

801945

RESTRICTIONS, COVENANTS AND CONDITIONS VOL. 233 PAGE 483

OF

COMANCHE CAVES RANCHES

WHEREAS, Comanche Caves Ranch Corporation, a Texas corporation, hereinafter called "Developer", is the record owner of all of the land shown and described on that certain map designated as Comanche Caves Ranches in Kerr County, Texas, according to the map or plat filed for record in Volume 4, at Page 199, of the Map and Plat Records of Kerr County, Texas, on the 12th day of February, 1980, to which reference is hereby made for all purposes;

WHEREAS, these Restrictions, Covenants and Conditions are established for the purpose of creating and carrying out a uniform plan for the improvement, development and sale of Comanche Caves Ranches; and

WHEREAS, Developer will cause to be incorporated under the laws of the State of Texas, a non-profit corporation, Comanche Caves Ranches Homeowners Association as an agency to carry out the powers of maintaining and administering Comanche Caves Ranches.

NOW, THEREFORE, Developer does hereby declare the land described on the aforesaid Map and Plat of Comanche Cave Ranches on file with the County Clerk of Kerr County, Texas, to which reference is hereby made for all purposes, is held and shall hereafter be held, sold, occupied and conveyed subject to the following Restrictions, Covenants and Conditions:

1. Purpose and Extent of Restrictions, Covenants and Conditions. These Restrictions, Covenants and Conditions are established for the purpose set forth above and for the further purpose of preserving and propagating the wildlife on said land, all for the mutual benefit of the owners of same. These Restrictions, Covenants and Conditions shall, as hereafter provided, be construed as covenants running with said land and binding upon the Developer, its successors and assigns, and all owners and purchasers of said property, their heirs, successors, executors, administrators, and assigns, as provided herein.

2. Definitions. In construing these Restrictions, Covenants and Conditions, the following words shall have the following meanings:

A. "Developer" shall mean and refer to the Comanche Caves Ranch Corporation, its successors and assigns.

B. "Association" shall mean and refer to the Comanche Caves Ranches Owners' Association, a Texas non-profit corporation, its successors and assigns.

C. "Bylaws" shall mean and refer to the Bylaws of the Association as the same may be amended from time to time by proper action of its Members.

D. "Original Plat" shall mean and refer to the aforesaid Plat filed for record in Volume 4, at Page 199 of the Map and Plat Records of Kerr County, Texas, on the 12th day of February, 1980, designating the Comanche Caves Ranches.

E. "Comanche Caves Ranches" shall mean and refer to the land hereinabove described and that subdivision of Kerr County, Texas, named Comanche Caves Ranches, recorded in the Deed Records of Kerr County, Texas, and designated according to the Original Plat; the term "Comanche Caves Ranches" to include any additional real property owned by Developer as long as such additional real property is:

(i) contiguous or adjacent to the real property now constituting Comanche Caves Ranches as set forth in the Original Plat or to any real property contiguous or adjacent to any such additional real property;

(ii) to be subdivided by Developer, its successors or assigns, pursuant to a plat filed of record in Kerr County, Texas, indicating that such additional property will constitute an addition to Comanche Caves Ranches; and

(iii) to be developed by Developer in a manner consistent with the ranch concept contemplated by these Restrictions, Covenants and Conditions.

Such additional real property may become subject to these Restrictions, Covenants and Conditions in any of the following manners:

(a) Developer may, without the consent of any Member which consent is expressly waived by each Member, at any time and from time to time, add to the Comanche Caves Ranches and to the concept hereof any such property which it presently owns or which it may hereafter own, by filing of record a Supplement to these Restrictions, Covenants, and Conditions, which shall extend the concept of the covenants, conditions and restrictions of these Restrictions, Covenants and Conditions to such additional real property; PROVIDED, HOWEVER, that such Supplement may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in these Restrictions, Covenants and Conditions as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept of these Restrictions, Covenants and Conditions. In no event, however, shall such Supplement modify or add to the covenants established by these Restrictions, Covenants and Conditions. Developer may make any such addition even though at the time such addition is made Developer is not the owner of any portion of the property described in the Original Plat. Each Supplement may designate the number of separate plots or tracts comprising the properties added which are to constitute Ranches, or such designation may be deferred to further and subsequent Supplements as herein provided, and each such separate plot or tract shall constitute a "Ranch" within the meaning of these Restrictions, Covenants and Conditions.

(b) Upon the approval of the Members entitled to cast two-thirds (2/3rds) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for that purpose, the owner of any property who desires to add it to the concept of these Restrictions, Covenants and Conditions and to subject it to the jurisdiction of the Association, may file of record a Supplement as described in paragraph (a)

of this paragraph. Any additions made pursuant to paragraphs (a) or (b) of this paragraph when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

F. "Common Areas" shall mean and refer to all real property, and improvements thereon, designated as such in the Original Plat and/or in any other plat filed of record pursuant to subparagraph E hereof, including all property acquired or owned by the Association for the common use and enjoyment of the Members.

G. "Ranch" shall mean and refer to any ranch, tract or parcel of land (with the exception of Common Areas) shown as such on the Original Plat or any other plat filed of record pursuant to subparagraph E hereof with respect to additional properties.

H. "Member" shall mean and refer to the person or persons, entity or entities, who either own of record fee simple title to a Ranch, or have entered, as an original party, successor or assignee, into a Contract for Deed for a Ranch with Developer (excluding expressly any lessees thereof); the term "Member" to exclude any person or persons, entity or entities, having an interest in a Ranch merely as security for the performance of an obligation, but to include Developer if Developer is a record owner of fee simple title of a Ranch, but only if, with respect to such Ranch, Developer has not entered into any Contract for Deed, as aforesaid. Every Member may lease a Ranch pursuant to a written lease agreement and may delegate to such tenant the right and easement of use and enjoyment in and to the Common Areas subject to, and as provided in, the provisions of these Restrictions, Covenants and Conditions and the Bylaws and Articles of Incorporation of the Association; and any such lease or lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions hereof and the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee thereunder to comply with the terms and provisions hereof and the Articles of Incorporation and Bylaws of the Association shall be and constitute a default under such lease. "Member" shall mean and refer to each such party, who shall upon the acquisition

of any such interest in a Ranch, automatically become a Member of the Association and be subject to the Bylaws. Membership shall be appurtenant to, and not separated from, ownership of each Ranch.

I. "Committee" shall mean and refer to the Architectural Control Committee established pursuant to Paragraph 9 of these Restrictions, Covenants and Conditions.

J. "Residence" shall mean and refer to a permanent structure erected on a Ranch for use as a single family dwelling.

3. Non-Commercial Use of Ranches. (a) Each Ranch shall be used for ranching purposes. The term "ranching purposes" as used herein shall mean and be construed to exclude hospitals, clinics, duplex houses, apartment houses, boarding houses, hotels, motels and commercial and professional uses whether from homes, residences or otherwise, and all such uses of said property are hereby expressly prohibited. No building shall be erected, altered, placed or permitted to remain on any Ranch other than three or less detached single family dwellings, not to exceed two (2) stories in height, together with a private garage (attached or detached) for not more than three (3) cars and servant's type quarters for each such dwelling, which may be occupied by an integral part of the family occupying the residences on the building sites, or by servants employed on the Ranch. In addition, a barn and ranch type buildings may be erected on each Ranch.

(b) No building shall be erected, placed, or altered on any Ranch in Comanche Caves Ranches until the building plans, specifications and plot plan showing the location of each such building have been approved in writing by the Committee, as hereinafter provided.

4. Common Areas. The Common Areas shall be maintained and governed by the Association in a manner consistent with the purposes of the Association as set forth in the Bylaws and in conformity with the terms and provisions hereof. Subject to the provisions hereof, every Member and every tenant of every Member who resides on a Ranch, and each individual who resides with either of them or who is a guest of either of them, respectively, on such Ranch shall have a right and easement of use and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Ranch; PROVIDED, HOWEVER, such

easement shall not give such person the right to make alterations, additions or improvements to the Common Areas. The Developer shall dedicate and convey the fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements and mineral interests outstanding and of record in Kerr County, Texas, prior to the date of the conveyance of the first Ranch; provided that if additional property is made subject to these Restrictions, Covenants and Conditions pursuant to the provisions hereof and if a portion of such additional property is designated as Common Areas, the Developer shall dedicate and convey the fee simple title to such additional Common Areas to the Association, as herein provided, prior to the date of the conveyance of the first Ranch within such additional property. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Board of Directors of the Association to prescribe regulations governing the use, operation and maintenance of the Common Areas (including limiting the number of guests of Members);
- (b) Subject to the affirmative vote of two-thirds (2/3rds) of the votes of the Members present or represented by proxy at a meeting at which a quorum is present and which is duly called and held for the following purpose, the right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage the Common Areas, and the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the homeowners hereunder;
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;
- (d) The right of the Association, as provided in its Bylaws, to suspend membership rights for any period during which any assessment against a Ranch remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations; provided, that the Association shall not deny the use of such of the Common Areas as is necessary for access to each Ranch.

(e) Subject to the affirmative vote of two-thirds (2/3rds) of the Members present or represented by proxy at a meeting at which a quorum is present and which is duly called and held for the following purpose, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine. Each Member shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of the Member or his family, guests, lessees or invitees, to the extent that the damage shall not be covered by insurance.

5. Construction of Buildings and Other Structures. All buildings, fencing and other structures on each Ranch shall be of new construction and architecturally in harmony with the ranching and residential scheme of Comanche Caves Ranches, as determined by the Committee. No unpainted sheet metal or fiberglass structures shall be placed on any of the Ranches for the use as an accessory building or otherwise. No tent, housetrailer, mobile home, or temporary structure of any character may be placed, constructed or maintained on any of the Ranches (except in connection with construction of permanent buildings and structures and then only during such construction).

6. Size of Building and Structures. In no event shall any residence be erected on any of the Ranches having an air conditioned or heated living area of less than one thousand two hundred (1,200) square feet, exclusive of porches, garages and other appendages. All garages or carports on any Ranch shall have a capacity of not less than two (2) standard size automobiles.

7. Set Back Requirements; Fencing. No building, fencing or other structure shall be erected on any Ranch nearer than two hundred (200) feet from any property line, except any property line which forms a part of the perimeter property line of Comanche Caves Ranches and except as otherwise approved by the Committee. No more than 75% of the area of any Ranch shall be fenced unless approved by the Committee.

8. Activities. No noxious or offensive activity shall be carried on upon any Ranch nor shall anything be done thereon which may be or become an annoyance or nuisance to any adjoining Ranch. No Ranch shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the County of Kerr, if applicable, or any other governmental agency or subdivision having jurisdiction thereof.

9. The Architectural Control Committee. There is hereby established an Architectural Control Committee herein referred to as the "Committee". The Committee shall determine if the plans and specifications for any fence, building or other structure on any Ranch meet the requirements of these Restrictions, Covenants and Conditions, determine if the appearance, design and quality of workmanship and materials are in harmony with the proposed scheme or plan of development of Comanche Caves Ranches, as established by the Committee, and approve the location of any such structure with respect to topography and ground elevation. No construction of any structure nor any addition or alteration of any structure may begin until a plot plan and plans and specifications for the same have been approved by the Committee. If approval is granted construction shall be commenced within eight (8) months thereafter and, if not, said approval shall be automatically withdrawn. The building of any approved structure must be completed within twelve (12) months of commencement of construction. Construction plans and specifications shall, as a minimum, include plans of all floors and levels involved together with elevations of all sides of the proposed structure, a section through the structure to explain the relationship of the floor levels and stairs, and notes and/or specifications that describe the materials to be used on the exteriors.

The Committee shall be comprised of no less than three (3) and no more than five (5) members all of whom shall be appointed by the Developer until such time as eighty percent (80%) of the Ranches have been sold. When the title to eighty percent (80%) of the Ranches is vested in Members other than the Developer, Developer shall no longer appoint the Committee and the Committee shall then be composed of persons appointed by the Board of Directors of the Association, and they shall thereupon be vested with all the rights, powers and authority herein granted to the Committee. A majority of the Committee may designate in writing a representative to act for it. There shall be no payment of compensation for services performed by the Committee or its members pursuant to these Restrictions, Covenants and Conditions and no member of the Committee shall be liable for damages, claims or causes of action arising out of any service performed pursuant hereto.

10. Rules and Regulations; Board of Directors of Association. The Board of Directors of the Association shall, and is hereby authorized, to establish such rules and regulations for all Ranches, the activities being conducted thereon, the improvements to be constructed thereon and the use thereof, not inconsistent with the provisions hereof and the same may be enforced in the same manner as provided herein and/or by

any and all appropriate legal and equitable remedies. Any Member violating said rules and regulations shall be liable for all damages and costs including attorney's fees. The Board of Directors may approve any variance from any provision or term hereof upon written application for same and each Member hereby expressly waives any rights to object to and consent to any such variance. The decision of the Board shall be absolutely binding upon all owners and the applicant for a variance. In addition, the Board of Directors shall have all other or additional powers and authorities as are stated in the Bylaws, as amended in accordance therewith.

11. Hunting. Hunting is prohibited on the Common Areas and all Ranches unless such hunting is planned, conducted or permitted under the direction of the Board of Directors of the Association.

12. Sanitation and Sewage. No outside toilets will be permitted on any Ranch, and no installation of any kind for disposal of sewage shall be allowed on any Ranch which would result in raw, treated or untreated sewage or septic tank drainage on or into the surface, ditches or water bodies. No septic tank or sewage disposal system may be installed without prior approval of the Committee and the proper governmental authorities. All State, County and municipal (if any) health and sanitation statutes, rules, ordinances and regulations must be complied with at all times.

13. Signs. No sign or advertising device may be displayed on any Ranch except in the event of sale of said Ranch. There may be one for sale sign on each Ranch containing no more than five (5) square feet.

14. Animals. The raising or keeping of hogs on any Ranch is prohibited, except that the raising and keeping of dogs, cats and usual household pets is permitted on a Ranch and the raising and keeping of horses and cattle is permitted on a Ranch if the same are maintained behind fences which are situated on the Ranch and the same are for personal use and enjoyment and not for commercial or business purposes. The raising, keeping or selling of animals for commercial purposes on any Ranch in Comanche Caves Ranches is strictly prohibited.

15. Intoxicants. No spiritous, vinous, or malt liquors, or medicated bitters, capable of producing intoxication, shall ever be sold, or offered for sale, on any Ranch in Comanche Caves Ranches, nor shall the Ranches or any part thereof be used for vicious, illegal, or immoral purposes,

nor for any purpose in violation of any laws, rules, statutes or regulations of the State of Texas, the United States or any other governmental body, or of police, health, sanitary building or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any Ranch.

16. Trash and Garbage; Repair. No trash, garbage, construction debris, or other refuse may be dumped or disposed of or be allowed to remain upon any Ranch, vacant or otherwise. No building materials of any kind or character shall be placed or stored upon a Ranch until the Member is ready to commence improvements, and then such material shall be placed within the property lines of the Ranch. No noxious or undesirable thing or use whatsoever shall be permitted on any Ranch. The Committee shall determine noxiousness or undesirability and its decision shall be conclusive and binding on all parties. Each Member shall, at his sole cost and expense, maintain and repair his Ranch and the dwelling and other improvements situated thereon, keeping the same in good condition and repair. In the event that any Member shall fail to maintain and repair his Ranch and such dwelling and improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Ranch and to repair, maintain, and restore the Ranch and the improvements situated thereon; and each Member (by acceptance of a deed for his Ranch) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Member to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due. No Ranch shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any Ranch except in sanitary containers.

17. Timber; Oil and Gas. No timber or tree of any kind may be cut by any Member on any of the Common Areas nor on any Ranch (except for construction as herein provided), without the express consent of the Committee. No oil exploration, drilling, development or refining operations and no quarrying or mining operations of any kind, including oil wells, surface tanks, tunnels, or mineral excavations or shafts shall be permitted upon or under any Ranch; and no derrick or other structure designed for use in boring for oil or

natural gas shall be erected, maintained or permitted on any Ranch. No open fires or burning shall be permitted on any Ranch at any time and no incinerators or like equipment shall be placed, allowed or maintained upon any Ranch. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

18. Obstructions. No Ranch, as that term is defined herein, may be re-subdivided or re-platted by a Member without the prior written consent of the Committee; each Member hereby delegating to the Committee the right and authority to approve or disapprove the same and each Member hereby expressly waiving any right to approve the same and any notice of the same. There shall be no obstruction of the Common Areas, including without limitation the air strip thereon, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas, without the written consent of the Board. Each Member shall not alter or change the drainage or seepage on, over or across, nor the grade of, his Ranch by channeling, filling, grading, excavating or any other means or acts and shall not do, permit or cause to be done any act that results or might reasonably be expected to result in any adverse change or affect on such drainage or seepage. Each Member shall not obstruct or in any way prevent other Members from exercising their rights of ingress and egress as herein set forth.

19. Association Membership. All of the Ranches are sold or conveyed upon the understanding that the owner, purchaser or contract purchaser (excluding expressly any leasing) will automatically become and remain a Member in good standing of the Association, and the Member and his property shall be subject to the provisions of the Bylaws of the Association and these Restrictions, Covenants and Conditions, including any obligation imposed for the payment of any costs, dues or assessments.

20. Covenants Running With The Land. These restrictions and covenants are hereby declared to be covenants running with the land and shall be fully binding upon all persons acquiring property in Comanche Caves Ranches, or any additional property, whether by descent, devise, purchase, assignment, contract or otherwise, and any person by the acceptance of title to any Ranch, or entering into a contract for the purchase of same shall thereby agree and covenant to abide by, and fully perform all these Restrictions, Covenants and Conditions. These Restrictions, Covenants and Conditions shall be binding for a period of thirty (30) years from the date they are filed for record in the Deed Records of Kerr County, Texas, unless changed or amended as provided herein.

Said covenants shall be automatically extended, upon the expiration of said term, for successive periods of ten (10) years each unless fifty-one percent (51%) of the Members shall in writing (and duly recorded in the Deed Records of Kerr County, Texas) elect to terminate the same prior to the expiration of such term. Fifty-one percent (51%) of the Members may amend or change these Restrictions, Covenants and Conditions in whole or in part at any time. Any change or amendment shall be set forth and evidenced by a successor or supplemental instrument bearing the signatures of the requisite number of Members and the recording of same in the Deed Records of Kerr County, Texas. A copy of any change or amendment to these Restrictions, Covenants and Conditions shall be forwarded by prepaid mail to all Members. Failure to furnish said copy shall not affect the validity of such change or amendment. Anything herein to the contrary notwithstanding, Developer reserves the right to amend all or any part of these Restrictions, Covenants and Conditions to such an extent and with such language as may be requested by any federal, state or local agency which requests such an amendment as a condition precedent to any approval by any such agency, or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Ranch thereof. Any such amendment shall be effected by the recordation, by Developer, of a Certificate of Amendment signed by a duly authorized agent of Developer, with his signature acknowledged, specifying the Federal, state or local governmental agency or the federally or state chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Comanche Caves Ranches and all persons having an interest therein; such persons having such interest hereby expressly waiving any notice thereof or right to consent thereto.

21. Severability of all Terms and Provisions. If any term or provision of this instrument, or the application thereof shall be held invalid, all other terms and provisions of this instrument, or the application thereof shall not be affected thereby, nor shall any failure of the Developer, the Committee or any Member to seek enforcement of any term or provision constitute a waiver of any right to do so in the future or the validity or enforceability of such term or provision.

22. Enforcement. The Developer, the Association, the Committee and every other person, firm or corporation hereinafter having any right, title or interest in any Ranch, or parcel of land in Comanche Caves Ranches or any additional property, shall have the right to prevent the violation of any of said restrictions by injunction or other lawful procedure to recover any damages resulting from such violations. Damages for the purpose of this paragraph shall include court costs and necessary attorney fees.

23. Interpretation. The right is expressly reserved to the Developer, the Committee and/or the Board of Directors of the Association and their successors and assigns, to interpret any and all conditions, limitations and restrictions contained in these restrictions but such right shall be without prejudice to the rights of enforcement prescribed herein.

24. Abatement and Removal of Violation. Violation of any restriction or condition or breach of any covenant herein contained shall give the Developer, the Board of Directors of the Association, the Committee, or any Member, or their agents, in addition to all other remedies, the right to enter upon the Ranch on which the violation occurs, and to abate and remove the violation at the expense of the Member in whose Ranch said violation occurred and the Developer, the Board of Directors of the Committee, or any Member or their agents, shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.

25. Assessments. (a) Each Member by acceptance of a deed, contract or other agreement, therefor, whether or not it shall be so expressed in any such deed or other agreement, shall be deemed to covenant and agree, to pay to the Association (or to a mortgage company or other collection agency designated by the Association) assessments or charges fixed, established and collected from time to time as hereinafter provided. The assessments thus collected by the Association shall constitute the Maintenance Fund of the Association. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on, and shall be a continuing lien upon each Ranch against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be

the continuing personal obligation of the Member whose Ranch is affected thereby, at the time when the assessment became due.

(b) The assessments levied by the Association shall be used (i) for the purpose of promoting the recreation, health, safety and welfare of the residents of Comanche Caves Ranches, and in particular for the improvement and maintenance of private roadways, walkways, or other properties, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Areas, (ii) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Areas; (iii) for carrying out the duties of the Board of Directors of the Association as set forth herein and in the Bylaws of the Association; and (iv) for carrying out the purposes of the Association as stated in its Articles of Incorporation and Bylaws.

(c) Developer shall have, at its election, the right in common with the Association to improve and maintain the Common Areas, and to exercise the duties of the Board of Directors of the Association and to pay taxes on and insurance in connection with the Common Areas and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Areas. In this regard, all assessments, collected by the Association (less such amounts required for the operation of the Association) shall be forthwith paid by the Association to Developer, to the extent that such assessments are required by Developer to improve and maintain the Common Areas as set forth in this paragraph and to carry out the duties of the Board of Directors of the Association. The Association shall rely upon a certificate executed and delivered by the Developer with respect to the amount required by Developer to improve and maintain the Common Areas hereunder and to carry out the duties of the Board of Directors of the Association. Any sums required by Developer to improve and maintain the Common Areas, in excess of the assessments collected by the Association, shall be borne and paid exclusively by Developer.

(d) Initially the monthly assessment for each Ranch, not owned by Developer, shall be \$75.00.. The Developer shall be exempt from any such assessment. Although the

Board of Directors shall not be required to fix assessments in each year, the Board of Directors may fix the assessments for each year. In addition, to the assessments authorized hereinabove, the Board of Directors may in its discretion 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 unexpected construction, reconstruction, repair, or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto; PROVIDED, THAT any such assessment shall have the affirmative approval of a majority of Members. The Board of Directors shall not be required to levy in any assessment year a special assessment. All assessments must be fixed at a uniform rate for all Ranches except as otherwise expressly provided herein.

(e) The assessments provided for herein shall commence as to all Ranches on the first day of the month following conveyance of the Common Areas and shall be payable in equal monthly installments, in advance, on the first day of each month thereafter. The due date or dates, if it is to be paid in installments, of any special assessment shall be fixed in the respective resolution authorizing such assessment. All assessment shall be paid to the Association at its offices in Kerr County, Texas.

(f) If the Board of Directors decides to fix and set assessments the Board of Directors of the Association shall so fix the amount of the assessment against each Ranch and shall, at that time, prepare a roster of the Ranches and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Written notice of the assessment shall thereupon be delivered or mailed to every Member subject thereto. The Board of Directors shall upon demand at any time furnish to any Member liable for said assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

(g) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall become delinquent and shall automatically

be due and payable together with such interest thereon and cost of collection thereof as hereinafter provided. Each Member hereby grants a continuing lien on the Ranch of each such Member as security for such assessments which shall bind such Ranch in the hands of the Member, his heirs, legal representatives, successors and assigns. Further, the Developer hereby retains a vendor's lien against each Ranch as security for said assessments and said vendor's lien is hereby transferred and assigned to the Association without recourse. The obligation of a Member to pay such assessments as are payable on or prior to the date on which his successors in title take possession of his Ranch shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. The lien for assessments shall be unaffected by any sale or assignment of a Ranch and shall continue in full force and effect, except as otherwise expressly provided herein. No Member may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Areas or abandonment of his Ranch.

(h) If any assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may, at its election, bring an action at law against the Member personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the Ranch subject thereto and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fees to be fixed by the court, together with the costs of the action.

(i) No Member shall, without the prior written consent of the Association (which consent need only be given by the Board of Directors of the Association), sell, convey or in any way transfer any Ranch, in whole or in part, unless and until such Member shall obtain from the Board of Directors of the Association, and shall furnish to such Owner's purchaser or transferee, a certificate (dated not more than ten (10) days prior to the date of such transfer or conveyance) in writing signed by an officer or agent of the Association setting forth that all assessments payable by such Member have been paid to the date thereof, that such Member is not

delinquent in the payment of such assessments as of the date thereof, that such Member is not in violation of any Restrictions, Covenants and Conditions or Rules and Regulations of the Association and that such Owner is otherwise in good standing with the Association. Such certificate shall be furnished by the Board of Directors in accordance herewith. Any sale, transfer or conveyance by any Member not in compliance herewith, shall be void and of no force and effect. Any transfer or conveyance by virtue of foreclosure, or in lieu thereof, with respect to first mortgages or deeds of trust constituting and creating a first and prior lien on a Ranch are expressly excluded from the provisions and requirements hereof.

(j) The lien of the assessments provided for herein shall be subordinate and inferior to the lien or equivalent security interest of any first mortgage or deed of trust now or hereafter placed upon a Ranch subject to assessment if the mortgage or deed of trust is for purchase money of or improvements on such Ranch and placed upon the Ranch at a time when no default has occurred and is then continuing in the payment of any portion of the assessment for such Ranch; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the time when the holder of any first mortgage or deed of trust comes into possession of a Ranch under the provisions of the mortgage, by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or the time when a purchaser at any such foreclosure sale comes into possession, except for claims for a share of such charges or assessments resulting from a reallocation of such charges or assessments to all Ranches including the mortgaged Ranch in question. Such sale shall not relieve such Ranches from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

(k) The following property subject to these Restrictions, Covenants and Conditions shall be exempted from the assessments, charge and lien created herein:

(i) All properties dedicated and accepted by the local public authority and devoted to public use.

(ii) All Common Areas as defined in Article I hereof.

(iii) All portions of Comanche Caves Ranches owned by Developer.

(l) The omission of the Board of Directors, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions hereof, or a release of any Member from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is filed.

(m) The Association shall have the right and authority to pledge, hypothecate, collaterally assign or otherwise mortgage or encumber the monies paid and to be paid into said Maintenance Fund to finance the construction of improvements on any recreational or public area in Comanche Caves Ranches, or in repayment thereof to the developing company or any lending institution or agency.

(n) Said maintenance charge and assessments, together with said liens securing the same, shall remain in effect and shall be collectable until January 1, 1999, and shall be extended automatically for successive periods of ten (10) years, unless prior to the commencement of any extended ten (10) year term a majority of the Members elect to discontinue such charges, which election shall be evidenced by a written instrument executed and acknowledged by a majority of the Members and filed of record in the office of the County Clerk of Kerr County, Texas.

26. Easements. Easements for installation, maintenance, repair and removal of utilities, drainage facilities and floodway easements over, under and across Comanche Caves Ranches are reserved by Developer for itself, its successors and assigns. Developer shall have the right to grant easements for such purposes over, under, and across the Comanche Caves Ranches. Full rights of ingress and egress shall be had by Developer and its successors and assigns, at all times over Comanche Caves Ranches for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Full rights of ingress and egress shall be had by the Association at all times over and upon each Ranch for the maintenance and repair in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder;

provided, that any such entry by the Association upon any Ranch shall be made with as minimum inconvenience to the Member as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Maintenance Fund.

27. Headings. The headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

28. Notices Any notice required to be given to any Member or otherwise shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person to whom it is addressed, as appears on the records of the Association at the time of such mailing.

29. Disputes. Matters of dispute or disagreement between Members with respect to interpretation or application of the provisions hereof or the Bylaws, shall be determined by the Board of Directors, which determination shall be final and binding upon all Members, except as otherwise expressly provided herein.

30. Rule Against Perpetuities. If any interest purported to be created hereby is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be those which would be used in determining the validity of the challenged interest.

EXECUTED this the 3 day of March,
1980.

COMANCHE CAVES RANCH CORPORATION

BY: John H. Duncan, Jr.
John H. Duncan, Jr. President

Weltha Collins
Secretary
Weltha Collins

THE STATE OF TEXAS §

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COUNTY OF KERR §

BEFORE ME, the undersigned authority on this day personally appeared JOHN H. DUNCAN, Jr., President of Comanche Caves Ranch Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 3rd day of March, 1980.



Dorothy Kretow Dorothy Kretow

Notary Public in and for
Kerr County, Texas

My commission expires: 11/1/80

801945
Dorothy Kretow & Son

Restoration Payments,
and conditions

Comanche Caves
Ranch Corporation

To
The Public
Re: Comanche Caves
Ranch

FILED FOR RECORD

at 11:00 o'clock A.M.

APR 7 1980

EMMIE M. MUENKER

Clerk County Court, Kerr County, Texas
By Ruby Whitlock Deputy

Return to:
Wardlaw & Jackson

Filed for record April 7, 1980 at 11:00 o'clock A.M.
Recorded April 10, 1980
EMMIE M. MUENKER, Clerk

By Ruby Whitlock Deputy