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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MENGER SPRINGS, UNIT 2**

AFTER RECORDING, RETURN TO:
Menger Springs Units 1 & 2, Ltd.
11 Lynn Batts Lane, Suite 100
San Antonio, Texas 78218
Attention: Sarah Carrington

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR MENDER SPRINGS, UNIT 2**

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Exhibits:

Exhibit A – Lots

Exhibit B – Annexation Area

Exhibit C – Master Plan

Exhibit D – Required Plans and Design Review Procedures

Exhibit E – Lienholder's Consent

- The Frost National Bank
- Balous T. Miller and Julie A. Miller

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
MENGER SPRINGS, UNIT 2**

This Declaration of Covenants, Conditions and Restrictions for Menger Springs, Unit 2 ("Declaration") is made to be effective as of _____, 2004, by **Menger Springs Units 1 & 2, Ltd.**, a Texas limited partnership ("Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the real property in the City of Boerne, Kendall County, Texas, described in **Exhibit A** attached hereto and incorporated herein (collectively, the "Lots," "Properties," or "Subdivision");

WHEREAS, Declarant has created a residential community for the benefit of the present and future Owners of Lots within the Subdivision, and desires to create and carry out a uniform plan for the improvement, development and sale of the Lots therein as part of the overall mixed-use development generally known as Menger Springs ("Project");

WHEREAS, Declarant desires to ensure the preservation of the values and amenities in the Subdivision and the Project and for the maintenance of the Common Areas therein, and to this end desires to subject the Properties within the Subdivision, together with such additions as may hereafter be made to the Subdivision as herein provided, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each of the Owners thereof;

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Project to create agencies to which should be delegated and assigned the powers of maintaining and administering various Common Areas within the Project to which Owners within the Subdivision will have access and which are for the benefit of Owners within the Subdivision, and for the purpose of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges created herein or in other Project documents; and

WHEREAS, Declarant has determined that it would be beneficial to the Properties to establish a means and mechanism to control and administer the maintenance of the right-of-way and center median of Menger Springs Parkway, as such median now exists or is hereafter constructed, as well as certain landscape easements now or hereafter situated along either side of such right-of-way, as designated from time to time by Declarant, as well as a means and mechanism to ensure that sufficient funds are available for continued maintenance of same; and

WHEREAS, Menger Springs Homeowners Association has or will be incorporated under the laws of the State of Texas as a non-profit corporation for the purposes of exercising the functions aforesaid as to the Common Areas within the

Subdivision to be owned by the Association and those additional areas which the Declarant and/or the Association determines should be maintained for the benefit of the Subdivision and Lot Owners thereof;

NOW, THEREFORE, Declarant declares that the Properties constituting the Subdivision are and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth and shall hereafter be subject to the jurisdiction and assessments of Menger Springs Homeowners Association, upon and subject to the terms and provisions herein stated; it being expressly agreed and acknowledged that the covenants, restrictions easements and conditions herein set forth shall run with the land and be binding on all parties having any right, title or interest in the Properties described or referred to herein, and their respective heirs, successors and assigns.

1. **DEFINITIONS.**

(a) "Annexation Area" shall mean the real property described or depicted on **Exhibit B** attached hereto and incorporated herein, which Declarant may, at its option, cause to be annexed to the Subdivision and the jurisdiction of the Association pursuant to **Section 2** herein.

(b) "Architectural Control Committee" and "ACC" shall mean the committee created pursuant to **Section 3** herein.

(c) "Association" shall mean Menger Springs Homeowners Association, a Texas non-profit corporation, its successors and assigns.

(d) "Board" or "Board of Directors" shall mean the Board of Directors of Menger Springs Homeowners Association, which shall be governed by the Articles of Incorporation and Bylaws of the Association.

(e) "Builder Member" shall mean such builders approved by Declarant for construction of residences within the Subdivision and who own one or more Lots for the purpose of construction of a residence thereon and resale to others.

(f) "City" shall mean the City of Boerne, Texas and its applicable agencies, departments, boards, and commissions.

(g) "Commercial Association" means the Menger Springs Business Center Association, a Texas non-profit association, whose members are the owners of the Commercial Tracts.

(h) "Commercial Tracts" means those tracts of land in close proximity to the Properties that may be designated by Declarant from time to time to be used for non-single family residential purposes permitted by then applicable zoning ordinances of the City, such tracts being located within the Annexation Area but not being within the direct scope and purview of the Properties or this Declaration.

- (i) "Common Areas" shall mean all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association. The initial Common Areas to be controlled by the Association may include private street rights-of-way as shown on the Subdivision Plat; Lot 59 (water production facility), Lot 60 (greenbelt), the Parkway Landscape Easement, and the Parkway Median.
- (j) "Common Maintenance Area" shall mean the Common Areas and all, if any, entrance monuments, perimeter walls, drainage facilities, trails, and detention ponds, esplanade and right-of-way landscaping and other areas deemed appropriate by the Board of Directors of the Association to be maintained by the Association for the preservation, protection and enhancement of the property values within the Subdivision and/or the general health, safety, welfare, or benefit of the Owners.
- (k) "Common Maintenance Area Fund" shall mean the fund established by the Association for the maintenance of the Common Areas, as more particularly described in **Section 7(m)** herein.
- (l) "Declarant" shall mean Menger Springs Units 1 & 2, Ltd., a Texas limited partnership, and its successors or assigns who are designated by Declarant as such in writing, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.
- (m) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and all amendments, annexations and supplements hereto made in accordance with the terms herein.
- (n) "Governmental Authority" shall mean all federal, state and local authorities, agencies, commissions and regulatory bodies having jurisdiction over the Properties, or any portion thereof, or over the Declarant or Owners.
- (o) "Governmental Regulations" shall mean all statutes, rules, codes, ordinances, regulations, permits, licenses and other requirements of any Governmental Authority.
- (p) "Improvements" shall mean every structure on the Properties and all appurtenances thereto, including, but not limited to, buildings, outbuildings, storage sheds or buildings, guest quarters, gazebos, patios, driveways, walkways and paved areas, tennis courts, play structures, fountains, large barbecue units, green houses, barns, basements, and large visible decorative items, swimming pools, garages, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and pumps, tanks, pipes, lines, meters, antennas, satellite dishes, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, fiber optic facilities, or other utilities.
- (q) "Living Unit" shall mean a single family residence and its attached or detached garage situated on a Lot. Any references herein to "home," "house," "residence" or "dwelling" shall have the same meaning as "Living Unit."

- (r) "Lot" shall mean and refer to any tract of land out of the Properties as described in the Subdivision Plat or other recorded map, plat or deed, whether or not such tract is platted, except for the Common Areas.
- (s) "Master Plan" shall mean the preliminary plan of development for the Project area, as depicted on **Exhibit C** attached hereto and incorporated herein, the original of which plan is maintained at Declarant's offices. The Master Plan anticipates commercial development on the Commercial Tracts designated by Declarant from time to time in close proximity to the Properties as well as different sizes, types and styles of dwellings in the various phases of the Project (i.e., estate homes, garden homes, etc.). The Master Plan is not binding on Declarant and may be amended by Declarant from time to time, without notice to any Owner or any other person.
- (t) "Member" shall mean and refer to all those Owners who are members of the Association as provided herein.
- (u) "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Properties given to secure the payment of a debt.
- (v) "Mortgagee" shall mean the holder or holders of any Mortgage(s), or any other interest held as security for the performance of an obligation.
- (w) "Owner" shall mean and refer to the record owner(s), whether one or more persons or entities, of fee simple title to any Lot within the Properties, including contract sellers, but excluding those having such interest merely as security of the performance of an obligation.
- (x) "Parkway" shall mean the public street known as Menger Springs Parkway connecting to the IH-10 access road, as shown on **Exhibit C** hereto.
- (y) "Parkway Landscape Easement" shall mean the approximately twenty foot (20') wide landscape and related utility easement for electricity and water on portions of either side of the dedicated Parkway right-of-way as designated by Declarant from time to time on the parcels abutting the Parkway (whether or not such easements are further evidenced by recorded plats or other instruments), the perimeter of which is approximately (____) feet within the property line of each affected parcel adjacent to the Parkway right-of-way. Such easements may be variable width easements in whole or in part if so determined by Declarant.
- (z) "Parkway Maintenance" shall mean the maintenance and upkeep (including lighting and irrigation, if deemed appropriate by the Association) of the landscaping and other improvements situated in the Parkway Median as well as certain of the landscaping situated in the Parkway Landscape Easement and/or the Parkway right-of-way, as such maintenance is described in **Section 8** herein.
- (aa) "Parkway Median" shall mean the center median of the Parkway, as such center median now exists or may exist in the future.

(bb) "Parkway Median Maintenance Fund" shall mean the separate maintenance fund established by the Association from time to time comprised of a portion of the assessments collected from the Owners pursuant to the terms of this Declaration and funds contributed by the Commercial Association, to perform maintenance of the Parkway Median and certain other related facilities expressly provided for herein, as deemed appropriate or necessary by the Association from time to time, such fund being more particularly described in **Section 8** herein. Notwithstanding the foregoing, the Association may determine that it will commingle such fund with the funds in the Common Area Maintenance Fund, but in such case will separately account for same.

(cc) "Properties" shall mean and refer to the real property in Kendall County, Texas, described in **Exhibit A** attached hereto, and such additions thereto as may hereafter be subject to this Declaration.

(dd) "Required Plans" shall mean complete architectural and engineering plans, including site plans, grading plans, exterior elevations, landscape and irrigation plans, and any other plans or information deemed necessary by the ACC for the performance of its functions in accordance with **Section 3** herein and as further described in **Exhibit D** attached hereto and incorporated herein.

(ee) "Single Family" shall mean and refer to a group related by blood, adoption, or marriage or a number of unrelated house mates equal to the number of bedrooms in a Living Unit.

(ff) "Subdivision" shall mean and refer to the Properties, as defined herein.

(gg) "Subdivision Plat" shall mean and refer to the map or plat of Menger Springs, Unit 2, filed for record in Volume 4, Page 274, Plat Records of Kendall County, Texas, and any amendment thereto upon filing of same for record in the Plat Records of Kendall County, Texas.

2. **PROPERTIES SUBJECT TO THIS DECLARATION.**

(a) **Properties.** The real property which is and shall be held, transferred, sold, conveyed, developed and occupied subject to this Declaration are the Properties described in **Exhibit A** attached hereto and incorporated herein, and as shown on the Subdivision Plat.

(b) **Annexation.** Additional properties may be annexed and subjected to this Declaration from time to time, in accordance with the following terms and conditions:

(1) **By Declarant.** Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration, and without the consent of Members, additional properties in future stages of the Project, and within twenty (20) years from the date of this instrument, provided that such additions lie within the Annexation Area depicted on **Exhibit B** attached hereto. Declarant, its successors and assigns, shall not be bound to make any additions to the existing property or to follow any particular type

of development which may be reflected on the Master Plan described on **Exhibit C** attached hereto. Any additions authorized under this and the succeeding **subsections** shall be made by filing of record a certificate of annexation and/or a separate or supplemental declaration of covenants, conditions and restrictions, or similar instrument with respect to such additional property which shall add the additional property to the scope, purview and jurisdiction of the Association, and shall extend the general scheme of the covenants and restrictions of this Declaration to such additional property. The execution or any such annexation certificate or separate or supplemental declaration by the Declarant shall constitute all requisite evidence of the required approval thereof. Such document may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the specific type of development, except that Declarant expressly reserves the right to make any deletions, additions and/or modifications as are necessary, in Declarant's sole discretion, to reflect the different sizes, types and/or styles of residential products within the Annexation Area (i.e., garden homes, estate homes, traditional homes, etc.), or commercial uses within the Annexation Area. In no event, however, shall any such certificate of annexation and/or separate or supplemental declaration be construed so as to revoke, modify or add to the covenants established by this Declaration as they are applicable to the existing property covered by this Declaration.

(2) Other Additions. The Owner of any property who desires to add such property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may make written application for annexation to the Association, together with the following:

(i) The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements.

(ii) The applicant shall describe the nature and extent of common facilities to be located on the proposed property and fully describe any mortgage debt related to the common facilities or other debt which applicant seeks the Association to assume.

(iii) The applicant shall acknowledge that the proposed additions, if made, will be subjected to the general scheme of this Declaration and all Association assessments.

(iv) Upon such submission and subject to the Association's later review and approval of the proposed form of certificate of annexation and/or supplemental declaration of covenants, conditions and restrictions for the proposed property, the Association shall vote by class on the proposal. Two-thirds (2/3) approval of each class of membership shall be required for approval. If the proposed property is approved for addition to the jurisdiction of the Association, such addition shall be complete upon the applicant's filing of record in the Real Property Records of Kendall County, Texas, an annexation certificate, or separate or supplemental declaration of covenants, conditions and restrictions or similar instrument in form approved by the Board of Directors of the

Association and executed by said Board of Directors or one or more authorized officers of the Association.

(c) **Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw areas owned by Declarant from the Properties, 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 Properties hereunder, Declarant shall be required only to record in the Real Property Records of Kendall 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 Real Property Records wherein this Declaration is recorded.

(2) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land.

(3) A legal description of the withdrawn land.

3. ARCHITECTURAL CONTROL.

(a) **Creation and Composition.** There is hereby created an Architectural Control Committee, initially composed of five (5) members, designated by Declarant from the following groups:

GROUP	INITIAL MEMBER	VOTES
Design Review Administrator (1)	Chuck Wilkes	1
Developer Representatives (2)	Dan Kossl Todd P. Helmer	2 2
General Contractors (2)	Israel Pena William Canavan	1 1
TOTAL	5 members	7 votes

Each member of the ACC shall have one (1) vote, except for the Developer Representatives, who shall each have two (2) votes.

Each member of the ACC shall serve until their successors are named. A majority of the ACC may act for the ACC and no notice of any of its meetings shall be required. A majority vote of the ACC shall mean a simple majority of the votes cast by the ACC members present at any meeting of the ACC, or if action is taken without a meeting as permitted herein, a simple majority of the total votes of the members of the ACC. Subject to the terms hereinafter set forth, Declarant shall have the right to remove or add members to the ACC and fill vacancies in the ACC membership, and Declarant may assign such rights to the Association. ACC members shall not be entitled to

compensation for their services rendered in such capacity, except for the Design Review Administrator who shall be compensated for services rendered to and for the ACC as determined by the Board of the Association.

(b) **Design Guidelines.** The ACC has the right to establish enforceable architectural design guidelines for the Properties ("Architectural Design Guidelines" or "ADG"). The Architectural Design Guidelines for the Properties and the other documents and information which may affect an Owner, prospective Owner, or contractor for Improvements to a Lot shall be maintained at the offices of the ACC. Each Owner and prospective Owner is advised to obtain these documents and carefully examine each of them in addition to this Declaration to determine his rights and obligations.

(c) **Function.** No Improvement shall be erected, constructed, placed, altered (either by addition or deletion), maintained or permitted to remain on any portion of the Properties until the Required Plans, in such form and detail as the ACC may deem necessary, shall have been submitted to and approved in writing by the ACC. The ACC shall have the power to employ professional consultants to assist it in discharging its duties, and to impose reasonable fees for processing of applications. The decision of the ACC shall be final, conclusive, and binding upon the applicant.

(d) **Goals.** The goal of the ACC is to encourage the construction of Improvements of good architectural design, quality and proper size compatible with Declarant's conceptual plan for the Properties. Improvements should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials as will, in the judgment of the ACC, create an attractive and harmonious blend with existing Improvements and the natural surroundings. The ACC may consider, among other factors, the conformity and harmony of exterior design with existing structures in the Subdivision, the location with respect to topography, existing trees, and finished elevation, and apparent conformity with the requirements of this Declaration. The ACC may disapprove the construction or design of an Improvement on purely aesthetic grounds where, in its judgment, such disapproval is required to protect the continuity of design or values of the Properties and of other Owners, or to preserve the natural beauty of any surroundings, by preventing unusual, radical, uncommon, curious, odd, extraordinary, bizarre, peculiar or irregular external designs or appearances from being constructed on the Properties. Prior judgments regarding such matters of design or aesthetics shall not be deemed binding upon the ACC if the ACC feels that the repetition of such matters will have an adverse effect on the Properties.

(e) **Powers.** The ACC 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 interpretation. Members of the ACC and their representatives shall not be liable to any person subject to or possessing or claiming the benefits of this Declaration for any damage or injury to property or for damage or loss arising out of their acts hereunder. The ACC's evaluation of Required Plans is solely to determine compliance with the

terms of this Declaration and the aesthetics of the proposed Improvements. The ACC expressly disclaims any responsibility to determine compliance with any applicable Governmental Regulations, building code or other standard for construction. The ACC shall not be responsible for reviewing any plans or specifications from the standpoint of structural safety, engineering soundness, or conformance with building or other codes, or other Governmental Regulations, nor shall the ACC's approval be deemed a verification of the structural safety, engineering soundness, or conformance of the Improvements to building or other codes, or other Governmental Regulations.

(f) **Procedures.** The Owner of a Lot shall submit all Required Plans to the ACC for approval in accordance with the requirements set forth in Exhibit D hereto. If plans submitted by any Owner are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance, or may notify the Owner that additional documents or information is required. If the submitted plans are deemed to be inadequate or incomplete, the review period specified in Exhibit D hereto shall not commence until the ACC has received a complete set of the Required Plans.

(g) **Required Plans.** The initial Required Plans submittals are set forth in Exhibit D attached hereto and incorporated herein. The Required Plans submittals are subject to review and revision by the ACC from time to time without further notice to any Owner or other person.

(h) **Variances.** The ACC shall have the right, but not the obligation, to grant variances and waivers relative to deviations and infractions of this Declaration and/or the ADG, or to correct or avoid hardships to Owners. Upon submission of a written request for variance, the ACC may, from time to time, in its sole discretion, permit an Owner to construct, erect or install an Improvement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration or the ADG. In any case, however, the Improvement with such variances must, in the ACC's sole discretion, blend effectively with the general architectural style and design of the Subdivision and must not detrimentally affect the integrity of the Subdivision. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the ACC has not expressly approved such request in writing within thirty (30) days of the submission of such request. No member of the ACC shall be liable to any Owner or any other person for any claims, causes of action or damages arising out of the grant of any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed independently, and the grant of a variance to any one Owner shall not constitute a waiver of the ACC's right to deny a variance to another Owner. The decisions of the ACC with respect to variances shall be final and binding upon the applicant. All variances, to be effective, must be in writing. Owners are advised that certain variances may require the separate approval of the Board of Adjustments or other applicable department of the City or other applicable Governmental Authority.

(i) **Approval Letter.** Upon approval of the final Required Plans submittals, an Approval Letter will be issued by the ACC. The Approval Letter must be signed by the Owner and returned to the ACC before construction of the Improvements specified therein may begin. By execution and delivery to the ACC of the Approval Letter, the Owner covenants and agrees as follows:

(1) Construction of the Improvements will be completed within twelve (12) consecutive months from start of construction, except as otherwise expressly permitted by written approval of the ACC.

(2) Construction will be in accordance with the Required Plans approved by the ACC.

(3) Any exterior changes after final approval by the ACC of the Required Plans must be approved in writing by the ACC prior to construction of those changes.

(4) Inspections of the Improvements and construction site may be made by representative(s) of the ACC.

If any of these conditions is not met, the Approval Letter shall terminate and be of no further force or effect, and the Owner shall be subject to the plan review and all other requirements set forth in this Declaration.

(j) **Failure to Act.** If the ACC fails to provide Owner with written notice of its decision within the applicable period specified in **Exhibit D** hereto, after submission by Owner of the Required Plans (subject to the ACC's rejection thereof and/or request for additional documents or information), it shall be conclusively presumed that the ACC has approved such plans; provided, however, that a deemed approval of any plan submittal shall not permit a violation of any of the terms of this Declaration, nor extend to any deviation from or alteration to the plans actually submitted, nor to any matter requiring a written variance.

(k) **Decisions Final.** All decisions of the ACC shall be final and binding, and there shall be no revisions of any action of the ACC except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of Improvements or threatened construction of Improvements in violation of this Declaration, any Owner, the Association, or Declarant may seek to enjoin such construction or seek other relief against the Owner or builder responsible therefore, provided that Owner shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of suit as provided herein.

(l) **Compliance Inspection.** The ACC may, but is not required, to inspect any Lot or Improvements for compliance with such considerations as setbacks or other specific, objective construction requirements. The ACC's agent may inspect those items reviewed by the ACC, including inspection for conformance to the site plan (grading and drainage), building plan, landscaping plan, and exterior design, colors and materials. If

the ACC determines that significant field discrepancies exist, the ACC may notify the Owner of the nature and extent of the discrepancy. Written clarification must be supplied by Owner to the ACC within ten (10) working days of receipt of such notification. If clarification by the Owner is not forthcoming or is determined to be inadequate by the ACC, the ACC may at its sole discretion retain a private consultant for the purpose of obtaining an outside opinion. All reasonable professional fees and expenses associated with this procedure may be assessed by the ACC against and collected from the Owner.

(m) **Limitation of Liability.** Neither the Declarant, the Association, the ACC, nor any of the members, partners, officers or directors thereof, shall be liable in 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 of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications or requests for variance.

(n) **Turnover of ACC Authority.** The ACC shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof. Upon completion of construction of the last residence in the Subdivision or such prior time as Declarant may elect in writing, the Association, acting through its Board of Directors, shall succeed to the powers of Declarant with respect to the ACC and shall thereafter have the right and obligation to appoint the members of the ACC. Upon turnover of the ACC to the Association by the Declarant: (i) the Board of Directors of the Association shall appoint five (5) or more members to the ACC to replace the then existing Members of the ACC, and from and after such turnover, each member of the ACC shall have one (1) vote; (ii) the ACC shall be under the jurisdiction of the Board of Directors and shall function as any other committee that may be formed by the Board; (iii) the ACC shall receive its orders from the Board and shall follow the guidelines in reporting to the Board as deemed necessary by the Board; and (iv) by order and majority of the Board, any member on the ACC may be removed and a replacement named by the Board at any time as deemed necessary by the Board.

(o) **GOVERNMENTAL PERMITS. IN ADDITION TO COMPLIANCE WITH THE COVENANTS, CONDITIONS AND RESTRICTIONS AND THE REQUIREMENT FOR ACC APPROVAL OF ALL REQUIRED PLANS AS SET FORTH IN THIS DECLARATION, EACH PROSPECTIVE PURCHASER AND LOT OWNER IS ADVISED THAT EACH LOT OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED PERMITS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION OR ALTERATION OF ANY IMPROVEMENTS ON ANY LOT, INCLUDING, WITHOUT LIMITATION, APPLICABLE PERMITS ISSUED BY THE CITY OF TERRELL HILLS FOR CONSTRUCTION WORK; DEMOLITION; ROOFING; CURB CUTS, DRIVEWAY APPROACHES AND STREET CUTS; GAS, ELECTRIC AND PLUMBING FACILITIES; INSTALLATION OF SATELLITE DISHES AND SIMILAR APPURTENANCES; TREE TRIMMING; FENCES AND WALLS OVER SIX FEET (6') HIGH; WALLS; SPRINKLER SYSTEMS; AND, HEATING AND AIR CONDITIONING SYSTEMS. ALL IMPROVEMENTS LOCATED, ERECTED, CONSTRUCTED AND**

INSTALLED UPON ANY LOT SHALL CONFORM TO AND BE CONTINUOUSLY MAINTAINED IN ACCORDANCE WITH ALL APPLICABLE GOVERNMENTAL REGULATIONS.

4. GENERAL RESTRICTIONS.

(a) **Permitted Uses.** The Properties shall be used for residential purposes only, either for the construction of private single-family residences, including an enclosed private garage for not less than two (2) automobiles or as part of the Common Areas; provided, however, that only one (1) such private single-family residence may be constructed, or otherwise placed upon, any one Lot. The terms "residential purposes" as used herein shall be held and construed to exclude any business, commercial, industrial, apartment house, hospital, clinic and/or professional uses, and such excluded uses are hereby expressly prohibited, subject solely to the use by each Builder Member of residences within the Properties as temporary sales offices and model homes for the display and sale of Lots within the Properties and no others. This restriction shall not, however, prevent the inclusion of permanent living quarters for domestic servants or prevent domestic servants from being domiciled with an Owner or resident.

(b) **Animals.** No animals, livestock, poultry, exotic, vicious or dangerous pets/breeds of any type, including but not limited to, pit bulls, boa constrictors or ferrets, that may pose a safety or health threat to the community, or animals that may hunt or prey on birds, shall ever be raised, kept, bred, or harbored on any portion of the Properties, except that dogs or other common household pets [not to exceed a total of three (3) adult animals] may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and provided further that such common household pets shall at all times, except when they are confined within a private single-family residence or Lot upon which same is located, be restrained or controlled by a leash, rope, or similar restraint or a basket, cage, or other container. For purposes of this Declaration, "adult animal" shall mean animals one (1) year of age or older. All animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It shall be the responsibility of the Owners of such household pets to prevent the animals from running loose or becoming a nuisance to the other residents.

(c) **Builder Approval.** Except for maintenance, repair or construction activities being undertaken by contractors at the direction of the City, no construction of any building, fence, wall, recreational facilities, landscaping, outbuilding or other structure or any other Improvement shall be commenced on, in, or within the Properties until the primary contractor to perform such construction shall have been approved in writing by the ACC. If the ACC fails to approve or disapprove a written request for the approval of a primary contractor to perform such construction within thirty (30) days after such request is submitted to it, such approval will not be required, and the provisions of this **Section** will be deemed to have been fully complied with. Notwithstanding the foregoing, all primary contractors for construction of a residence or other permitted improvement on a Lot must be currently registered and in good standing with the Texas

Residential Construction Commission in accordance with the Texas Residential Construction Liability Act.

(d) **Commercial Tracts.** The Commercial Tracts are excluded from the covenants, conditions and restrictions set forth in this Declaration for all purposes, except that the Commercial Association shall share the maintenance expenses of the Parkway Median as set forth in **Section 8** herein. The Commercial Tracts may be developed within Declarant's sole and absolute discretion, subject to applicable City zoning ordinances.

(e) **Use of Common Areas.** The following restrictions shall apply to the Common Areas:

(1) No maintenance, trimming, cutting or removal of any vegetation situated in the Common Areas may be undertaken by or on behalf of an Owner or by anyone other than the Declarant or a party expressly authorized by Declarant to do so.

(2) No activities shall be conducted or permitted by any Owner in the Common Areas which would cause the Common Areas to have an unattractive appearance, which would constitute a nuisance or a material annoyance or disruption to the other Owners, or which would obstruct the Common Areas in any way.

(3) No permanent or temporary storage of any personal property or materials shall be permitted in the Common Areas.

(4) No motorcycles, motorbikes, off road recreational vehicles or other similar motorized vehicles will be permitted in any greenbelts, trails or other designated portions of the Common Areas without the prior written approval of the ACC. The ACC reserves the right to promulgate reasonable rules and regulations from time to time governing the use of any such vehicles within the Common Areas.

(5) No firing of guns, shooting of arrows or other similar dangerous or objectionable conduct shall be permitted in the Common Areas.

(f) **Construction Materials and Debris.** Each Owner and Builder Member shall provide sufficient dumpsters, of a size and location approved by the ACC, to handle all construction debris, which dumpsters shall be regularly used and emptied to keep construction debris from accumulating on Lots. In particular, all refuse or waste material generated from such builder's construction shall be placed therein and picked up for disposal on a regular basis. Additionally, the Owner and Builder Member of a residence undergoing construction shall be responsible for providing sanitary bathroom facilities to accommodate all contractors and subcontractors during the construction period. These requirements are intended to facilitate the goal of the Declarant and the Association to maintain the Subdivision in a clean and respectable manner. If an Owner or Builder Member unreasonably violates this objective, the Declarant's and/or the Association shall have the option to initiate cleanup of the Lot, and/or place facilities on the Lot necessary to maintain the referenced goal. In the event such action becomes

necessary, the costs and expenses of same shall be imposed upon the Owner, and shall become a lien on the Lot as described in **Section 7(k)** herein.

(g) **Construction and Design Restrictions.** In order to protect the overall integrity of the Subdivision as well as the quality and appearance of improvements of all Owners within the Subdivision, the ACC shall have the right, but not the obligation, to control all construction, development and improvement activities of any kind within the Subdivision, and to insure that all such activities are properly conducted in accordance with and in good workmanlike manner, and in accordance with standard industry trade practices. Traditional style architectural designs are encouraged. No geodesic, A-Frames, log homes, or free style architectural designs shall be permitted. Owners are encouraged to submit preliminary or conceptual plans and specifications of front elevation (and side elevation on corner lots), materials specifications, and the positioning of the Living Unit upon the Lot to the ACC for review and comment, prior to the completion of final plans and specifications. Prior to the commencement of any construction, all final plans and specifications must be approved in writing, by the ACC, and by the City, as applicable.

(h) **Firearms, Projectiles and Weapons.** The discharge of any firearm, including BB guns and pellet guns, within the Subdivision is strictly prohibited and each Owner shall ensure that his guests and family members do not violate such prohibition. Additionally, there is prohibited the use of any bow and arrow, slingshot, paintball, or other launching or catapulting device except strictly within the confines of a Lot and not involving the hunting or killing of any animal. The discharge of all fireworks within the Subdivision or any property owned by Declarant or the Association is prohibited.

(i) **Hazardous Activities.** No activities shall be conducted on the Properties and no Improvements shall be constructed on the Properties which are or might be unsafe or hazardous to any Person or the Properties. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Properties, no open fires shall be lighted or permitted, except within interior and exterior fireplaces designed and built according to industry standards and all applicable laws, codes and statutes, or in contained barbecue units for cooking purposes while attended by a responsible adult.

(j) **Hazardous Materials and Burning Prohibited.** Except with the express written approval of the ACC, no butane, propane or other combustible fuel tank or container shall be installed or kept on any Lot except for (1) portable, small sized tanks used solely to fuel barbecue units or portable tools, (2) fuel tanks installed in vehicles, boats or equipment, or (3) a reasonable number of portable cans/tanks used to refuel equipment or vehicles. No open fires shall be permitted on any Lot except those within a safe, well-designed interior fireplace or those within a contained barbecue unit which is attended while in use for cooking purposes only. The burning of any materials will not be allowed including, but not limited to brush and building materials on any Lots, Common Areas, or greenbelts within the Properties.

(k) **Maintenance.**

(1) Improvements. Each Owner is responsible for keeping all Improvements on their Lot in a neat, well maintained, and attractive fashion. No Improvement shall be allowed to be left in a state of disrepair, damaged, or in a condition which appears to be excessively weathered or worn.

(2) Irrigation Systems. Each Owner is responsible for maintaining his irrigation system in working order at all times.

(3) Lot and Lawns and Plantings. The Owners of all Lots shall keep grass and vegetation well mown and trimmed, shall promptly remove all weeds as they grow and all trees, shrubs, vines and plants which die or are diseased, and shall keep all yard areas in a sanitary, healthful, and attractive manner. Lawns, front and back, must be mowed at regular intervals (maintained at less than six inches (6") in height), and fences must be repaired and maintained in an attractive manner. No objectionable or unsightly usage of Lots, or condition on any Lot, will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot.

(4) Oak Wilt. All Owners are advised to secure from the Texas Forest Service, local county agent, Texas Extension Forester at Texas A&M University, or elsewhere, information on oak wilt and other diseases which may infect their trees and may spread to trees on other Lots. Each Owner is responsible for taking such action as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always will spread from a diseased tree to its neighboring oaks, at a minimum, each Owner shall:

- (i) Properly destroy all infected oaks;
- (ii) Avoid unneeded pruning of and immediately apply dressing to all wounds on oaks. It should be noted that the period of February 1 to June 1 is the most susceptible.
- (iii) Where oak wilt is detected, trench three feet (3') deep in advance of infection front (100 feet is recommended) to stop the spread through connecting roots;
- (iv) Avoid infected oak firewood. As a precaution, no oak wilt infected firewood should be kept for more than one heating season and firewood should be cut only in the summer;
- (v) Use fungicide propiconazole to treat uninfected oaks when Owner becomes aware of oak wilt nearby.

The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant nor the Association shall be liable to any Owner in connection with the existence or spread of oak wilt on any Lot. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any one of them, such default continuing ten (10) days from date of a written notice thereof deposited in the United States mails, Declarant, or the Association may, without liability to Owner or any occupants in trespass or otherwise, enter upon said Lot, cut or cause to be cut, such lawn, weeds and grass not being maintained, remove or cause to be removed, such dead vegetation, garbage, trash and rubbish or infected oak trees, or do any other thing necessary to secure compliance with the terms of this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work, plus a reasonable administrative charge and reasonable attorney's fees. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the provisions hereof or otherwise as provided by law.

(5) Vacant Lots. Until a Living Unit is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its reasonable judgment, and have dead trees, shrubs and plants removed therefrom. Declarant and/or the Association may also, at its option, after ten (10) days written notice, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of such Lot shall be obligated to reimburse Declarant and/or the Association, as applicable, for the cost of any such maintenance or removal upon demand. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the provisions hereof or otherwise as provided by law.

(6) Owner's Responsibilities. In the event an Owner is advised by the Board, or by an agent of a management company hired by the Board to assist with administration of Association business that the condition of their property is in violation of this **Section**, the Owner shall undertake whatever measures are necessary to cure the non-conforming condition as soon as it is reasonably practicable to do so.

(l) **Mining and Drilling.** No oil or natural gas drilling, oil or natural gas development or oil refining or quarrying, or mining operations of any kind shall be permitted upon any portion of the Properties, nor shall oil, natural gas, or water wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or within any portion of the Properties. No derricks or other structures for use in the boring or drilling for oil, natural gas, minerals or water shall be erected, maintained or permitted upon, in or within any portion of the Properties.

(m) **Noise.** No exterior speakers, horns, whistles, bells or other sound devices (other than alarm devices used exclusively for security purposes) shall be located, used or

placed on any of the Properties without the express written approval of the ACC as to such system, including, without limitation, speaker placement, permissible sound levels, and other specifications. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Properties so as to be offensive or detrimental to any other portion of the Properties or to its occupants.

(n) **Numbering.** House numbers identifying the address of each Living Unit must be placed as close as possible to the front entry so that the numbers can be easily read from the street at night. Size, color and material of the numbers must be compatible with the design and color of the house. If address identification numerals attached to the home are not visible from the street, a single marker near the driveway may be approved. The marker must be either of (1) a stone that blends in with the surrounding topography and landscape character, or (2) constructed of materials that are consistent with the main residence's materials, finishes, and color palette. Address markers may not exceed three feet (3'-0") in height and four feet (4') in width. Markers must be located outside of the street right-of-way and within 10' feet of the driveway on such Lot. The ACC may establish a consistent style and size of house numbers and/or address markers.

(o) **Nuisances .** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units or their Owners or residents.

(p) **Parking and Storage of Vehicles.** No boat, trailer, tent, recreational vehicle, camping unit, wrecked, junked, inoperable, self propelled or towable vehicle, equipment or machinery of any sort shall be kept, parked, stored, or maintained in any portion of the front yard in the front of the building line of the permanent structure and shall be parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area, which shall be approved by the ACC, which prevents the view thereof from any Subdivision street, the Common Areas, or adjacent Lot.

No dismantling or assembling of motor vehicles, boats, trailers or other machinery or equipment shall be permitted in any front yard, driveway, or within view of an adjacent street or Common Area. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an enclosed structure or a screened area, which shall be approved by the ACC, which prevents such view thereof from adjacent Lots and streets, unless such vehicle is temporarily located for the purpose of serving such Lot. No camper, boat, trailer, equipment, or machinery shall be parked in front of any residence for a period in excess of twenty-four (24) consecutive hours.

The Board of Directors is empowered to establish additional rules and regulations relating to the parking and storage of vehicles, equipment, and other

property both on Lots and the Common Areas (including Subdivision streets and in parking islands) as it may from time-to-time deem necessary to ensure the preservation and appearance of the Subdivision as a first class residential neighborhood. Such rules and regulations shall, when promulgated, be in all respects binding on and enforceable against all Lot Owners, provided, however, no such additional rules or regulations shall in any manner revoke or relax any of the restrictions of use set forth in this **Section 4**. During the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of such necessity only.

(q) **Repair and/or Restoration of Buildings.** In the event of fire or other casualty causing damage to improvements on a Lot, the Owner of the Lot shall promptly remove all debris and promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof. Such removal of debris and repair, restoration or replacement shall be commenced within thirty (30) days of the casualty and shall be completed in a good and workmanlike manner using exterior materials identical to those originally used in the structures, except with the written consent of the ACC.

To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within thirty (30) days after the occurrence of such damage or destruction, and thereafter prosecute same diligently to completion, or if the Owner does not clean up any debris resulting from any damage within thirty (30) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement or cleanup, and such Owner shall be personally liable to the Association for the cost of such work and the Lot shall be subject to the lien of the Association for such costs; provided, however, that if the Owner is prohibited or delayed by law, regulation or administrative or public body or tribunal from commencing such repair, restoration, replacement or cleanup, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed.

(r) **Rentals.** Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes; provided however, all lessees shall be required to comply fully with the terms, covenants and restrictions of this Declaration. During any period when a Lot or Improvements are rented or leased, the Owner of the Lot shall remain liable for complying with all terms of this Declaration. No "time-share plan" or any similar plan of fragmented or interval ownership of said Single Family Unit shall be permitted on the Properties.

(s) **Resubdivision and Consolidation of Lots.** No Lot may be subdivided except with the prior written consent of Declarant. Any Owner owning two or more adjoining Lots or portions of two or more such Lots, may with the prior approval of the ACC and City consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other Improvements as are permitted herein. The Lot resulting from such consolidation shall bear, and the Owner thereof shall be responsible for all assessments applicable to the Lot. Provided the unimproved Lots

have been consolidated by a reasonably identifiable method, as approved by the ACC, the assessment for the consolidated Lot shall be equal to any other single unimproved Lot. When the consolidated Lot is improved with a single Living Unit, the Owner will be subject to an assessment equal to that for a single improved Lot.

(t) **Rubbish and Debris.** Except as otherwise expressly provided in this Section (4)(l)-(y), no trash, rubbish, garbage, manure, putrescible matter or debris of any kind shall be dumped or allowed to accumulate on any portion of the Properties. All rubbish, trash, or garbage shall be kept in sanitary refuse containers with tightly fitting lids, and, except as necessary for purposes of effecting garbage pickup, said containers shall be kept in an area of the Lot adequately screened by planting or fencing.

Reasonable amounts of construction materials and equipment may be stored upon a Lot by the Owner thereof for reasonable periods of time during the construction of improvements thereon provided that the same shall not be stored or kept within any drainage easement area.

It shall be the duty of each Owner to preserve the condition of surrounding properties during the construction of each residence on any Lot. No grading, dumping, disposal of trash, driving of vehicles or equipment operation or other activities shall be permitted to overlap or encroach on neighboring Lots or the greenbelts or other Common Areas. No material shall be dumped or stored in any street, green belt, Common Area, or conservation area.

It shall be the duty of all Owners and their builders to prevent trash from their activities from finding a resting place on any one of the surrounding properties, and any trash for any reason placed, moved, dumped or blown by wind onto neighboring Lots, greenbelts, conservation areas, Common Areas, open areas, or streets shall be promptly retrieved and placed in the collection facility herein required.

No lumber, gravel, bricks, sand, dirt or other material of any nature shall be placed or stored on the streets, safety lanes, greenbelts, open areas or adjoining property, nor shall tractors, graders, ditching machines or other machinery be parked or placed on said areas without express written permission from the Owner thereof received in advance.

(u) **Unsightly Articles; Vehicles.** No unsightly article shall be permitted to remain on any Lot so as to be visible from any adjoining Lot or streets within the Subdivision. Without limiting the generality of the foregoing, trailers, trucks (other than pickups not to exceed one ton capacity), boats, tractors, vans, recreational vehicles and other vehicles used or designed for use as commercial vehicles, campers, wagons, buses, motorcycles and similar two (2) and four (4) wheel motorized vehicles, motor scooters, golf carts, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in fully enclosed garages or other structures, screened from

public view. No commercial vehicle owned or driven by an owner or any resident of the Subdivision shall be parked on any driveway or street within the Subdivision. Each residential structure constructed within the Properties shall have sufficient garage space, or screened area to the rear of the residence to house all other vehicles to be kept on the Lot.

(v) **Signs.** No signs of any kind shall be displayed to the public view on any Lot, or on any vehicle or trailer parked on or adjacent to any Lot, including, but not limited to, the displaying of any signs which advertise the Lot or improvements for sale or lease, except as expressly permitted by the ACC. Each model home may be advertised by one front yard sign not larger than twelve (12) square feet, which shall have been approved in advance by the ACC as to color and design.

The ACC shall establish standardized sign criteria which permits the displaying of one sign per Lot uniform in size, color and permitted location on the Lot, which such sign can be used to identify that an Improved Lot is for sale or lease. The ACC specifically reserves the right to establish a separate set of sign standards and criteria for Unimproved Lots and to modify both such standards and criteria from time to time, but in no event shall any sign reference bankruptcy, distressed nature of sale, lease, or foreclosure. The ACC shall be contacted for information on sign style, color, where the sign inset and sign frame can be obtained.

In addition to the foregoing, political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election, and that the ACC shall have the right to regulate the size and type of political signs on Lots.

All other signage is prohibited such as, but not limited to builders/architect signs, subcontractors, lenders, and real estate companies. All signs within the Properties shall be subject to the prior written approval of the ACC. No signs are allowed on any Common Areas within the Subdivision.

Signs used by Declarant to advertise the Properties during the development, construction and sales period shall be permitted, irrespective of the foregoing, but subject to size, design, and other requirements of the ACC.

(w) **Temporary Structures and Facilities.** Except as expressly provided herein, no structure of a temporary character (sales structure, trailer, tent, shack, garage, barn or other outbuildings) shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. All structures of a temporary character must be approved by the ACC. **Notwithstanding the other provisions of this Section:**

(1) Declarant reserves unto itself and its assigns in writing the exclusive right to erect, place, and maintain such temporary facilities in or upon any portions of the Properties as Declarant in its sole discretion may determine to be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Each Builder Member may not, however, utilize more than one mobile trailer or similar vehicle as a temporary facility, but may use such as a sales or construction office only in support of sales and construction activities within the Subdivision, and each such mobile trailer or similar vehicle shall be parked only within a Lot owned by such Builder Member, the location and use of which shall have been approved in advance by Declarant or the ACC.

(2) Each Owner shall have the right to erect, place, and maintain on his Lot such temporary facilities, other than mobile trailers or similar vehicles, as may be necessary or convenient for construction of a residence thereon and each Owner engaged in the construction of residences within the Properties for sale shall have the right to erect, place, and maintain temporary facilities for offices, storage, and accumulation of reasonable amounts of construction debris while so engaged in the construction of residences within the Properties the location and use of such facilities shall have been approved in advance by Declarant or the ACC.

(x) **Utilities.** Utility services are stubbed to the property line of each Lot. Power, telephone, and cable television service locations are generally clustered at the utility easement located on one of the front corners of each Lot. The location of water point-of-connections varies from Lot to Lot. The extension of services from these stub locations to the residence is the responsibility of each Owner and must be routed to minimize disruption to any existing natural landscape. These routes must be considered in the site planning phase, and where possible, combined with other disturbances through the front setback, such as alongside the driveway. All utilities extending from the point of connection to a residence must be placed underground. Utility connections, meter boxes, and other appurtenances must be screened from view or located on a side of the building that cannot be viewed from off-site of the Lot.

Design and installation of all septic tanks and systems and other sewage disposal systems on the Lots shall be in accordance with the requirements of the City, Kendall County, and other applicable Governmental Authority. The ACC is authorized to make set back waivers and adjustments it deems necessary in connection with the authorized location of any sewage disposal system or equipment. Owners are advised that some Lots may require an authorized sewage disposal system other than a septic tank system, such as an aerobic treatment system, an evapo-transpiration unit, or a pressure dosing system. All Owners are required to determine which sewage disposal systems may be used on their Lots. The ACC is not responsible for, and will not review or approve, the design or placement of any septic system. Each Owner must have his septic tank and system properly engineered and obtain review and approval from all applicable Governmental Authority.

No outside toilets shall be used, constructed or permitted. No installation of any kind for disposal of sewerage shall be constructed or maintained which would result in untreated sewerage or septic tank drainage being drained onto or into the surface of any part of the Subdivision, or onto or into any body of water located in the Subdivision. No means of sewerage disposal may be installed, used or maintained except a septic tank, an improved gray water system or a similar or improved means of sanitary sewerage disposal which meets the requirements of and is approved by all Governmental Authority having jurisdiction thereof. No structure placed upon a Lot shall be used until sanitary sewerage disposal facilities complying with this **Section** have been completely finished. The ACC shall have the right, but not the obligation, to specify the location, orientation and drainage field of any such means of sanitary sewerage disposal, subject to the approval of all Governmental Authority having jurisdiction thereof. This **Section** is not meant to prohibit any "gray water" systems which are approved by the ACC and all applicable Governmental Authority.

(y) **Yards.**

(1) **Front Yard.** No more than ten percent (10%) of the front yard area of any Lot, excluding driveways and sidewalks, may be covered by rock or material other than dirt and vegetation except for such driveways and sidewalks as have been approved by the ACC. The "front yard area" shall be defined as that area of a Lot situated between the front Lot line and a line extending from the front of a residence to the side Lot lines.

(2) **Back Yard.** The Owners or occupants of any Lots at the intersection of streets or where the rear yard or portion of the Lot is visible to public view from a street or Common Area shall construct and maintain an inner fence or other improvements as approved by the ACC to adequately screen from view of streets and Common Area any of the following: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. Trash, garbage or other waste materials shall be kept in a clean and sanitary condition. Clothes hanging devices exterior to a dwelling shall not exceed six feet (6') in height and shall be so located as to not be visible from any street, Lot, or Common Areas.

5. **CONSTRUCTION STANDARDS AND REQUIREMENTS.**

(a) **Antennas and Flagpoles.** Antenna and satellite dishes are generally discouraged. No radio or television aerial wires or antennae or other radio or television related apparatus or equipment shall be placed or maintained on any residence or on any other exterior portion of a Lot except with the prior written approval of the ACC, which shall have the authority to disapprove the installation of same. With the prior written consent of the ACC, a satellite disc or dish of not more than eight inches (18") in diameter may be placed on a Lot where such equipment is not visible from a street or Common Area and where such location does not materially and adversely obstruct the view from an adjacent Lot.

Flagpoles of a modest size may be displayed if specifically approved by the ACC. Flagpoles must be in proportion to the modest size of the flag and may not exceed the height of the horizontal line of the roof fascia of the structure to which the flagpole is attached or most closely located.

(b) **Artificial Vegetation.** No artificial vegetation shall be installed or kept in the front or side yard areas on any Lot.

(c) **Athletic Facilities.**

(1) Tennis-court or sport-court lighting and fencing shall be allowed only with the approval of the ACC and shall meet all other applicable governmental requirements. No outdoor lighting of outdoor athletic facilities shall be permitted.

(2) Only freestanding, permanently installed basketball goals shall be permitted. Basketball goals shall not be placed within the front setback, or within the side Lot lines of corner Lots, or within five feet (5') of any interior side Lot line in the Subdivision, without the prior written consent of the ACC. In addition:

(i) All basketball backboards shall be of a clear or a smoke-colored, see-through material. The ACC will consider other quality backboard materials.

(ii) All supporting poles and stanchions shall be painted either black, dark hunter green, or other muted finish approved by the ACC.

(iii) Basketball backboards may not be affixed to the main residence building.

(iv) All basketball backboards shall be maintained in a playable condition at all times and any damaged structure shall be repaired or removed immediately.

(v) The ACC will have the right to further regulate the appearance and placement of all sporting apparatus, including basketball goals.

(3) All children's play equipment or structures shall be submitted to the ACC for review and approval. In addition:

(i) Any play structure shall be placed a minimum of ten feet (10') from the side or rear property lines and shall not exceed eight feet (8') in height as measured from top of ground to the topmost part of the structure.

(ii) Any tarps or roofing material shall be dark hunter green or wood (not painted or stained) to match the main structure. No bright or multi-colored tarps are allowed.

(4) Landscaping and fencing requirements may be established by the ACC for the purpose of screening courts and play equipment in an aesthetically pleasing manner.

(d) Building Materials, Finishes and Colors.

(1) Masonry. At least seventy-five percent (75%) of the exterior walls of the main residence buildings constructed on any Lot shall be surfaced with square cut native or regional stone, wood mold or handmade brick of muted color, or subtle hand-trowelled stucco. All materials must be approved by the ACC as not all stone, brick, or stucco fitting this description may be acceptable. Other materials of historical or unique application may be approved by the ACC. Stucco finishes must extend down to within eighteen inches (18") of finished grade with painted full parging to finished grade to match stucco. No EIF thin coat finishes will be allowed. All other finishes must extend to within eighteen inches (18") of finished grade with full parging to finished grade. Man-made stone or stucco intended to represent stone may be allowed for detail and trim work only, as approved by the ACC.

(2) Siding and Sidewall Design. Subject to the limitations imposed by **Subsection (1)** above, wood siding may be used. All other siding materials, and all siding colors, must be approved by the ACC. Absent the express written consent of the ACC, vinyl siding and aluminum siding shall not be allowed. The sidewall of each house on a corner Lot that faces a side street will be designed and completed to create an attractive appearance that is comparable to its front elevation in terms of building materials, use of architectural trim and décor, windows, doors and other relief areas.

(3) Roofing. The surface of roofs of principal and secondary structures, including garages and domestic living quarters, shall be of slate or approved substitute; clay barrel tile; large concrete barrel tile; 24 gauge standing seam metal, or 40-year dimensional composition shingles, if approved by the ACC. Metal roofs shall be pre-weathered galvanized, pre-weathered galvalume, or pre-finished earth-tones. No "shiny" roofs will be permitted. Slate and barrel tiles shall be natural or earth-tone in color. No wood shingle, wood shake, or composition shingle roofing is allowed. The ACC shall have the authority to approve other roof treatments and materials if the form utilized will, in its sole discretion, be harmonious with the surrounding homes and Subdivision as a whole. Pitched roofs may be gabled, shed or hipped and may range from 4:12 to 12:12, unless otherwise approved by the ACC. Flat roofs and/or lower pitched shed roofs may be approved if the roof structure is integral to the architecture of the house and the architectural style is acceptable to and approved by the ACC. The ACC shall establish roofing criteria which are directed to generally improving the quality of material used; encouraging the use of colors which are in harmony with other structures in the Subdivision; and establishing minimum pitch requirements.

(4) Finishes and Colors. The exterior colors of all Improvements on a Lot, including any repainting of Improvements, shall be subject to approval by the ACC. A sample of the masonry, roofing material, paint color(s) and any additional exterior

materials shall be submitted to the ACC for review prior to its application. Any changes to exterior material or color shall be submitted to the ACC for review.

(5) **Windows.** All windows shall be wood, clad wood, vinyl clad, or factory or job-finished painted metal or aluminum windows, and shall be stained or painted in a color compatible with the exterior color of the residence and approved by the ACC. All glass in exterior windows shall be of a color and type approved by the ACC. No bronze colored, reflective, mirror type, or stained glass is permitted.

(6) **Exterior Glass and Mirrors.** No reflective or mirrored glass shall be used on, in or for the windows or doors of any buildings or other Improvements constructed upon the Properties.

(e) **Burglar and Fire Alarms.** Each residence constructed on a Lot within the Subdivision shall be pre-wired for a perimeter burglar alarm system covering all exterior doors, entries and windows and such type, number, and location of smoke detectors as stipulated by the ordinances and/or building codes of the City or governing municipality then in effect. The ACC may, but is not required to establish, minimum standards for such burglar alarm systems and smoke detectors and shall, at such time, make the same available to Lot Owners and Builders, and may disapprove any plans and specifications not conforming to this provision or such standards.

(f) **Chimneys.** Chimneys are required to be one hundred percent (100%) masonry and will be composed of masonry matching the primary masonry used on the residence. Pre-fabricated metal fireplaces must include a decorative metal or masonry bonnet at the chimney cap to reduce the visual impact of the spark arrestor.

(g) **Compliance.** Each Owner shall comply strictly with the provisions of these restrictions as the same may be amended from time to time. Failure to comply with any of this Declaration 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 an aggrieved Owner or Declarant. Declarant makes no warranty or representation as to the present or future validity or enforceability of this Declaration, its terms or provisions. Any Owner acquiring a Lot in reliance on this Declaration, its terms and provisions shall assume all risks of the possible amendment, validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless from any damages resulting from any amendment to or invalidity or unenforceability of the Declaration.

(h) **Construction 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 Properties. 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, or similar activities, provided that such construction is pursued to completion with

reasonable diligence and as hereinafter provided, and conforms to usual construction practices in the area. No residential building including flatwork shall remain incomplete for more than twelve (12) months once the foundation construction has commenced. The ACC may, by its written approval, permit extensions of the aforesaid timeframe in its sole discretion, provided that construction is being diligently pursued.

(i) **Construction in Place.** All Improvements constructed on the Properties shall be built in place on the Lot and the use of prefabricated buildings are prohibited.

(j) **Corner Lot Residences.** Residences constructed upon corner lots shall be oriented so that the front of the residence shall face the street as approved by the ACC.

(k) **Drainage.** All storm water from any Lot shall drain into or onto contiguous or adjacent street rights-of-way, drainage easements, or retention areas. All work done on any Lot affecting or pertaining to the Lot grade, the flow of surface water drainage, the alteration or removal of any drainage or environmental berm or swale or any storm berm or swale, must be in accordance with the site grading and drainage plans prepared by an engineer selected by Declarant or the ACC to prepare such plan or plans and also in accordance with all applicable laws, codes and regulations. Within any platted drainage easements, the Owner shall not permit the following: (i) any buildings or other structures to be erected, (ii) any planting of vegetation to occur except as per a landscape plan approved by the ACC, or (iii) any reshaping, grading or other alteration of such drainageway that would impede, accelerate, divert or enhance the natural flow of water thereover.

(l) **Driveways, Sidewalks, and Curbs.**

(1) Driveways.

(i) Driveways on each residential Lot and visible from a street must be constructed of hard-surfaced asphalt, broom finished concrete, salt finished concrete, concrete pavers, or brick pavers. Pebble finish concrete will not be allowed on street side drives, walks, or porches. All materials and colors must be approved by the ACC.

(ii) All curb cuts must be professionally machine cut. No more than one curb cut per Lot shall be permitted without approval of the ACC. Driveway locations shall be only as approved by the ACC. A circular driveway may be considered by the ACC if the total impervious cover of the driveway material does not exceed 40% of the front building setback area.

(iii) Driveways shall comply with the following minimum standards, unless the ACC grants a specific variance as to such standard:

(1) Each driveway must allow for two (2) uncovered parking spaces.

(2) Each driveway shall not exceed 8% grade overall and 12% gradient at its steepest point.

(3) The paved surface of the driveway must be at least 10' wide but not more than 14' wide, except at garage approaches, with a 20' width maximum concrete approach at the street.

(4) Driveways which have more than six inches (6") of exposed concrete foundation sides shall have a masonry veneer applied or be fully parged, and additional landscaping may be required depending on the amount of exposure.

(iv) The driveway leading directly to the garage shall in all cases, and regardless of the house being on the topographically low or high side of the street, be constructed in a manner consistent with the following:

(1) The elevation of the driveway surface at a point ten (10) linear feet from the curb line shall be at least nine inches (9") higher than the pavement grade at gutter line.

(2) For Lots on the topographically low side of the street, the driveway shall be constructed with a protective swale in front of the garage to prevent runoff water from entering into the house and/or garage. Also, the driveway shall not have the effect of "trapping" a low area of ground with no other convenient route of drainage. The Lot Grading Plan will serve to indicate areas of concern.

(v) Driveways may be gated upon approval by the ACC of the location, design, materials and colors of the gate and related fencing. All driveway gates must operate on electrical power, and may not be situated forward of the front setback of the Lot. All gated driveways must coordinate with and be connected to a fence which connects to the perimeter fencing on the Lot.

(2) Sidewalks.

(i) Sidewalks are not allowed parallel to the street exclusive of the landing.

(ii) Sidewalk landings shall be approved in writing by the ACC on a case-by-case basis.

(iii) Sidewalks/entry walks/landings shall be at least four feet (4') wide.

(iv) Builders and contractors are required to clean streets immediately after sidewalks and driveways have been constructed.

(3) Curbs.

(i) All curbs shall be cut by an experienced, qualified professional curb cutter. All driveways and curb cuts must be shown on the plans submitted to the ACC and approved prior to any action being taken.

(ii) No curbing shall be ripped out to provide access for a driveway (header curb) or sidewalk approach.

(iii) Any portion of curbing which is damaged, whether during construction or afterwards, shall be repaired as soon as practicable at the sole and exclusive expense of and by the Owner of the Lot appurtenant to such damaged curb.

(4) General. Asphalt paving and loose gravel driveways or sidewalks are specifically prohibited forward of the front building line.

(m) **Exterior Equipment.** All electric service meters, air conditioning units, pool equipment, or other outdoor equipment shall be located where not in view of any street, Common Areas, or fully screened by landscaping (evergreen plants) or fencing so as not to be in view from any street or Common Areas.

(n) **Exterior Lighting.** Exterior light fixtures are required at the front door of each residence; provided, however, that no light fixture or lantern of any type shall be placed in the front yard, or in the back yard if same is visible from any other portion of the Properties or any streets, of any Lot until the same has been approved by the ACC. 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. Reasonable security or landscape, or tennis court lighting is permitted with the approval of the ACC, provided that no security lighting may be left on continuously or controlled by photocell device. Maintenance and the cost of electricity to operate street lights, if any, located on any Lot shall be the responsibility of the Association.

(o) **Fences.** Fences and walls may be approved by the ACC for any Lot within the Subdivision when needed for security, screening, and containment or sound attenuation. All fences shall be subject to the following requirements:

(1) Perimeter fencing will be limited to King Ranch net wire with stripped cedar posts, not to exceed fifty-six inches (56") in height (except as otherwise permitted herein for deer management). No top rails will be permitted on this type of fencing. Fencing will not be allowed forward of the residence on any street frontage. No chain link fencing of any type is allowed. If needed for deer management, fencing not to exceed eighty-four inches (84") in height may be installed twenty feet (20') from the side and rear property line of a Lot, but not forward of the residence on the Lot.

(2) Fencing used to enclosed driveway gated entrances may be permitted if approved by the ACC in accordance with the requirements of **Section 5(I)(1)(v)** herein and provided such fencing complies with the other requirements of this **Section**.

(3) Masonry, wrought iron, or wood privacy fences (with top rails) may be permitted, on a limited case-by-case basis, within the building setback lines. All such fences shall be limited in height to a maximum of six feet (6'-0"). All fence materials and locations must be approved by the ACC prior to installation. Masonry fences and walls must match residence in style, material, and color.

(4) The ACC is empowered to waive the composition requirements for fences and the height or setback limitation in connection with retaining walls and decorative walls if, 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 fence, decorative wall and/or retaining wall (whichever is applicable) will not detract from the general appearance of the neighborhood and it meets the requirements of the City or applicable Governmental Authority. Any materials other than cedar planks, wrought iron, or masonry to be attached to or made part of a fence must be approved in writing by the ACC prior to installation.

(5) No fence, wall or hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area as formed by the extension of curb lines and a line connecting them at points twenty-five feet (25') from the intersection of the curb lines into the street, or in the case of a rounded property corner, from the intersection of the street line extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(6) Pool and decking perimeter fencing will be required as safety fencing for pools and spas. These fences must have self-closing and self-latching gates as well as meet all other requirements under this **Section**. Pool fencing shall be installed prior to the completion of the construction of the pool.

(7) Each Owner shall maintain all fencing placed on his Lot including the reconstruction or replacement of fences which are tilted more than ten (10) degrees from a vertical position and the replacement of broken or cracked wooden pickets.

(p) **Foundation Exposure and Finished Floor Elevation.** The builder of each residence and building shall, to the extent possible, minimize the amount of exposed foundation below the brick lug, and in any event, no more than eighteen inches (18") of the foundation along all sides of the residence shall be exposed to view from any street or Common Areas. All exposed slab areas shall be parged or concealed by masonry or masonry veneer approved by the ACC. Additional landscape screening of exposed foundation may be required by the ACC. All stucco exteriors shall be fully extended to within eighteen inches (18") of final grade. All foundations shall be poured concrete slabs.

(q) **Garages and Carports.** All garages shall face and open to the rear or side Lot line, except if facing a side street on a corner Lot. In no event shall an attached garage face the primary address street or be located forward of the leading edge of the main residence. Detached garages may be allowed with ACC approval. If the garage is detached from the residence, it may open to the front if approved by the ACC. A garage able to accommodate at least two (2), but not more than four (4) automobiles must be constructed and maintained for each residence. Garage doors on corner lots which do orient directly to the street shall be no more than 10' in width and shall be in groups of two (2) or three (3). Additional door(s) must be placed in a different wall plane. Garages on model homes will be allowed to be used as a builder's sales offices but must be reconverted to use as a garage upon conveyance or occupancy of home as a residence.

(r) **Grading, Fill and Elevations.** No excessive excavation or fill will be permitted on any Lot. Every effort must be made to minimize cut and fill necessary for the construction of a residence on a Lot. Excess fill may not be placed on a Lot and must be legally disposed of outside of the Subdivision. For Lots adjacent to a 100 year flood plain, the finished house pad elevation must be a minimum of two feet (2') above the 100 year flood plain elevation. Excavation for finished grade changes may not exceed five feet (5') in vertical depth. Grading must be limited to that reasonably necessary for the construction of a residence. Topographic transition from building locations to setbacks must appear natural. Grading near the setbacks may not result in abrupt transitions to adjacent Lots or streets. No structures may be constructed on portions of a Lot where the slope exceeds 30% unless specifically approved by the ACC.

(s) **Guttering.** Guttering shall not be required but all dwellings with guttering must be guttered with downspouts being so situated as to minimize adverse drainage consequences for adjoining Lots and shall blend with the exterior of the house.

(t) **Landscaping and Irrigation.** The following provisions shall be applicable to landscaping and irrigation of the Lots in the Subdivision:

(1) **Landscape Zones.** A Lot may contain one or more landscape zones and each zone must be identified on the landscape plan. Each zone is intended to fulfill a particular function, and certain plant species are only acceptable for use in specific zones. The following landscape zones are established for the Subdivision: Enhanced Landscape, Transitional Landscape, and Natural Landscape. The Landscape Zones are defined as follows:

(i) **Natural Landscape.** Natural Landscapes are suitable for use within all residential areas. Natural Landscape Zones which are disturbed before, during, and subsequent to construction will be restored to their original condition. Natural Landscape Zone designs will generally simulate landscape conditions that occur in adjacent undisturbed landscape areas typical of the *Menger Springs* ecosystem. Planting arrangements must be random to replicate natural patterns. Indigenous plant species and densities should be similar to the adjacent natural area. A temporary drip

irrigation system will be required to aid establishment of potted and transplanted specimens. In order to avoid conspicuously verdant and lush growth in the Natural Landscape Zone, permanent and spray irrigation is not permitted.

(ii) Transitional Landscape. Transitional Landscape areas will generally occur where a buffer zone is necessary to protect native vegetation from the additional irrigation and increased maintenance needs that normally occur in the Enhanced Landscape Zone. The Transitional Landscape Zone includes plant species, which while still indigenous, provide an obvious bridge between the Natural Landscape Zone and the Enhanced Landscape Zone. Plantings in this zone provide the opportunity, while simulating the character of the natural landscape, to add human enhancement to the existing vegetation. This zone will likely require more maintenance and limited permanent irrigation.

(iii) Enhanced Landscape. Enhanced Landscape Zones are those adjacent to the structure(s) intended for high intensity use areas near streets, entries, porches, terraces, swimming pools and decks. Landscaping in the Enhanced Landscape Zone must have a direct relationship with the built environment and should never appear isolated from the home. The Enhanced Landscape Zone offers the broadest use of plant species, provides a more finished appearance and usually requires regular maintenance and irrigation. The purpose of the Enhanced Landscape Zone is to allow for the Owners who wish to provide personalized landscaping to do so as long as it relates to the structures. The intent is that this landscaping be clearly linked to the house and that it be used as an extension of the living area.

(2) Plans. All landscape designs must be submitted to and approved by the ACC prior to installation of any landscaping. In connection with the initial construction of a residence, each Owner, builder or his landscape contractor will furnish the ACC two (2) copies, at minimum 1"=10' scale, of a detailed landscaping plan. The ACC may modify the requirements of submittals to facilitate review of plans for various building programs. All plans shall be submitted to the ACC for review in determining their consistency and compatibility with the design and character of adjacent Lots and the Subdivision as a whole. Such plans shall be drawn to scale and shall include delineation of existing or proposed structures, pavement and other site features, and designate by name, size and location the applicable landscape zone and the plant material to be installed in each landscape zone.

After a landscaping plan has been approved and instituted, each Owner is required to submit to the ACC a written request for any change in the plan, each such Owner shall at all times maintain the minimum required vegetation, and each Owner shall be charged with the responsibility of replacing any vegetation which shall thereafter die or is destroyed or removed.

Installation of all landscaping and irrigation systems must be completed within one hundred twenty (120) days of first occupancy in accordance with the landscape plan approved by the ACC.

(3) Plant Materials. All plant materials must be submitted to and approved by the ACC as part of the landscape plan. The ACC shall maintain and make available to all Owners an approved plant list for each landscape zone. Each Owner shall make every effort to preserve significant natural vegetation. Appropriate procedures consistent with sound nursery practices shall be employed in all cases.

The use or preservation of natural vegetation is intended to be sensitive to the natural plant species especially those which require minimal watering. This is not however intended to allow weeds, non-maintained, peculiar, or radical landscape to exist. The definition and interpretation of appropriate natural areas, wildscapes, native plants, drought tolerant and indigenous shall be at the sole discretion of the ACC.

In order to help Owners and their landscape designers, the National Wildflower Research Center publications "Native Plant Bibliography for Texas", "Texas Sources for Native Plants and Seeds", "Gardening and Landscaping with Native Plants", and "Wildflower Meadow Gardening" are maintained by the ACC for inspection and reference. In addition, the National Wildflower Research Center has consultants available at a nominal fee to help Owners either by prepaid telephone conversations or personal appointments. A list of native plants and publications are available, on request, from the ACC.

Complete landscaping in front yard and, for corner Lots, along the side yard adjacent to a street is required. The use of drought tolerant grasses is encouraged.

All planted or landscaped areas should be mulched with at least four (4") inches of native mulch.

Additional evergreen planting will be required to screen the broad expanse of concrete for circular driveways, or a three (3) or four (4) car garage driveway that side loads from a side street.

A twenty four inch (24") vertical berm or twenty four inch (24") material is required in planting areas of circular driveways and parking courts in order to screen the broad expanse of concrete.

(4) Turf. Turf areas shall be limited to the area within 75' of the main residence on each Lot in accordance with the City of Boerne requirements. Owners are encouraged to minimize lawn areas to avoid excessive use of water and to minimize the use of fertilizers and pesticides necessary for maintenance. Turf grass shall be limited to types found on the acceptable plant list maintained by the City and the ACC.

(5) Hardscape. Natural building materials such as stone, clay bricks, or concrete pavers are approved materials for exterior ground surfaces. Stained and/or patterned concrete is also acceptable. Where possible, colors should blend into the existing ground plane. All retaining wall material shall be approved by the ACC. No railroad tie retaining walls are allowed. Statues, statuary fountains, multiple tier

planters, concrete and other lawn furniture are prohibited in front and side yards. All hardscape selections must be presented to and approved by the ACC as part of the landscape plan.

(6) Irrigation. Automatic irrigation systems are required for the Enhanced Landscape Zone. Temporary drip irrigation systems are allowed to establish native and transitional landscapes. In accordance with the City of Boerne requirements, the allowable irrigated area shall be limited to that area that lies within 75' of the main residence on each Lot. However, the geometry of the irrigation area that would be within the 75' perimeter of the main residence may be adjusted to accommodate topography, easements, right of ways and other factors that would preclude the practical use of the irrigation system, provided that the adjusted irrigation area shall not exceed the total area that would have been provided by the 75' perimeter of the main residence. Irrigation systems must be installed with rain sensors. Each Owner shall be responsible for watering and maintaining the landscaping on his Lot including landscape easements and pedestrian easements.

(7) Landscape Lighting. Landscape lighting is only allowed when approved by the ACC and when the submittal indicates the lighting scheme is limited in area and in intensity. The purpose of landscape lighting is to provide for safety and diffused mood lighting only, not for decoration. Step lights, pole and pilaster mounted fixtures may be allowed when placed appropriately. Filters and shields are required to hide the light source. Fluorescent, metal halide, or low pressure sodium lamps are not allowed. No light fixtures are allowed in setbacks.

(8) Variances. In addition to the variance powers of the ACC hereinafter set forth, the ACC shall have the right to grant a variance or waiver of the requirements of this **Section** of the landscaping standards from time to time promulgated in such instances as it shall determine that such waiver is advisable in order to accommodate a unique, attractive or advanced landscaping concept, design or material and the resulting appearance, in the opinion of the ACC, will not detract from the general appearance of the neighborhood. No such variance or waiver shall be presumed and any such grant of variance or waiver shall be in writing.

(u) **Tree Protection**. Maintenance of the trees within the Subdivision is strongly encouraged. Prudence, care, and discretion should be used in the positioning of all Improvements in order to preserve as many trees as possible within the Subdivision. During construction, soil around tree root systems must be protected from compaction and erosion at the drip line of each tree. Replacement of trees that are removed or die is encouraged. All precautions shall be taken in connection with the pruning and trimming of trees, in order to prevent the spread of oak wilt and oak decline within the Subdivision. Such precautions shall include, but not be limited to minimal trimming and pruning of oak trees, trimming and pruning during dormant months only (normally January and February), and painting all fresh cuts with appropriate dressing or paint.

(v) **Pesticides, Herbicides, and Fertilizers.** Traditional commercially produced chemicals are not to be used in the Subdivision. Alternative, naturally occurring fertilizers and pesticides may be used.

(w) **Mailboxes.** No mailboxes or similar receptacles shall be installed or maintained on a Lot, it being contemplated that there shall be one or more central mail areas situated upon the Common Areas or Lots.

(x) **Outbuildings.** Every outbuilding, inclusive of such structures as a storage building, pool house, servants' quarters, greenhouse or children's playhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. The design, materials and location of all such buildings shall be subject to the prior written approval of the ACC. Prefabricated storage buildings are not permitted. In no instance shall an outbuilding exceed one (1) story in height other than a detached garage, nor shall the total floor area of any outbuilding other than a detached garage exceed ten percent (10%), individually or in the aggregate, of the floor area of the main dwelling.

Every proposed addition or exterior modification to any structure or improvement shall be subject to the terms of this Declaration and the plans and specifications for same shall be submitted to the ACC for approval.

Accessory buildings, including but not limited to, detached private garages, green houses, tool sheds, portable storage buildings; bath houses; gazebos; bona fide servants quarters not for rent; nonpaying guest houses or rooms for guests within an accessory building but not for permanent residence, but for the use of servants employed on the premises, when detached from the principal main building and located in the rear yard within the side and rear setback lines for said Lot. When the accessory building is directly attached to the principal main building by a breezeway, such accessory building shall be considered an integral part of the principal main building. The breezeway may be considered a part of an accessory building when the breezeway extends into the required rear yard.

(y) **Solar Panels and Systems.** No solar panels or solar heating or electrical system or similar apparatus shall be placed in or upon any Lot without the prior approval of the ACC which shall have the authority to disapprove the installation of same or to limit the installation of same so that no portion thereof is visible from any street or Common Area and where such location does not adversely affect the view from an adjacent Lot.

(z) **Structures: Placement on Lots, Size and Height:**

(1) **Setback Lines.** All buildings or other structures, permanent or temporary, habitable or not, must be constructed, placed and maintained in conformity with the setback lines hereby established and those shown on the Subdivision Plat, if any. In no event shall any such building or other structure be constructed, placed or maintained except in accordance with the following:

MINIMUM SETBACK REQUIREMENTS	
Front Setbacks	seventy-five feet (75')
Side Setbacks	twenty feet (20'), except for the street side of any Lot which shall be thirty feet (30')
Rear Setbacks	seventy-five feet (75')
Driveway	five feet (5')
Flood Plain	If any part of the Lot is within the 100 year flood plain, the limits of the 100-year flood plain shall constitute the minimum setback requirement if greater than the setback specified above.

Notwithstanding the foregoing, for good cause shown, a residence or garage may be allowed to be erected closer than the required setback to the front boundary line of a Lot with written approval of the ACC, provided there shall be no projections nor encroachments into any utility or drainage easement. Eaves of buildings shall not be deemed to be a part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure for the purpose of this **Section**. The ACC shall have the right to grant variances to the setbacks established in this **Section** to accommodate topography, existing trees and vegetation, or rock outcroppings on a Lot or the architectural design of the proposed improvements. In no event may any structure be constructed or maintained upon any utility easement or other easement. All variances to setbacks must be approved in writing by the ACC and may also require approval by the Board of Adjustments or other applicable department of the City.

(2) **Size.** Each one (1) story or one and one-half (1½) story building or structure shall contain not less than 2,500 contiguous square feet of living area, and each two (2) story building or structure shall contain not less than 2,800 contiguous square feet of living area, such areas to be exclusive of open or screened porches, terraces, patios, driveways, carports, garages, and living quarters for domestic servants separated or detached from the primary living area.

(3) **Height.** No building or structure erected, altered or placed on, within or in the Properties shall exceed thirty-five feet (35') in height (measured from average finished ground level within building setbacks to the highest point of the roof's surface, if a flat surface, or to the deck line of mansard roofs; or to the mean height level between eaves and ridge for hip and gable roofs) nor be more than two (2) stories in height excluding basements and attics; provided, however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of building and structures shall be complied with at all times. In measuring the height of a building, the following

structures shall be excluded: chimneys, towers, ornamental cupolas, domes or spires, parapet walls not exceeding four (4) feet in height, and basements.

(aa) **Swimming Pools/Spas.** Any swimming pool/spa constructed on a Lot must be enclosed with a fence or other device completely surrounding the swimming pool/spa which, at a minimum, satisfies the City Code and all other applicable Governmental Regulations. Pool/spa fencing shall be installed prior to the completion of the construction of the pool/spa. Nothing in this **Section** is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable Governmental Regulations concerning swimming pool/spa enclosure requirements. All plans for swimming pools/spa, and all related fencing, construction and access must be submitted to the ACC for approval prior to the start of construction. When swimming pool/spa construction accompanies the initial construction of a residence, such plans (include clear site plans) shall accompany the submission of plans for the residence. Above ground pools are not permitted. Swimming pool filter tanks shall be fully screened from view of all streets and other Lots or buried in conformity with applicable Governmental Regulations.

(bb) **Pet and Dog Runs.** Dog runs may provided on a Lot when approved in advance by the ACC. Dog runs must be integrated to the fullest extent with the primary residence and may not be freestanding. Chainlink fencing of any type is not allowed.

6. **MENGER SPRINGS HOMEOWNERS ASSOCIATION.**

(a) **Creation.** Declarant has taken or shall take all steps necessary to create Menger Springs Homeowners Association, which shall be the non-profit, self sustaining corporate homeowner's association for the Subdivision (and any other properties Declarant subjects to the jurisdiction of the Association), which Association may elect to do business pursuant to an assumed name determined by the Board. Declarant may assign to the Association, on a permanent or temporary basis, one or more of the rights, powers, obligations and duties of the Declarant under this Declaration.

(b) **Membership and Voting.** Every person or entity who is a record Owner of a fee or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association shall be a Member of the Association; provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation, shall not be a Member.

(c) **Classes of Members.** The Association shall have two classes of voting membership:

(1) **Class A.** Class A Members shall be all those Owners defined in **Subsection (b)** above, with the exception of the Declarant and Builder Members. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and 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 such Lot.

(2) **Class B.** Class B Members shall be the Declarant and Builder Members. Class B Members shall be entitled to three (3) votes for each Lot in which they hold the interest required for membership, provided that the Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership (including the future class B members to be annexed to the jurisdiction of the Association); or

(ii) On January 1, 2025.

From and after the happening of either of these events, whichever occurs earlier, the Class B Members shall be deemed to be Class A Members entitled to one (1) vote for each Lot in which they hold the interest required for membership under **Subsection (b)** of this **Section**.

(d) **General Powers and Duties of the Board of Directors of the Association.**

The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

(1) To execute all declarations of ownership for tax assessment purposes and with regard to the Common Areas, if any, on behalf of all Owners.

(2) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board sees fit.

(3) To enter contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association, including, without limitation, to enter into contractual arrangements with the Commercial Association with respect to the maintenance of the Parkway Median.

(4) To protect or defend the Common Areas from loss or damage by suit or otherwise and to provide adequate reserves for replacements.

(5) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Areas, by the Owners in the portions affected.

(6) To make available for inspection by Owners within sixty (60) days after the end of each year an annual report or to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

(7) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(8) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(9) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

(10) To contract for all goods, services, and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

(11) To contract with any Owner or other person or entity for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

(e) **Turnover.** At any time after commencement of operations of the Association, at Declarant's sole discretion, the Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith ("Turnover"). Upon such Turnover by the Declarant, the Owners within the Subdivision will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of this Declaration and to establish any and all bylaws, procedures and other management devices by which the Association shall operate. After Turnover, any Board Members/Directors must be Owners within the Subdivision. Notwithstanding anything to the contrary, until such Turnover has taken place, the management of the Association shall be by Declarant and/or its agents and representatives, and any expenses incurred in such management shall be reimbursed to Declarant by the Association, including, without limitation, the cost of Declarant and/or its agents and representatives for the time spent in the management of the Association. **FROM AND AFTER THE TIME OF SUCH TURNOVER, THE ASSOCIATION SHALL INDEMNIFY AND HOLD DECLARANT HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS OR DAMAGES OF EVERY KIND ARISING OUT OF THE DEVELOPMENT AND OPERATIONS OF THE ASSOCIATION AND THE COMMON AREAS.**

7. ASSESSMENTS.

(a) **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association, the following assessments (collectively, the "Assessments"): (1) annual assessments or charges ("Annual Assessments"), and (2) special assessments for capital improvements or extraordinary expenses ("Special Assessments"). The Assessments shall be fixed, established, and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued.

(b) **Duties of the Board of Directors.** In December of each year, the Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot for the following year and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said Assessment, a certificate in writing signed by an officer of the Association setting forth whether said Assessment has been paid or the balance due. Such certificate, when signed by an authorized officer or agent of the Association, shall be conclusive evidence of payment of any Assessment herein stated to have been paid. The Association may charge a reasonable fee for issuing such a certificate.

(c) **Date of Commencement of Assessments.** The Annual Assessments provided for herein shall not commence until the roads, sanitary sewer and water utilities to the Lot(s) are substantially complete as verified by Declarant, or such later date as the Board may determine. The first Annual Assessments shall be made for the balance of the calendar year, shall be prorated for such partial year, and shall be due and payable, and shall be collected, quarterly in advance, unless the Board of Directors shall determine otherwise. When a Lot becomes an Improved Lot after the Annual Assessment for it as an Unimproved Lot has been paid, there shall be payable as of the first day of the month following the month when it becomes an Improved Lot, a sum equal to the difference between the Annual Assessments for Unimproved Lots and the Annual Assessment for Improved Lots prorated over the balance of the year then remaining. The due date of any Special Assessment shall be fixed in the resolution authorizing such Special Assessment.

(d) **Personal Obligation and Lien Rights Associated with Collection of Assessments.** Each Lot Owner, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association regular annual assessments and all other Association dues, fees, fines, assessments or charges of any kind, including special assessments for capital improvements, which may be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to any successors or assigns in title unless assumed by them.

(e) **Purpose of Assessments.** The assessments levied by the Association shall be used for the purpose of promoting recreation, health, safety and welfare of the Members; preserving or enforcing the rights and obligations of the Owners and the Association; or for the improvement, maintenance and operation of the Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the Members, including, without limitation, the Parkway Maintenance and the Association's share of needed contributions to the Parkway Median Maintenance Fund.

(f) **Uniform Rate of Assessment.** Any and all dues of the Association or Special Assessments must be fixed at a uniform rate for all classes of Lots and may be collected on a quarterly basis in lieu of annually, as determined by the Declarant until Turnover occurs, and thereafter by a majority of the Board of Directors. Any provision herein pertaining to the annual Association dues or Special Assessments, shall be construed to mean monthly unless otherwise expressly provided herein.

(g) **Initial Assessment.** The Annual Assessments for both Improved and Unimproved Lots shall be determined by the Board of Directors in the manner herein provided after determination of current maintenance costs and anticipated needs of the Association during the year for which the Assessment is being made; provided that the Annual Assessment for Unimproved Lots shall not exceed twenty-five percent (25%) of the Annual Assessment for Improved Lots. A Lot shall be deemed to be an Improved Lot when construction of a Living Unit thereon is completed and a closing of a sale thereof has taken place, or when a Living Unit on the Lot has been occupied as a residence, whichever first occurs. All other Lots shall be Unimproved Lots. The maximum Annual Assessment for all Lots shall be subject to increase as follows:

(1) **Maximum Rate of Increase by Board.** For all Annual Assessments accruing after January 1 of the year following conveyance of the first Lot by Declarant, the maximum Annual Assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent (10%) above that of the previous year without a vote of the membership.

(2) Increase above Maximum by Board. Any increase in the maximum Annual Assessment of more than ten percent (10%) above that of the previous year shall require approval of two-thirds (2/3) vote of a quorum of each class of Members voting at a meeting duly called for that purpose.

(h) **Special Assessments.** In addition to the Annual Assessments, the Association may levy, in any assessment year, a Special Assessment on Improved Lots only, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Areas, or to finance or defray the cost of any extraordinary expense of the Association; provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the votes of a quorum of each of the Improved Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Improved Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(i) **Notice and Quorum for Actions under Subsections (g) and (h).** At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

(j) **Costs of Curing Covenant Violations.** Declarant, or the Association, has the option, but not the obligation, to perform any action required of any Owner by this Declaration. In the event that Declarant or the Association elects to do so, all sums incurred by the Declarant or the Association in performing the required action shall be charged against the Owner and if not paid within thirty (30) days after it is due said sums shall bear interest at the highest legal rate and shall be secured by a lien (the same as if said sums were due and/or Assessments) on all Lots(s) owned by said Owner. The Declarant or the Association may bring an action at law against the Owner of the Lot subject to the Assessment for payment thereof and/or bring an action to foreclose the lien which secures the Assessment.

(k) **Effect of Nonpayment of Assessments; Remedies of the Association.** If any Assessment or other sum due the Association hereunder is not paid on the date when due, then such Assessment or amount shall become delinquent and shall, together with such interest thereon and cost of collection thereof provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner to pay the same or to

foreclose the lien against the property, and there shall be added to the amount of such Assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorney's fees and court and other costs of suit.

(l) **Exempt Property.** The Assessments, charges and liens created herein shall apply only to the Lots, and the remainder of the Properties shall not be subject thereto.

(m) **Common Maintenance Area Fund.** The Board, for the benefit of the Owners, shall establish and maintain a maintenance fund ("Common Area Maintenance Fund"), into which shall be deposited the Annual Assessments collected from Owners and which shall be used, without limitation, for the payment of the following:

(1) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any;

(2) Care and preservation of the Common Areas; provided that in this connection the Association may segregate or designate certain portions of the Common Area Maintenance Fund for transfer to the Parkway Median Maintenance Fund which said latter fund will include monetary contributions made by the Commercial Association from time to time;

(3) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors, and the services of such other personnel as the Board of Directors or the manager deems advisable from time to time;

(4) Legal and accounting services;

(5) A policy or policies of insurance insuring the Association, its directors and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors;

(6) Workers compensation insurance to the extent necessary to comply with any applicable laws;

(7) Such fidelity bond as may be required by the Bylaws or as the Board of Directors may determine to be advisable;

(8) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against any individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration; and

(9) Perpetual maintenance and enhancement of the Subdivision entry wall, monument signage and adjacent grounds, landscaping, lights, irrigation and electric systems, if any.

(n) **Nonjudicial Foreclosure.**

(1) Creation of Special Deed of Trust. To secure the payment of the Assessments and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Lot governed by this Declaration conveys the Lot to the Trustee hereinafter named, in trust, for so long as these covenants, conditions, restrictions and easements shall remain in effect, such conveyance operating as a Special Deed of Trust. If an Owner fails to tender payment of Assessments or reimbursements when due, or if an Owner fails to perform any of the obligations under or maintain any condition required by this Declaration, the Association may perform those obligations, advance whatever funds may be required, and then be reimbursed by the Owner on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the dates of payment at the highest legal rate. The sum to be reimbursed shall be secured by this Special Deed of Trust.

(2) Breach of Special Deed of Trust. If the Owner fails on demand to reimburse the Association for the sums advanced or for the Assessments owed, and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured as may be required by law or by written agreement, then the Association, as the Beneficiary of this Special Deed of Trust, may:

(i) Direct the Trustee appointed herein, or his successor, to foreclose the liens created herein, in which case the Association shall give notice of the foreclosure sale as provided by Section 51.002 et seq of the Texas Property Code then in effect (or any successor statute thereto); and

(ii) Purchase the Lot at any foreclosure sale by offering the highest bid and then have the bid credited to the reimbursement or satisfaction of the outstanding indebtedness owed to the Association.

(3) Foreclosure. If directed by the Association to foreclose this lien, the Trustee shall:

(i) Either personally or by agent give notice of the foreclosure sale as required by Section 51.002 et seq. of the Texas Property Code then in effect (or any successor statute thereto);

(ii) Sell and convey the Lot "AS IS" to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty, and without representation or warranty, express or implied, by Trustee, and from the proceeds of the sale, pay, in this order:

- (a) expenses of foreclosure, including a reasonable commission to Trustee;
- (b) to the Association, the full amount advanced, attorney's fees, court and other costs, and other charges due and unpaid;
- (c) any amounts required by law to be paid before payment to the Owner; and
- (d) to the Owner, any remaining balance.

(4) Appointment of Trustee. Richard L. Kerr, Attorney at Law, is appointed Trustee for the purpose of enforcing the covenants, conditions and restrictions imposed by this Declaration, and also for the collection of the Assessments. The Association, as Beneficiary, may appoint a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate designation of substitute trustee in the Real Property Records of Kendall County, Texas.

(5) Creation of Tenancy. From and after any such foreclosure, the occupants of such Lot shall be required to pay a reasonable rent for the use of such Lot and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Lot by forcible detainer without further notice.

(6) Applicability of Texas Property Code. It is the intent of the provisions of this Section to comply with the provisions of Texas Property Code Section 51.002 as same may be amended or superceded hereafter. The President of the Association, acting without joinder of any Owner or mortgagee of any Owner, may, by amendment to this Declaration filed in the office of the County Clerk of Kendall County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002.

(7) Priority of Liens. Any liens created under this Declaration shall be superior to all other liens and charges against any Lot covered hereby except only for statutory clean-up liens in favor of the City, tax liens, and all sums secured by a first-priority mortgage or deed of trust lien of record, securing, in either instance, sums borrowed for the purchase or improvement of the Lot in question.

8. **SPECIFIC PROVISIONS PERTAINING TO THE PARKWAY MEDIAN AND RELATED FACILITIES.**

(a) **General.** Declarant has determined that the Association (together with one or more additional associations formed by Declarant, if any, having jurisdiction over any land in the Annexation Area that Declarant subsequently brings within the scope and purview of this Declaration) and the Owners of Commercial Tracts acting by and

through the Commercial Association shall share the direct costs of the maintenance of the Parkway Median and other related facilities as expressly set forth herein, on a pro rata basis. Declarant contemplates that when the Properties and Commercial Tracts have been fully developed, platted and annexed in the manner consistent with the Maser Plan, as it is amended by Declarant from time to time, approximately three percent (3%) of the resulting land mass thereof shall be comprised of Commercial Tracts and approximately ninety-seven (97%) of the resulting land mass shall be comprised of single family residential developments. The initial development of the Properties is projected to be largely residential in nature. Therefore, Declarant has determined that the Association will be responsible for coordinating and administering the Parkway Median Maintenance Fund. Each Commercial Tract Owner shall be responsible for payment to the Commercial Association as part of its annual assessments as provided in the Commercial Declaration, a pro rata share of the needed funds for the Parkway Median Maintenance Fund, from and after the date such Commercial Tract has been developed and platted as well as formally made subject to the scope and purview of the jurisdiction of the Commercial Association by Declarant via a separate Declaration of Covenants, Conditions and Restrictions pertaining to the Commercial Tracts ("Commercial Declaration"). Each Commercial Tract shall be assessed by the Commercial Association a pro rata share of the contribution for the Commercial Tracts in the aggregate bearing the same ratio to the total thereof as the number of square feet comprising such Commercial Tract shall bear to the total number of square feet comprising all Commercial Tracts. In no event however, shall the total of any contributions to the Parkway Median Maintenance Fund by the Commercial Association attributable to the Commercial Tracts ever be in excess of forty percent (40%) of the aggregate total of such needed contributions from both the single family residential and commercial sources.

(b) **Maintenance Obligations.** It is contemplated that the Declarant shall initially be responsible for installing and/or planting the landscaping and related improvements to the Parkway although portions may initially be kept in a natural state. Thereafter, the Association's obligations with respect to the maintenance thereof shall include the following activities which shall be funded from the contributions made to the Parkway Median Maintenance Fund:

(1) maintenance of any landscaping improvements situated within the Parkway Median;

(2) maintenance of any general monument(s) situated within the Parkway Median or right-of-way that is (are) designed to serve and/or identify the entire Project (residential as well as commercial);

(3) maintenance of any irrigation improvements and/or accent lighting for landscaping or monuments and consumption of any utilities used in connection therewith;

(4) maintenance of stormwater filtration basins and the area immediately surrounding the basins, if any, in accordance with all applicable rules and regulations of TCEQ and other applicable Governmental Authority;

(5) any other items benefiting both the Commercial Tracts and the residential developments if approved by the Association, the Commercial Association and other associations with responsibility for the maintenance of the Parkway Median, if applicable.

Upon approval of the Board, the Association may enter into an agreement with the Commercial Association to perform all maintenance obligations of the Commercial Association for any landscape buffer easement areas situated within the Commercial Tracts fronting on the Parkway (in addition to the items to be maintained by the contributions to the Parkway Median Maintenance Fund) in conjunction with the Association's maintenance of the Parkway Landscape Easement for the Properties. The Association will assess the costs of such maintenance to the Commercial Association (not to exceed 25% of the total costs for the maintenance of the Parkway Landscape Easement and such landscape buffer) and the Commercial Association will assess the owners of the Commercial Tracts their pro rata portion as part of the annual assessments, in the same manner and proportion as the maintenance and assessments are handled for the required contributions to the Parkway Median Maintenance Fund in accordance herewith.

(c) **Administration of Parkway Median Maintenance Fund.** The Association shall be obligated to administer and manage the Parkway Median Maintenance Fund. The Association shall establish budgets on an annual basis for then reasonably anticipated expenses pertaining to maintenance of the Parkway and shall specify the total amount of the needed contributions to the Parkway Median Maintenance Fund which the Association and the Commercial Association will be responsible for paying for then applicable future periods (i.e., for the next year), together with the pro rata share of same to be paid by the Association and any other affected parties.

(d) **Parkway Median Maintenance Fund Contributions.**

(1) The Board of Directors of the Association shall fix the needed or reasonably anticipated Parkway Median Maintenance Fund contributions from time to time required from its Members (such contributions may be a part of the Annual Assessments imposed by the Association against the Members at the Board's election) and from the Commercial Association (and any other involved associations, if applicable) but no more frequently than once per calendar year. The projected amount of the Parkway Median Maintenance Fund shall be established by the Association from time to time based on the landscaping improvements then in place at the time of any consideration or reconsideration of such Fund and the then reasonably anticipated expenses needed for the maintenance obligations that are within the scope and purview of the Parkway Median Maintenance Fund.

(2) The Board may reasonably increase the amount of the required Parkway Median Maintenance Fund contributions from year to year. After establishment of the Parkway Median Maintenance Fund contributions for the first year after full completion of the landscaped improvements contemplated or projected by Declarant for the Parkway Median, the Board may not increase Parkway Median Maintenance Fund contributions during any subsequent calendar year by more than ten percent (10%) over the Parkway Median Maintenance Fund contributions in the immediately preceding calendar year, unless such greater increase is unanimously approved by the Association and the Commercial Association (and any other involved association, if applicable).

(e) Special Contributions.

(1) The Board of the Association may, from time to time, in its sole and absolute discretion, declare special contributions to pay for or to reimburse the Association for any extra or unusual costs incurred (i) in connection with maintenance and repairs of any unanticipated damage, whether due to natural causes or to the negligent or intentional act of any person, to any portion of the Parkway Median, or (ii) for any improvements required in order to maintain and/or enhance same in a manner consistent with the general intent of this Declaration (collectively, the "Special Contributions").

(2) Special Contributions shall be established by the Association in a manner whereby the Special Contributions are fairly and equitably shared by the Association, the Commercial Association and any other affected associations, if applicable.

(f) Due Dates of Contributions. The due dates of the needed contributions to the Parkway Median Maintenance Fund shall be established from time to time by the Board on either a quarterly, semiannual or annual basis. The Board shall, upon demand and for a reasonable charge, furnish any affected party with a written confirmation, signed by an officer of the Board, stating whether contributions to the Parkway Median Maintenance Fund attributable to specified property have been paid. A properly executed confirmation of the Board as to the status of the Parkway Median Maintenance Fund contributions on any such property is binding upon the Board as of the date of its issuance.

(g) Separate Accounting. The Association shall be obligated to separately account for and keep records attributable to the Parkway Median Maintenance Fund, whether or not such funds are commingled with the Common Maintenance Area Fund. The Parkway Median Maintenance Fund shall in no event be used for any functions or purposes intended to be performed for any residential development within the Properties including, but not limited to, the improvement, maintenance or security of any Common Areas or any services or facilities devoted to or intended to specifically serve the residential developments, except as expressly otherwise set forth herein.

(h) **Amendments to Declaration.** Notwithstanding any other provisions contained in this Declaration to the contrary, in no event may this Declaration and/or the Articles of Incorporation of Bylaws of the Association be amended in any manner that would adversely affect or discriminate against the Owners of the Commercial Tracts or the Commercial Association with respect to its obligations to contribute to the Parkway Median Maintenance Fund in the manner set forth in this Declaration, without the unanimous written consent of Declarant, the Association and the Commercial Association.

9. COMMON AREAS, STREETS, SECURITY, AND SECURITY DEPOSIT

(a) **Mortgage and Conveyance of Common Areas.** Common Areas owned by the Association shall not be mortgaged or conveyed by the Association without the prior approval of two-thirds (2/3) of the Owners other than Declarant. If ingress or egress to any Lot is through the Common Areas, any mortgage or conveyance of the Common Areas by the Association shall be subject to an easement of ingress and egress for the Owner of such Lot(s). Ownership of all or any portion of the Common Areas will be transferred to the Association, free of encumbrance other than as provided herein, at a time deemed appropriate by the Declarant. Nothing herein shall be construed as requiring Declarant to construct improvements upon the Common Areas.

(b) **Appearance of the Common Areas.** Areas of Menger Springs are intended to retain a "natural" appearance, as compared to a "manicured" appearance. Accordingly, Common Areas may be seeded with vegetation which is indigenous to South and Central Texas, and are to be maintained in accordance with the natural cycle of such indigenous vegetation.

(c) **Members' Easements of Enjoyment.** Subject to the provisions of **Subsections (d) and (e)** of this Section, every Member shall have a common right and easement of enjoyment in and to the Common Areas and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

(d) **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(1) The rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat and/or in this Declaration.

(2) The rights of the Association, once it has obtained legal title to the Common Areas, to do the following:

(i) To borrow money for the purpose of constructing or improving the Common Areas and, in aid thereof, to mortgage said properties and facilities, in accordance with the Articles of Incorporation and Bylaws of the Association;

(ii) To take such steps as are reasonably necessary to protect the Common Areas against foreclosure; and

(iii) To enter into one or more contracts or agreements for the maintenance or improvement of the Common Areas.

(e) **Streets.** Streets within the Subdivision shall be private and shall be owned and maintained by the Association. Declarant and/or its contractor warrants the construction of the streets for a period of one year from completion of the street as verified by the project engineer engaged by Declarant. Maintenance beyond that period is the responsibility of the Association. Each prospective Lot Owner should carefully note the width of the paved portion of the streets, the proximity of trees to the pavement, and the location of trees within various esplanades. In purchasing a Lot, the Owner specifically assumes the risk for himself, his family, employees, guests, contractors and all other invitees of driving in narrow streets bordered closely by native trees and agrees to do so in a safe manner. Each prospective Lot Owner also is notified that the drainage ditches, culverts and other drainage facilities within the Subdivision are owned by the Association. Each prospective Lot Owner should carefully note the location of the facilities and avoid unsafe conduct in those areas.

The Board of Directors may make reasonable rules and regulations, and may proscribe such penalties, as it determines reasonable and necessary to promote safety within the Properties. In the event an Owner or Owner's family member or guest repeatedly violates such rules or fail to operate a motorized vehicle at or below the posted maximum rate of speed and in a safe, reasonable and prudent manner on the private streets within the Subdivision, such person may be subject to such penalties, including, but not limited to fines and/or the suspension of such person's right to traverse the private streets within the Subdivision via motorized vehicle for a period not to exceed thirty (30) days.

The Board may make such other and further rules regarding notification of safety infractions, proof of safety infractions and/or enforcement of the penalties as may be reasonably necessary to give effect to this **Section**. In the event speed and traffic control in the Subdivision are assumed by the City or by some other public agency having the authority to issue penalties for infractions thereof, the penalties prescribed herein may not be imposed in addition to the penalties imposed by said public entity.

(f) **Entry Gate.** Access to the Subdivision will be provided through a controlled entry gate to be maintained by the Association. Absent Declarant's written consent to the contrary, the Subdivision entry gate, when constructed, shall be kept open to the public during daylight hours (or from 6:30 a.m. to 7:00 p.m., whichever is longer) until three (3) months following the conveyance of the last Lot owned by Declarant within the Subdivision and future phases of development annexed to the jurisdiction of the Association. This right of entry is to ensure access to Lots by prospective new home purchasers and builders to complete construction of homes.

(g) **Security.** The Association is not now a provider of any security, and Owners must provide their own security for their home, improvements, and personal property on the Properties.

(h) **Security Deposit.** As security for the performance by each Owner of its obligations herein with respect to the initial construction of a residence on a Lot, and further to indemnify the Association for any loss, costs, fees and expenses which the Association may incur by reason of any default by Owner thereunder, each Owner shall deposit with the Association the sum of Two Thousand Dollars (\$2,000.00), as a security deposit ("Security Deposit"), at the same time as the submission by such Owner of the Required Plans to the ACC. The Security Deposit shall be held by the Association without liability for interest and may be commingled with the Association's other funds. It is expressly understood that the Security Deposit shall not be considered an advance payment of any Assessments or a measure of damages in case of default by Owner. The Association may, from time to time, without prejudice to any other remedy available to it at law or in equity, use the Security Deposit to the extent necessary to satisfy any obligation of Owner hereunder. If, in the reasonable judgment of the Association, Owner is not in default upon the completion of the initial construction of the residence on the Owner's Lot, the balance of the Security Deposit remaining on deposit with the Association shall be returned by the Association to such Owner. The application of the Security Deposit as provided herein shall be in addition to all other rights and remedies of the Association hereunder or otherwise available to the Association at law or in equity.

10. **GOVERNMENTAL REQUIREMENTS.**

(a) **Compliance.** All Improvements located, erected, constructed and installed upon any Lots and all activities of the Owners, their tenants, invitees, agents, employees and contractors on or about the Properties, shall conform to and comply with all applicable Governmental Regulations.

(b) **Precedence Over Less Stringent Governmental Regulations.** If the covenants, conditions and restrictions set forth in this Declaration set or establish minimum standards or limitations or restrictions on use in excess of any Governmental Regulations, the covenants, conditions and restrictions set forth in this Declaration shall take precedence and prevail over any less stringent Governmental Regulations. Similarly, when any Governmental Regulations are more stringent than those set forth in this Declaration, the more stringent Governmental Regulations shall control.

(c) **Remedies of the Declarant, the Association and the ACC.** By acceptance of a deed to a Lot, each Owner agrees that Declarant, the Association and the ACC shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by Governmental Authority is maintained, or on which there has been a failure to perform any act required by Governmental Authority, for the purpose of curing any such violation, provided that the Owner has been given five (5) days prior written notice and has failed to remedy the violation within such time. **EACH OWNER**

INDEMNIFIES AND HOLDS HARMLESS DECLARANT, THE ASSOCIATION AND THE ACC FROM ALL COST AND EXPENSE OF ANY SUCH CURATIVE ACTION AND ANY COST OR EXPENSE OR PENALTIES OR FINES LEVIED BY ANY GOVERNMENTAL AUTHORITY AS A RESULT OF THE ACT OR FAILURE TO ACT OF THE OWNER WITH RESPECT TO ITS LOT(S) OR THE PROPERTIES. THE FOREGOING REMEDY SHALL BE CUMULATIVE OF ALL OTHER REMEDIES FOR VIOLATIONS OF PROVISIONS OF THIS DECLARATION.

(d) **Additional Obligations.** By acceptance of a deed to a Lot, or by initiating construction of Improvements to a Lot, each Owner assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable Governmental Regulations, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 *et seq.*), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Commission on Environmental Quality (TCEQ), related to each Lot, including, without limitation, the provisions of Chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of Owner and do not in any way limit the terms and requirements of this covenant and the requirement that all Owners and contractors comply with all Governmental Regulations, and any plan required by such Governmental Regulations, such as a Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable TPDES permit prior to the start of construction. **EACH OWNER, BY ACCEPTANCE OF A DEED TO A LOT AND EACH BUILDER AND CONTRACTOR, BY UNDERTAKING THE MAKING OF IMPROVEMENTS TO A LOT, AGREES TO HOLD HARMLESS, DEFEND AND INDEMNIFY DECLARANT FROM AND AGAINST ALL COST (INCLUDING REASONABLE ATTORNEYS FEES AND COURT AND OTHER COSTS), LOSS, LIABILITIES, FINES, PENALTIES OR DAMAGE OCCASIONED BY THE FAILURE TO ABIDE BY ANY APPLICABLE GOVERNMENTAL REGULATIONS RELATED TO THE LOT AND/OR THE PROPERTIES.**

11. EASEMENTS.

(a) **Subdivision Plat.** The Subdivision Plat creates for use as such, subject to the limitations set forth herein, certain private streets and easements shown thereon, and further establishes certain dedications, limitations, reservations and restrictions applicable to the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof 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 said property or any part thereof.

(b) **Sidewalk Easement.** Each Owner shall, upon acceptance of a deed to his Lot, be deemed to have granted an easement of use to the public as to any sidewalk on his Lot, and shall execute any instruments necessary to evidence such easement grant.

(c) **Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any plat covering all or any portion of the Properties, and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Properties becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as is 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 Properties. Further, Declarant hereby creates, declares, grants and reserves for the benefit of Declarant, Kendall County, the City, and all Owners and any public or private providers of utility services to the Properties and their respective successors and assigns, a nonexclusive easement for utility purposes over, under, within and upon other easement areas shown on the plats of the Properties, as hereafter amended, for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing from time to time any and all utility lines, systems and facilities from time to time deemed necessary or appropriate by Declarant for development of the Properties. Further, Declarant reserves the right, and all Owners agree to cooperate, 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, water, electricity, telephone, fiber optics, sanitary, sewer and drainage), across any Lot or on any portion of the Properties as is necessary or efficient to supply all utilities to all Lots.

(d) **Drainage Easements.** Easements for drainage throughout the Subdivision are identified and reserved as shown on the Subdivision Plat (collectively, the "Drainage Easements"). No Owner of any Lot in the Subdivision may perform or cause to be performed any act which would alter or change the course of such Drainage Easements in a manner that would divert, increase, accelerate or impede the flow of water over and across the Drainage Easements. More specifically, and without limitation, no Owner may:

(1) Alter, change or modify the existing natural vegetation or design of the Drainage Easements in a manner that changes the character of the design or original environment of such Drainage Easements.

(2) Alter, change or modify the existing configuration of the Drainage Easements, or fill, excavate or terrace such easements or remove trees or other vegetation therefrom without the prior written approval of the ACC.

(3) Construct, erect or install a fence or other structure of any type or nature within or upon such Drainage Easement; provided, however, that fences may be permitted in the event the proper openings are incorporated therein to accommodate the flow of water over said easement as determined by a qualified engineer and the appropriate Governmental Authority authorizes the construction.

(4) Permit storage, either temporary or permanent, of any type upon or within such Drainage Easements.

(5) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

On any Lot adjoining a greenbelt and/or Drainage Easement, the Owner, builder, contractor and all subcontractors shall be responsible for keeping all drainage areas and drainage easements free of construction materials, debris, equipment or other properties which might impair the drainage or flow of water within such areas, including the construction and maintenance of outlets within any perimeter fence abutting a Drainage Easement. Any landscaping or vegetation (including trees and grass) within such areas altered or damaged during the construction process shall be replaced by the Lot Owner at such Owner's expense to the satisfaction of the ACC, Association or Declarant. All vegetation within the greenbelt and/or Drainage Easement will be maintained in its natural state and at no time will the taking of trees be allowed, unless it is determined by the Declarant and/or Association that it is in the best interest of safety or when constructing or improving the areas for the benefit of the community. The Association will be allowed to contract for the basic maintenance and clearing of greenbelts and Drainage Easements as needed and shall have an easement upon and across all adjacent Lots to perform such services.

The failure of any Owner to comply with the provisions of this **Section** shall in no event be deemed or construed to impose liability of any nature on the Association, ACC and/or Declarant, and neither the Association, ACC nor Declarant shall be charged with any affirmative duty to police, control or enforce such provisions. The Drainage Easements provided for in this Declaration shall in no way affect any other recorded easement in the Subdivision.

Notwithstanding anything herein to the contrary, the creation and/or maintenance of any Drainage Easements within the Subdivision shall not be deemed to constitute nor be construed as a representation or any assurance by Declarant, the Association, the ACC, or any Owner that stormwater and other drainage shall be collected and detained wholly within such Drainage Easements. Each Owner is advised of the potential for such stormwater or other drainage collection outside of the limits of the Drainage Easements.

(e) **Utility Easements.** Easements for installation and maintenance of utilities, cable television, and other utility facilities to service the Properties and certain adjoining land have been or will be reserved as shown on the plats and/or as provided by instruments of record or to be recorded. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers and for paving of driveways, unless otherwise specifically prohibited by the plat or any other recorded easement; provided, however, that no structure, planting, or other material shall be

placed or permitted to remain which may damage or interfere with the installation and maintenance of the utilities. The easement area of each Lot, if any, and all improvements in such easement area shall be maintained continuously by the Owner of the Lot, except for those improvements for which Governmental Authority or any utility or private company is responsible. Neither Declarant, the Association, the ACC, nor any utility company using the utility easements shall be liable for any damage done by them or their assigns, agents, employees, or servants to shrubbery, grass, streets, flowers, trees, landscape or other property of the Owners situated on the land covered by said easements, except as may be required by Governmental Regulations or by custom and practice of such utility company.

(f) **Fence, Wall, Landscape, Maintenance and Access Easements.** Declarant hereby reserves unto itself, the Association, and their respective assigns, a five foot wide (5') wall, fence, and landscaping easement on Lot 11, along the property line adjacent to Lot 59. Within said easement, Declarant, the Association, and their respective assigns in writing, shall have the right, but not the obligation to construct a fence, and to install and maintain such landscaping and plants as they may determine, and shall have the right to erect, install and maintain such project features and signage as they may determine. The easement owners shall also have a general right of access upon such Lots for the purpose of such initial construction and thereafter to exercise the other powers reserved unto them under the easement hereby established. Any fence constructed by Declarant pursuant to the rights herein retained shall be the property of the Association following completion of construction, and the Association shall thereafter maintain said fence at all times and shall ensure that the exterior thereof is kept clean and free of all defacing, blemishes, mars, and markings thereon. In the event the Association shall ever fail to promptly make any needed repair, maintenance or cleaning to the fence, or shall fail to properly and neatly maintain the vegetation and landscaping between the fence and right of way, Declarant, its successors and assigns, shall have the right of entry onto said Lots and right to perform such functions at the expense of the Association.

(g) **Parkway Landscape Easement/Greenbelt.** Declarant reserves the right from time to time to impose one or more landscape easements and/or greenbelts along the dedicated Parkway right-of-way, in accordance with the terms of this Declaration.

(h) **Certain Other Easements.** There is hereby created in favor of the easement owners, Declarant, the Association, the ACC, and their respective successors and assigns, a right of ingress or egress across, over, and under the Properties for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas, and appurtenances thereto, and to construct, reconstruct, repair, correct, replace, or maintain any wall, fixture, light, or other structure or item required to be constructed or maintained under the terms hereof or to correct or remove any condition prohibited to be maintained under the terms hereof.

(i) **Maintenance of Easements.** By acceptance of a deed to any one or more Lots, the Owner thereof covenants and agrees to keep and maintain, in a neat and clean condition, any easement which may traverse any portion of said Lot or Lots, including, without limitation, removing weeds, mowing grass and trimming shrubbery and trees, if any, within such easement area.

(j) **Damages.** Neither the Declarant, nor the Association, nor the ACC, nor any member of any of them, shall be liable for any damages done by any utility company or their assigns, agents, employees or servants, using any easements now or hereafter in existence, whether located on, in, under or through the Properties, to persons or to property, including, without limitation, fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Properties. No provision hereof related to placement or the nature of structures or conditions on a Lot, nor the approval thereof, express or implied, by the Declarant, the Association or the ACC shall affect the rights of easement owners nor enlarge the rights of Owners with regard to the construction or maintenance of Improvements or conditions within the easement area.

12. **ENFORCEMENT.**

(a) **Enforcement.** The Association, Declarant, and each Owner shall have the right, but not the obligation, to enforce all restrictions and covenants imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right. The reservation of the right of enforcement shall not create an obligation of any kind to enforce same. Any court action brought to enforce any obligation or restriction hereunder shall, if successful, entitle the party initiating such action to the award of costs and attorney's fees.

(b) **Additional Remedies.** In addition to the remedies for enforcement provided for elsewhere in this Declaration or by law, the violation or attempted violation of the provisions of this Declaration, or any amendment hereto, or of any guidelines, rules, regulations, bylaws, or Articles of Incorporation herein referenced or permitted, by any Owner, his family, guests, lessees or licensees shall authorize Declarant or the Association (in the case of all of the following remedies) or any Owner (in the case of the remedies provided in **Subsection (3)** below), including Declarant, to avail itself of any one or more of the following remedies:

(1) The suspension by the Association of rights to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;

(2) The right of Declarant or the Association, but not the obligation, to enter the Lot to cure or abate such violation through self help and to charge the expense thereof, if any, to such Owner, plus attorney's fees incurred by the Association with respect to the exercise of such remedy;

(3) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court costs; or

(4) Before the Association may invoke the remedy of suspension of privileges as set forth herein, it shall give written notice of such alleged violation to Owner, and shall afford the Owner the opportunity of a hearing at which the owner and any persons the Owner desires may attend. Thereafter, if a violation is found to exist, the Association's right to proceed with the suspension of privileges shall be absolute. Each day a violation continues after notice thereof has been given to the Owner shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any violation shall not be deemed a waiver of any right to take enforcement action thereafter or upon a subsequent violation. No Owner shall have the right to compel or require the filing of suit by Declarant or the Association.

(c) **Enforcement of Sections 4 and 5.** If, in the opinion of Declarant, the Association, or the Owners owning twenty-five percent (25%) or more in area of the Properties, any Owner has failed to construct, landscape or maintain its Lot(s), as specified in **Sections 4 and 5**, the Declarant, the Association, or such Owners, as applicable ("Enforcing Party," whether one or more) may enforce such obligations in accordance with the following:

(1) Give the Owner written notice of such failure, whereupon the Owner must stop work immediately, submit a plan for remedy within thirty (30) days, and perform the required remedy in a reasonable time as determined by the Association.

(2) Should the Owner fail to fulfill its obligations hereunder within thirty (30) days, then the Enforcing Party shall have the right, but not the obligation, to perform such remedy without any liability for damages or wrongful entry or trespassing.

(3) The defaulting Owner or occupants (including lessees) of any part of the Lot(s) in which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Enforcing Party for such cost.

(4) Should the Owner or occupant fail to reimburse the Enforcing Party within thirty (30) days after receipt of the statement for such work, then the debt shall be a debt of all such persons, jointly and severally, and shall constitute a lien against the Lot on which the work was performed.

(5) Failure by any Owner to pay on time will result in the over-due amount bearing interest at the highest per annum legal rate of interest permitted, and the Owner shall additionally be obligated to pay reasonable attorney's fees and court and other costs incurred by the Enforcing Party.

(6) The Association shall have the right to enter the grounds of any Lot, at any time for the purposes of inspecting the Lot and determining the adequacy of the Owner's maintenance without any liability for damage, wrongful entry or trespassing.

(7) To the fullest extent permitted by law, the City shall also have the right, but not the obligation, to enforce the restrictions and covenants imposed in **Sections 4 and 5** of this Declaration.

(d) **Nonwaiver.** The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist on its Lot which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Lot, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to covenant violations. Noncompliant conditions shall be allowed to exist on a Lot only upon the Owner obtaining a written variance in accordance with the applicable provisions herein. Failure of Declarant, the Association, the ACC, or of any Owner or other person to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so at any time or from time to time thereafter.

(e) **Assessments by Award or Judicial Decree.** In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and/or any other charges awarded in the decree shall also constitute an Assessment, which shall likewise run with the land, and which shall have the same priority as the lien created in **Section 7** herein. Failure to pay Assessments imposed under this **Section** shall constitute an event which may give rise to the remedies provided in **Section 7(n)** herein.

13. INDEMNIFICATION AND RELEASE. EACH PROSPECTIVE PURCHASER IS RESPONSIBLE FOR THOROUGHLY INSPECTING AND EXAMINING THE LOT IN WHICH IT IS INTERESTED AND FOR CONDUCTING SUCH INVESTIGATIONS OF SUCH LOTS(S) AS IT DEEMS NECESSARY TO EVALUATE ITS PURCHASE. BY COMPLETING THE PURCHASE OF A LOT, EACH PROSPECTIVE PURCHASER IS ACKNOWLEDGING THAT IT IS PURCHASING THE LOT ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS. BY PURCHASING A LOT, EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS DECLARANT, ITS PARTNERS, OFFICERS, DIRECTORS, CONTRACTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, COSTS, FEES, EXPENSES, DAMAGES OR LIABILITIES THAT AN OWNER, HIS FAMILY, EMPLOYEES, GUESTS, CONTRACTORS AND ANY OTHER INVITEES MAY SUFFER OR INCUR AS A RESULT OF, ARISING OUT OF, OR RELATED TO ANY CONDITION ON, IN OR UNDER THE LOT, INCLUDING, BUT NOT LIMITED TO CAVES, KARSTS, SINKHOLES, GEOLOGICAL FEATURES, STREETS, TREES WITHIN OR NEAR THE STREET RIGHTS-OF-WAY, DRAINAGE FACILITIES, PROJECTILES, AND OTHER

DANGEROUS OBJECTS. EACH OWNER UNCONDITIONALLY RELEASES DECLARANT, ITS PARTNERS, OFFICERS, DIRECTORS, CONTRACTORS, EMPLOYEES AND AGENTS, BOTH KNOWN AND UNKNOWN, PRESENT AND FUTURE, ARISING OUT OF OR RELATED TO SAID CAVES, KARSTS, SINKHOLES, GEOLOGICAL FEATURES, STREETS, TREES WITHIN OR NEAR THE STREET RIGHTS-OF-WAY, DRAINAGE FACILITIES PROJECTILES AND OTHER DANGEROUS OBJECTS.

14. GENERAL PROVISIONS.

(a) **Severability.** The provisions of this Declaration shall be deemed independent and severable, and invalidation of any one of the provisions, covenants or restrictions set forth in this Declaration by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

(b) **Term.** This Declaration, including all covenants, conditions and restrictions set forth herein, are made and adopted to run with the land, and shall be binding upon Declarant and all Owners until December 31, 2026, at which time said covenants will be automatically extended for successive periods of ten (10) years each, unless amended or terminated by written instrument executed by seventy-five percent (75%) of the Owners of the Properties subject to this Declaration and filed of record in the Real Property Records of Kendall County, Texas.

(c) **Limitation of Liability.** Neither the ACC, nor the Association, nor the Declarant shall be liable in damages or otherwise to anyone submitting plans or specifications for approval or to any Owner by reasons of mistake or bad judgment, negligence or non-feasance in the performance or non-performance of any duties assigned to such person or entity in this Declaration.

(d) **Assignment by Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant may in writing filed of record expressly 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. Upon assignment by Declarant of any or all of such rights, such Declarant shall no longer be liable for performance of such assigned rights provided that the assignee expressly assumes in the recorded assignment the obligations of such Declarant that are assigned.

(e) **Amendment.** This Declaration may be amended until January 1, 2020, by written instrument executed by the Owners of ninety percent (90%) or more of the Lots comprising the Properties subject to this Declaration and the jurisdiction of the Association, upon recording of such written instrument in the Real Property Records of Kendall County, Texas, provided that until such date no amendment hereto shall be effective unless approved and executed by Declarant. After January 1, 2020, this Declaration may be amended in like manner by ninety percent (90%) of the Owners of

Lots comprising the Properties subject to this Declaration and the jurisdiction of the Association, but the approval and joinder of Declarant shall not be required after said date. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner, for the purposes of correcting an error, clarifying an ambiguity, inserting an omitted portion, or removing any contradiction in the terms hereof, or for any reason whatsoever deemed necessary for the benefit of the Subdivision as determined by Declarant, in its sole discretion, so long as the general scheme contemplated herein is not materially altered and no approvals theretofore obtained by Declarant from the City are being circumvented thereby. Said amendment shall be effective upon filing the said amended restrictions with the County Clerk of Kendall County, Texas.

(f) **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.

(g) **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 or **Sections** hereof.

(h) **Gender and Grammar.** The singular whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

(i) **Interpretation.** If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

(j) **Notice.** Whenever written notice to an Owner or Member or an Owner of a Commercial Tract is permitted or required hereunder, such notice shall be given by mailing such notice to the address of such Owner or Member appearing on the records of the Association, unless such Owner or Member has given written notice to the Association of a different address, in which event such notice shall be sent to the Owner or Member at the address so designated. Such notice shall conclusively be deemed to have been given as of the date such notice is deposited in the United States Mail, properly addressed, whether actually received by the addressee or not.

(k) **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Kendall County, Texas.

(l) **Lienholder's Consent.** Each of the current owners and holders of existing mortgages and liens upon and against the Property, or any portion thereof, have consented to and joined in the execution of this Master Declaration solely for the limited purposes set forth in the Lienholder's Consent executed by each such lienholder and attached hereto as **Exhibit E** and incorporated herein.

(m) **Counterparts.** This Declaration may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[COUNTERPART SIGNATURE PAGES FOLLOW]

**COUNTERPART SIGNATURE PAGE
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MENGER SPRINGS, UNIT 2**

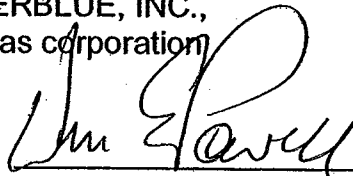
DECLARANT:

MENGER SPRINGS UNITS 1 & 2,
a Texas limited partnership

By Its General Partner:

BITTERBLUE, INC.,
a Texas corporation


By:



Wm. Eugene Powell
Chief Executive Officer

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on June 8, 2004, by Wm. Eugene Powell, Chief Executive Officer of Bitterblue, Inc., a Texas corporation, as General Partner of Menger Springs Units 1 & 2, a Texas limited partnership, on behalf of said corporation and limited partnership.



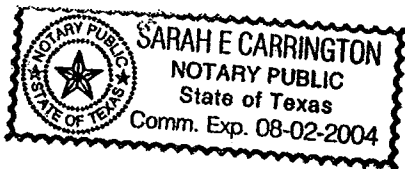
Notary Public, State of Texas

EXHIBIT A

LOTS

Lots 1-4, inclusive Block 2; Lots 5-9, inclusive, and Lots 13-31, inclusive, Block 3; Lots 32-42, inclusive, and Lots 45-49, inclusive, Block 4; and Lots 10-12, inclusive, and Lots 43-44, inclusive, Block 5; Menger Springs, Unit-2, in the City of Boerne, Kendall County, Texas, according to plat thereof recorded in Volume 4, Page 274, Plat Records of Kendall County, Texas.

MENGER SPRINGS

PLAN SUBJECT
TO CHANGE



UNITS-01	1.49 AC	1 LOT
UNITS-02	2.50 AC	1 LOT
UNITS-03	2.50 AC	1 LOT
UNITS-04	2.50 AC	1 LOT
UNITS-05	2.50 AC	1 LOT
UNITS-06	2.50 AC	1 LOT
UNITS-07	2.50 AC	1 LOT
UNITS-08	2.50 AC	1 LOT
UNITS-09	2.50 AC	1 LOT
UNITS-10	2.50 AC	1 LOT
UNITS-11	2.50 AC	1 LOT
UNITS-12	2.50 AC	1 LOT
UNITS-13	2.50 AC	1 LOT
UNITS-14	2.50 AC	1 LOT
UNITS-15	2.50 AC	1 LOT
UNITS-16	2.50 AC	1 LOT
UNITS-17	2.50 AC	1 LOT
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UNITS-93	2.50 AC	1 LOT
UNITS-94	2.50 AC	1 LOT
UNITS-95	2.50 AC	1 LOT
UNITS-96	2.50 AC	1 LOT
UNITS-97	2.50 AC	1 LOT
UNITS-98	2.50 AC	1 LOT
UNITS-99	2.50 AC	1 LOT
UNITS-100	2.50 AC	1 LOT

NOTE: AREA SHOWN IS APPROXIMATE AND IS SUBJECT TO FINAL SURVEY AND RECORDATION. LAYOUT SHOWN ARE SUBJECT TO CHANGE WITHOUT NOTICE.

REVISED APRIL, 2004.

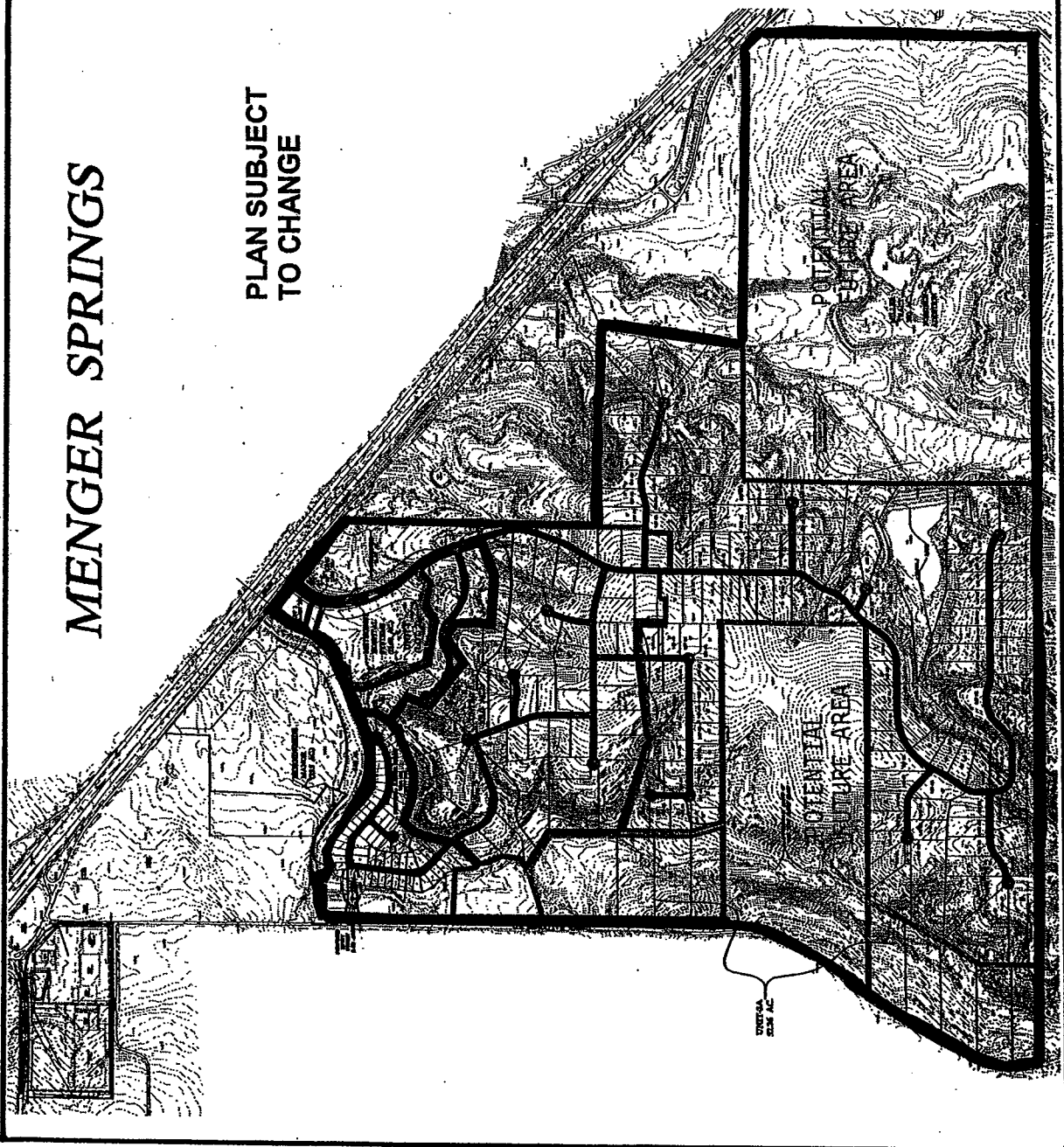


EXHIBIT "B" AND "C"

EXHIBIT D

REQUIRED PLANS AND DESIGN REVIEW PROCEDURES

1.1 GENERAL OVERVIEW

Site sensitive and site specific design is fundamental to the concept of *Menger Springs*. The Architect's and Designer's planning process and the design and construction documents should evolve from the careful and thorough analysis of a site's specific settings and features. Therefore, Owners and design consultants must refrain from approaching a home site with a predetermined design expecting to make it fit with little regard for the site's existing features and constraints. *Menger Springs* has established this review procedure to assist the applicant through the design process in an appropriate sequence.

1.2 PRE-DESIGN CONFERENCE

Prior to beginning preliminary plans for any proposed home site improvement at *Menger Springs*, a Pre-Design Meeting with a representative of the *Menger Springs* ACC is required. It is mandatory that the Architect or Designer selected for the project is at the meeting. The objectives of this conference are to discuss the improvement requirements, resolve any questions regarding building requirements, and to provide a site-specific discussion and agreement on the approximate location of the home and major improvements proposed.

A \$250.00 Design Review Fee must be submitted at this time payable to "Menger Springs ACC." This is a one time fee which will cover all submittals for approval of the residence. An additional \$100.00 Design Review Fee must be submitted for approval of landscape and other improvements. The Architect Designers must provide a Site Plan drawing at 1/8" = 1'-0" or 1"=20'-0" with all elements required for site analysis drawn or sketched on plan. Site specific issues should be discussed at this time, prior to the commencement of design. If questions arise after this meeting, the Architect or Designer is obliged to contact the ACC Design Review Administrator for clarification.

1.3 SUBMITTALS AND DEADLINES

Submittals must be made to the Design Review Administrator's office at least 5 working days prior to a scheduled *Menger Springs* ACC meeting in order to be reviewed at that meeting. Design Review Administrator will verify completeness of submittal package within 3 working days of submittal. Late or incomplete submittals will not be accepted.

1.4 PRELIMINARY DESIGN SUBMITTAL

When the Preliminary Design is complete, one set of plans (24'X36" or larger) must be submitted (rolled, not folded). The drawings required at this time shall include a Site Plan, Floor Plans, and all four Exterior Elevations. A proposed finished floor elevation

must be provided and existing grades must be accurately projected on all exterior elevations. A preliminary stake-out of house on property must be completed for review 3 days prior to this meeting.

1.5 PRELIMINARY DESIGN REVIEW

Once the preliminary submittal is complete, a representative of the *Menger Springs* ACC will visit the site to verify that the site is staked and to determine whether the home will be appropriately located on the site.

The *Menger Springs* ACC will meet every two weeks to review all submittals and will respond to specific submittals, in writing, within 5 business days of meeting. Owners and/or Architects and Designers are encouraged to attend the Preliminary Design Review meeting. Points of deviation from the improvement requirements and clarification of design intent may be discussed in order to provide a complete and thorough review of each submittal.

Once a project receives preliminary design approval, it may be submitted to the City of Boerne for approval. If any significant changes occur after the submittal to the City, the applicant is responsible for any additional fee assessments by the City in accordance with the City's requirements. Therefore, it is prudent, but not required, to wait until *Menger Springs* Final Design Approval prior to seeking City approval.

1.6 FINAL DESIGN SUBMITTAL

When the Final Design is complete, one set of plans (24'X36" or larger) must be submitted for review (rolled, not folded). Required drawings will include Site Plan, Floor Plans with all area calculations, Building Sections, Roof Plan, Exterior Elevations, and Electrical Plans. All drawings must have Lot, Block, Section and Street Address identified.

An exterior material and color board must be submitted at this time. Actual samples or legible photographs of exterior materials and colors (including windows) and proposed entry door must be provided and labeled with home site address.

1.7 FINAL DESIGN REVIEW

Upon submission of complete final plans, the ACC will meet to review the plans and will respond to specific submittals, in writing, within 10 business days after each meeting. If building location has change substantially from Preliminary Submittal, a re-staking may be requested.

1.8 DESIGN VARIANCE REQUESTS

Variances to the requirements set forth in these improvement requirements may be considered by the *Menger Springs* ACC. A letter requesting specific variances must accompany submittal of plans with variance locations clearly highlighted on appropriate drawings.

Variances require that a hardship is demonstrated and that benefit to the community as a whole is the outcome of the variance.

1.9 ADDITIONS, EXTERIOR REMODELS, AND REFINISHING

Owner must contact Design Review Administrator for more specific instructions prior to adding, remodeling, or refinishing any item on the home. All such improvements must be approved by the *Menger Springs* ACC prior to commencement of work.

1.10 NON-WAIVER

The approval by the *Menger Springs* ACC of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any provision of these improvement requirements shall not constitute a waiver of the same.

Moreover, approval granted to a project does not constitute approval of each element within that project. If an element that does not comply with the guidelines is discovered in a future submittal, or during construction of the same project, modification of the non-complaint element may be required. The *Menger Springs* ACC, the Declarant, or any employee or member thereof may not be held liable for any costs or inconveniences incurred to remedy such a situation.

EXHIBIT E

LIENHOLDER'S CONSENT

The undersigned, being the owner and holder of existing mortgage(s) and liens upon and against the Property subject to this Master Declaration, being described in the Deed of Trust for the benefit of the undersigned recorded in Volume 790, Page 238, Official Records of Kendall County, Texas, as may be amended from time to time, and acting solely as mortgagee and lienholder and at the specific request of the Declarant, does hereby consent to and join in the foregoing Master Declaration for the limited purposes herein stated.

The undersigned hereby join in the execution of this instrument for the sole purpose of subordinating the liens held by the undersigned to all of the provisions of the foregoing Master Declaration of Covenants, Conditions, and Restrictions for Menger Springs, Unit 2. Any owner who accepts title to any of the Property subject to this Master Declaration specifically acknowledges that the undersigned lienholder is not a party to this Master Declaration except for the sole purpose of subordinating its liens as set out herein. Each Owner who accepts title to any of the Lots hereby specifically and unconditionally releases and discharges said lienholder from any claims or liability with respect to, or arising out of, the Master Declaration, except as to actions which may hereafter be taken by lienholder as a successor to the interest of Declarant.

Executed to be effective as of June 8, 2004.

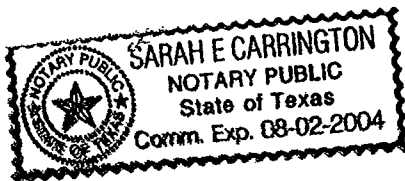
LIENHOLDER:

THE FROST NATIONAL BANK,
a national banking association

By: Betsy Gleiser
Name: Betsy Gleiser
Title: Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on June 8, 2004, by Betsy Gleiser, Executive Vice President of The Frost National Bank, a national banking association, on behalf of said banking association.



Sarah E. Carrington
Notary Public, State of Texas

orig was

Filed for Record in:

Kendall County
Darlene Herrin
County Clerk

On: Jun 09, 2004 at 03:47P

Document Number: 00185784
Total Fees : 155.00

Receipt Number - 65371
By Deputy: Paula Pfeiffer

This Document has been received by this Office
for Recording into the Official Public Records.
We do hereby swear that we do not discriminate
due to Race, Creed, Color, Sex or National
Origin.

LIENHOLDER'S CONSENT

The undersigned, being the owner and holder of existing mortgage(s) and liens upon and against the Property subject to this Master Declaration, being described in the Deed of Trust for the benefit of the undersigned recorded in Volume 790, Page 62, Official Records of Kendall County, Texas, as may be amended from time to time, and acting solely as mortgagee and lienholder and at the specific request of the Declarant, does hereby consent to and join in the foregoing Master Declaration for the limited purposes herein stated.

The undersigned hereby join in the execution of this instrument for the sole purpose of subordinating the liens held by the undersigned to all of the provisions of the foregoing Master Declaration of Covenants, Conditions, and Restrictions for Menger Springs, Unit 2. Any owner who accepts title to any of the Property subject to this Master Declaration specifically acknowledges that the undersigned lienholder is not a party to this Master Declaration except for the sole purpose of subordinating its liens as set out herein. Each Owner who accepts title to any of the Lots hereby specifically and unconditionally releases and discharges said lienholder from any claims or liability with respect to, or arising out of, the Master Declaration, except as to actions which may hereafter be taken by lienholder as a successor to the interest of Declarant.

Executed to be effective as of 6/9/2004.

LIENHOLDER:

Balous T. Miller

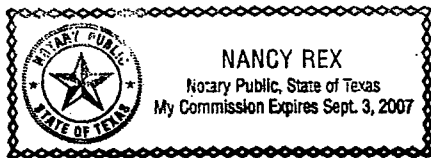
Balous T. Miller

Julie A. Miller

Julie A. Miller

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

The foregoing instrument was acknowledged before me on June 9, 2004, by Balous T. Miller and Julie A. Miller.



Nancy Rex
Notary Public, State of Texas