

6326

RESIGNATION AND DESIGNATION  
OF  
CUSTODIAN AND ADMINISTRATOR

THE STATE OF TEXAS }  
COUNTY OF BREWSTER }

WHEREAS, Terramar Corporation, a Texas corporation, formerly known as Great Western Investment Corporation and Great Western Corporation ("Terramar"), is the "Developer" referred to and identified in Terlingua Ranch Maintenance Association Agreement (the "Agreement") recorded in Volume 173, page 213, the Deed Records of Brewster County, Texas, and in amendments to such Agreement also filed of record in the Deed Records of Brewster County, Texas (the Agreement and all amendments thereto being collectively referred to herein as the "Agreement") pertaining to property in Brewster County, Texas, described in the Agreement (the "Property"); and

WHEREAS, the Agreement creates a maintenance fund (the "Maintenance Fund") payable by the owners of tracts in the Property, reference being made to the Agreement for the terms, covenants and conditions pertaining to the Maintenance Fund which terms, covenants and conditions are incorporated herein by reference; and

WHEREAS, Terramar is the present Custodian and Administrator of the Maintenance Fund in accordance with the terms, covenants and conditions of the Agreement; and

WHEREAS, Terramar desires to resign and to appoint and designate a successor custodian and administrator of the Maintenance Fund;

NOW, THEREFORE, for good and valuable consideration, including the covenants herein set forth, Terramar and Property Owners' Association of Terlingua Ranch, Inc., a Texas non-profit corporation ("P.O.A.T.R."), covenant and agree as follows:

(1) Terramar, subject to the matters herein set forth: (a) resigns as Custodian and Administrator of the Maintenance Fund; and (b) appoints and designates P.O.A.T.R., as the Custodian and Administrator of the Maintenance Fund in accordance with the provisions of the Agreement pertaining to the Property.

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(2) Terramar reserves and retains unto itself and its successors, for a period of ten years commencing with the effective date hereof, the following:

(a) The option, right and privilege, to succeed P.O.A.T.R., or its successors, as custodian and administrator of the Maintenance Fund, such option to be exercised by, (i) written notice to P.O.A.T.R., or any successor custodian and administrator, mailed postage prepaid, certified mail, return receipt requested, with the U.S. Postal Service, addressed to P.O.A.T.R., or its successors, at the address registered with the Secretary of State of the State of Texas for service of process upon P.O.A.T.R., or such other address as may be requested by such custodian and administrator delivered to Terramar and acknowledged by Terramar in writing, and (ii) recording an affidavit in the public records of Brewster County, Texas, stating that Terramar has exercised its option to succeed as custodian and administrator of the Maintenance Fund. Effective on the first day of the month following ten (10) days after the date such notice from Terramar is posted with the U.S. Postal Service, Terramar or its successors shall automatically become the custodian and administrator of the Maintenance Fund, and all rights, duties and privileges of the then present custodian and administrator shall simultaneously cease and terminate; provided, however, such automatic succession by Terramar shall not relieve the prior custodian and administrator of the Maintenance Fund of any obligations or liabilities that may have accrued prior to the effective date of Terramar's succession. Upon such succession by Terramar to custodian and administrator of the Maintenance Fund, Terramar shall immediately receive, and the prior custodian and administrator shall immediately deliver, all monies, bank accounts and deposits, books and records of any nature pertaining to the Maintenance Fund and shall promptly execute and deliver any instrument or document to evidence or otherwise accomplish such succession as may be deemed necessary or desirable by Terramar, or its successors.

(b) The option, right and privilege, at any time and from time to time to examine, inspect or audit any of the books, records, files, bank accounts, monies, assets and other matters in any manner pertaining to the Maintenance Fund.

(c) Notwithstanding the terms and conditions of the Agreement, the resignation of P.O.A.T.R., or any other person or legal entity as administrator and custodian of the Maintenance Fund and the appointment of a successor administrator and custodian shall be subject to and conditioned upon advance written notice to and the prior written approval of Terramar.

(3) The resignation and appointment set forth herein pertains only to the Maintenance Fund and shall not in any manner affect or impair the rights, obligations and privileges of Terramar as the developer of the Property and other property in Brewster County, Texas.

(4) P.O.A.T.R., joins herein to evidence its acceptance of the appointment as administrator and custodian of the Maintenance Fund, and P.O.A.T.R., for itself and its successors, covenants with Terramar and Terramar's successors, to fully and timely perform all of the covenants, obligations, rights and privileges pertaining in any manner to the Maintenance Fund, including without limitation, the custody, administration, operation, control and enforcement thereof, for the general common good and benefit of the Property, in accordance with the terms, covenants and conditions of the Agreement.

(5) P.O.A.T.R., its successors and assigns, shall indemnify and hold Terramar and Terramar's successors harmless from any and all claims, liabilities, expenses and obligations in any manner pertaining to or arising out of the Maintenance Fund subsequent to the effective date hereof.

This instrument is executed and dated this 30 day of NOVEMBER, 1976, but the resignation and appointment set forth herein and the other terms and covenants hereof shall be effective as of the 30 day of JANUARY, 1977.

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TERRAMAR CORPORATION

By William D. McNair  
William D. McNair, President

PROPERTY OWNERS' ASSOCIATION OF TERLINGUA RANCH, INC.

By [Signature]  
Vice-President

THE STATE OF TEXAS |  
COUNTY OF NUECES |

BEFORE ME, the undersigned authority, on this day personally appeared William D. McNair, known to me to be the person whose name is subscribed to the foregoing instrument as President of TERRAMAR CORPORATION, a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30 day of November, 1976.



Barbara J. Ross  
Notary Public in and for Nueces County, Texas

My Commission Expires: 6-1-77

THE STATE OF TEXAS |  
COUNTY OF NUECES |

BEFORE ME, the undersigned authority, on this day personally appeared John A. Zimmerman, known to me to be the person whose name is subscribed to the foregoing instrument as Vice-President of PROPERTY OWNERS' ASSOCIATION OF TERLINGUA RANCH, INC., a corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30 day of November, 1976.



Barbara J. Ross  
Notary Public in and for Nueces County, Texas

My Commission Expires: 6-1-77

FILED FOR RECORD the 6th day of December A.D., 1976 at 11:30 o'clock A.M.  
RECORDED the 7th day of December A.D., 1976 at 11:35 o'clock A.M.

Ally AKA AKA Deputy HELEN CRONE, County Clerk,  
Register County, Texas