

RESTRICTIONS

CHOKE CANYON ACRES, PHASE I

THE STATE OF TEXAS

✕

COUNTY OF LIVE OAK

✕

The Declaration, made on the date hereinafter set forth by CHOKE CANYON DEVELOPERS, INC., a Texas Corporation, by and through its duly authorized officers, RONNIE B. DUGGER, President and ALLEN SCOTT DUGGER, Secretary, hereinafter referred to as "GRANTOR".

W I T N E S S E T H

WHEREAS, Grantor is the owner of that certain property known as Choke Canyon Acres, Phase 1, a subdivision in Live Oak County, Texas, according to the map or plat thereof recorded in Vol. 3, Page 84, of the Plat Records of Live Oak County, Texas; and

WHEREAS, it is the desire of Grantor to place certain restrictions, covenants, conditions, stipulations and reservations upon and against such property in order to establish a uniform plan for the development, improvement and sale of such property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Tracts in said subdivision:

NOW, THEREFORE, Grantor hereby adopts, establishes and imposes upon Choke Canyon Acres, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the land, which reservations, easements, covenants, restrictions and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

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ARTICLE I

Defintions

Section 1. "Association" shall mean and refer to the Choke Canyon Acres Improvement Association, its successors and assigns, provided for in Article V hereof.

Section 2. "Properties" shall mean and refer to Choke Canyon Acres, Phase I, and any additional properties made subject to the terms hereof pursuant to the provisions set forth herein.

Section 3. "Tract" and/or "Tracts" shall mean and refer to the Tracts upon the Subdivision Plat which are restricted hereby to use for single-family residential dwellings.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Tract which is a part of the Properties, but in the event of the execution of a contract for sale covering any Tract, the "Owner" shall be the purchaser named in the contract, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 5. "Subdivision Plat" shall mean and refer to the map or plat of Choke Canyon Acres, recorded in Volume 3, Page 84, of the Plat Records of Live Oak County, Texas.

Section 6. "Architectural Review Committee" shall mean and refer to the Choke Canyon Acres Architectural Review Committee provided for in Article IV hereof.

Section 7. "Builder-Owner" shall be any person who acquires a Tract or Tracts for the purpose of engaging in the business of construction of single-family residential dwellings for the purpose of resale.

ARTICLE II

Reservations, Exceptions and Dedications

Section 1. The Subdivsion Plat dedicates for use as

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such, subject to the limitations set forth therein, the streets and easements shown thereon and such Subdivision Plat further establishes certain restrictions applicable to the Properties, including without limitation, certain minimum setback lines. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Grantor conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2. Grantor reserves the easements and rights of way as shown on the Subdivision Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, water, and any other utility Grantor sees fit to install in, across and/or under the Properties.

Section 3. Grantor reserves the right to make changes in, and additions to, the above easements for the purpose of most efficiently and economically installing the improvements.

Section 4. Neither Grantor nor any utility company using the easements herein referred to, shall be liable for any damages done by it or its assigns, its agents or employees, to fences, shrubbery, trees or flowers or any other property of the Owner situated on the land covered by said easements, that is to say, that should the Owner place any improvements on the property covered by said easements, then, in the event Grantor or any utility company uses the same, said Grantor and/or utility company shall be held harmless by Owner from any damage done to said improvements.

Section 5. It is expressly agreed and understood that the title conveyed by Grantor to any tract or parcel of land

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within the Properties by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone purposes and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances, thereto constructed by or under Grantor or any part thereof, to serve said land or any other portion of the Properties, and where not affected, the right to maintain, repair, sell or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or to any other party, and such right is hereby expressly reserved.

### ARTICLE III

#### Use Restrictions

Section 1. Land Use and Building Type. All Tracts shall be known and described as Tracts for single-family residential dwellings only (single family residences for the purposes of this provision shall be construed to include bi-plex, tri-plex and four plex structures), and no structure shall be erected, altered, placed or permitted to remain on any Residential Tract other than one (1) single-family dwelling, a detached or an attached garage for not less than one (1) nor more than four (4) cars, with detached garages not to exceed two (2) stories in height which may contain guest quarters. Such detached or attached garage and guest quarters shall not exceed the main dwelling in height or number of stories and said structure may be occupied only by a member of the family occupying the main residence on the building site or by guests. The dwellings shall not exceed a height of thirty-five (35) feet. No Tract shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose. No building of any kind or character shall ever be moved onto any Tract within said Subdivision without the written permission of the Architectural Review

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Committee.

Section 2. Architectural Control. No building shall be erected, placed or altered on any Tract until the construction plans and specifications and a plat plan showing the location of the structures thereon have been approved by the Architectural Review Committee as to harmonize with existing structures as to location with respect to topography and as to compliance with minimum construction standards more fully provided for in Article IV hereof.

Section 3. Dwelling Size. The total living area of the main residential structure on Choke Canyon Acres, Phase I, shall not be less than 1,200 square feet, exclusive of open porches and garages.

Section 4. Type of Construction, Materials and Landscaping.

(a) All structures must be constructed in a good workmanlike manner and must be maintained in such a manner so as to present an attractive appearance. The exterior walls of all such structures shall be constructed of brick, stone, rock, stucco, or cedar siding (i.e., batt and board, lap and gap, or tongue and groove siding, but excluding plywood or simulated wood siding) unless a deviation therefrom is first approval in writing by the Architectural Review Committee.

(b) No external roof material other than asbestos or wood shingles or built-up tar and gravel shall be constructed or used on any building located on any Tract without the written approval of the Architectural Review Committee.

(c) No window or wall type air conditioners shall be permitted to be used, erected, placed, or maintained on or in any building located on any Tract without the written approval of the Architectural Review Committee.

(d) Before any landscaping shall be done in the front

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of any newly constructed dwelling, the landscape layout and plans shall have been first submitted to and approved by the Architectural Review Committee (See Article IV). Such landscaping is to be done in the parkway area and on the front of the Tract at the time the dwelling is being completed and before occupancy.

Section 5. Building Location. No building shall be located on any Tract nearer to the front Tract line or nearer to the side street line than the minimum building setback lines. No building shall be located nearer than ten (10) feet to any side or rear Tract. No main residence building or any part thereof shall be located on any interior Tract nearer than twenty-five (25) feet to the rear Tract line and ten (10) feet to any side Tract line. No main residence building or any part thereof shall be located on any corner Tract nearer than twenty-five (25) feet to the rear Tract line, twenty-five (25) feet to the street side line and ten (10) feet to any interior side line. For the purpose of these restrictions, the front of each Tract shall coincide with and be the property line having the smallest or shortest dimension abutting a street. Unless otherwise approved in writing by the Architectural Review Committee, each main residence building will face the front of the Tract, and be located at least fifty (50) feet from the front of the Tract on which it is situated.

Section 6. Lot Ingress & Egress.

All Owners will enter or exit their Tract/Tracts on the streets and/or roads provided within Choke Canyon Acres. No private entrance from an Owner's Tract/Tracts onto Highway No. 72 will be permitted.

Section 7. Minimum Tract Area. No Tract shall be re-subdivided without the express written approval of the Architectural Review Committee, nor shall any building be erected or placed on any Tract having an area of less than 15,000 square

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feet; provided, however, that nothing contained herein shall be construed to prohibit the resubdivision of any Tract or Tracts within the Properties if such resubdivision results in each resubdivided Tract containing not less than the minimum Tract area aforesaid; it being the intention of this restriction that no building plot within the Properties contain less than the aforesaid minimum area of 15,000 square feet.

Section 8. Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Tract nor shall anything be done thereon which may become an annoyance to the neighborhood. The display or shooting of firearms, fireworks, or firecrackers is expressly forbidden.

Section 9. Temporary Structures. No trailer houses or mobile homes of any kind are permitted on any Tract/Tracts, for the purposes of these restrictions the terms "trailer houses" and "mobile homes" shall include any and all structures used for residential purposes to which title passes under the Certificate of Title Act (Art. 6687-1, V. A. T. C. S.). No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Tract at any time as a permanent residence, or for any other purpose, either temporarily or permanently; provided, however, that Grantor reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Tracts, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to sales and construction offices, storage areas, model units, signs and portable toilet facilities. The Grantor and Builder Owners may use a residence as a temporary sales office. No garage, guest quarters or other permitted accessory structure shall be erected, placed or main-

tained on any Tract until construction of the main residential dwelling has commenced. Any structure on which construction has commenced must be completed within a 9 month period of time. No inoperative automobiles or portable buildings are to be permanently or semipermanently stored in the public street right-of-way or on driveways. Permanent and semi-permanent storage of such items and vehicles must be screened from public view, either within the garage or behind a fence which encloses the rear of the Tract.

Section 10. Signs and Billboards. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Tract or plot without the express prior written consent of the Grantor; except a "For Sale" sign, of a neat appearance, placed thereon by an Owner; and except for a Builder-Owner who may place on each Tract owned by such Builder-Owner, during the construction and sales period of improvements, not more than one sign of not more than five square feet of sign space. Grantor or its agents shall have the right to remove any sign not complying with the above restriction, and in so doing, shall not be liable and are expressly relieved from any liability for trespass or other tort in connection therewith, or arising from such removal. The right is reserved by Grantor to construct and maintain such signs, billboards or advertising devices as is customary in connection with the general sale of property.

Section 11. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Tract nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Tract. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Tract.

Section 12. Storage and Disposal of Garbage and Refuse.

No Tract shall be used or maintained as a dumping ground for rubbish, unless expressly designated as such by Grantor. Trash, garbage, or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Tract shall be used for the open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Tract may be placed upon such Tract at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Tract or stored in a suitable enclosure on the Tract.

Section 13. Electric Distribution System.

Electric Service will be supplied to Owners of Tract/Tracts by Karnes Electric Co-Operative, Inc. The utility easement areas dedicated and shown on the recorded map of Choke Canyon Acres may be cleared and kept clear by any utility of all trees, bushes and other growth, including overhanging branches from trees or protrusions from structures located upon adjacent property, without payment to Owners by such utility for such clearance, cutting or trimming. The provisions of this paragraph shall constitute a covenant running with the land as to each Tract and Owner in this subdivision.

Grantor does hereby require that individual underground electrical service drops be installed to each residence. The Owners of each residence will therefore comply with Karnes Electric Co-Operative's policy regarding such underground service installations, and the Owners do hereby agree to pay any charges which might be incurred for the installation of the underground service

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as set forth in the Company policy. Karnes Electric Co-Operative's policy is subject to change from time to time without notice.

The Owners shall ascertain the location of said service drops and keep the area over the route of said service drops free of excavations and clear of structures, trees and other obstructions; and that Karnes Electric Co-Operative may install, maintain, repair, replace and remove said underground service drops, and open the ground for any such purpose or purposes; and no payment will be due or made by any utility for such use or activity.

Section 14. Walls, Fences and Hedges. All fences, walls and hedges must be approved by the Architectural Review Committee prior to construction. No walls, fences or hedges shall be erected or maintained nearer to the front Tract line than the walls of the dwelling existing on such Tract. All side or rear fences and walls must be at least six (6) feet in height unless otherwise approved in writing by the Architectural Review Committee.

Fences must be of ornamental iron, wood or masonry construction. No chain link (except on the sides or rear of said Tract or tracts) or barb-wire fences are permitted, except to enclose swimming pools and only then if they are not visible from the street.

Any wall, fence or hedge erected as a protective screening on a Tract by Grantor shall pass ownership with title to the property and it shall be the Owner's responsibility to maintain said protective screening thereafter. In the event of default on the part of the Owner or occupant of any Tract in maintaining said protective screening and such failure continuing after ten (10) days' written notice thereof, Grantor or its assigns may, at their option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Tract and cause said protective screening to be repaired or maintained or to do any other thing necessary to secure compliance with these restrictions,

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so as to place said protective screening in a satisfactory condition and may charge the Owner or occupant of such Tract for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof.

Section 15. Tract Maintenance. The Owners or occupants of all Tracts shall at all times maintain said Tract/Tracts in a sanitary, healthful and attractive manner and shall in no event use any Tract for storage of material and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash, or rubbish of any kind thereon and shall not burn anything (except by use of an incinerator). The drying of clothes in full public view is prohibited and the Owners or occupants of any Tracts at the intersection of street or adjacent to parks, playgrounds, or other facilities where the rear yard or portion of the Tract visible to full public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes; yard equipment; wood piles or storage piles which are incident to the normal residential requirements of a typical family. In the event of default on the part of the Owner or occupant of any Tract in observing the above requirements or any one or more of the them, such default continuing after ten (10) days' written notice thereof, Grantor or its assigns may, at their option, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Tract and cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or do any other thing necessary to secure compliance with these restrictions so as to place said Tract in a neat, attractive, healthful and sanitary condition and may charge the Owner or occupant of such Tract for the cost

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of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the property to pay such statement immediately upon receipt thereof.

Section 16. Motor Vehicles. No unlicensed motor vehicles shall be allowed within the subdivision. No motor bikes, motorcycles, motor scooters or other vehicles of that type shall be operated in such a way as to create a nuisance within the subdivision. If they are a nuisance by reason of noise or manner of use in the sole judgement of the Choke Canyon Acres Improvement Association, the same shall be removed and not returned to the subdivision.

Section 17. Septic Tanks. Every dwelling shall have an individual sewage disposal system which meets or exceeds the minimum standards of state and county health regulations. Septic tanks shall be used in connection with houses and other improvements containing sanitary facilities erected on the subject Tracts. In no event will a cess pool or open toilet be permitted on any Tract in said subdivision. No part of the septic system shall be located within 10 feet of any Tract property line. No water well shall be located within 50 feet of any septic tank, or within 150 feet of any part of any drain field. No waste water shall be permitted to drain into any creek or draw on the subject Tracts.

Section 18. Pets. No animals will be permitted on any Tract in such subdivision other than those that are normally found in a suburban subdivision for private residential use and pleasure, with it being specifically understood that no hogs will be permitted on any part of such subdivision and that no commercial livestock, animal or fowl feeding, breeding or raising or sales operation or feed lot will be permitted on any part of said subdivision.

Section 19. Drainage. Natural drainage of street,

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Tracts or roadway ditches will not be impaired by any person or persons. Driveway culverts will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. Grantor may remove any culvert that obstructs the flow of water through the street ditches.

Section 20. Water Supply. Choke Canyon Acres will be supplied water by El Oso Water Supply Corporation, a membership owned and operated Rural Water System funded by the U. S. Department of Agriculture, Farmers Home Administration.

After Owner submits House Plans to the Architectural Review Committee for approval, Owner should then apply for membership and meter installation to El Oso Water Supply (P. O. Box 309, Karnes City, Texas 78118--512/780-3539). When the Architectural Review Committee issues final approval of the submitted House Plans, El Oso will then install water meter and make connection to the existing water lines within the subdivision.

#### ARTICLE IV

##### Architectural Review Committee

Section 1. Approval of Building Plans. No building shall be erected, placed, or altered on any Tract until the construction plans and specifications and a plot plan showing the location of the structure, have been approved in writing as to harmony of exterior design and color with existing structures, as to location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards set forth by the Architectural Review Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Review Committee, or its designated representative prior to commencement of construction. Along with the submission of such plans and specifications for the main dwelling unit, a fee of \$35.00 (payable to Choke Canyon

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Acres Improvement Asociation) shall be submitted to cover the expenses of the Committee in reviewing the plan and making required inspections before or after construction is started. The afore-said fee of \$35.00 may be incresed after 1987 at the discretion of the Architectural Review Committee to the extent necessary to cover the expenses of the Committee in making the required review of plans and specifications and inspections pertaining thereto. The Architectural Review Committee requires the submission of such plans, specifications, and plot plans, front, side, and rear setback lines and septic installation together with such other documents as it deems appropriate, in such form and detail as it may elect at its entire discretion. In the event the Architectural Review Committee fails to give written notice of approval or disapproval of such plans and specifications within thirty (30) days after the same are submitted to it, approval will not be required and the requirements of this Section will be deemed to have been fully complied with.

Section 2. Committee Membership. The Architectural Review Committee shall be initially composed of Allen Scott Dugger and Ronnie B. Dugger, who may designate a representative to act for them.

Section 3. Replacement. In the event of death or resignation of any member of said committee, the remaining member or members shall appoint a successor member or members and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted or to designate a representation with like authority.

Section 4. Minimum Construction Standards. The Architectural Review Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and

such Architectural Review Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the Architectural Review Committee and of the designated representative shall cease on and after twenty (20) years from the date of this instrument. Thereafter, the approval described in this covenant, and all power vested in said Committee by the covenant shall automatically pass to the Choke Canyon Acres Improvement Association.

#### ARTICLE V

##### Choke Canyon Acres Improvement Association

Section 1. Membership. Every person or entity who is an Owner of any of the Properties which are subject to maintenance charge assessment by the Association, shall be a member of the Choke Canyon Acres Improvement Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of membership:

Class A. Class A members shall be all those Owners as defined in Section 1, with the exception of the Grantor. Class A members shall be entitled to one vote for each Tract in which they hold the interest required for membership by Section 1. When more than one person holds the interest in any Tract, all such persons shall be members. The vote for such Tract shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Tract.

Class B. The Class B member shall be CHOKE CANYON DEVELOPERS, INC., the Grantor as defined in the Declaration. The

Class B member shall be entitled to two (2) votes for each Tract in which they hold the interest required for membership by Section 1; provided, however, that 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,

(b) On January 1, 2004.

The Class A and Class B members shall have no rights as such to vote as a class, except as required by the Texas Nonprofit Corporation Act, and both classes shall vote together upon all matters as one group.

Section 3. Nonprofit Corporation. Choke Canyon Acres Improvement Association, a nonprofit corporation, will be organized; and all duties, obligations, benefits, liens, and right hereunder in favor of the Association shall vest in said corporation.

Section 4. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in conflict with the terms and provisions hereof.

Section 5. Inspection of Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during the normal business hours.

## ARTICLE VI

### Maintenance Charge

Section 1. Choke Canyon Acres will be subject to an annual maintenance charge and assessment of \$25.00 for the purpose of creating a fund to be designated and known as the "maintenance fund," which maintenance charge and assessment will be paid by

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the Owner or Owners of each Tract within Choke Canyon Acres, to the Choke Canyon Acres Improvement Association. The maintenance charge will be payable yearly in advance (or at the option of the Grantor, monthly in advance) until a dwelling is erected on the Tract, at which time the maintenance will be payable in advance in annual installments. The first annual payment shall be made and collected at the closing of the purchase of each Tract, the second annual payment shall be due January 1, 1986 (unless said purchase is made subsequent to said date), subsequent annual installments shall be due and payable on or before the first day of January in each and every calendar year thereafter. The Grantor and Builder-Owners shall pay twenty percent (20%) of the assessed rate. Every person or entity who is an owner of more than one Tract, except the Grantor and Builder-Owner, shall pay the assessed rate on one Tract and twenty percent (20%) of the assessed rate on all additional Tracts owned; except that when a dwelling is erected on any Tract, the full assessed rate will be paid for such Tract regardless of the number of Tracts owned. The rate at which each Tract will be assessed will be determined annually, and may be adjusted from year to year by the Association as the needs of the subdivision, may in the judgment of the Association, require; provided that such assessment will be uniform. The Association shall use the proceeds of said maintenance fund for the use and benefit of all residents of Choke Canyon Acres, as well as all other sections of the Subdivision; provided, however, that each section of Choke Canyon Acres to be entitled to the benefit of this maintenance fund, must be impressed with and subjected to the annual maintenance charge and assessment on a uniform (subject to the rates applicable to Grantor and Builder-Owners as described herein), per Tract basis, equivalent to the maintenance charge and assessment imposed hereby, and further made subject to the jurisdiction of the Association. The uses

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and benefits to be provided by said Association shall include, by way of clarification and not limitation, and at its sole option, any and all of the following: building, maintaining and operating swimming pools, tennis courts, parks, parkways, club houses, rights-of-way, easements, esplanades and other public areas, payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies, payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment, employing policemen and watchmen, and doing any other thing or things necessary or desirable in the opinion of the Association to keep the Properties in the subdivision neat and in good order, or which is considered of general benefit to the Owners or occupants of the Properties, it being understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 2. To secure the payment of the maintenance fund established hereby and to be levied on individual residential Tracts, there shall be reserved in each Deed (whether specifically stated therein or not) by which the Grantor shall convey such Tract subject to the Vendor's Lien for benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each such lien shall be secondary, subordinate, and inferior to all liens, present and future, given, granted and created by or at the instance and request of the Owner of any such Tract to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction of improvements on any such Tract to the extent of any such maintenance fund charge accrued and unpaid prior to foreclosure of any such purchase

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money lien or construction lien; and further provided that as a condition precedent to any proceeding, to enforce such lien upon any Tract upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes, the Association shall give the holder of such first mortgage lien sixty (60) days' written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage holder by prepaid U. S. certified mail, and shall contain a statement of the delinquent maintenance charges upon which the proposed action is based. Upon the request of any such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Tract covered by such first mortgage lien to the holder thereof.

Section 3. The above maintenance charge and assessment will remain effective for the full term (and extended term if applicable) of the within covenants.

Section 4. It is specifically stated and agreed that any Tract sold to persons or entities by the Grantor by deed with lien and note, or other instrument and the purchaser defaults in the contract or note payments in any manner and said Tract is repossessed or foreclosed by Grantor, its successors or assigns, the Association will release its right to collect the past due maintenance charges, assessments and penalties on such Tract from the Grantor. Nothing herein contained shall relieve the purchaser in default from whom the Tract was repossessed from his obligation to pay such delinquent charges, assessments and penalties to the Association.

## ARTICLE VII

### General Provisions

Section 1. Term. These covenants shall run with the land and shall be binding upon all parties and all persons claiming

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under them for a period of forty (40) years from the date these covenants are recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at the end of the 40 years, or anytime thereafter an instrument signed by a majority of the then owners of the Tracts has been recorded agreeing to change or terminate said covenants in whole or in part. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other Tract owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from doing so or to recover damages or other dues for such violations. The Grantor reserves the right to enforce these restrictions.

Section 2. Severability. Invalidation of any one of these covenants by judgement or other court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

Section 3. Approval of Lienholder. Commercial National Bank, chartered under the laws of the State of Texas, the holder of a lien or liens on Choke Canyon Acres, a subdivision in Live Oak County, Texas, joins in the execution hereof to evidence its consent hereto, and hereby subordinates its lien or liens to the provisions hereof.

EXECUTED this 24th day of August, A. D., 1984.  
CHOKY CANYON DEVELOPERS, INC.

BY: Ronnie B. Dugger  
Ronnie B. Dugger, President

ATTEST:

Allen Scott Dugger  
Allen Scott Dugger, Secretary

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COMMERCIAL NATIONAL BANK OF  
BEEVILLE

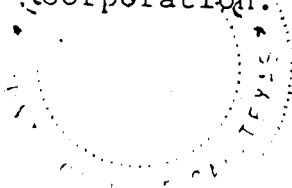
BY: *Ford Sasser*  
Ford Sasser, Vice President

ATTEST:

*Joyce Naylor*

THE STATE OF TEXAS     X  
COUNTY OR LIVE OAK     X

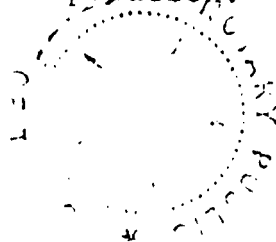
This instrument was acknowledged before me this the 24<sup>th</sup> day of August, 1984, by RONNIE B. DUGGER, President of CHOKE CANYON DEVELOPERS, INC., a Texas Corporation, on behalf of said Corporation.



*Robbie Marker*  
Notary Public, State of Texas  
My Commission Expires: 12-4-84  
ROBBIE MARKER  
NOTARY PUBLIC IN AND FOR LIVE OAK COUNTY, TEXAS  
PRINTED NAME OF NOTARY PUBLIC

THE STATE OF TEXAS     X  
COUNTY OF BEE     X

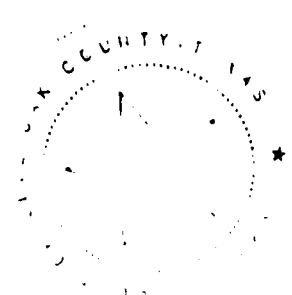
This instrument was acknowledged before me this the \_\_\_ day of \_\_\_\_\_, 1984, by FORD SASSER, Vice President of COMMERCIAL NATIONAL BANK OF BEEVILLE, a Texas Corporation, on behalf of said Corporation.



*Debra Ann Love*  
Notary Public, State of Texas  
My Commission Expires: 4-30-88  
DEBRA ANN LOVE  
NOTARY PUBLIC, STATE OF TEXAS  
PRINTED NAME OF NOTARY PUBLIC

THE STATE OF TEXAS     X  
COUNTY OF LIVE OAK     X

I, Mildred James, Clerk of the County Court in and for Live Oak County, Texas, do hereby certify that this instrument was FILED FOR RECORD and RECORDED in the Volume and Page of the named record and at the time and date as stamped hereon by me.



*Mildred James*  
County Clerk of Live Oak County,  
Texas

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STATE OF TEXAS X

COUNTY OF LIVE OAK X I, MILDRED JAMES, Clerk of the County Court of  
said County hereby certify that the foregoing instrument with its certificate of  
authentication, was filed for record in my office Aug 24, 1984  
at 2:15 o'clock P.M. and with this certificate of record, was duly recorded  
in the Deed Records  
of said County, in Volume 325 page 293.

To certify, WITNESS my hand and the seal of the County Court  
of said County, at office in GEORGE WEST, TEXAS, this Aug 24, 1984

Mildred James Clerk  
County Court, Live Oak County, Texas

By: Clifford L. Jones  
Deputy

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86498

Restriction - Chabre  
Canyon Area - Please  
No. 1

Chabre Canyon and Development,  
Inc.

to  
the Public

FILED FOR RECORD

24

DAY OF

August A.D. 1984

AT

3:15 O'CLOCK PM

MILDRED JAMES

CLERK COUNTY COURT, LIVE OAK COUNTY, TEXAS

BY

Mildred James DEPUTY  
8-24-84

Chg: Bonnie Duggan  
Stacy Pt 2  
John Brown St  
4370