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Alamo Title 50

AMENDMENT OF SURFACE USE AGREEMENT

THE STATE OF TEXAS

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§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MONTGOMERY

WHEREAS, THE ROBERT A WELCH FOUNDATION, a Texas non-profit corporation, (hereinafter sometimes called "WELCH"), whose address is 5555 San Felipe, Suite 1900, Houston, Texas 77056, is the owner of an undivided interest in the mineral estate as described in that one certain instrument recorded under Montgomery County Clerk's Film Code No. 013-10-2053 and which is made a part hereof for all purposes, and to which mineral estate this Amended Surface Use Agreement is made expressly subject; and

WHEREAS, Jack Frey Properties, Inc., Kinard Bros. Corp., HM Investments, L.L.C., John R. Frey and Shirley T. Frey, hereinafter sometimes collectively (whether one or more) called "Owners," whose address is P.O. Box 860, Tomball, Texas 77377-0860 represent that they are the owners of the surface estate as described on Exhibit "A" which tract or tracts of land are all or part of the lands covered and affected by said mineral estate and are hereinafter sometimes collectively (whether one or more) called "Owners' Tracts;" and

WHEREAS, by that certain Surface Use Agreement (hereinafter sometimes called "Surface Use Agreement") dated 11 December, 1979 and recorded at Montgomery County Clerk' Film Code No. 013-10-2053, and that certain Surface Use Agreement Amendment dated 13 September, 1985 recorded at Montgomery County Clerk' File No. 8548955, WELCH and the then surface owner agreed to various limitations on the exercise of WELCH's rights which exist under said mineral estate as to the use of the surface of Owners' Tracts as therein provided; and

WHEREAS, it is the desire of the parties hereto to amend said Agreement as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual benefit to be derived by Owners and WELCH, the sufficiency of which is hereby acknowledged, Owners and WELCH do hereby agree as follows:

WELCH and Owners hereby agree that the designated drillsites and easements as agreed to in the above referenced Surface Use Agreement, as amended, and as the same affect the rights of the parties hereto in and to the property described in Exhibit "A" attached hereto and made a part hereof shall be and are hereby amended to be as shown on Exhibit "B" attached hereto and made a part hereof for all purposes.

Owners, Owners' successors and assigns do hereby waive any rights to object to drilling, production, pipeline or other operations should this property ever be subject to a government setback or permitting process.

Nothing herein contained shall be construed as altering, amending or affecting said previous Agreements or any of the terms and provisions thereof, except as said previous Agreements are hereby expressly amended, but all of the other terms and provisions of said previous Agreements shall apply to and be construed with the hereby amended terms and provisions of said previous Agreements in the same manner as if said previous Agreements had been originally written as now amended.

The provisions hereof shall extend to and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

EXECUTED this the 18th day of December, 1998.

THE ROBERT A. WELCH FOUNDATION

By: Richard J. Johnson
Name: Richard J. Johnson
Title: Chairman

OWNERS:

JACK FREY PROPERTIES, INC.

By: John R. Frey
Name: JOHN R. FREY
Title: PRESIDENT

John R. Frey
JOHN R. FREY

Shirley T. Frey
SHIRLEY T. FREY

KINARD BROS. CORP.

By: Kim Kinard
Name: K. M. Kinard
Title: President

HM INVESTMENTS, L.L.C.

By: Pat A. Cloyd
Name: Pat Cloyd
Title: Manager

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this 18th day of December, 1998, personally appeared Richard J. V. Johnson, known to me to be the person whose name is subscribed to the foregoing instrument as Chairman and Director of The Robert A. Welch Foundation, a Texas non-profit corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said The Robert A. Welch Foundation.

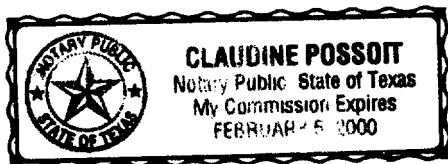


Kathryn M. Kirk
NOTARY PUBLIC in and for
THE STATE OF TEXAS

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this 22nd day of December, 1998, personally appeared John R. Frey, known to me to be the person whose name is subscribed to the foregoing instrument as President of Jack Frey Properties, Inc., a Texas Corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Jack Frey Properties, Inc.



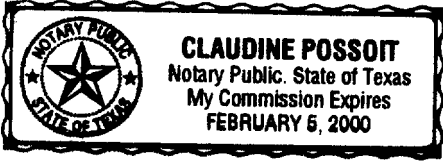
Claudine Possoit
NOTARY PUBLIC in and for
THE STATE OF TEXAS

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this 22 day of December, 1998, personally appeared Ken Kinard, known to me to be the person whose name is subscribed to the foregoing instrument as President of Kinard Bros. Corp., a Texas corporation, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Kinard Bros. Corp.

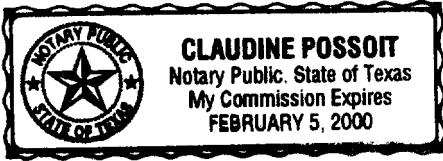


Claudine Possoit
NOTARY PUBLIC in and for
THE STATE OF TEXAS

STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this 22 day of December, 1998, personally appeared Pete Skyer, known to me to be the person whose name is subscribed to the foregoing instrument as General Manager of HM Investments, L.L.C., a Texas limited liability company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said HM Investments, L.L.C.

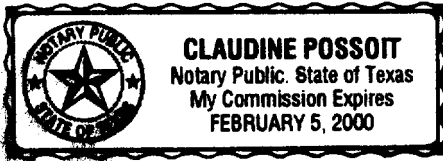


Claudine Possoit
NOTARY PUBLIC in and for
THE STATE OF TEXAS

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on December 22, 1998, by John R. Frey and Shirley T. Frey.



Claudine Possoit
NOTARY PUBLIC in and for
THE STATE OF TEXAS

AFTER RECORDING, RETURN TO:

WOODFOREST NATIONAL BANK
P.O. BOX 2808
CONROE, TEXAS 77305
Alamo Title Company
P.O. Box 538
Tomball, TX 77377-0538

EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THE
AMENDMENT SURFACE USE AGREEMENT
BY AND BETWEEN

JACK FREY PROPERTIES, INC.
AND
THE ROBERT A. WELCH FOUNDATION

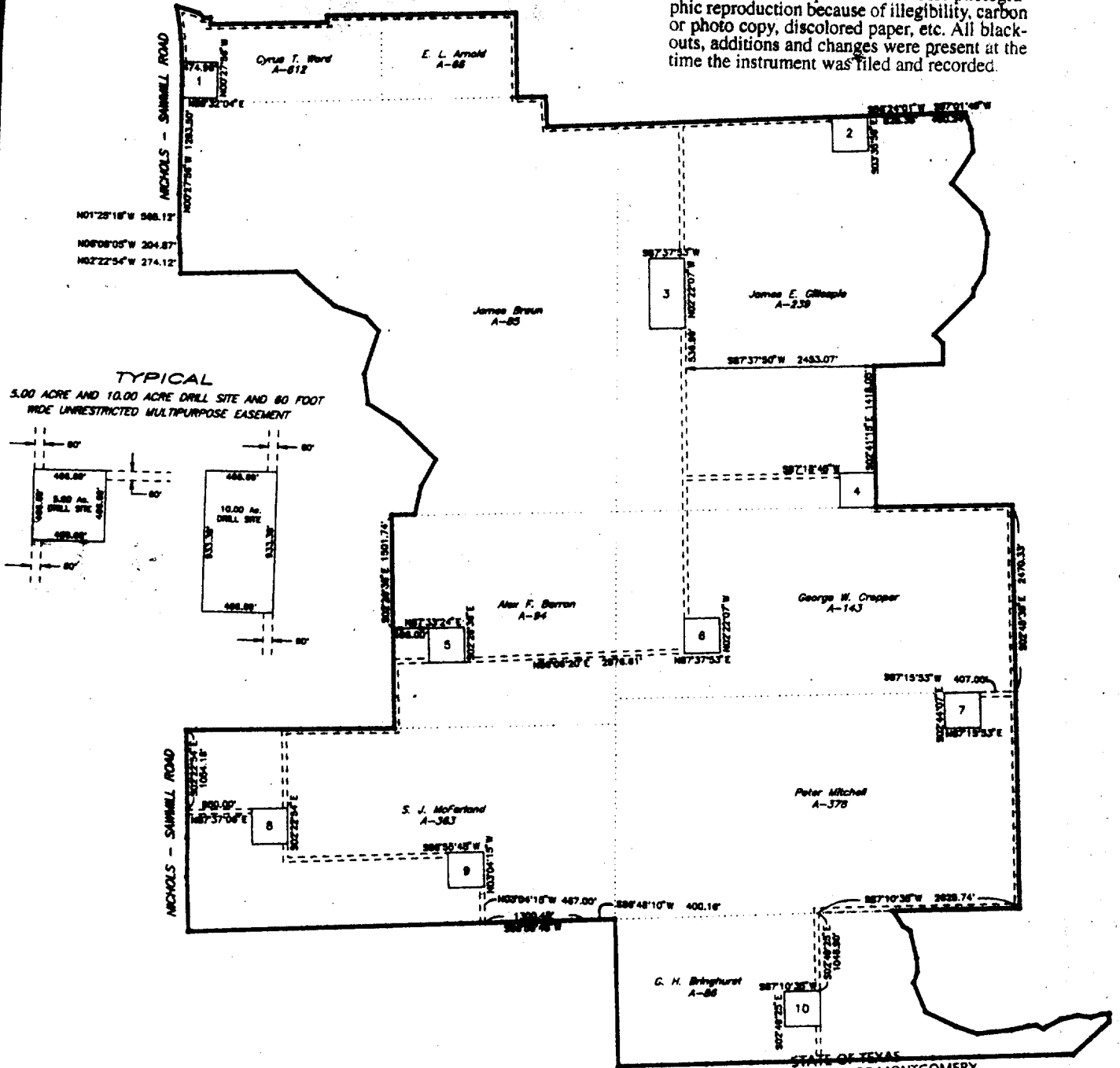
Surface Estate

1. 334.86 acres, more or less, out of the S. J. McFarland Survey, A-363, Montgomery County, Texas (being described as Tract 4 in that certain deed dated December 27, 1946 from Humble Oil & Refining Company, et al, to J. H. Kurth, Jr., as recorded in Volume 267, Page 124, of the Deed Records of Montgomery County, Texas.
2. 160 acres, more or less, out of the A. F. Barron Survey, A-93, Montgomery County, Texas (being described as Tract 2 In that certain deed dated December 27, 1946 from Humble Oil & Refining Company, et al, to J. H. Kurth, Jr., as recorded In Volume 267, Page 124, of the Deed Records of Montgomery County.
3. 197.334 acres, more or less, out of the G. Bringhurst Survey, A-86, Montgomery County, Texas (being described as Tract 22 in that certain deed dated April 25, 1979, in Volume 1143, Page 418, Deed Records save and except that 2 acres conveyed and described by metes and bounds in deed dated August 20, 1980, recorded under Clerk's file No. 8028774.
4. 169.9 acres, more or less, out of the P. Mitchell Survey, A-378, Montgomery County, Texas (being described as Tract 12 in that certain deed dated December 27, 1946 from Humble Oil & Refining Company, et al, to J. H. Kurth, Jr., as recorded in Volume 267, Page 124, of the Deed Records of Montgomery County, Texas.
5. 316.17 acres, more or less, out of the G. W. Cropper Survey, A-143, Montgomery County, Texas (being described as Tract 11 in that certain deed dated December 27, 1946 from Humble Oil & Refining Co., et al, to J. H. Kurth, Jr., as recorded in Volume 267, Page 124, of the Deed Records of Montgomery County, Texas.
6. 509.01 acres, more or less, out of the J. Gillespie Survey, A-239, Montgomery County, Texas, 255.79 acres, more or less, out of the J. Braun Survey, A-85, Montgomery County, Texas, 68.36 acres, more or less, out of the Cyrus T. Ward Survey, A-612, Montgomery County, Texas, 49.73 acres, more or less, out of the E. L. Arnold Survey, A-66, Montgomery County, Texas (being the same land as described as Tract 3 in that certain deed dated December 27, 1946 from Humble Oil & Refining Company, et al, to J. H. Kurth, Jr., as recorded In Volume 267, Page 124, of the Deed Records of Montgomery County, Texas, save and except 3.27 acres, in the C. T. Ward Survey conveyed to Montgomery County, Texas by instrument recorded at Volume 371, Page 37, Deed Records and 3.16 acres in the C. T. Ward Survey conveyed to R. A. Dunphey by Deed dated December 8, 1982 under instrument filed under Montgomery County Clerk's File No. 8255978.

SAVE AND EXCEPT: 108.973 acres described in deed dated March 25, 1997, to David J. Weber and wife, Rondi B. Weber, recorded under Montgomery County Clerk's File No. 9717461; 53.259 acres described in deed dated January 22, 1998, to David J. Weber and wife, Rondi B. Weber, recorded under Montgomery County Clerk's File No. 9805459; 25.072 acres described in deed dated January 22, 1998, to Davis W. Ratcliff and wife, Constance B. Ratcliff, recorded under Montgomery County Clerk's File No. 9805466; 46.246 acres described in deed dated March 25, 1997, to Davis W. Ratcliff and wife, Constance B. Ratcliff, recorded under Montgomery County Clerk's File No. 9717465; 620.457 acres described in deed dated June 30, 1998, to Properties of the Southwest, L.P., recorded under Montgomery County Clerk's File No. 9848818.

EXHIBIT "B"

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.



STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the official Public Records of Real Property of Montgomery County, Texas.

FILED FOR RECORD
98 DEC 30 AM 10:22



SCALE: 1"=6000' NOVEMBER 1997

DEC 30 1998

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

===== DENOTES A 80' UNRESTRICTED MULTIPURPOSE EASEMENT.
..... DENOTES SURVEY LINE.



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

**DRILLSITE EXHIBIT FOR
2487.365 ACRES OF LAND**

BEING PART OF THE

E. L. ARNOLD SURVEY, A-66
ALEX F. BARRON SURVEY, A-94
JAMES BRAUN SURVEY, A-85
GEORGE BRINGHURST SURVEY, A-86
GEORGE W. CROPPER SURVEY, A-143
JAMES E. GILLESPIE SURVEY, A-239
SAMUEL J. MCFARLAND SURVEY, A-363
PETER MITCHELL SURVEY, A-378
AND THE
CYRUS T. WARD SURVEY, A-612

MONTGOMERY COUNTY, TEXAS