

§323 PROTECTIVE COVENANTS AND USE RESTRICTIONS

THE STATE OF TEXAS X
COUNTY OF BREWSTER X

TERRAMAR CORPORATION, a Texas corporation, formerly known as Great Western Corporation and Great Western Investment Corporation ("Terramar"), is the owner of the surface estate in and to the property situated in Brewster County, Texas, described on the attached Exhibit A, SAVE AND EXCEPT the property described on the attached Exhibit B, (such property is referred to herein as the "Restricted Property"), which Exhibits A and B are incorporated herein by reference.

I. GENERAL PLAN

The restrictions, conditions and use limitations hereinafter set forth shall constitute covenants running with the land, shall be binding upon and inure to the benefit of Terramar, its successors and assigns, and upon all parties acquiring the Restricted Property or any portion thereof, whether by purchase, descent, devise, gift or otherwise, and each such party, by the acceptance of title to any of such Restricted Property, shall agree and covenant to abide by and perform the terms, conditions, restrictions and covenants as set forth herein. Such restrictions, conditions and use limitations shall be made a part of each deed executed by or on behalf of Terramar conveying any portion of the Restricted Property by reference to the place of record of this instrument and by acceptance thereof, the grantee, and all parties claiming under such grantee, shall be subject to and bound thereby, and each such deed shall be conclusively held to have been executed, delivered and accepted subject to all the terms, conditions and restrictions set out in this instrument. In the event, however, of the failure of any deed to any portion of the Restricted Property to refer to this instrument, this instrument shall nevertheless be considered a part thereof, and any conveyance of the Restricted Property shall be construed to be subject to the terms, restrictions, conditions and use limitations set forth herein. The restrictions, conditions and use limitations herein set forth shall encumber the surface estate only of the land herein described and shall not affect, impair or encumber any mineral and/or royalty estates and interests, including, without limitation, oil and gas, pertaining to such land which mineral and/or royalty estates and interests are expressly excluded from the Restricted Property; and such restrictions, conditions and use limitations shall not encumber or limit the use of the surface of the Restricted Property in any manner necessary or desirable for the exploration, development, production, mining, drilling, marketing, processing or transportation of any such mineral and/or royalty estates and interests.

II. GENERAL LAND USE

1. The Restricted Property and the facilities located thereon shall be used, maintained, operated and developed for general recreational uses, together with all other related and appurtenant uses convenient or necessary thereto; provided, however, one building including any replacement, or substitution thereof which may occur from time to time, located upon the Restricted Property may be used for business and sales purposes by Terramar, its successors or assigns, for matters arising from or pertaining to the sale, rental, leasing, development or management of real property or any interest in real property.

2. The use restrictions and limitations set forth herein shall be for the common use, enjoyment and benefit of, (a) all holders of legal or equitable title to any property located in Brewster County, Texas, which Terramar has been, is, or shall be the owner of record title, as reflected in the Deed Records of Brewster County, Texas (record owners of property described in this paragraph are collectively referred to herein as the "Property Owners" and the property in Brewster County, Texas, owned by such Property Owners is collectively referred to herein as "the Property"), (b) Terramar and its successors in interest and

Terramar's guests, (c) all holders of Contracts for Deed ("Contract Holders") for any property located in Brewster County, Texas, executed by Terramar (but only if any such holder is not in default under the terms of any such Contract) and (d) the general public, but only to extent specifically authorized by the owner of the Restricted Property.

III. CONTROL AND USE

1. Terramar shall maintain and operate the Restricted Property for the benefit of all of the Property Owners and Contract Holders, and no action or inaction by Terramar which shall have the effect of limiting the use of or excluding any portion of the Restricted Property from use by the Property Owners or Contract Holders, shall be valid or effective.
2. Terramar may adopt reasonable rules and regulations for the operation and use of the Restricted Property provided such rules and regulations are applicable to all of the Property Owners and Contract Holders on an equal basis and conform to the covenants, conditions and restrictions set forth herein. However, it is expressly agreed that rules and regulations for the operation and use of the Restricted Property may restrict or deny access or use of the Restricted Property to any Property Owner owning less than five (5) acres of the Property, unless such Property Owner pays and is current in the payment of maintenance fees described under that certain Terlingua Ranch Maintenance Association Agreement recorded in Volume 173, Page 213 of the Deed Records of Brewster County, Texas, whether required or not, in the amount and at the times set forth thereunder.
3. Terramar and any successor corporation have the full right, power and authority upon such terms and conditions as Terramar in its sole discretion deems advisable to convey all of its right, title and interest in and to the Restricted Property or any part thereof to any successor corporation, or other corporation or entity undertaking to perform the responsibilities hereunder, or to a public or quasi-public corporation or entity with the power to tax, such as a city, Brewster County or a public district having such powers. Any such conveyance shall be executed by Terramar and all such assignors, assignees or transferees and shall be filed of record in the appropriate public records of Brewster County, Texas.
4. All references to Terramar in this Section III shall apply with equal force and effect, except as may be limited by law, to each successor in interest to Terramar which may be designated as provided in the above paragraph 3.

IV. DURATION

The restrictions, conditions, use limitations and covenants herein set forth shall continue and be binding upon Terramar, its successors and assigns, for a period of thirty-five (35) years from the date hereof and shall automatically be extended for an additional ten (10) year period and for successive periods of ten (10) years thereafter, unless nullified or revised as herein provided. After the expiration of thirty-five (35) years from the date of this instrument, the holder or holders of legal title to the Restricted Property plus Property Owners holding legal title to at least fifty-one percent (51%) of the Property referred to in paragraph 2 of Section II above (such holders of legal title to be determined from the public records of Brewster County, Texas) may execute and acknowledge an agreement in writing terminating these restrictions and covenants and file the same in the office of the County Clerk of Brewster County, Texas, or in such office as conveyances of real estate may be required to be filed at such time, and thereupon these restrictions and covenants shall be null, void and of no further force and effect.

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V. AMENDMENT

At any time, the holder or holders of legal title to the Restricted Property plus Property Owners holding legal title to fifty-one percent (51%) of the Property referred to in paragraph 2 of Section II above (such holders of legal title to be determined from the public records of Brewster County, Texas) may amend or revise the restrictions, covenants, conditions, definitions and other matters set forth herein by filing an instrument containing such amendment or revision in the office of the County Clerk of Brewster County, Texas, except that, prior to the expiration of fifteen (15) years from the date hereof, no such amendment shall be valid or effective without the joinder of Terramar.

VI. ENFORCEMENT

The restrictions, conditions and use limitations herein set forth shall be binding upon Terramar, its successors and assigns, and all parties claiming by, through, or under them and all subsequent holders of legal or equitable title to any portion of the Restricted Property, each of whom shall be obligated and bound to observe such restrictions, conditions and use limitations. The violation of any such restriction, condition or use limitation, shall not operate to invalidate any mortgage, deed of trust, or other lien acquired and held in good faith against the Restricted Property or any part hereof, but such liens may be enforced against any and all property covered thereby, subject, nevertheless, to the restrictions, conditions and use limitations herein mentioned. Terramar, or any holder of legal or equitable title to any of the Restricted Property, or any person or legal entity comprising the Property Owners, shall have the right to enforce observance or performance of the provisions of this instrument. If any party or parties violates or attempts to violate any of the restrictions, conditions or use limitations contained herein, it shall be lawful for Terramar, or any holder of legal or equitable title to any of the Restricted Property, or any person or legal entity comprising the Property Owners, to instigate and prosecute proceedings at law or in equity against the party violating or attempting to violate the same, either to prevent such violation, or to correct such violation, or to recover damages, or to obtain such relief for such violations as then may be legally available.

VII. SEVERABILITY

Invalidation of any of the terms, provisions or covenants contained in this instrument by judgment or court order shall not in any way affect any of the other terms, provisions or covenants set forth in this instrument which shall remain in full force and effect.

DATED this 30th day of November, 1976.

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TERRAMAR CORPORATION

By: William D. McNair
William D. McNair, President



THE STATE OF TEXAS X
COUNTY OF NUECES X

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, T e x a s

My Commission Expires: 6-1-77

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M E T E S A N D B O U N D S

THE STATE OF TEXAS I

COUNTY OF BREWSTER I

METES AND BOUNDS of 423.84 acres of land, said land being known as the Terlingua Lodge area, out of Surveys 56, 53, 58, and 57, Block G-4, D. & W. Ry. Co. Surveys, Brewster County, Texas, of which 223.41 acres are out of said Survey 56, 88.73 acres are out of said Survey 53, 60.89 acres are out of said Survey 58, and 50.81 acres out of said Survey 57, and being situated S. 14° E. about sixty-seven (67) miles from the County Site.

BEGINNING at a point in and near the NE end of the Terlingua Lodge Air Strip, being the NE corner of the South 1/2 of Survey 57, and the NW corner of the South 1/2 of Survey 56, Block G-4, D. & W. Ry. Co. Surveys, Brewster County, Texas, for a point in the North line of this 423.84 acre tract, from which the common corner of said Surveys 56, 53, 58, and 57, bears S. 01° 06' 19" W. 2670.91 feet.

THENCE S. 89° 42' 26" E. 4361.44 feet, with the North line of the South 1/2 of said Survey 56, to a point at the NE corner of the NW 1/4 of the SE 1/4 of said Survey 56, for the NE corner of this tract.

THENCE S. 01° 06' 02" W. 1343.49 feet, with the East line of said NW 1/4 of the SE 1/4 of said Survey 56 to a point for the SE corner of said NW 1/4 of the SE 1/4 of said Survey 56, for a corner of this tract.

THENCE N. 89° 36' W. 1453.81 feet, with the South line of said NW 1/4 of the SE 1/4 of said Survey 56 to a point for the SW corner of said NW 1/4 of the SE 1/4 of said Survey 56, for an inside corner of this tract.

THENCE S. 01° 06' 08" W. 1340.81 feet, with the East line of the SW 1/4 of said Survey 56, to a point in the South line of said Survey 56, and in the North line of said Survey 53, being the SE corner of the SW 1/4 of said Survey 56, and the NE corner of the NW 1/4 of said Survey 53, for a point in the East line of this tract from which the common corner of said Surveys 56, 53, 58, and 57 bears N. 89° 29' 34" W. 2907.63 feet.

THENCE S. 01° 10' 47" W. 1330.18 feet, with the East line of the North 1/2 of the NW 1/4 of said Survey 53 to a point for the SE corner of said North 1/2 of the NW 1/4 of said Survey 53 for the SE corner of this tract.

THENCE N. 89° 27' 35" W. 2907.64 feet, with the South line of said North 1/2 of the NW 1/4 of said Survey 53 to a point in the West line of said Survey 53, and the East line of said Survey 58, being the SW corner of said North 1/2 of the NW 1/4 of said Survey 53 and the SE corner of the North 1/2 of the NE 1/4 of said Survey 58, for a point in the South line of this tract from which the common corner of said Surveys 56, 53, 58, and 57 bears N. 01° 10' 49" E. 1328.51 feet.

THENCE N. 89° 27' 35" W. 2384.89 feet, with the South line of said North 1/2 of the NE 1/4 of said Survey 58 to a point on the NW edge of the SW end of the Terlingua Lodge Air Strip for the SW corner of this tract.

EXHIBIT A

THENCE N. 31° 17' 10" E., with the NW edge of said Terlingua Lodge Air Strip, at 1544.6 feet pass the North line of said Survey 58, and the South line of said Survey 57, from which the common corner of said Surveys 56, 53, 58, and 57 bears S. 89° 29' 34" E. 1610.08 feet, 4653.02 feet in all to a point in the North line of the South 1/2 of said Survey 57, and in the NW edge of said Air Strip for the NW corner of this tract.

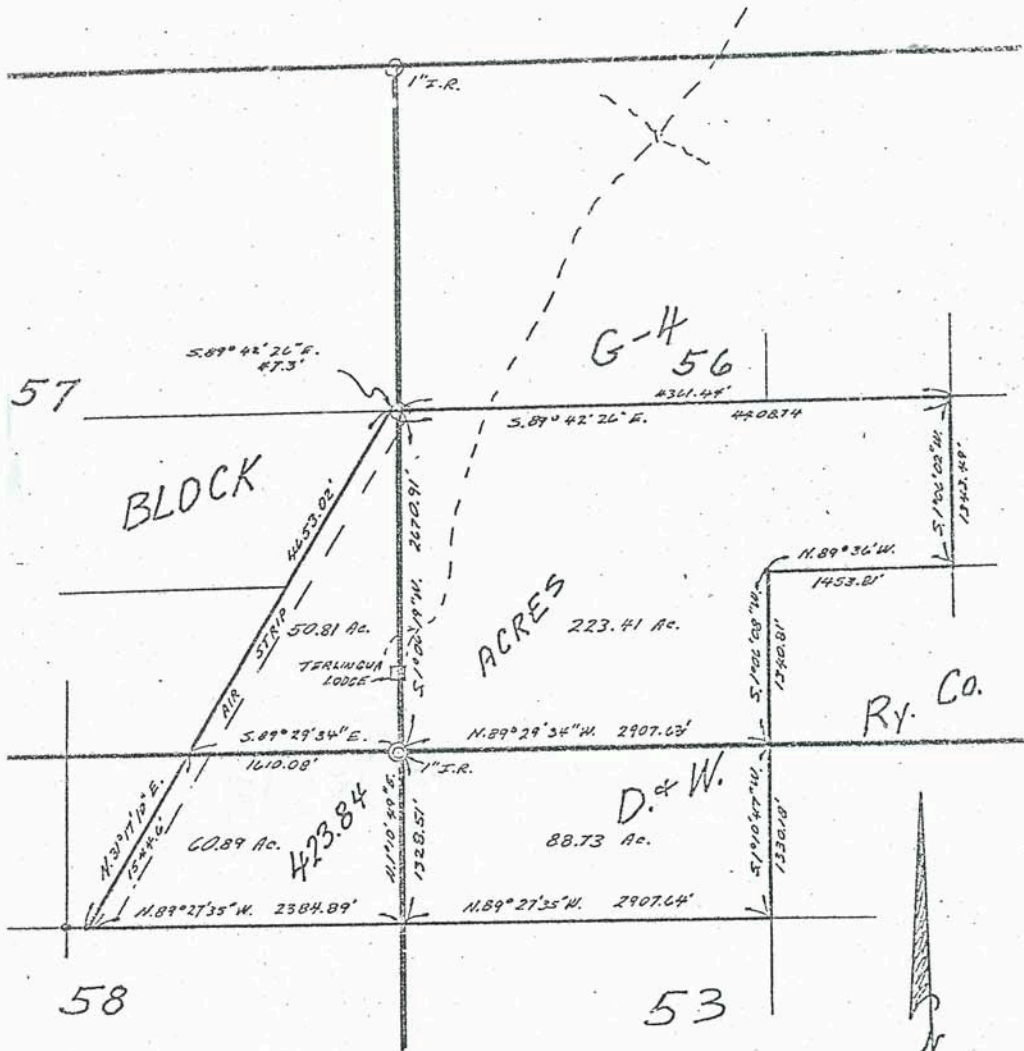
THENCE S. 89° 42' 26" E. 47.3 feet, with the North line of the South 1/2 of said Survey 57 to the place of beginning.

NOTE: Bearings and distances based on Texas Coordinate System, South Central Zone.

I, Kenneth R. Barnes, County Surveyor of Brewster County, Texas, do hereby certify that the foregoing Metes And Bounds are correct and truly represents an actual survey on the ground by me, this 28th day of November, 1976.



Kenneth R. Barnes
Kenneth R. Barnes
Brewster County Surveyor



SKETCH OF 423.84 ACRES OUT OF SURVEYS 56, 53, 58, AND 57, BLOCK G-4, D. + W. Ry. Co. SURVEYS, BREWSTER COUNTY, TEXAS.

NOTE: BEARINGS + DISTANCES BASED ON TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE.



I, KENNETH R. BARNES, BREWSTER COUNTY SURVEYOR DO HEREBY CERTIFY THAT THE FOREGOING SKETCH IS CORRECT, AND TRULY REPRESENTS AN ACTUAL SURVEY ON THE GROUND BY ME THIS 25th DAY OF November, 1976

Kenneth R. Barnes
 KENNETH BARNES
 BREWSTER COUNTY SURVEYOR

PROPERTY: An Eight (8) acre tract out of Section 56, Abstract No. 8139, Cert. No. 356, Block G-4, D & W Ry. Co., described by metes and bounds as follows, to-wit:

BEGINNING at a 5/8" iron rod for the Northeast corner of this 8.00 acre tract, said point being the Northwest Corner of a 4.27 acre tract, from which point a rock mound being the Northeast corner of Section 56, Block G-4 bears North 3468.23 feet and South 89°55' East 5198.54 feet;
THENCE along the West boundary of said 4.27 acre tract South 20°46'16" East 572.81 feet to a 5/8" iron rod; South 24°47'24" West, 231.83 feet to a 5/8" iron rod; South 40°57'17" West 559.50 feet to a 5/8" iron rod and South 26°12'22" West 187.73 feet to a 5/8" iron rod for the Southwest corner of said 4.27 acre tract, and being the most southerly Southeast corner of this tract;
THENCE North 63°26'58" West, 153.03 feet to a 5/8" iron rod for the Southwest corner of this tract;
THENCE along the West boundary of this tract North 9°32'40" East, 341.92 feet to a 5/8" iron rod; North 43°08'15" East, 517.25 feet to a 5/8" iron rod; North 13°44'28" West, 517.25 feet to a 5/8" iron rod for the Northwest corner of this tract;
THENCE North 75°02'35" East, 200.19 feet to the POINT OF BEGINNING

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 11:25 o'clock A..M.

By Debra Keltan Deputy HELEN CRONE, County Clerk,
Brewster County, Texas

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EXHIBIT B