entered on and Improvements thereon, and (iii) shall be enforced in the same manner and to the same extent as provided in Article 7 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the names of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Summit Crossing Residential Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Summit Crossing Residential Restrictions; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, its successors or assigns.
- (F) **Fines.** To levy and collect fines against Owners for any violation of the Declaration which is not cured by the Owner in the judgment of Board within 30 days after written notice of such violation as provided in section 9.04. Fines may be assessed

repeatedly for continuous violations. Fines shall be uniform according to a fine schedule to be established from time to time by the Board.

- (G) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association.
  - (H) Delegation to Committees. To set up one or more committees as authorized by the Texas Non-Profit Corporation Act, as the same is amended from time to time.
  - (I) Employees. To engage such employees as may be reasonably necessary in the management of the Association and the performance of its duties.
  - (J) Agreements with Third Parties and other Associations. To agree with third parties or other property owner associations for use by Owners of amenities such as swimming pools, club houses, and other benefits, and to enter into agreements to merge into other associations as allowed by law.
- 5.05 Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, drainage structure areas, rights-of-way, entryways, sidewalks, paths, trails, detention facilities, waterfall pumps, irrigation equipment, water wells, entrance buildings, and other areas of the Property, as appropriate. Without limitation, the Association shall maintain the Front Lawns and the automatic sprinkler system in the Front Lawns.
- 5.06 Association Duties.

- (A) Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have the following duties:
  - (1) To accept, own, operate and maintain all property, real and personal, conveyed or leased to the Association by Declarant; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association, whether by Declarant or by other Persons.
  - (2) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
  - (3) To execute mortgages, both construction and permanent, for construction of Improvements on property owned by or leased to the Association. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the borrower, whether Declarant or the Association. The mortgage or other security interest given to secure



repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by borrower, whether Declarant or the Association, on the Improvements to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by Declarant or the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(B) In addition to, and not in limitation of, the power and authority of the Association as set forth in Section 5.04 of this Declaration, the Association, acting through the Board, shall have the power and authority:

- (1) To grant and convey portions of Association property, including fee title, leasehold estates, easements, right-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating or maintaining the following:
  - (a) Parks, parkways, or other recreational facilities or structures;
  - (b) Roads, streets, walks, driveways, trails and paths;
  - (c) Lines, cables, wires, conduits, pipelines or other means of providing utilities;
  - (d) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
  - (e) Any similar public, quasi-public or private Improvements.

Nothing contained in this subparagraph, however, shall be construed to permit use or occupancy of any Improvement in a way that would violate applicable use and occupancy restrictions imposed by other provisions of this Declaration, or by any statute, rule, regulation, ordinance or other law of any governmental entity, including but not limited to rules and orders of the Texas Water Development Board, Texas Water Commission, Texas Commission on Environmental Quality ("TCEQ") and any flood plain, industrial waste or other ordinance of the City of College Station.

- (2) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association, or within city-owned parks, parkways, entrance ways, or street rights of way which the Association desires to maintain or pay for, in the best interest of the Association and the aesthetic appearance of the subdivision as a whole.
- (3) To pay for any other services necessary or proper in the performance of Association functions, and to pay for any other taxes or assessments that the Association or the Board is required to secure or to pay for, pursuant to

applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.

- (4) To own and operate any and all types of facilities for both active and passive recreation, and to establish rules, regulations, fees, and permits for the use of such facilities as the Board in its discretion deems appropriate.
- (5) To construct new Improvements or additions to Association properties, subject to the approval of the Architectural Committee as required in this Declaration.
- (6) To enter into contracts with Declarant and other persons, with such terms and provisions as the Board shall determine, to provide any service or perform any function on behalf of Declarant or the Association in connection with the purposes of the Association.
- (7) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

5.07 Agreement with City of College Station, State of Texas, and County of Brazos. The Declarant, as the agent of the Association, or the Association, may enter into one or more agreements (i) with the City of College Station or State of Texas or Brazos County, with respect to (1) the landscaping and maintenance of portions of public streets, highways or rights of way, or (2) the dedication of any drainage basin, park within the property for municipal maintenance, or (ii) with the City of College Station with respect to landscaping and maintenance of portions of utility easements. The Association shall accept, without further requirement or documentation, said agreement and the requirements and benefits associated therewith, for any agreement reached by the Declarant.

5.08 Indemnification. The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who by reason of the fact that such person is or was a director, officer or member of such a committee of the Association was, is, or is threatened to be made, a named defendant or respondent in (i) any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, (ii) any appeal in such an action, suit, or proceeding, and (iii) any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding"), and against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Non-Profit Corporation Act, as amended and in effect from time to time.

## **ARTICLE 6 ARCHITECTURAL COMMITTEE**

- 6.01 Membership of Architectural Committee. The Architectural Committee shall consist of not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the Voting Members of the Architectural Committee: David Scarmardo, Mark Scarmardo, and Greg Scarmardo.
- 6.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.
- 6.03 Advisory Members. The Voting Members may from time to time designate Advisory Members.
- 6.04 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed as provided herein.
- 6.05 Declarant's Rights of Appointment. Until the Transition Date as defined in Section 5.03(B), Declarant, its successors or assigns shall have the right to appoint and remove all Voting Members of the Architectural Committee, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date. Whenever the Transition Date occurs, thereafter, the Board shall have the right to appoint all Voting Members. At such time as the Board gains the right to appoint and remove Voting Members of the Architectural Committee, or any portion of this right, a majority of the Voting Members so appointed shall be drawn from Members of the Association. Advisory Members shall, when reasonably possible, be drawn from Members of the Association.
- 6.06 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes.
- 6.07 Review of Proposed Construction. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts that, in its sole and absolute discretion, are relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, including without limitation, alterations, remodeling, repairs or modifications, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof or other work may not commence unless and until the Architectural Committee has approved such Plans and Specifications. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval. Upon receipt of all necessary information, the

Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other related duties assigned or authorized by this Declaration, including at its option inspection of construction in progress to assure its conformance with previously approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact-finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one construction. The Architectural Committee may, in its review of Plans and Specifications and such other information as it deems proper, consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property and the surrounding area. Conformity of colors and materials within the Property is necessary, and no Owner may alter any colors or materials of doors, brick, masonry, roofing materials, fences, or other features without approval of the Architectural Committee. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans and Specifications be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

- 6.08 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Committee taken without a meeting shall constitute an act of the Architectural Committee.
- 6.09 No Waiver of Future Approvals. The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, shall *not* be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.
- 6.10 Work in Progress. The Architectural Committee may at its option inspect all work in progress to insure compliance with approved Plans and Specifications.
- 6.11 No Liability for Architectural Committee Members. Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the

case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.

- 6.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of David Scarmardo, DWS Development, Inc., 1289 North Harvey Mitchell Parkway, Suite 101, Bryan, TX 77803, or in care of such other person at such other address as may be designated by Declarant or the Board, as the case may be, from time to time.
- 6.13 Failure to Act. In the event the Architectural Committee or its designated representative fails to approve or disapprove any Plans and Specifications within ten (10) days after the same have been submitted to it, complete with all other information requested by the Architectural Committee in connection with such submission, approval shall be assumed.
- 6.14 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any individual Lot or Lots upon the Property, variance from any restrictions set out in this Declaration may be granted by a unanimous decision of the Architectural Committee in a written instrument to be duly acknowledged, if and when such a variance shall ever be granted.
- 6.15 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner from securing such approvals, certificates and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.
- 6.16 Relationship with Association. The Architectural Committee has been created pursuant to this Declaration to perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements built on the Property. The Architectural Committee does not exercise the authority of the Board, and shall not do so unless and until (i) the Board shall have duly appointed a majority of Board members to the Architectural Committee, and (ii) the Board shall by unanimous resolution, duly recorded in the records of the Association, make the Architectural Committee a committee of the Board in accordance with the Texas Non-Profit Corporation Act.

## **ARTICLE 7 FUNDS AND ASSESSMENTS**

- 7.01 Assessments.
- (A) The Association may from time to time levy Assessments against each Lot whether or not improved. The level of Assessments shall be equal and uniform between all Lots, provided, however, that no Assessments hereunder shall be levied against Declarant.
- (B) Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose in proportion to the amount of the Assessment year or other period remaining after said date.

- (C) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the owner of the Lot against which the Assessment falls due, and shall become a lien against each such Lot and all Improvements hereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.
- 7.02 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.
- 7.03 Initial Assessment. At the time of purchase of a lot, a new Owner other than a builder who intends to develop the lot, shall pay to the Association an initial assessment to the Association equal to \$200.00 to defray costs to the Association, establish reserves, and to partially reimburse Declarant for sums advanced on behalf of the Association prior to creation of the Association and the filing of this Declaration. The Association shall reimburse Declarant for such sums as initial assessments are received.
- 7.04 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including but not limited to the cost of all entry ways, landscaping, greenbelts, median strip, and right-of-way maintenance, the cost of enforcing this Declaration, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's funds. Assessments sufficient to pay such estimated note expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly or quarterly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. Any builder who purchases a lot with the intent to develop it, shall pay such regular assessments to the Association within 90 days of the purchase of such lot, and then in such manner as the Board may designate.
- 7.05 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under this Declaration. The amount and due date of any special Assessments shall be at the reasonable discretion of the Board.
- 7.06 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the owner of the Lot covered by such assessments. Except as otherwise provided in Section 7.01(A) hereof, no Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the owner of the Lot shall be obligated to

pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from due date thereof (or if there is no such highest rate, then at the rate of 1-1/2% per month), together with all costs and expenses of collection, including reasonable attorney's fees.

- 7.07 Assessment and Fine Lien and Foreclosure. All sums assessed in the manner provided in this Article but not paid by the Owner, and all fines assessed by the Board in the manner provided in Section 5.04, shall, together with interest as provided in Section 7.05 hereof and the cost of collection, including attorney's fees as herein provided, thereupon become a continuing lien and charge on the Lot covered by such Assessment or fine, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first mortgage lien or first deed of trust filed of record, securing in either instance sums borrowed for the acquisition or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid Assessment and Fine lien to any other lien. Such power shall be entirely discretionary with the Board and an officer of the Association, duly authorized by the Board, shall effectuate such subordination. To evidence an Assessment and Fine lien, the Association may prepare a written notice of Assessment and Fine lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien, and a description of the Lot. Such notice shall be signed by an officer of the Association, duly authorized by the Board, and shall be recorded in the office of the County Clerk of Brazos County, Texas. Such lien for payment of Assessments or Fines shall attach with the priority above set forth from the date such payment becomes delinquent, and may be enforced subsequent to the recording of a notice of Assessment and Fine lien as provided above, by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property, or the Association may institute suit against the Owner personally obligated to pay the Assessment or Fine and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee the status of any Assessments or Fines relating to the Mortgagee's mortgage and remaining unpaid for longer than thirty (30) days after due.

## **ARTICLE 8 EASEMENTS**

- 8.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, 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. Declarant also reserves and declares a maintenance and irrigation easement for the Association on

and across the Front Lawn of each Lot, although fee title shall remain in each Owner. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the Property. 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, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of five feet (5') on each side of any Lot line.

- 8.02 **Installation and Maintenance.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction or flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible and except for the Front Lawns. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, trees, lawns or flowers or other property of the Owners situated on the land covered by said easements.
- 8.03 **Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.
- 8.04 **Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon require. Each Owner further covenants not to disturb any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.
- 8.05 **Blanket Easement.** An easement is hereby retained in favor of the Association over all Lots for the purpose of enforcing the Summit Crossing Residential Restrictions in accordance with Section 5.04(E) hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot to effectuate the foregoing purposes shall not be deemed as trespass.



- 8.06 Temporary Easements. The 0.450 and 0.161 acre easements, as depicted on Exhibit "A", are temporary until such time as Phase 2B is developed and permanent easements are established.

**ARTICLE 9  
MISCELLANEOUS**

- 9.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2055, unless amended as herein provided. After December 31, 2055, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended as provided in Section 9.03 below or terminated by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the Property then subject to this Declaration, and filed of record in the Official Records of Brazos County, Texas.
- 9.02 Dissolution. Upon termination of this Declaration in accordance with Section 9.01 above, the Association shall be dissolved. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.
- 9.03 Amendment.
- (A) By Declarant. This Declaration may be amended by the Declarant, acting alone, until December 31, 2019, and thereafter for so long as Declarant holds a majority of the votes of the Association. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and, if amended after December 31, 2019, an instrument executed and acknowledged by the Secretary of the Association, certifying that the Declarant had the requisite number of votes.
- (B) By Owners. In addition to the method in Section 9.03 (A), after December 31, 2019, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 5.03 hereof.
- 9.04 Notices. Any notice permitted or required by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.
- 9.05 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in

this Declaration. This Declaration shall be construed, governed and enforced under the laws of the State of Texas.

9.06 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to (i) excavate and grade, (ii) construct and alter drainage patterns and facilities, (iii) construct any and all other types of Improvements, sales and leasing offices, and similar facilities, and (iv) post signs incidental to construction, sales, and leasing anywhere within the Property.

9.07 Assignment of Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

9.08 Enforcement and Nonwaiver.

(A) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of the Summit Crossing Residential Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(B) Nonwaiver. The failure to enforce any provision of the Summit Crossing Residential Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in this judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

9.09 Construction.

(A) Restrictions Severable. The provisions of the Summit Crossing Residential Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

(C) Sole and Absolute Discretion. Notwithstanding anything herein to the contrary, whenever a party to this Declaration is entitled to exercise its "sole and absolute

discretion", such discretion may be exercised by that party for any reason or for no reason, whether such discretion is arbitrary, uncontrolled or unreasonable. Any parties' exercise of its "sole and absolute discretion" shall be final and shall not be subject to appeal or be subject to adjudication by a court of law, arbitration, mediation, or otherwise.

- (D) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.
- (E) Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.
- (F) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this 10th day of February, 2015.

DECLARANT:

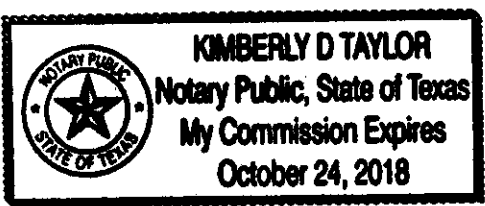
DWS DEVELOPMENT, INC

By: [Signature]  
DAVID SCARMARDO, President

STATE OF TEXAS §  
COUNTY OF BRAZOS §

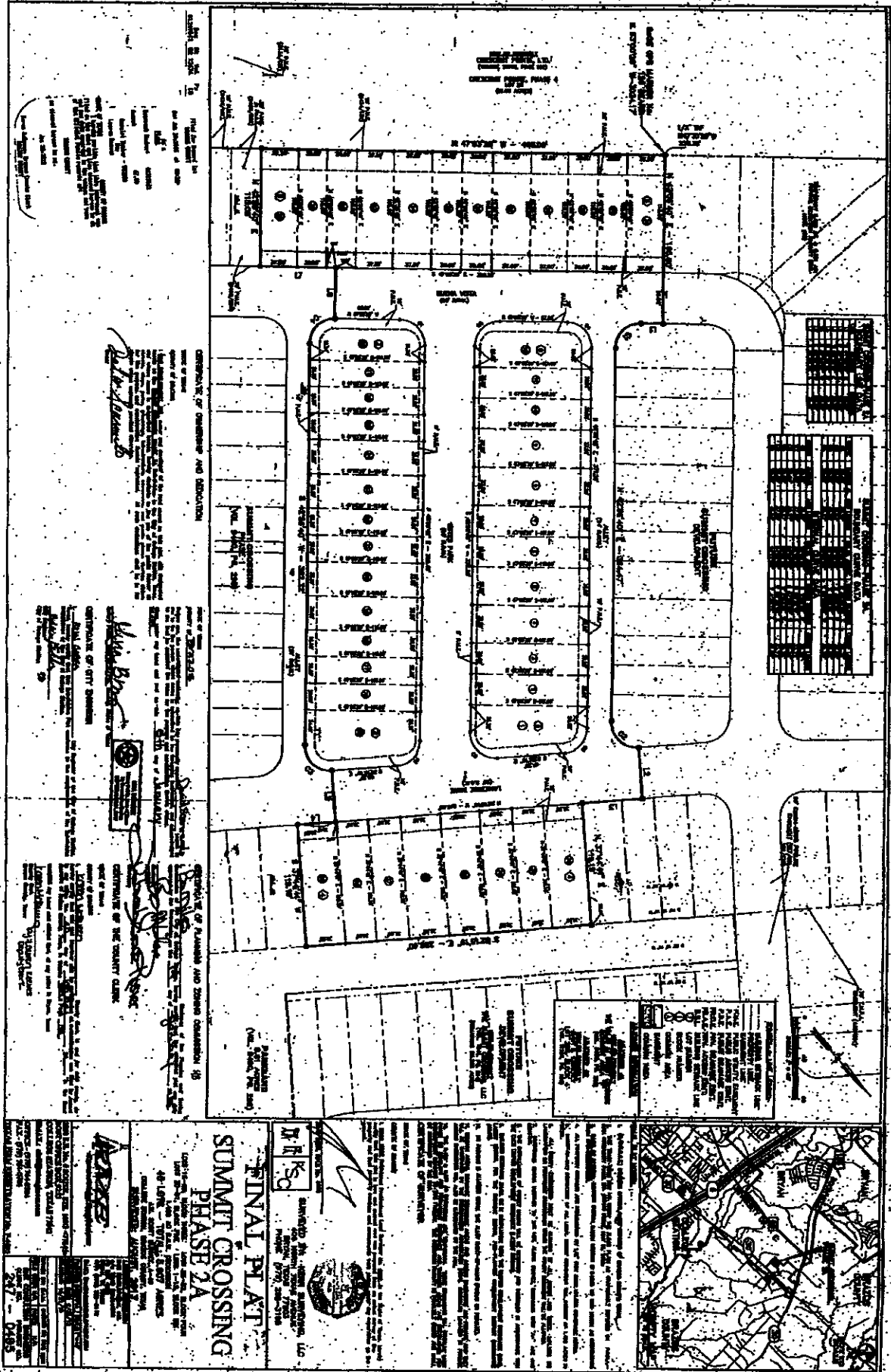
This instrument was acknowledged before me on the 10th day of February, 2015, by DAVID SCARMARDO, President of DWS DEVELOPMENT, INC., a Texas corporation, on behalf of said corporation and in the capacity herein stated.

[Signature]  
Notary Public, State of Texas



**AFTER RECORDING RETURN TO:**  
Cully Lipsey  
Hoelscher, Lipsey & Elmore, P.C.  
1021 University Drive East  
College Station, Texas 77840  
File #080842  
|USER|LISA|WPDOCS|DECLARATIONS|Summit Crossing|CCRs

Exhibit "A"



DATE: 11/11/11  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT: SUMMIT CROSSING PHASE 2A

APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]

APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]

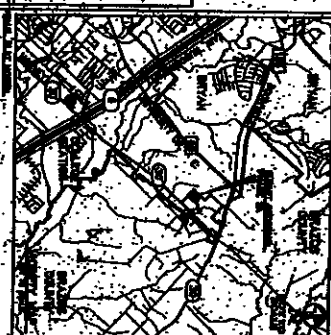
APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]

APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]

**FINAL PLAT**  
**SUMMIT CROSSING**  
**PHASE 2A**

DATE: 11/11/11  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT: SUMMIT CROSSING PHASE 2A

APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]



APPROVED BY: [Signature]  
 TITLE: [Title]  
 COMPANY: [Company Name]

Filed for Record in:  
BRAZOS COUNTY

On: Feb 10, 2015 at 04:15P

As a  
Recordings

Document Number: 01221500

Amount 132.00

Receipt Number - 535855

By,  
Victoria Elliott

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the Official Public records of:

BRAZOS COUNTY

as stamped hereon by me.

Feb 10, 2015

Karen McQueen, Brazos County Clerk  
BRAZOS COUNTY

Vol. 12511

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