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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

THE PROMONTORY

An Addition To The

City of Heath, Texas

Rockwall County, Texas

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE PROMONTORY

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

THE PROMONTORY

A RESIDENTIAL SUBDIVISION TO THE CITY OF HEATH, TEXAS

THE STATE OF TEXAS)
) **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF ROCKWALL)

THIS DECLARATION, made on the date hereinafter set forth by **THE PROMONTORY VENTURE**, a Texas joint venture, for the purpose of evidencing the covenants, conditions and restrictions contained herein.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the City of Heath, County of Rockwall, State of Texas and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property").

WHEREAS, Declarant desires to create an exclusive residential community to be known as **THE PROMONTORY** on the Property and such other property as may be added thereto pursuant to the terms and provisions of this Declaration;

NOW THEREFORE, Declarant hereby declares that all of the Property 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 Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of Declarant and each Owner thereof.

ARTICLE I

DEFINITIONS

1.1 **ASSOCIATION**. "Association" shall mean and refer to **THE PROMONTORY HOMEOWNERS' ASSOCIATION, INC.**, a Texas not-for-profit corporation established for the purposes set forth herein, its successors and assigns.

1.2 **AREAS OF COMMON RESPONSIBILITY**. "Areas of Common Responsibility" shall mean the public right-of-way parkway along Ridge Road (F.M. 740) and the public right-of-way parkway along Lafayette Drive adjacent to Lot 10, Block A and Lot 12, Block B of the Property (parkway being defined as that area between the platted Lot property line and the paving improvements along the adjacent right-of-way), as such areas are shown on the Subdivision Plat of the Property. The common responsibility shall also include those perimeter masonry screening walls or fences along said parkways along the east line of Lot 1, Block B and

along the east line of Lots 1, 2 and 3, Block A and along the south line of Lots 3 and 4, Block A and such entrance monuments and signs and right-of-way landscaping, all as may be further designated by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners.

1.3 DECLARANT. The term "Declarant" shall mean and refer to THE PROMONTORY VENTURE, a Texas joint venture and its successors and assigns.

1.4 CITY. "City" shall mean The City of Heath, Rockwall County, Texas.

1.5 HOME. "Home" shall mean a single-family residential unit constructed on a Lot being a part of the Property, including the parking garage utilized in connection therewith and the Lot upon which the Home is located.

1.6 LIENHOLDER. "Lienholder" or "Mortgagee" shall mean the holder of a first mortgage lien, either on any Home and/or any Lot.

1.7 LOT. "Lot" shall mean and refer to a portion of the Property designated as a Lot on the Subdivision Plat of the Property, excluding Open Space, streets, alleys and any Area of Common Responsibility. Where the context requires or indicates, the term Lot shall include the Home and all other improvements which are or will be constructed on the Lot.

1.8 MEMBER. "Member" shall mean and refer to every person or entity who holds membership in the Association. The Declarant and each Owner shall be a Member.

1.9 OPEN SPACE. Open Space shall mean the areas of Common Responsibility as herein described, even though within public right-of-way or Member owned with common rights granted through easement as shown on the Subdivision Plat of the Property there being no areas, parcels or tracts of land whose title is held in the name of the Association.

1.10 OWNER. "Owner" shall mean and refer to the record Owner, other than Declarant whether one (1) or more persons or entities, of a fee simple title to any Lot and shall include the homebuilder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is a part of the Property, through deed in lieu of foreclosure or through judicial or non judicial foreclosure.

1.11 PROPERTY, PREMISES OR DEVELOPMENT. "Property" shall mean and refer to that certain real property known as THE PROMONTORY, as described as Exhibit "A" hereto.

1.12 SUBDIVISION PLAT. "Subdivision Plat" shall mean or refer to the plat of The Promontory Addition filed of record in Cabinet C at Page 323 of the Plat Records of Rockwall County, Texas, as same may be amended from time to time.

ARTICLE II

THE PROMONTORY HOMEOWNERS ASSOCIATION, INC.

2.1 ESTABLISHMENT OF THE ASSOCIATION. The formal establishment of The Promontory Homeowners Association will be accomplished by the filing of the Articles of Incorporation of The Promontory Homeowners Association, Inc. with the Secretary of State for

the State of Texas and the subsequent issuance by the Secretary of State of the Certificate of Incorporation of The Promontory Homeowners Association, Inc.

2.2 ADOPTION OF BY-LAWS. By-Laws for The Promontory Homeowners Association will be established and adopted by the Board of Directors of The Promontory Homeowners Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 MEMBERSHIP. Declarant, during the time it owns any Lots and each person or entity who is a record Owner of a fee or undivided fee interest in any Lot 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. Transfer of ownership, either voluntarily or by operation of law, shall terminate such Owner's membership in the Association, and membership shall be vested in the transferee; provided, however, that no such transfer shall relieve or release such Owner from any personal obligation with respect to assessments which have accrued prior to such transfer.

3.2 VOTING RIGHTS. The Association shall have two (2) classes of voting membership:

(a). Class "A." The Class "A" Members shall be all Owners. The Class "A" Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest 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 shall be Declarant. The Declarant shall be entitled to three (3) votes for each Lot it owns; provided however, that Declarant shall cease to be a Class "B" Member and shall become a Class "A" Member entitled to one (1) vote per Lot on the earliest to happen of either of the following events:

(i). when the total votes outstanding in the Class "A" membership equals the total votes outstanding in the Class "B" membership, or

(ii). the expiration of ten (10) years from the recording date of this Instrument in the Deed Records of Rockwall County, Texas.

3.3 NO CUMULATIVE VOTING. At all meetings of the Homeowners' Association, there shall be no cumulative voting. Prior to all meetings, the Board of Directors shall determine the total number of votes outstanding and entitled to vote by the Members.

ARTICLE IV

COVENANT FOR ASSESSMENTS

4.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of any Lot by acceptance of a deed therefor, whether or not it

shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements. Such assessments (collectively, the "Assessments") are to be fixed, established and collected as provided herein. Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest costs and reasonable attorney's fees shall also constitute a personal obligation of the person or entity who was the record Owner of such Lot at the time of the Assessment. "The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by such successors, however the lien upon the Lot shall continue until paid.

4.2 PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, welfare and appearance of the Property for the benefit of the Owners, the improvement and maintenance of the Areas of Common Responsibility and any property owned by the Association, and the performance and/or exercise of the rights and obligations of the Association arising hereunder. Assessments shall include, but not be limited to, funds to cover actual Association costs for all taxes, insurance, repair, replacement, maintenance and other activities as may from time to time be authorized by the Board of Directors; legal and accounting fees, and any fees for management services; expenses incurred in complying with any laws, ordinances or governmental requirements applicable to the Association or the Property; reasonable replacement reserves and the cost of other facilities and service activities, including, but not limited to, mowing grass, grounds care, sprinkler system, landscaping, and other charges required or contemplated by this Declaration of Covenants, Conditions and Restrictions and/or that which 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.

4.3 BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

(a). For the period beginning January 1st of the year next following the conveyance of the first lot to an Owner, the regular maximum annual Assessment shall be \$400.00 per Lot.

(b). From and after January 1st of the second year next following the conveyance of the first Lot to an Owner, the maximum regular annual assessment may be increased by an amount up to fifteen (15%) over the preceding year's regular annual assessment solely by the Board of Directors. Any increase over and above 15% of the previous year's regular annual assessment shall be done only by the prior written approval of sixty-six and two-thirds percent (66 2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by the Members at a meeting at which a quorum is present.

4.4 SPECIAL ASSESSMENTS. In addition to the regular annual Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs incurred

by the Association pursuant to the provisions of this Declaration, provided that any such Assessment shall have the prior written approval of sixty-six and two-thirds percent (66 2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by the Members at a meeting at which a quorum is present. Any Special Assessments shall be prorated based on the period of time the Owner owns the Lot during such year.

4.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.3 AND 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.3 and 4.4 hereunder shall be given to all Members not less than seven (7) days nor more than twenty-one (21) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes 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 requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

4.6 UNIFORM RATE OF ASSESSMENT. Both the regular annual and Special Assessments shall be fixed at a uniform rate for all Lots, and shall commence and be due in accordance with the provisions of Section 4.7 hereof. Each Owner shall pay one hundred percent (100%) of the established Assessment for each Lot he or it owns. Declarant shall pay twenty-five percent (25%) of the established Assessment for each Lot it owns.

4.7 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES.

(a). The obligation to pay regular annual assessments provided for herein shall commence on January 1st of the first year next following Declarant's conveyance of a Lot to an Owner (the "First Assessment Year"). Assessments shall be due and payable on an annual basis unless otherwise designated by the Association. The assessment due date may be re-established on such other dates as may be determined by the Association.

(b). As long as Declarant is a Class "B" Member pursuant to Section 3.2 hereof, Declarant shall pay the deficiency resulting in the event the cost of maintenance exceeds the amount of the Assessments received from the Owners; provided, however, in such event, Declarant shall not otherwise be required to pay Assessments with respect to portions of the Property owned by Declarant; and further, provided, however, in no event shall Declarant be required to pay an amount which is in excess of one hundred percent (100%) of the established Assessment for each Lot it owns. When the Declarant is converted to a Class "A" Member, the Declarant (i) shall no longer be responsible for contributing shortfalls outlined in the preceding sentence but rather, (ii) shall commence making regular annual and Special Assessments pursuant to Sections 4.3 and 4.4 hereof calculated on the number of Lots Declarant then owns.

(c). 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 (but shall not exceed the first year maximum assessment specified under Section 4.3(a) hereof. 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 regular annual Assessment upon thirty (30) days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted pursuant to Section 4.3 hereof. Written notice of the regular annual Assessment shall be given as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed either by the President, Vice President or the Treasurer of the Association setting forth whether the annual and special 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.

(d). No Owner may exempt himself from liability for Assessments by waiver of the use or enjoyment of any portion of the Property or Open Space or by abandonment of his Home or Lot.

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

(a). All payments of the Assessments shall be made to the Association at its principal place of business as stated on the Notice of Assessment, or at such other place as the Association may otherwise direct or permit. There shall be no right of offset and payment shall be made in full regardless of whether any Owner has any dispute with Declarant, the Association, 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 and a continuing covenant running with the Property.

(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 or the maximum rate allowed by law, whichever is the lesser. 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 hereof, foreclose the lien against the Lot as provided in Subsection 4.8(d) hereof. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said interest and a reasonable attorney's fee, together with costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such lien against such Owner, and the expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default. Under no circumstances, however, shall Declarant or 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.

(c). No action shall be brought to foreclose any Assessment lien or to proceed under the power of sale herein provided until 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 then record Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of Rockwall County, Texas. Such notice of claim must recite 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 maximum 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 Association.

(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 Section 51.002 of the Property Code of the State of Texas, or in any other manner permitted by law. Each Owner, by accepting a deed to a Lot, expressly grants to the Association a power of sale as set forth in said Section 51.002 of the Property Code, 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 the actual cost of preparing and filing or recording the lien and the release.

(f). The Assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right of suit to recover a money judgment for unpaid Assessments, as above provided.

4.9 SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien securing the Assessments provided for herein shall be subordinate to the lien of any first lien mortgage. The sale or transfer of any Lot shall not diminish or extinguish the Assessment lien. However, the sale or transfer of any first lien mortgage, pursuant to a decree of foreclosure or a non-judicial foreclosure under such first lien 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. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due, in accordance with the terms herein provided.

4.10 MANAGEMENT AGREEMENTS. The Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the development and the performance of its obligations hereunder. 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. Any and

all management agreements shall be for a term not to exceed one (1) year 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 Association may, at its discretion, assume self management of the development by the Association.

4.11 INSURANCE REQUIREMENTS. The Association through the Board of Directors, or its duly authorized agent, shall obtain insurance policies covering the Association's use and maintenance of the Areas of Common Responsibility and covering all damage or injury caused by the negligence of the Association, any of its employees, officers, directors and/or agents, commercial general liability insurance, directors and officers liability insurance, and such other insurance as the Association may from time to time deem necessary or appropriate.

ARTICLE V

PROPERTY RIGHTS

5.1 USE OF OPEN SPACE. The Open Space as defined herein shall be improved only to the extent of landscaping and plantings, including adjacent screening fences and walls as are prudent for security and safety to the Property. As such, the Association shall not, except as the Association may reasonably deem appropriate to comply with applicable laws or to protect the health, safety or welfare of the Development or the Members, cause (i) any permanent structures to be constructed on the Open Space; or (ii) allow any interference or conflict with the natural or planted vegetation or trees in the Open Space. The foregoing shall not imply any obligation on the part of the Declarant or the Association to provide any particular enhancement to the Open Space or render the Association in any way responsible for the actions of any Members or other parties on or in connection with the Open Space, unless such actions are undertaken at the written instructions of the Association. The Association shall have the right to enter upon and make rules and regulations relating to the use of the Open Space, subject to the limitations and restrictions applicable to those areas of Open Space contained within public right-of-way.

5.2 TITLE TO THE OPEN SPACE. The Association has no title right to the Open Space as defined herein. All rights of ownership to the Open Space shall remain vested in the ownership of the public right-of-way and in and to the Lots over which the Association has easement rights.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

No building, fence, wall, parking area, swimming pool, spa, pole, mail box, driveway, fountain, pond, tennis court, sign, exterior illumination, change in exterior color or shape, or new structure or modification of a structure shall be commenced, erected or maintained upon any Lot or the patio or garage used in connection with any Lot after the purchase of any Lot from Declarant, 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 by the Architectural Review Committee (the

"ARC") which shall be composed of three (3) representatives appointed by Declarant (during such time Declarant owns any Lots) and thereafter by the Association. Plans and specifications shall be submitted to the ARC at least seven (7) days prior to the commencement of any construction or modification. The following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure; and a description of all exterior construction materials. A copy of the above described plans and specifications shall be retained by the ARC. The ARC shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the ARC fails to approve or disapprove said plans and specifications within fourteen (14) days after the same has been submitted to it, they will be deemed to have been approved by the ARC. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The judgment of the ARC in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No construction, alteration, change or modification shall commence until approval of the ARC is obtained. The ARC may approve any deviation from these covenants and restrictions as the ARC, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the ARC shall be personally liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the ARC's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the ARC of the plans and specifications or its determination that the completed construction or modification has been constructed in accordance with the plans and specification shall be deemed to be an acknowledgment by the ARC that such are in accordance with these Covenants and Restrictions and such acknowledgment shall be binding against the Owners of the Lots and the Property. Until Declarant no longer owns a Lot, as vacancies on the ARC occur by resignation or otherwise, successor members shall be appointed by Declarant. Thereafter, the members of the ARC shall be selected and appointed by the Board of Directors of the Association. In the event that such Directors fail to designate members of the ARC within thirty (30) days after any vacancy appears thereon, then the remaining members of the ARC shall be entitled to appoint a successor to fill any vacancies. Members of the ARC may at any time and without cause, be removed by Declarant, or in accordance with the parameters above, by the Board of Directors of the Association. Neither the Declarant, the Association, the Board, the ARC nor any employees, officers, directors or members thereof shall be personally liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment negligence or nonfeasance arising out or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Any errors in or omissions from the plans or the site plan submitted to the ARC shall be the responsibility of the Owner of the Lot to which the improvements relate, and the ARC shall have no obligation to check for errors in or omissions from any such plans, or to

check for such plans' compliance with the general provisions of this Declaration, City codes, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

ARTICLE VII

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

7.1 RESIDENTIAL USE. The Property shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family residence per Lot, which residence may not exceed two (2) stories in height and a private garage as provided below, which residence shall be constructed to minimum property standards of the Federal Housing Authority ("FHA"), unless otherwise approved in writing by the ARC (as hereinafter defined).

7.2 SINGLE-FAMILY USE. Each residence shall be limited to occupancy by only ONE family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons residing together as a single housekeeping unit, in addition to any household or personal servant staff.

7.3 GARAGE REQUIRED. Each residence shall have a fully enclosed garage suitable for parking a minimum of two (2) standard size automobiles, which garage shall conform in design and materials with the main structure. No open sided "car ports" shall be permitted. All garages must be equipped with an electric remote controlled garage door opener for each door on such garage.

7.4 RESTRICTIONS ON RESUBDIVISION. No Lot shall be further subdivided into smaller Lots.

7.5 DRIVEWAYS. All driveways shall be surfaced with concrete or similar material subject to approval of the ARC.

7.6 USES SPECIFICALLY PROHIBITED.

(a). No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot during construction of the residence on that Lot. No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the improvements are to be erected.

(b). No boat, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any residence unless properly concealed from public view. Such

determination shall rest solely with the ARC. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked while in use for the construction, maintenance or repair of a residence in the Development.

(c). Trucks with tonnage in excess of one and one-half (1.5) tons and any commercial vehicle with painted advertisement shall not be permitted to park overnight on the Property except those used by a builder during the construction of improvements.

(d). No vehicle of any size which transports flammable or explosive cargo may be kept on the Property at any time.

(e). No motorized vehicle or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (including those with attached bed campers) that are in operating condition and have current license plates and inspection stickers.

(f). No structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure or other out-building shall be used on the Property at any time as a dwelling house; provided, however, that any builder may maintain and occupy (for the purpose implied), model homes, sales offices and construction trailers during the construction period, but not as a residence.

(g). No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.

(h). No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other qualified domestic animals may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food products. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the peace and quiet and health and safety of the community. No more than four (4) pets will be permitted on each Lot. Pets must be restrained or confined to the homeowner's rear yard within a secure fenced area or within the house. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.

(i). No Lot or other area of the Property shall be used as a dumping ground for rubbish or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and furniture. Trash, garbage or other waste shall not be kept on a Lot except in sanitary containers. All containers for the storage or other disposal of such material shall be kept

in clean and sanitary condition. Materials incident to construction of improvements may be only be stored on Lots during construction of the improvement thereon.

(j). No individual water supply system shall be permitted on any Lot.

(k). No individual sewage disposal system shall be permitted on any Lot.

(l). No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence.

(m). No air-conditioning apparatus shall be installed (on the ground or attached to the residence building) in the front of a residence. No evaporative cooler shall be installed on the front or side walls or windows of any residence.

(n). Except with the written permission of the ARC, no antennas, satellite dishes or other equipment for receiving or sending sound or video signals shall be permitted in or on the Property except antennas for AM or FM radio reception and UHF and VHF television reception. Such antennas shall be located inside the attic of the main residential structure except that, with the written permission of the ARC, one (1) satellite dish or similar antenna may be attached to a side wall of a dwelling unit or placed in the rear yard of a Lot so long as it is reasonably screened (in the sole determination of the ARC) from view from adjacent Lots, streets or public areas.

(o). No Lot or improvement thereon shall be used for a business, professional, commercial or manufacturing purposes of any kind. No business activity shall be conducted on the Property which is not consistent with single family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's temporary use of a residence as a sales/construction office for so long as such builder is actively engaged in construction on the Property. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring, art lessons and other professional service type activity so long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' peaceful use and enjoyment of their residences and yards.

(p). No fence, wall, hedge or shrub planting exceeding three (3) feet in height shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner, ten (10) feet from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot for that area that is ten (10) feet from the intersection of a street right-of-way line with the edge of a residence driveway at such street right-of-way line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum height of six (6) feet above the adjacent ground line.

(q). Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property.

(r). Within those easements on each Lot as designated on the Subdivision Plat of the Development, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter, obstruct or retard the direction of flow within designated drainage swales or courses.

(s). The general grading, slope and drainage plan of a Lot as established by the approved Development plans may not be altered without the approval of the ARC and, where applicable, if designated as a dedicated drainage easement, the City.

(t). No sign of any kind or character shall be displayed to the public view on any Lot except for one (1) professionally fabricated sign of not more than six (6) square feet advertising the property for rent or sale, or signs used by a builder to advertise the property during the construction and sales period. Declarant or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal.

(u). Outdoor clothes lines and drying racks visible to adjacent Properties are expressly prohibited. Owners or residents of Lots where the rear yard is not screened by solid fencing or other such enclosures, shall construct a drying yard or other suitable enclosure or screening to shield from public view clothes drying racks, yard maintenance equipment and/or storage of materials.

(v). Except within fireplaces in the main residential dwelling and equipment for outdoor cooking, no burning of anything shall be permitted anywhere on the Property.

7.7. MINIMUM FLOOR AREA. The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls (but exclusive of open porches, garages, patios and detached accessory buildings), shall be not less than the minimums as stated as follows:

Lots 1 and 2, Block A:	Three thousand (3,000) square feet
Lot 1, Block B:	Three thousand (3,000) square feet.
All other Lots:	Three thousand four hundred (3,400) square feet

7.8. BUILDING MATERIALS. The total exterior wall area (excluding windows, doors and gables) of each residence constructed on a Lot shall not be less than seventy five percent (75%) brick, brick veneer, stone, stone veneer, or other masonry material approved by the ARC (but not less than the minimum percentage as established by the City by ordinance or building code requirement). Windows, doors and other openings, gables or other areas above the height of the top of standard height first-floor windows are excluded from calculation of total exterior wall area. All roofing shall be a minimum 240 lb/square Fiberglass material of the Elk "Prestique II" type, or approved equal, variegated pitch, in "Weathered Wood" or other ARC

approved color and shall comply with minimum property standards requirements of the City. All residences shall have a minimum 7 : 12 roof pitch on the major portions of the building.

7.9 SIDE LINE AND FRONT LINE SETBACK REQUIREMENTS. No dwelling shall be located on any Lot nearer to the front lot line or nearer to the side lot line than the minimum setback lines shown on the Subdivision Plat of the Property.

7.10 WAIVER OF FRONT SETBACK REQUIREMENTS. With the written approval of the ARC, any building may be located further back from the front property line of a lot than provided above, where, in the opinion of the ARC, the proposed location of the building will enhance the value and appearance of the Lot and will not negatively impact the appearance of adjoining Lots.

7.11 FENCES AND WALLS. All fences and walls shall be constructed of masonry, brick, wood, wrought iron or other material approved by the ARC. Interwoven wire (sometimes called "chain link", "cox" and "hog-wire") is expressly prohibited within the Property. Side yard fencing on Lot 10, Block A and on Lot 12, Block B along Lafayette Drive shall be constructed of brick or masonry in general conformance with the exterior of the dwelling units constructed thereon and shall be a minimum height of six (6) feet. Fencing along the rear property lines of Lots 4 through 10 of Block A shall be constructed of wrought iron or ARC approved equal of a height not to exceed six feet (6.0'). No fence or wall on any Lot shall extend nearer to any street than the front of the residence thereon. Except as otherwise SPECIFICALLY approved by the ARC, all streetside side yard fencing on corner Lots shall be set no closer to the abutting side street than the side yard setback line as shown on the Subdivision Plat, EXCEPT side yard fencing on Lots 1 & 10, Block A and Lots 1 & 12, Block B shall be permitted along the side yard Lot property line. No portion of any fence shall exceed eight (8) feet in height measured from the adjacent ground elevation. Any wooden fence or portion thereof that faces a public street shall be constructed so that all structural members and support posts will be on the side of the fence away from the street and are not visible from any public right-of-way.

7.12 SIDEWALKS. All walkways along public rights-of-ways shall conform to the minimum property standards of the City.

7.13 MAILBOXES. Mailboxes shall be standardized and shall be constructed of a material and design approved by the ARC (unless gangboxes are required by the U.S. Postal Service).

7.14 CHIMNEY FLUES. Chimney stacks on front and side exterior walls that are visible from the street shall be enclosed One Hundred Percent (100%) in brick on all faces visible to adjacent streets and Lots.

7.15 WINDOWS. Windows jambs and mullions shall be composed of anodized aluminum or wood. All windows on any front elevation of a residence shall have baked-on painted aluminum divided light windows (no mill finish).

7.16 LANDSCAPING. Landscaping of each Lot shall be completed within sixty (60) days after the Home construction is completed, subject to extension for delays caused by inclement weather, and shall include fully sodded (or ground cover plantings) front and side yards, a minimum of twenty (20) five (5) gallon shrubs, and a minimum of two (2) four inch

(4") caliper trees. Each Lot shall have an automated underground irrigation system providing full coverage to the front yard and side yard areas.

7.17 GENERAL MAINTENANCE.

(a). Following occupancy of the Home upon any Lot, each Owner shall maintain and care for the Home, all improvements and all trees, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not be limited to: (i) the replacement of worn and/or rotted components; (ii) the regular painting of all exterior surfaces; (iii) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the Home to maintain an attractive appearance; and (iv) regular mowing and edging of lawn and grass areas. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the Declarant or the Association, or either of them, at its option and discretion, but without any obligation to do so, but only after ten (10) days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse said Declarant and/or Association for the cost of such work within ten (10) days after presentment of such statement. This provision, however, shall in no manner be construed to create a lien in favor of any party on any Lot for the cost or charge of such work or the reimbursement for such work.

(b). The Association shall maintain, repair and, if required, replace the masonry screening fence located along the rear property lines of Lots 1, 2, 3 & 4, Block A and along the east side property line of Lot 1, Block B. A ten (10) foot wide operation, maintenance and re-construction easement parallel and adjacent to said property line(s) is hereby reserved in favor of Declarant and the Association for the performance hereof.

(c). The Association shall operate, maintain, repair and replace, as an expense of the Association, all improvements including landscaping, irrigation systems and fencing in the Areas of Common Responsibility.

ARTICLE VIII

GENERAL PROVISIONS

8.1 **EASEMENTS.** Easements for the installation and maintenance of public utilities and drainage facilities are reserved as shown on the Subdivision Plat. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the Lot property lines to the residences located thereon. Declarant reserves the right to make changes in and additions to the above easements for the purpose of the most efficient and economical installation of such improvements.

8.2 **ENFORCEMENT.** The Declarant or 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. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys fees from the non prevailing party.

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

8.4 TERM. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lots), the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote, the then Owners of 67% of the Lots (and, if then regulated by city ordinance, the City) agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the Real Property Records of Rockwall County, Texas.

8.5 AMENDMENTS.

(a). This Declaration may be amended or modified upon the express written consent of at least sixty-six and two thirds percent (66 2/3%) of the outstanding votes (determined pursuant to Section 3.2 hereof) held by Members at a meeting at which a quorum is present. If then required by applicable city ordinance, written approval of the City must also be obtained for any such amendment to these Declarations. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party if the sole purpose of the amendment is for the purpose of correcting technical and/or typographical errors or for purposes of clarification. Any and all amendments hereto, if any, shall be recorded in the office of the County Clerk of Rockwall County, Texas.

(b). Declarant intends that this Declaration may be amended to comply (if not in compliance) with all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA") and the Federal Housing Administration ("FHA"). Notwithstanding anything to the contrary contained herein, if this Declaration does not comply with FHLMC, FNMA or FHA requirements, the Board and/or the Declarant shall have the power in its discretion (on behalf of the Association and each and every Owner) to amend the terms of this Declaration or to enter into any agreement with FHLMC, FNMA and the FHA, or their respective designees, reasonably required by FHLMC, FNMA or the FHA to allow this Declaration to comply with such requirements. Should the FHLMC, FNMA or the FHA subsequently delete any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent, the Board and/or the Declarant, without

approval of the Owners, may cause an amendment to this Declaration to be executed and recorded to reflect such changes.

8.6 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.

8.7 ENFORCEMENT. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that the Declarant's and/or the other Owner's remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Association, the Declarant, or any Owner against any person or persons violating or attempting to violate them; and failure by the Association, the Declarant or 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.

8.8 NOTICES TO MEMBER / OWNER. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered upon (i) forty-eight (48) hours after deposited in the United States Mail, postage prepaid, certified or registered mail, and addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing or, (ii) upon receipt of delivery when delivered by messenger service or courier.

8.9 HEADINGS. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and words in the singular shall be held to include the plural and visa versa unless the context requires otherwise.

8.10 FORMATION OF ASSOCIATION; INSPECTION OF DOCUMENTS, BOOKS AND RECORDS. The Association shall be formed by Declarant as a not-for-profit corporation in accordance with the laws of the State of Texas. Management and governance of the Association shall be implemented and/or undertaken in accordance with its Articles of Incorporation, in accordance with this Declaration, and in accordance with the By-Laws which shall be adopted by the Association following its formation. The Association shall make available at reasonable cost copies of the Declaration, By-Laws, Articles of Incorporation, rules and regulations governing the Association. All minute books, meeting and other records and financial statements of the Association shall be held available for inspection by any Owner or any Mortgagee during normal business hours or at such other reasonable times as the Board may approve.

8.11 INDEMNITY. The Association shall indemnify, defend and hold harmless Declarant, the Board, the ARC and each director, officer, employee and agent of Declarant, the Board and the ARC from all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including attorneys' fees) incurred by such indemnified

person under or in connection with this Declaration or the Property to the fullest extent permitted by applicable law. Such indemnity to include matters arising as a result of the sole or concurrent negligence of the indemnified party, to the extent permitted by applicable law.

8.12 FHA APPROVAL REQUIREMENT. As long as there remains any Class B membership AND any first lien mortgage is in effect with respect to any Lot which is insured by the FHA, the following actions shall require prior approval of the FHA (to the extent such approval is required under the then applicable FHA regulations): amendment of the Articles of Incorporation, Declaration or Bylaws; annexation of additional property or dissolution of the Association.

8.13 FAILURE OF ASSOCIATION TO PERFORM DUTIES. Should the Association fail to carry out its duties as specified in this Declaration, the City or its lawful agents shall have the right and ability, after due notice to the Association, to remove any landscape systems, features or elements that are the responsibility of and cease to be maintained by the Association; to perform the responsibilities of the Association if the Association fails, to do so in compliance with any of the provisions of this Declaration or of any applicable City codes or regulations; to assess the Association for all costs incurred by the City in performing said responsibilities if the Association fails to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City codes and regulations. Should the City exercise its rights as specified above, the Association shall indemnify and hold harmless the City from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operations, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties. The obligations described in this paragraph are solely obligations of the Association, and no other party, including without limitation, the Declarant or any Owner, shall have any liabilities or obligations in connection therewith.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereto set its hand this the 30th day of April, 1996

THE PROMONTORY VENTURE,
a Texas joint venture

VENTURER:

HSM DEVCO, a Texas limited partnership
By: HSM Development, Inc.,
a Texas corporation, General Partner

By: Don R. Plunk
Don R. Plunk, President

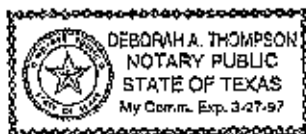
VENTURER:

BROTHERS W, INC., a Texas corporation

By: Richard W. Wells
Richard W. Wells, Vice President

THE STATE OF TEXAS }
COUNTY OF DALLAS }

This instrument was acknowledged before me on the _____ day of _____, 199____
by Don R. Plunk, President of HSM Development, Inc., a Texas corporation, acting as General
Partner of HSM Devco, Ltd., a Texas limited partnership, known to me to be the person whose
name is subscribed to the foregoing instrument and acknowledged to me that he executed the
same for the purposes and consideration therein expressed and in the capacity therein stated.

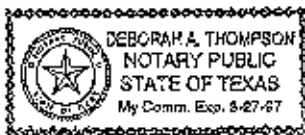


Deborah A. Thompson
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Deborah A. Thompson
(Printed Name of Notary)
My Commission Expires:
3-27-97

THE STATE OF TEXAS }
COUNTY OF ROCKWALL }

This instrument was acknowledged before me on the _____ day of _____, 199____
by Richard W. Wells, Vice President Brothers W, Inc., a Texas corporation, known to me to be
the person whose name is subscribed to the foregoing instrument and acknowledged to me that
he executed the same for the purposes and consideration therein expressed, in the capacity
therein stated, and as the act and deed of said corporation.



Deborah A. Thompson
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Deborah A. Thompson
(Printed Name of Notary)

My Commission Expires:
3-27-97

EXHIBIT "A"

BEING Twenty-two (22) Lots out of **THE PROMONTORY**, an addition to The City of Heath, Texas according to the recorded plat thereof filed of record in Cabinet C, Page 323 of the Plat Records of Rockwall County, Texas and more particularly described as follows:

Lots 1 through 10, Block A, and

Lots 1 through 12, Block B.