

DECLARATION OF RESTRICTIVE COVENANTS
City of San Antonio Zoning Case No. Z2006167
December 14, 2006

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is executed by and between Applied Building Concepts (the "Declarant") and Walzem Road Area Revitalization Inc. (the "Organization").

Definitions

1. **"Declarant"** shall mean Applied Building Concepts, the record owner of the Property, as defined herein, and any successors and assigns of the owner who acquire fee title to all or a portion of the Property.
2. **"Organization"** shall refer to Walzem Road Area Revitalization, a coalition of neighborhood associations concerned with the revitalization and development of Walzem Road, each owner of real property located within 200 feet of the Property, including those owners of real property currently organized in opposition to the proposed rezoning of the Property, and any neighborhood association whose membership now or in the future is comprised of property owners located within 200 feet of the Property.
3. **"Property"** shall refer to the 7.347 acres of land located at 6670 and 6726 Walzem Road, and more specifically described as Lots P-11 and P-3, NCB 15894, in the City of San Antonio, Bexar County, Texas, and consisting of that certain property made the subject of City of San Antonio Zoning Case Numbered Z2006167.
4. **"Townhomes"** or **"Townhouses"** shall mean buildings that have one-family dwellings erected in a row as a single building on adjoining lots, each being separated from the adjoining unit by a fire wall.

Recitals

1. Declarant is the owner of the Property, which encompasses approximately 7.347 acres located at 6670 and 6726 Walzem Road, and more specifically described as Lots P-11 and P-3, NCB 15894, in the City of San Antonio, Bexar County, Texas.
2. The Property is the subject of a request for rezoning through Zoning Case Number Z2006167. Declarant has requested rezoning of the Property from "R-6" (Residential Single Family District) to "MF-25" (Multi-Family District).
3. The Organization has consented to the request for the above-referenced rezoning as consideration for this Agreement set forth herein. All obligations agreed to by the Declarant as

part of this Agreement are expressly contingent on the City of San Antonio's City Council's approval of the above-referenced rezoning request.

4. The following restrictions shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in part or in whole, and their heirs, successors, and assigns.

5. The following Restrictions shall continue for a period of ten (10) years from the date that this Declaration is recorded, after which period, the covenants conditions and restrictions shall be automatically extended for successive periods of five (5) years unless terminated by agreement of the parties herein. However, should the Organization, or its assigns, cease to operate, the Declarant shall have the right to amend this Declaration at any time.

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:

Restrictions

The Declarant hereby agrees to impose the following conditions and restrictions on the Property:

1. The development of the Property shall be restricted to townhouses ranging from two – three units and 900 to 1,500 square feet in size, with a uniform structure and appearance. Units will be sold to individual occupants and units will have rear-load garages if this can be achieved after the completion of engineering studies concerning the development. Prior to the sale of individual townhouses, provisions shall be made for a property owners' association that is designated as the representative of the owners of Property, and any successors and assigns of the owners who acquire fee title to all or a portion of the Property. The property owners' association shall have the direct responsibility to provide for the operation and maintenance of all common areas and facilities, including private streets and sidewalks, which are part of the Property and/or a townhouse development. A dedicatory instrument(s) shall establish a plan for the use and permanent maintenance of the common areas/facilities and demonstrate that the property owners' association is self-perpetuating and adequately funded by regular assessment and/or special assessment to accomplish its purposes.

General Provisions

1. **Expiration:** The covenants and restrictions outlined herein shall immediately and automatically expire if the Property is not rezoned to "MF-25" (Multi-Family District).
2. **Construction & Severability:** If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible to more than one or conflicting interpretations, then the interpretation which is more nearly in accordance with the general purposes and

objectives of this Declaration shall govern. In the event one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

3. **Unintended Omission:** If any punctuation, word, clause, sentence, or provisions 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.
4. **Headings:** The headings and other captions contained in this Agreement are for convenience of reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.
5. **Rights, Duties and Obligations of Successors:** Every covenant, condition, and restriction contained herein shall run with the land and be binding upon the Property and Declarant, and inure to the benefit of the Organization. Notwithstanding anything to the contrary in this Agreement, upon an owner's sale of all or a portion of the Property, such owner shall be released from all liabilities and other obligations arising under this Agreement.
6. **Notice:** Any formal notice or communication with respect to the subject matter of this Declaration of Restrictive Covenants shall be delivered by one of the following methods:
 - (a) by delivering the same in person; or
 - (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified at the address set forth below; or
 - (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the party to be notified at the address set forth below.

Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, shall be as follows:

Declarant:

Applied Building Concepts
c/o H.B. Newman
P.O. Box 701641
San Antonio, TX 78270

Organization

Walzem Road Area Revitalization, Inc.
c/o Don Myles, Secretary
P.O. Box 18311

San Antonio, Texas 78218-0311

The parties may, from time to time, change their respective mailing addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other party.

7. **Enforcement** - In any action to enforce these Restrictions, it is agreed that Declarant, or its successors(s) if ownership has been transferred, shall be liable for payment (jointly and severally if more than one successor owner) of the reasonable attorneys' fees and costs of the party seeking enforcement if such party shall have substantially prevailed, whether in court or by settlement.
8. **Entire Agreement and Amendment** – This Declaration constitutes the entire agreement and understanding between the parties herein and supersedes all prior negotiations, agreements and understandings. Any covenant, condition, or restriction of this Declaration may be amended by either party herein by an instrument in writing and shall not be effective until signed by the Declarant and recorded in the Real Property Records of Bexar County, Texas.

WHEREFORE, this Declaration is executed this executed this _____ day of _____, 2006, at San Antonio, Texas.

DECLARANT:

Applied Building Concepts

By: _____

Name: H.B. Newman on behalf of Applied Building Concepts

VERIFICATION

STATE OF TEXAS §
COUNTY OF BEXAR §

I H.B. Newman, on behalf of Applied Building Concepts, have read the above and foregoing Declaration of Restrictive Covenants, and verify that to my personal knowledge the facts therein contained are true and correct.

By: _____

Name: H. B. Newman

APPROVED AS TO FORM AND CONTENT:

By: _____
Name: Terri L. Williams
Title: Chairman, Walzem Road Area Revitalization

DRAFT