

SCANNED

DECLARATION OF RESTRICTIVE COVENANTS
City of San Antonio Zoning Case No. Z2008253

STATE OF TEXAS §
 §
COUNTY OF BEXAR §



This **DECLARATION OF RESTRICTIVE COVENANTS** (this “Declaration”) is executed by and between Q & M, LLC (the “Declarant”) and the Jade Oaks Homeowners Association.

I.



Definitions

Any term not herein specifically defined shall carry the definition contained in the Unified Development Code of the City of San Antonio as such Code is defined below.

“**Association**” shall refer to the Jade Oaks Homeowners Association, its successors and assigns.

“**City**” shall mean the City of San Antonio, a Texas municipal corporation.

“**Code**” shall mean the Unified Development Code of the City in effect as of the effective date of this Declaration.

“**Declarant**” shall mean Q & M, LLC, the owner of the Property defined in Article II below, and any successors and assigns of the owner of the Property who acquires fee title to all or a portion of the Property.

“**Development**” shall mean any land preparation, clearing, or grading, associated with construction.

“**Subdivision**” shall mean the Jade Oaks Subdivision as recorded in the Real Property Records of Bexar County, Texas, the property owners within which are members of the Association.

II.

Property

The “**Property,**” as the term is used throughout this Declaration, shall refer to the entirety of a 37.286-acre tract of land generally located northeast of the intersection of Babcock Road and Melissa Ann Street, and more specifically described as 37.286 acres out of NCB 17204 and 14862, in Bexar County, Texas that is eligible for development, 10.413-acres of which is the subject of City of San Antonio Zoning Case Number Z2008253 (“**Rezoning Property**”).

III.

Recitals

1. WHEREAS, Declarant is the owner of the Property, as more specifically defined in Article II above.
2. WHEREAS, Declarant submitted a Zoning Application to the City's Development Services Department formally referenced as Zoning Case Number Z2008253. Pursuant to Zoning Case Number Z2008253, Declarant has requested rezoning of the Rezoning Property to "MF-33" (Multi-Family) Zoning District.
3. WHEREAS, Declarant has requested support from the Association for the above-referenced rezoning request to "MF-33" (Multi-Family) Zoning District.
4. WHEREAS, the Association has consented to the request for the above-referenced rezoning request as consideration for this Declaration, and shall agree not to oppose the same when such request is heard by the City Council.
5. WHEREAS, the undersigned Declarant does hereby finally and irrevocably impose the following restrictions on the Property, and burdens the Property with such restrictions, which are to run with the land, to survive all transfers of ownership of the Property, and to govern any development or use of the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements, and other valuable consideration, it is declared that the Property, shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions:

IV.

Restrictions

1. **Height Limitation:** The Declarant agrees to limit the height to no more than 1-story for all structures located on the Rezoning Property, and to no more than three stories for all structures located on the remainder of the Property.
2. **Density:** The Declarant agrees to limit the building density on the Rezoning Property to no more than thirty (30) units (2.88 units per acre), without regard as to whether the Code allows for additional density pursuant to the zoning of the Rezoning Property. The Declarant further agrees to limit the total building density for the overall Property to no more than 750 units (21 units per acre), without regard as to whether the Code allows for additional density pursuant to the zoning of the entire Property. The Declarant further agrees that no apartment built on the Property shall contain more than three (3) bedrooms.

3. **Building Setback:** The Declarant agrees that all buildings on the Rezoning Property shall be set back a minimum of sixty feet (60ft) from the southern property line of the Rezoning Property.
4. **Landscape Buffer:** The Declarant agrees to provide a twenty-foot (20-ft.) landscape buffer along the portion of the Property adjacent to the Subdivision, excluding the 4.271-acre portion of the Property located within the 100-year floodplain, as measured from the southern property line of the Rezoning Property. The Declarant further agrees that the landscape buffer shall be constructed pursuant to the standards imposed for a standard (non-optional) Type D Bufferyard, as defined by Section 35-510 of the Unified Development Code in effect as of the effective date of this Declaration, reduced in depth from twenty-five feet to twenty feet, with said buffer yard's ten percent reduction for use of native vegetation option waived.
5. **Fencing and Screening:** The Declarant agrees to construct and maintain an eight-foot (8ft), opaque wooden fence along the southern portion of the Rezoning Property, located at the extremity of the Landscape Buffer nearest to the Subdivision, in fulfillment of the said Landscape Buffer's fence/wall requirement. The Declarant agrees to screen visually, and to refrain from elevating above ground level, all exterior heating, ventilation and air conditioning components located on the Rezoning Property. The Declarant agrees to screen visually any exterior heating, ventilation and air conditioning components located on the remainder of the Property that is elevated above ground level.
6. **Emergency Gate:** Subject to applicable governmental restrictions and approvals, the Declarant agrees that the secondary access gate on Melissa Ann Street will be locked and used for emergency access only pursuant to the City of San Antonio's Unified Development Code.
7. **Trash Containers:** The Declarant agrees to locate all trash containers a minimum of two-hundred feet (200 ft.) from the southern property line of the Rezoning Property. The Declarant further agrees to contractually require, and to use the best possible efforts to enforce, a limitation of the trash collection times to 6:00 a.m. to 9:00 p.m. Monday through Friday and 8:00 a.m. to 9:00 p.m. Saturday through Sunday.
8. **Tree Preservation:** The Declarant agrees not to remove or injure any and all trees and landscaping within the drainage easement located between the Property and the Subdivision.
9. **Parking:** The Declarant agrees that all parking areas shall be located a minimum of forty feet (40ft) from the southern property line of the Rezoning Property.
10. **Hours of Construction:** The Declarant agrees to limit the times for construction activity on the Property to 5:00 a.m. to 9:00 p.m. Monday through Friday and 6:00 a.m. to 8:00 p.m. Saturday through Sunday. Notwithstanding the foregoing, no heavy construction work, defined as including grading, cement truck assembly and pouring, blasting,

trenching, rock drilling or sawing, framing, or roofing shall commence before 8:00 a.m. on any day of the week.

11. **Site Plan and Building Materials:** The Declarant agrees to develop the Property in substantial conformance with the Property site plan attached as Exhibit A hereto. Furthermore, Declarant agrees that all structures built upon the Property shall meet the following additional requirements: Rezoning Property exterior wall surfaces shall be stone, brick, other masonry, or stucco, and shall explicitly exclude, without limitation, Hardi-Plank-style, wood, metal or synthetic siding. Roofing shall be composite shingle, tile, or commercial-grade metal. Hardi-Plank-style and wood siding are not prohibited outside the Rezoned Property, but the remaining exterior wall and roofing restrictions shall apply.

The Declarant agrees not to depart from substantial compliance with the commitments of this Section 11, without first meeting with the Association and obtaining the written consent of the Association Board of Directors. Association agrees to respond to Owner requests for any such consent within fifteen (15) business days of receipt of written request therefor from Owner. Any such Association Board of Directors approval shall be evidenced and documented on the same basis as a waiver of a provision hereof under Section VI(8), but need not meet the fifty-one percent (51%) member approval requirement for waivers contained therein. For purposes of this Section V(11), departure from substantial compliance shall include: (i) any substantial alteration of exterior finish materials or roofing, or (ii) any rotation of Rezoning Property building footprints as shown on Exhibit A hereto that turn such buildings thirty degrees of rotation or more. Nothing contained in this paragraph shall authorize deviation from any specific commitments contained elsewhere in this Declaration.

12. **Lighting:** The Declarant agrees to provide lighting in the sixty-foot (60ft) building setback area described in Section IV(3) above. The illumination component of any outside lighting on the Property must be so designed that its light must be directed essentially downward and away from the boundaries of the Property sufficiently to avoid any substantial illumination of the properties adjoining or facing the Property ("cut-off lighting"). This shall not forbid low-intensity illumination of any primary building structure up to its maximum permitted height.
13. **Drainage Easement Access.** The Declarant agrees to pay the reasonable cost of obtaining and installing vehicular-access-blocking, concrete and steel bollards across the City drainage easement that follows the border of the Property and the Subdivision, at the extremities of the Property's interface with said drainage easement, spaced at intervals appropriate to the denial of access by small pick-up trucks, and sunk at such a depth as can reasonably be expected to withstand erosion by water passing through the easement. This obligation is conditioned upon the approval, or upon written application to, and subsequent non-disapproval, of the City, at the request of the Association, and shall expire if not performed on or before December 31, 2010.

V.

Condition Precedent

1. **Zoning:** All obligations agreed to by the Declarant as part of this Declaration are expressly contingent upon the City Council's approval of a "MF-33" (Multi-Family) Zoning District for the Property pursuant to Zoning Case Number Z2008253.

VI.

General Provisions

1. **Enforcement:** Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. Declarant hereby agrees that upon receipt of a written notice from the Association of any violation of these restrictive covenants, the Property shall be brought into compliance with the restrictive covenant(s) violated within sixty (60) days of written notice thereof. It is understood and agreed by the parties to this Declaration that upon the sale of the Property by the Declarant or any other purchaser or developer of the Property, the Declarant shall be released from any and all liability and responsibility under this Declaration, excepting only liability that the Declarant may already have for any breach of Declarant's obligations under this Declaration that occurred prior to the sale of the Property by the Declarant. The release of liability and responsibility of the Declarant shall not affect or release these restrictive covenants which shall continue and run with and bind the Property. Declarant agrees that upon receipt of a written notice from the Association of any violation of these restrictive covenants, Declarant shall use all due diligence to bring the Property into compliance with the restrictive covenant(s) violated within sixty (60) days of written notice thereof by the Association, or in the event such violation is of a type that cannot be cured within such sixty (60) day period, to commence to cure such violation with such sixty (60) day period and to thereafter diligently and continuously pursue such cure to completion.
2. **Covenants Running With the Land:** These restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the property owned by the Declarant and the Association. Consequently, unless terminated pursuant to the provisions of this Declaration, such restrictions, covenants, and conditions shall run with the real property and shall be binding on all parties having any right, title, or interest in the Property, or property owned by the Association in whole or in part, and their heirs, successors, and assigns. These restrictions, covenants, and conditions shall be for the benefit of the Property, described within this Declaration, or property owned by the owners of the Association, and each property owner in the Association. The Association and each owner in the Association shall have the right to enforce these restrictions. In the event of a violation of these restrictions which is not brought in compliance in a timely manner, in accordance with the terms of this Declaration, the Association, or if the Association shall fail or refuse to act, any member of the Association shall be entitled to seek relief, including but not limited to relief provided by law, regulation, or in equity,

including injunctive relief. In no event will the Association or a member be required to post bond or provide financial assurances to procure temporary injunctive relief for any violation of these Declarations.

3. **Attorney Fees:** If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs. No member of Association shall be responsible for any liability of Association hereunder.
4. **Severability:** Declarant agrees that invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect any other provision, and all other provisions shall remain in full force and effect.
5. **Headings:** The headings and other captions contained in this Declaration are for convenience of reference only and shall not be used in interpreting, construing, or enforcing any of the provisions of this Agreement.
6. **Unintended Omission:** 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, 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.
7. **Term:** Declarant agrees that the restrictions, covenants, and conditions of this Declaration shall be effective for a term of fifty (50) years from the date this Declaration is recorded, after which period, the covenants conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless terminated by agreement of the parties herein, as set forth below.
8. **Waiver and Amendment:** The Association may effectively waive the applicability of all or a portion of any one of the restrictions set forth herein or amend a provision, but only if approved by a majority (51%) of the members of the Association, and evidenced by an instrument executed in writing by the then-serving President of the Association expressly setting forth that such waiver or amendment has been approved as set forth above. Said waiver or amendment shall be acknowledged before a Notary Public, and verify the then-current officer capacity of each signatory for the Association, specifically referencing this Declaration (including the Volume and Page numbers of recordation of this Declaration in the Records), quoting the language of the restriction(s) to be waived or amended, and duly recorded in the Bexar County Real Property Records. Should the Association cease to exist or operate without assigning its rights to a successor, the Declarant shall have the sole power to amend this Declaration.
9. **Entire Agreement:** This Declaration reflects the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.

WHEREFORE, this Declaration is executed this 4 day of December, 2008, at San Antonio, Texas.

DECLARANT:
Q & M, LLC

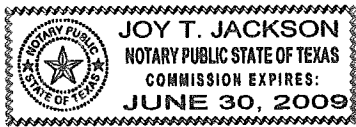
By: M Starnes MANAGER
Print name: Mitchell STARNES

DECLARANT ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Mitchell Starnes, and acknowledged his signature of this instrument on behalf of Q & M, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4 day of December, 2008.



Joy Jackson
Notary Public, State of Texas
Printed Name: Joy Jackson
My Commission Expires: 6/30/09

ASSOCIATION APPROVAL

Jade Oaks Neighborhood Association

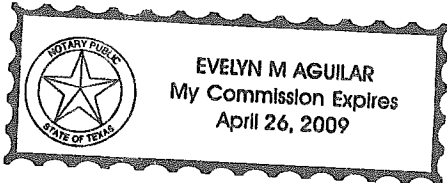
By: *[Signature]*
Miguel Aguilar, President

ASSOCIATION ACKNOWLEDGEMENT

STATE OF TEXAS §
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COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared *Miguel Aguilar*, on behalf of the Jade Oaks Neighborhood Association

GIVEN UNDER MY HAND AND SEAL OF OFFICE this *4th* day of December, 2008.

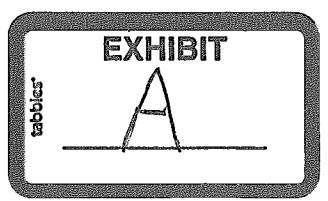
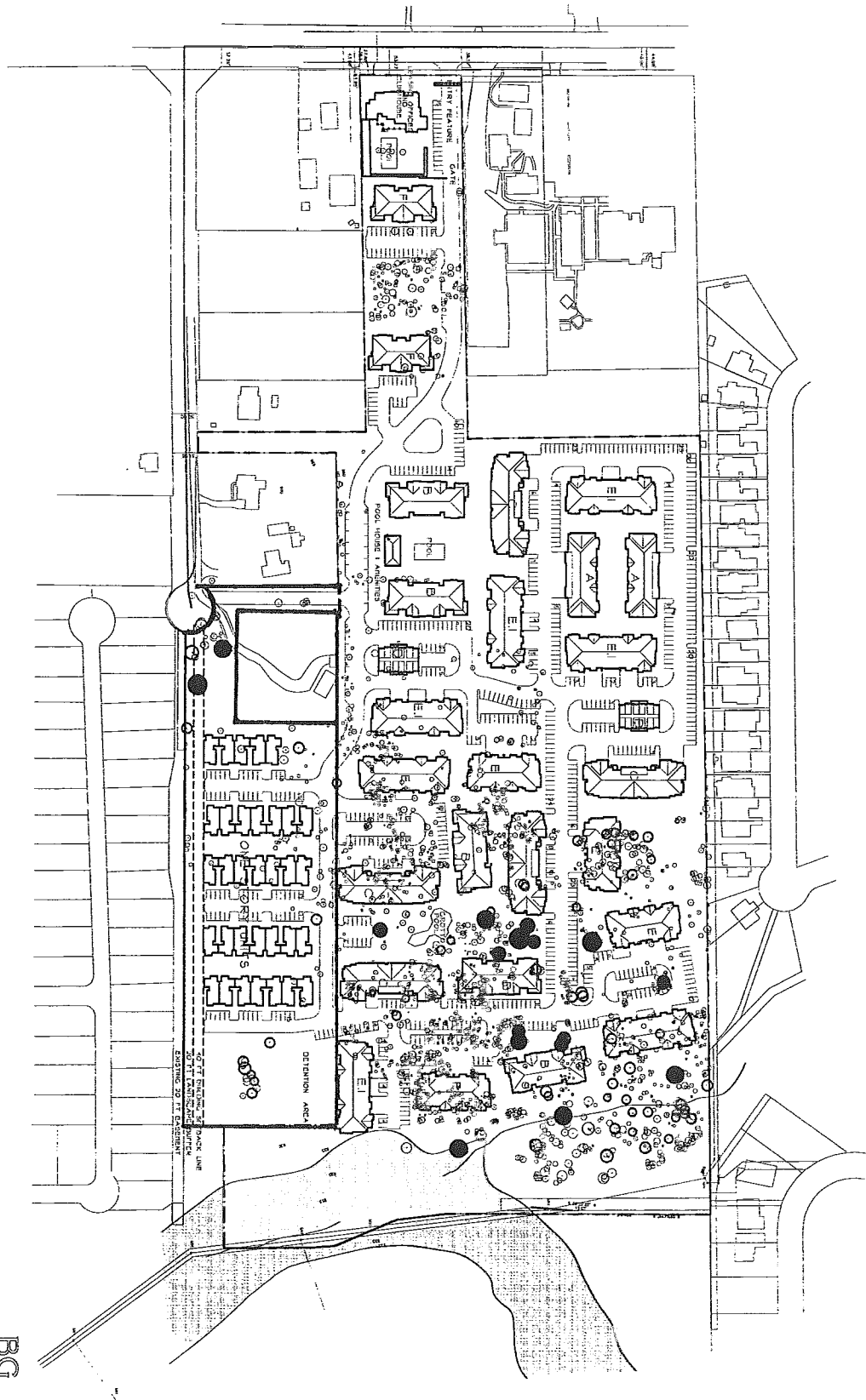


[Signature]
Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

AFTER RECORDING RETURN TO:

Mitchell Starnes
8018 Broadway, Suite 200
San Antonio, TX 78209

CONCEPTUAL SITE PLAN



BG
BRUNNEN & GARDNER
ARCHITECTS
ALL RIGHTS RESERVED

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS
INSTRUMENT WAS FOUND TO BE INADEQUATE
FOR THE BEST PHOTOGRAPHIC REPRODUCTION
BECAUSE OF ILLEGIBILITY, CARBON OR
PHOTO COPY, DISCOLORED PAPER ETC.

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 this 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:

Doc# 20080260679 Fees: \$52.00
12/10/2008 2:11PM # Pages 10
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERARD BICKHOFF COUNTY CLERK

DEC 10 2008



[Handwritten Signature]
COUNTY CLERK BEXAR COUNTY, TEXAS