



BB-SCANNED

LT1-77-20070043488-1

SCANNED

MENGER

CERTIFICATE OF ANNEXATION AND SUPPLEMENTAL DECLARATION FOR MENDER SPRINGS, UNIT 3

This Certificate of Annexation and Supplemental Declaration for Menger Springs, Unit 3 ("Unit 3 Supplemental Declaration") is made to be effective as of February 19, 2007, by Menger Springs Units 1 and 2, Ltd., a Texas limited partnership ("Declarant"), and joined in by Menger Springs Unit 3, Ltd., a Texas limited partnership ("Owner"), for the purposes set forth herein.

RECITALS

By instrument entitled "Declaration of Covenants, Conditions and Restrictions for Menger Springs, Unit 2", recorded in Volume 867, Page 692, et seq., Official Records of Kendall County, Texas ("Declaration"), Declarant subjected certain real property in the development known as "Menger Springs" and more particularly described in the Declaration as "Menger Springs, Unit 3", to certain covenants, conditions and restrictions.

Pursuant to the Declaration, Menger Springs Homeowners Association has been incorporated under the laws of the State of Texas as a non-profit corporation for the purposes of maintaining the Common Areas and exercising the other functions as provided in the Declaration.

Pursuant to Section 2(b) of the Declaration, Declarant retained the right to annex and bring within the scope and purview of the Declaration additional property as designated by Declarant out of the Annexation Area described in Exhibit A attached to the Declaration, and to impose such complementary additions and/or modifications of the covenants and restrictions contained in the Declaration applicable to the specific type of development on the annexed land to reflect the different character of the development on the annexed land.

Owner is the owner of the Annexed Property (as herein defined), and Declarant and Owner desire to join in this Unit 3 Supplemental Declaration for the purpose of subjecting such Annexed Property to the terms of the Declaration, as amended and supplemented herein, and to the jurisdiction of the Menger Springs Homeowners Association, including the liens for assessments as set forth in the Declaration, and to impose certain supplementary and/or different covenants, conditions and restrictions on the Annexed Property, as set forth herein.

NOW, THEREFORE, Declarant, joined by Owner, hereby declares as follows:

1. Terms. All capitalized terms used herein shall have the meaning assigned to such term in the Declaration, unless otherwise expressly defined herein.



LT2-12709-2095-24

2. Annexed Property. The following described property ("Annexed Property") is hereby annexed as additional Lots pursuant to the Declaration:

Lots 130-151, inclusive, Block 4; Lots 152-159, inclusive, Block 5; and Lots 217-246, inclusive, Block 1; Menger Springs, Unit 3, in Kendall County, Texas, according to plat thereof recorded in Volume 5, Pages 259-261, Plat Records of Kendall County, Texas.

3. Common Areas. The following described property is hereby annexed as additional Common Areas pursuant to the Declaration:

All private streets, including the streets designated as Menger Springs, Fair Springs, Ledge Springs, Bitter Springs, and Cabin Springs, and all easements, shown on the plat for Menger Springs, Unit 3, Kendall County, Texas, recorded in Volume 5, Pages 259-261, Plat Records of Kendall County, Texas.

The additional Lots and additional Common Areas described herein are collectively referred to herein as the "Annexed Property," or "Menger Springs Unit 3"

4. Subdivision Plat. The term "Subdivision Plat" in Section 1(gg) of the Declaration shall include the Subdivision Plat of Menger Springs Unit 3, recorded in Volume 5, Pages 259-261, Plat Records of Kendall County, Texas, and any amendment thereof upon filing of same for record in the Plat Records of Kendall County, Texas, and any other recorded subdivision plat(s) for additional properties subjected to the Declaration by annexation certificate or by any subsequent amended or supplemental declaration.

5. Additional Restrictions. Section 5 of the Declaration entitled "Construction Standards and Requirements" is hereby amended with respect only to the Lots within the Annexed Property, to read as set forth in Exhibit A attached hereto and incorporated herein.

6. Annexation. Effective immediately, the Annexed Property shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to all easements, restrictions, covenants, changes, liens, assessments, terms and conditions which are set forth or referred to in the Declaration and any amendments thereto, as modified and supplemented in this Unit 3 Supplemental Declaration, with the same force and effect as if set out verbatim herein, and shall hereafter be subject to the jurisdiction of the Menger Springs Homeowners Association, and to the supplemental terms and provisions of this Unit 3 Supplemental Declaration.

7. Miscellaneous.

(a) Amendment. In no event shall any of the supplemental covenants, conditions and restrictions pertaining to the Annexed Property set forth in this Unit 3 Supplemental Declaration be construed so as to revoke, modify or add to the covenants established by the Declaration as they are applicable to the Existing Property. This Unit 3 Supplemental Declaration may be amended until January 1, 2020, by written instrument executed by the Owners of ninety percent (90%) or more of the residential Lots within Menger Springs Unit 3, upon recording of such written instrument in the Official Records of Kendall County, Texas, provided that until such date no amendment shall be effective unless approved and executed by Declarant. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Unit 3 Supplemental Declaration, without the necessity of joinder by any Owner of Lots, or any interest therein, for the purposes of correcting an error, clarifying an ambiguity, inserting an omitted portion, or removing any contradiction in the terms herein, or for any reason whatsoever deemed necessary for the benefit of the Property and the Subdivision as determined by Declarant, in its sole discretion, so long as the general scheme contemplated herein and in the Declaration is not materially altered.

(b) Headings. Section and other headings contained in this Unit 3 Supplemental Declaration are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Unit 3 Supplemental Declaration or any provision hereof.

(c) Invalid Provisions. If any one or more of the provisions of this Unit 3 Supplemental Declaration, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Unit 3 Supplemental Declaration and all other applications of any such provision shall not be affected thereby.

(d) Governing Law and Venue. The laws of the State of Texas and applicable federal law shall govern the validity, enforcement and interpretation of this Unit 3 Supplemental Declaration. The obligations of the parties are performable and venue for any legal action arising out of this Unit 3 Supplemental Declaration shall lie in Kendall County, Texas.

(e) Counterparts. This Unit 3 Supplemental Declaration may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement, and the signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

(f) Consent of Lienholders. Each holder of existing mortgage(s) and liens against the Annexed Property consents to and joins in the execution of this Unit 3 Supplemental Declaration for the limited purposes set forth in the Consent of Lienholder attached hereto.

[COUNTERPART SIGNATURE PAGES FOLLOW]

EXHIBITS:

- Exhibit A - Construction Standards and Requirements
- Consent of Lienholder – Sterling Bank
- Consent of Lienholder – Balous T. Miller and Julie A. Miller

AFTER RECORDING, RETURN TO:

Ms. Jamie M. Wilson
 WILSON & WILSON LAW, P.C.
 3303 Oakwell Court, Suite 110
 San Antonio, Texas 78218

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COUNTERPART SIGNATURE PAGE
TO
UNIT 3 SUPPLEMENTAL DECLARATION

DECLARANT:

MENGER SPRINGS UNITS 1 & 2, LTD., a Texas limited partnership

By Its General Partner:
BITTERBLUE, INC., a Texas corporation

By: Wm Eugene Powell
Wm. Eugene Powell, Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

The foregoing instrument was acknowledged before me on February 19, 2007, by Wm. Eugene Powell, Chief Executive Officer of Bitterblue, Inc., a Texas corporation, as General Partner of Menger Springs Units 1 & 2, Ltd., a Texas limited partnership, on behalf of said limited partnership.



Sarah E. Carrington
Notary Public, State of Texas

COUNTERPART SIGNATURE PAGE
TO
UNIT 3 SUPPLEMENTAL DECLARATION

OWNER:

MENGER SPRINGS UNIT 3, LTD., a Texas limited partnership

By Its General Partner:
BITTERBLUE, INC., a Texas corporation

By: Wm. Eugene Powell
Wm. Eugene Powell, Chief Executive Officer

STATE OF TEXAS

COUNTY OF BEXAR

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Sarah E. Carrington
Notary Public, State of Texas

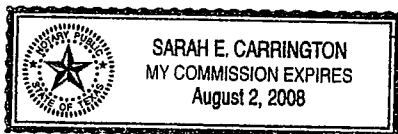


EXHIBIT A

CONSTRUCTION STANDARDS AND REQUIREMENTS

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 eighteen 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 twelve feet (12') 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.

(iii) Trampolines must not be able to be seen from any Common Areas or Lots.

(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. Exposed aggregate concrete is discouraged, but will be reviewed by the ACC on a case by case basis. 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 non-climb wire fencing (12.5 gauge or better) not to exceed fifty-six inches (56") in height, including a single strand of smooth top wire, with stripped cedar posts (minimum 4" diameter for inline posts and 6" for corners and H-braces). Painted iron pipe is permissible for H-brace supports. No top rails will be permitted. Fencing will not be allowed forward of the residence on any street frontage. No chain link fencing will be permitted.

(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 or wrought iron fences 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 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. Garages located forward of the leading edge of the main residence are discouraged, but will be reviewed by the ACC on a case by case basis. 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) **Variations.** 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.

(9) **Security Deposit.** As security for the performance by each Owner of its obligations under this **Section 5(t)** with respect to the initial installation of the required landscaping 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 an Owner hereunder, each Owner shall deposit with the Association the sum of Two Thousand Five Hundred Dollars (\$2,500.00), as a security deposit ("Landscape Security Deposit"), at the same time as the submission by such Owner of the Required Plans to the ACC. The Landscape 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 Landscape 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, use the Landscape Security Deposit to the extent necessary to satisfy any other obligation of Owner hereunder. If, in the reasonable judgment of the Association, Owner is not in default upon the completion of the initial installation of the required landscaping on the Owner's Lot in accordance with the Plans approved by the ACC, the balance of the Landscape Security Deposit remaining on deposit with the Association shall be returned by the Association to such Owner. The application of the Landscape Security Deposit as provided herein shall be in addition to all other rights and remedies of the Association hereunder or otherwise available at law or in equity. Each Owner acknowledges that the Landscape Security Deposit is in addition to the Security Deposit in the amount of \$2,000.00 required to be deposited with the Association by each Owner pursuant to Section 9(h) of the Declaration.

(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	fifty feet (50') on Lots 133, 136-141, 150-152, 217, 231-234, 238, and 242-244 seventy-five feet (75') on all other Lots
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.

CONSENT OF LIENHOLDER

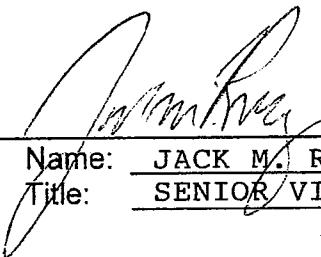
The undersigned, being the owner and holder of existing mortgage(s) and liens upon and against a portion of the Property subject to this Certificate of Annexation and Supplemental Declaration for Menger Springs, Unit 3 ("Unit 3 Supplemental Declaration"), being described in the Deed of Trust for the benefit of the undersigned recorded in Volume 912, Page 754, 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 Unit 3 Supplemental 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 Unit 3 Supplemental Declaration. Any owner who accepts title to any of the Property subject to this Unit 3 Supplemental Declaration specifically acknowledges that the undersigned lienholder is not a party to this Unit 3 Supplemental Declaration except for the sole purpose of subordinating its liens as set out above, and 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 Unit 3 Supplemental 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 FEBRUARY 20TH, 2007.

LIENHOLDER:

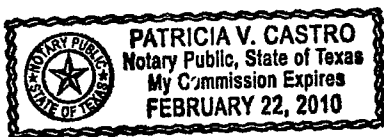
STERLING BANK

By: 
Name: JACK M. RONEY
Title: SENIOR VICE PRESIDENT

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on FEBRUARY 20TH, 2007, by JACK M. RONEY, SR. VICE PRES. of Sterling Bank, a banking association, on behalf of said banking association.




Notary Public, State of Texas

CONSENT OF LIENHOLDER

The undersigned, being the owner and holder of existing mortgage(s) and liens upon and against a portion of the Property subject to this Certificate of Annexation and Supplemental Declaration for Menger Springs, Unit 3 ("Unit 3 Supplemental Declaration"), being described in the Deed of Trust for the benefit of the undersigned, recorded in Volume 912, Page 743, 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 Unit 3 Supplemental 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 Unit 3 Supplemental Declaration. Any owner who accepts title to any of the Property subject to this Unit 3 Supplemental Declaration specifically acknowledges that the undersigned lienholder is not a party to this Unit 3 Supplemental Declaration except for the sole purpose of subordinating its liens as set out above, and 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 Unit 3 Supplemental 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 February 19, 2007.

LIENHOLDER:

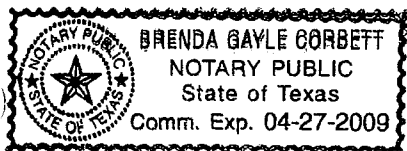
Balou T. Miller
BALOUS T. MILLER

Julie A. Miller
JULIE A. MILLER

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on February 19, 2007, by Balous T. Miller and Julie A. Miller.



Brenda G. Corbett
Notary Public, State of Texas

Filed for Record in:

Kendall County
Darlene Herrin
County Clerk

On: Feb 26, 2007 at 01:46P

Document Number: 00218483
Total Fees : 103.00

Receipt Number - 96393
By Deputy: Sally Peters

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.

AT - 50

STATE OF TEXAS
COUNTY OF KENDALL

I hereby certify that this instrument was filed in File Number Sequence on the date and at the time stamped hereon and was duly recorded in the Official Records of Kendall County, Texas on:

FEB 27 2007

DARLENE HERRIN, County Clerk
Kendall County, Texas



By: [Signature] Deputy

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

FEB 23 2007

Doc# 20070043488 Fees: \$108.00
02/23/2007 11:26AM # Pages 24
Filed & Recorded in the Official Public Records of BEXAR COUNTY
GERRY RICKHOFF COUNTY CLERK



[Signature]
COUNTY CLERK BEXAR COUNTY, TEXAS