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MEMORANDUM OF AN AGREEMENT

THE STATE OF TEXAS |
COUNTY OF EL PASO |

This MEMORANDUM OF AN AGREEMENT made and entered into this 22d day of March, 1939, by and between George C. Fraser, Jr., George L. Burr, and David H. McAlpin, as Parties of the First Part, and Jas. A. Borders Company, Inc., Louise I. Borders, a feme sole, H. A. Borders and M. W. Borders, Jr., individually and as independent executors and trustees of the Will of Jas. A. Borders, deceased, Parties of the Second Part, WITNESSETH: That,

WHEREAS, Parties of the First Part own certain sections of land, being the odd numbered sections, in Blocks 76, 77 and 78, Township 4, in Blocks 77 and 78, Township 3, Texas & Pacific Railway Company surveys, in El Paso and Hudspeth County, Texas; and Parties of the Second Part own certain alternate sections of land in parts of said blocks and townships, bordering on the sections owned by Parties of the First Part, the record title to such alternate sections being in the estate of Jas. A. Borders, deceased, but the same being owned, in truth and in fact, beneficially, by Jas. A. Borders Company, Inc; and,

WHEREAS, Parties of the first Part have heretofore caused to be made, during the period from July 1 to December 15, 1937, a resurvey of all said sections showing the true lines and corners thereof, and a plat of said resurvey, signed by R. W. Baker, licensed land surveyor, of Big Spring, Texas, and approved by W. J. Powell, consulting engineer, of Dallas, Texas, has been made; and,

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WHEREAS, A Controversy has arisen between Parties of the First Part and Parties of the Second Part as to the true location of said lines, particularly the lines with reference to certain improvements claimed by Parties of the First Part to be situated (1) (on Section 37, in Block 78, Township 3 (this improvement being known as the Headquarters Ranch and Well), (2) on Section 27, in Block 77, Township 3 (this improvement being known as the North or Rentleman Well), (3) on Section 37, in Block 77, Township 3 (this improvement being known as the East or Red Well), (and on Section 23, in Block 77, Township 4) (this improvement being known as the New Well); and,

WHEREAS, Parties of the First Part instituted suit against Jas. A. Borders Company, Inc., the same being known as Cause No. 24 Civil on the docket of the District Court of the United States for the Western District of Texas, El Paso Division, and being a suit in trespass to try title and to recover four certain tracts of land embracing the improvements above mentioned, and also to recover damages and rentals as set out in the plaintiffs' petition filed in said cause; and,

WHEREAS, it is now the desire of the parties to settle all differences between them as to the location of said section lines, the ownership of said improvements, and the liabilities for damages and rents; now, therefore,

KNOW ALL MEN BY THESE PRESENTS: That

(Map in Book 506 Back)

1) The parties hereto mutually agree to recognize the lines and corners as shown on the plat of the resurvey by R. W. Baker as afore mentioned, in so far as such lines and corners affect lands belonging to Parties of the First Part and Parties of the Second Part which adjoin each other; but this shall not be binding on Parties of the Second Part to the extent that such lines and corners affect lands owned by Parties of the Second Part which do not adjoin the lands owned by Parties of the First Part; and a copy of said plat, signed, for identification, by Ray McDowell, as agent for Parties of the First Part, and H. A. Borders, as agent for Parties of the Second Part, is hereto attached and made a part hereof; and it is agreed that a signed copy of said plat may be placed of record in connection with this agreement or in connection with any other document later to be executed as hereinafter provided.

2) Parties of the First Part will convey to Parties of the Second Part, by their customary form of special warranty deed, the tracts of land described in the petition hereinabove referred to as Tract 1 (embracing the Headquarters Ranch and Well) and Tract 4 (embracing the New Or South Well), or the tracts described in said petition as Tract 2 (embracing the North or Rentleman Well) and Tract 3 (embracing the East or Red Well), at the option of Parties of the Second Part, such option to be exercised as follows;

It is understood that Tracts 1 and 4 as aforesaid and Tracts 2 and 3 as aforesaid are to be considered in pairs, the first two as one pair (Tracts 1 and 4) and the other two as one pair (Tracts 2 and 3); and Parties of the Second Part have the option of choosing either one or the other of said pairs of tracts; the option to be exercised in writing on or before April 1, 1939.

And Parties of the Second Part do hereby appoint H. A. Borders as their agent and attorney in fact, for them and in their name to make such written designation, with full power to act in the premises.

3) In the event Parties of the Second Part, through their said agent, shall designate Tracts 2 and 3 to be conveyed to them (said tracts embracing the Rentleman and Red Wells as aforesaid), Parties of the First Part will; in addition to conveying said tracts, pay Parties of the Second Part the sum of Nine Hundred Fifty Dollars (\$950.00), in cash, concurrently with the delivery of deed; but in the event Parties of the Second Part, under their said option,

designate Tracts 1 and 4 as aforesaid (embracing the Headquarters Ranch and Well and the South or New Well), no money consideration is to be paid by either party.

It is agreed and understood that, in the event the said H. A. Borders, as agent and attorney in fact as aforesaid, has not, by April 1, 1939, made the designation, in writing, under said option, then and in such event Ray McDowell, the agent for Parties of the First Part, shall designate which of the pairs of tracts shall be conveyed to Parties of the Second Part.

4) In the deed of conveyance provided in section 2 above, Parties of the First Part will reserve all mineral rights to the tracts conveyed; it being understood and agreed, however, that Parties of the First Part will not drill for oil or gas and will not excavate for minerals, nor will they permit any of their grantees, assignees or lessees so to drill or excavate, within a radius of seven hundred fifty (750) feet of either of the two wells situated upon the tracts to be conveyed to Parties of the Second Part as aforesaid, and such reservation and restriction shall be embodied in any mineral lease that may be entered into by Parties of the First Part or their assigns.

5) Parties of the Second Part will execute their special warranty deed conveying to Parties of the First Part the two tracts, that is the pair of tracts, that are not designated by Parties of the Second Part under their option as aforesaid; or, at the option of Parties of the First Part, a consent decree will be entered in said cause No. 24 Civil establishing the location of said section lines in accordance with said resurvey and quieting title in Parties of the First Part to the two tracts, or pair of tracts, not designated by Parties of the Second Part.

6) Parties of the First Part will release all claims for rents and damages sought to be recovered in said suit.

7) The Parties hereto agree that they will cause to be entered in said cause No. 24 Civil any decree and will execute any and all conveyances or other instruments that may be necessary to effectively carry out the terms of this agreement; it being the purpose and intent of the parties to this agreement and each of them to compromise and settle all causes of dispute put in issue in said lawsuit; and to that end the parties hereto will, upon the execution and delivery of the instruments called for by the provisions of this memorandum, including the mutual deeds, cause to be entered in said civil action No. 24 a decree embodying the agreements as herein set out, or, in the alternative, at option of Parties of the First Part, said suit will be dismissed; and, in either event, Parties of the First Part agree to pay all costs of suit.

8) Parties of the First Part will pay all fees for the recording of all instruments required to be executed under this agreement, excepting for the recording of deed or deeds conveying to Parties of the Second Part the two tracts, or the pair of tracts, of land to be designated under their option as hereinbefore provided.

IN WITNESS WHEREOF, This memorandum of agreement is executed this, the day and year first above written; it being understood that M. W. Borders, Sr., one of the trustees named in the will of Jas. A. Borders, deceased, is physically incapacitated, and this instrument is executed for and on behalf of the trust estate created by said will by the undersigned trustees in accordance with Article V, paragraph g, of said will.

GEORGE C. FRASER, JR.
 GEORGE L. BURR
 DAVID H. McALPIN
 Parties of the First Part

By Ray McDowell
 General Agent

By McBROOM & CLAYTON
Their attorneys of record

By Frank B. Clayton
Member of Firm

JAS A. BORDERS COMPANY, INC.

ATTEST:

E. N. Bates,
Secretary.

By H. A. Borders,
President

(Corp. Seal: The James A. Borders Company, Inc.
Texas)

Louise I. Borders

M. W. Borders, Jr. H. A. Borders.
Individually and as independent exe-
cutors and trustees of the will of
Jas. A. Borders, deceased.

Parties of the Second Part.

THE STATE OF TEXAS |
 |
COUNTY OF EL PASO |

BEFORE ME, the undersigned authority, on this day personally appeared Ray McDowell and Frank B. Clayton, known to me to be the persons whose names are subscribed to the foregoing instrument, the first as general agent of George C. Fraser, Jr., George L. Burr and David H. McAlpin, the parties thereto, and the other as a member of the firm of McBroom & Clayton, attorneys for said parties, and acknowledged to me that the said George C. Fraser, Jr., George L. Burr and David H. McAlpin executed the same by and through them as general agent and attorney, respectively, for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 22 day of March, A.D. 1939.

(Notarial Seal)

Esther S. Collier,
Notary Public in and for
El Paso County, T e x a s.

THE STATE OF TEXAS |
 |
COUNTY OF EL PASO |

BEFORE ME, the undersigned authority, on this day personally appeared H. A. Borders and Louise I. Borders, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed; and the said H. A. Borders further acknowledged to me that he executed the same for the purposes and consideration therein expressed in the capacity therein stated; and the said H. A. Borders, officially known to me to be the person whose name is subscribed to said instrument as president of Jas. A. Borders Company, Inc., acknowledged such instrument to be the act and deed of said corporation and that he executed the same as the act of said corporation for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office, this 29th day of March, A.D. 1939.

(Notarial Seal)

B. A. Pendley,
Notary Public in and for
El Paso County, T e x a s.

THE STATE OF MISSOURI |
 |
COUNTY OF JACKSON |

BEFORE ME, the undersigned authority, on this day personally appeared M.W. Borders, Jr., 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 27th day of March, A.D. 1939.

(Notarial Seal: Jack County, Missouri)

Blanche I. Lee
Notary Public in and for
Jackson County, Missouri

My commission expires Nov. 15, 1942.

Filed for record April 25, 1939 at 10:35 A. M. | P. D. LOWRY, County Clerk,
 And recorded May 9, 1939 at 2:15 P. M. | By Pauline Cavender Deputy

THE STATE OF TEXAS,
 COUNTY OF EL PASO.

I, RAYMOND L. TELLES, JR., County Clerk in and for
 El Paso County, State of Texas, do hereby certify that the
 foregoing is a true and correct copy of the: Memorandum
of Agreement ^{between} Geo. C. Frazer Jr et al
^{and} Jas. A. Borders et al DATED THE 22 day
 of March 1939 ., as the same appears of record in
 the Deed Records of said County in Volume 650 page 56
 thereof.

Given under my hand and seal of office, at office,
 in El Paso, Texas, this the 29 day May A.D. 1939.

RAYMOND L. TELLES, JR.,
 County Clerk,

By Emilie G. Morrow Deputy.

File No. 28

El Paso County

Sketch File

Filed July 21 19 52

BASCOM GILES Com'r

V. E. Hoising
Clerk

Memorandum of
agreement between
Geo. C. Fraser, et al and
Jas. A. Borders, et al
re: Blks. 76, 77 & 78,
Tsp. 4, and Blks. 77 & 78
Tsp. 3, T. & P. R. R. Co.
El Paso & Hudspeth
Counties.

March 22nd, 1939

See El Paso Co.
Rolled Sk. 46



County 22075

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