

DECLARATION
OF
RESTRICTIVE COVENANTS AND CONDITIONS OF
GUILBEAU PARK, UNIT II

STATE OF TEXAS §

COUNTY OF BEXAR §

WHEREAS, GUILBEAU PARK DEVELOPMENT, LTD. (the "Developer") is the owner of a 44.011 acre tract of land (the "Property") located in Bexar County, Texas more particularly described as GUILBEAU PARK, Unit II, according to a map or plat recorded in Volume _____, Page _____, Plat Records of Bexar County, Texas.

WHEREAS, Developer has subdivided the Property into single-family lots as shown on the recorded plat; and

WHEREAS, Developer plans to develop the Property and to sell such lots to persons who will construct single-family residences on them;

NOW, THEREFORE, IT IS AGREED that the covenants and restrictions hereinafter set forth are to run with the land and are for the purpose of creating and carrying out a uniform plan for the development and improvement of the Property which shall enhance and protect the value and desirability of the Property and that

these covenants and restrictions shall benefit and be binding upon all parties and all persons having any right, title or interest in the Property defined in paragraph 1.03, or any part thereof, and their heirs, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

1.01 "Association" - GUILBEAU PARK OWNER'S ASSOCIATION, INC., a Texas nonprofit corporation, its successors and assigns.

1.02 "Owner" - the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.03 "Property" - the real property hereinbefore described and such additions thereto as may hereafter be brought

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within the jurisdiction of the Association pursuant to Section 9.04 hereof.

1.04 "Common Area" - all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to an Owner who uses it for residential purposes shall be the following described real property, together with any improvements hereinbefore or hereinafter constructed thereon:

Lots 7 and 8, Block 7, Guilbeau Park, Unit II, according to map and or plat recorded in the above described Plat Records of Bexar County, Texas.

1.05 "Lot" - any plot of land identified as such on any recorded subdivision map of the Property, with the exception of the Common Area.

1.06 "Developer" - Guilbeau Park Development, Ltd., a Texas limited partnership, its successors and assigns, but only if such successors and assigns should be in the land development business or residential construction business and should acquire more than ten undeveloped Lots from the Developer in a single transaction.

ARTICLE 2

COMMON AREA

Owner's Easements of Enjoyment

2.01 Every Owner shall have a right and easement of enjoyment in the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment imposed by the Association against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its

published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded.

(d) The right of the Association, in accordance with its Articles of Incorporation or By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area. The rights of any such mortgagee in said Common Area shall be subordinate to the rights of the Owner hereunder.

Delegation of Use

2.02 Any Owner may delegate, in accordance with the Association's By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on his Lot.

ARTICLE 3

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

3.01 Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

3.02 The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer, and shall be entitled to one (1) vote for each Lot owned. If more than one person should hold an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Developer shall be the Class B member and shall be entitled to three (3) votes for each Lot Developer owns. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On January 1, 1989.

Notwithstanding the above, the Class B membership shall be revived automatically upon the annexation of any part of the additional land shown on the plat attached hereto as Exhibit "A", but in such event the Class B membership shall terminate automatically on the fifth anniversary date of such annexation. Successive annexation, however, shall revive the Class B membership in accordance with the provision of this paragraph. If not terminated earlier, Class B membership shall terminate on April 1, 1994.

ARTICLE 4

COVENANT FOR MAINTENANCE ASSESSMENTS

Creation of the Lien and
Personal Obligation of Assessments

4.01 The Developer, for each Lot owned within the Property hereby covenants, and each Owner by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to 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 the Lot when the assessment fell due.

Purpose of Assessments

4.02 The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area, the maintenance of the entry islands to Guilbeau Park on Caen located to the North and South of New Guilbeau Road and to promote the recreation, health, safety and welfare of the residents of the Property.

Maximum Annual Assessment

4.03 (a) Until January 1 of the year immediately following the Assessment Commencement Date (as defined in Section 4.06 below), the maximum annual assessment shall be ONE HUNDRED EIGHTY AND NO/100 DOLLARS (\$180.00) per Lot.

(b) From and after January 1 of the year immediately following the Assessment Commencement Date, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership (regardless of the amount actually assessed for the prior year).

(c) From and after January 1 of the year immediately following the Assessment Commencement Date, the maximum annual assessment may be increased above said 10% by the vote or written assent of 66-2/3% of each class of members who are voting in person

an amount not in excess of the maximum.

Special Assessments for Capital Improvements

4.04 In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of 66-2/3% of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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Notice and Quorum for any Action
Authorized Under Sections 4.03 and 4.04

4.05 Written notice of any meeting called for the purpose of taking any action authorized under Section 4.03 or 4.04 shall be sent to all members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be three-fourths (3/4) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Date of Commencement of Annual Assessments - Due Dates

4.06 (a) The annual assessments provided for herein shall commence as to each Lot, on the first day of the month following the conveyance of the Common Area to the Association, or in the event construction of improvements situated thereon is not then

completed, the first day of the month following such completion of construction, such date being herein referred to as the "Assessment Commencement Date". Notwithstanding the foregoing, each Lot which is owned by Developer shall be assessed at the rate of one-fourth (1/4th) of the annual assessment hereinabove provided, until the first day of the month following the date on which such Lot is first used for residential purposes. The first annual assessment on each Lot shall be prorated according to the number of months remaining in the calendar year.

(b) The board of directors of the Association shall establish the annual assessment period and the due dates. The board of directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

(c) The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance.

Effect of Nonpayment of Assessments -
Remedies of the Association

4.07 Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against that Owner's Lot. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agent, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and each Owner hereby expressly grants to the

Association in a like manner as a mortgage or deed of trust lien on real property, and each Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Subordination of the Lien to Mortgages

4.08 The lien for assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the subsequent Owner from liability for any

assessment thereafter becoming due or from the lien thereof.

Exempt Property

4.09 All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, in no event shall land or improvements devoted to dwelling use be exempt from said assessments.

ARTICLE 5

ARCHITECTURAL CONTROL

Architectural Control Committee

5.01 Developer shall designate and appoint an Architectural Control Committee consisting of not less than three (3) qualified persons, which committee shall serve at the pleasure of the Developer. The members of the Architectural Control Committee shall not be entitled to any compensation for services performed pursuant to this article.

Approval of Plans and Specifications

5.02 No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any Lot or Lots be undertaken, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography. All decisions of said committee shall be final and binding and there shall be no revision of any action of said committee except by procedure for injunctive relief when such action is patently arbitrary and capricious. In no event shall the Developer or any member of said committee be personally liable for any decision made by said committee. All submissions to the Architectural Control Committee shall be at the Developer's office located at 401 Isom Road, Suite 110, San Antonio, Texas 78216, or at such

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address as may be later designated.

Failure of Committee to Act

5.03 In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

Termination and Extension

5.04 The powers and duties of the Architectural Control Committee and the requirements of this article shall cease on or before January 1, 1995, provided, however, that at the time the Owners of a majority of the Lots shall have the power through a duly recorded written instrument to extend the operation of this article for an additional ten year period, and in connection with such extension shall have the power to remove any committee member or members and replace them with other members, or to withdraw from the committee any of its powers and duties.

ARTICLE 6

MINIMUM LIVING AREA AND ZERO SIDE LOT LINE

6.01 The following Lots out of Guilbeau Park, Unit II, shall be restricted to single-family dwellings of not less than 1,100 square feet of heated and air conditioned living area:

<u>LOTS</u>	<u>BLOCK</u>
1-6	6
1-6	7
1-52	10
1-21	11
1-4	12
1-38	13
1-16	14

6.02 The following Lots out of Guilbeau Park, Unit II, shall be restricted to single-family dwellings of not less than 900 square feet of heated and air conditioned living area:

<u>LOTS</u>	<u>BLOCK</u>
1-22	1
1-17	2
1-9	4

6.03 Merger of Lots: When two or more adjacent Lots are purchased and used for a single home site, all interior Lot line requirements, such as setbacks, walls or easements shall be waived automatically.

6.04 The Architectural Control Committee shall have total authority in approving or denying plans based upon proposed square feet of living area.

6.05 The Owner of any Lot may make use of one zero side Lot line in compliance with the following restrictions and easements:

(a) To avoid visibility through any part of the wall abutting the zero side Lot line, said wall shall be of solid construction and shall contain no windows, doors or other similar openings;

(b) No door or window facing the zero side Lot line shall be nearer than five (5) feet from such zero side Lot line; and

(c) The eaves or other similar overhang of any structure on the zero side Lot line may not extend more than two feet (2') over such zero side Lot line into the adjoining Lot. No part of any such eave or overhang may be less than eight feet (8') above the ground.

The Owner of any Lot making use of a zero side Lot line is hereby granted, sold and conveyed an easement upon the neighboring Lot adjacent to the zero side Lot line (the "Adjoining Lot") upon, over and across a strip of land six (6) feet wide along the entire zero side Lot line for the purpose of building, maintaining, repairing and replacing any of the structures along the zero side Lot line. This easement shall include the right for an encroachment of eaves on such adjoining Lot that do not overhang more than two (2) feet into the adjacent Lot and that are not less than eight (8) feet above the ground. This easement also shall allow for the reasonable encroachment of any structure onto the Adjoining Lot that is due to soil settlement after construction is completed. The Owner of the Adjoining Lot will have the

right to use and enjoy the easement area subject to such easement herein granted and shall maintain such area, but will not place any structures or improvements within such easement area which would unreasonably interfere with such building, maintenance, repair or replacement by the adjoining Zero Side Line Lot Owner. The Zero Side Line Lot Owner will be liable to the Adjoining Lot Owner for any damage to the Adjoining Lot caused by the use of such easement. The Adjoining Lot Owner may construct a fence extending to the neighboring zero Lot line, but any such fence shall have a gate or easily removable section not less than four (4) feet wide within the six (6) foot strip covered by this easement.

ARTICLE 7

USE RESTRICTIONS

Type of Buildings Permitted

7.01 All Lots shall be used for residential purposes only, and no building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height and a private garage. Each residential structure shall provide off-street parking spaces for at least two cars, one of which spaces may be a garage

spaces for at least two cars, one of which spaces may be a garage or carport and the other such space may be the driveway.

Exterior Walls and Floor Area

7.02 The exteriors shall consist of not less than 25 percent (25%) masonry veneer (as that term is commonly construed in the residential construction industry in the San Antonio, Texas area) on the first floor, including the garage, to a height of eight (8) feet above the foundation, unless the Architectural Control Committee agrees to allow other material deemed to be of equal value and quality.

Radio and Television Antenna

7.03 Any radio and/or television antenna placed on any building on any Lot shall not extend higher than the peak of the roof of the residence on that Lot and shall be placed so that it is not visible from the street.

Resubdivision or Consolidation

7.04 None of said Lots shall be resubdivided in any fashion except that any person owning two or more adjoining Lots may subdivide or consolidate such Lots into building sites, with the privilege of constructing improvements as permitted in Paragraphs 6.01 and 6.02 hereof on each resulting building site.

Building Setback

7.05 All front, back and side building set-back lines will be determined in accordance with the recorded plat or the applicable zoning, subdivision or building regulations, whichever are the most restrictive.

Utility and Drainage Easements

7.06 Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Likewise, each Owner shall create and retain the approved grading

channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Likewise, each Owner shall create and retain the approved grading plan of his particular Lot so as not to change the direction, velocity, amount or quality of drainage flow onto neighboring Lots or onto the street. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Noxious or Offensive Activities Prohibited

7.07 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.

Prohibited Residential Uses

7.08 No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Signs

7.09 No signs of any character shall be allowed on any Lot except one sign of not more than five square feet advertising the Property for sale or rent; provided, however, that Developer and any other person or entity engaged in the construction and sale of residences within the subdivision shall have the right, during the construction and sales period, to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas, and model units.

Oil Development Prohibited

7.10 No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on a Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.

Rubbish, Trash and Garbage

7.11 No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

Animals

7.12 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Fences, Walls, Hedges and Utility Meters

7.13 No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. All fences shall be five (5) to six (6) feet high and

shall be constructed of wood, unless the Architectural Control Committee gives its approval to a variance of this requirement in writing. Chain-link fences may be constructed only on the side line of a Lot with the prior approval of the Architectural Control Committee and the written consent of the adjoining Lot Owner. Such chain-link fence must not be visible from the street and should be screened by a wooden fence running from house to house on the front of each affected Lot.

Shrubs and Trees

7.14 No shrub or tree planting which obstructs sight lines at elevations between two and six feet above the roadway shall be planted or permitted to remain on any corner Lot within the triangular area formed by the curblines at points twenty-five feet from their intersection, or, in the case of a rounded corner, from the intersection of the curblines as extended. The same sight line limitations shall apply on any Lot within ten feet of the intersection of a street curbline and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foilage line is maintained at a height of more than six feet above ground level.

Parking and Storage

7.15 No truck, bus, boat, trailer, camper or motor home shall be left parked in the street in front of any Lot except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity, and no truck, bus, boat, trailer, camper or motor home shall be parked on the driveway or any portion of a Lot in such manner as to be visible from any street. The parking of non-commercial pick-up trucks or passenger vans shall not be a violation of paragraph 7.15.

Sporting Equipment and Paraphernalia

7.16 No sporting equipment or other paraphernalia shall be constructed on or attached to any improvement on any Lot in such a manner as to be visible from the adjoining street. Paragraph 7.16 specifically, without limitation, includes basketball backboards.

Prohibited Activities

7.17 No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot.

ARTICLE 8

ADJACENT DEVELOPMENT

8.01 Each Owner, by acceptance of a deed to his Lot, expressly covenants that he will not challenge or interfere with any zoning proceedings or actions which may affect Developer's plan of development for all or any part of the land delineated on the plat attached hereto as Exhibit "A".

ARTICLE 9

GENERAL PROVISIONS

Enforcement

9.01 The Developer, or any Owner, shall have the right, but not the duty, to enforce by any proceeding at law or in equity all restrictions, conditions and reservations now or hereafter imposed by the provisions of this instrument. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Severability

9.02 Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

Duration and Amendment

9.03 The restrictive covenants and conditions of this instrument shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Developer or the Owner of any Lot subject hereto and their respective legal representatives, heirs, successors, and assigns, and, unless amended as provided herein, shall be effective for a term of thirty (30) years from the date this instrument is recorded, after which time said restrictive covenants and conditions shall be automatically extended for successive periods of ten (10) years. This document

may be amended during the first thirty (30) year period by an instrument signed by not less than 80 percent of the Owners; during any succeeding ten (10) year period, said document may be amended during the last year of any such ten (10) year period by an instrument signed by not less than 75 percent of the Owners. No amendment shall be effective until recorded in the Official Public Records of Real Property of Bexar County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

Annexation

9.04 Additional residential Property and Common Area may be annexed to the Property with the consent of two-thirds (2/3rds) of each class of members. Notwithstanding the immediately preceding sentence, within ten (10) years of the date of this instrument additional land within the area delineated on the plat attached hereto as Exhibit "A" may be annexed by the Developer, by Larry Thomas Development Company or by any entity of which Larry Thomas Development Company is the general or managing partner without the consent of members, provided that

the FHA and/or the VA determine that the annexation is in accord with the general plan heretofore approved by them.

FHA/VA Approval

9.05 As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: Annexation of additional properties, dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions.

Executed by the said Developer, this 3rd day of April, 1984.

GUILBEAU PARK DEVELOPMENT LTD.

By: Larry Thomas Development
Company, General Partner

By: 
Larry J. Thomas, President

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