

Unit 1  
129/399

THE STATE OF TEXAS                    )  
  )     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF JEFF DAVIS                )

AMENDED RESTRICTIONS, COVENANTS AND CONDITIONS

WHEREAS, it is the desire of FORT DAVIS ESTATES, to establish a uniform plan for the development, improvement, and sale of its property and to insure the preservation of such uniform plan for the benefit of itself as well as its successors and any future owners of the property;

NOW, THEREFORE, FORT DAVIS ESTATES, a Texas General Partnership, does hereby adopt and impress the following restrictions, covenants and conditions upon the following described real property owned by Fort Davis Estates, to-wit:

See Exhibit A attached hereto and incorporated herein for all purposes.

and the real property described within Exhibit "A" is and shall be held, transferred, sold, conveyed and occupied subject to the restrictions, covenants, and conditions hereinafter set forth which shall amend and supersede those certain Restrictions, Covenants and Conditions adopted for said property on September 10, 1986, and filed for record at Volume 125, Page 444, Deed Records of Jeff Davis County, Texas.

1.    Purpose and Extent of Reservations, Restrictions, Covenants, Conditions and Easements.

These reservations, restrictions, covenants, conditions and easements as set forth herein are established for the purpose set forth above and for the benefit of FORT DAVIS ESTATES, its successors and assigns, and any future owners of said real property. Said reservations, restrictions, covenants, conditions and easements shall, as hereafter provided, be construed as covenants running with the land and binding upon FORT DAVIS ESTATES, its successors and assigns, and any Grantee, and his (or her or its or their) heirs, successors, executors, administrators, and assigns as provided herein, including without limitation any subsequent owner of the Real Property conveyed hereunder.

2.    Definitions.

Construing these provisions, the following words shall have the following meanings:

(a) "Grantor" shall mean and refer to FORT DAVIS ESTATES, its successors and assigns.

(b) "Grantee" shall mean and refer to any Grantee of any real property within the premises described in Exhibit "A"; and said Grantee's heirs, successors, executors, administrators, and assigns, including, without limitation, any subsequent owner of the real property conveyed hereunder.

(c) "Common Areas" shall mean: (1) all existing roads on the Real Property as hereinafter defined, whether or not formally dedicated to public use; (2) any easements reserved herein; (3) any roads or easements subsequently and expressly created or reserved by Grantor in deeds to any subsequent Grantee; (4) the implied easement of ingress and egress of any subsequent Grantee; and (5) any other real property owned by Grantor which shall be hereafter dedicated for

public use or as common areas. Provided, however, that nothing contained herein shall permit the creation of "Common Areas" as defined by subparagraph (3) through (5) inclusive, on any of the Real Property as hereinafter defined without the express written consent of Grantor or its successors or assigns.

(d) "Real Property" shall mean and refer to any lot, tract, or parcel of land within the premises described in Exhibit "A".

(e) "Owner" shall mean and refer to the Grantee or person or persons, entity or entities, who either own a record fee simple title to any real property, or have entered as an original party, successor or assign, into a contract of purchase and sale for any real property with Grantor; the term "Owner" shall exclude any person or persons, entity or entities having an interest in any real property merely as security for the performance of an obligation, unless said security interest shall be foreclosed and said person or entity shall become the record owner of the real property thereby.

(f) "Residence" shall mean and refer to any permanent structure erected on a lot for use as a single family dwelling.

### 3. Applicability of Restrictions.

The reservations, restrictions, covenants, conditions and easements contained herein shall apply only to the Real Property covered hereby.

### 4. Dedication of Common Areas.

Any streets, roads, and other common areas as defined herein, and described in this deed are dedicated to the use of Grantor and persons purchasing other real property from or through Grantor. Any utility easements described in this instrument are dedicated subject to the reservations hereinafter set forth. SAVE AND EXCEPT, however, that Grantor does not dedicate to the public any streets, boulevards or other roadways connecting the subdivision to other areas. Grantor further reserves the right to drill water wells, if necessary, on said common areas.

### 5. Reservations; Easements and Utilities.

There is hereby reserved by Grantor a utility easement around the entire boundary of the Real Property, said reservation being for the benefit of any public or utility company operating in Jeff Davis County, Texas, as well as for the benefit of Grantor and subsequent Grantees of Real Property from Grantor, to permit or allow for the construction, repair, maintenance and operation of a system or systems of electric power, telephone lines, television cable lines, gas, water, sanitary sewers, storm sewers, and any other utility or service which the Grantor may find necessary or proper to provide to any Grantee. This easement shall not be less than thirty feet (30') in width, and shall extend fifteen feet (15') on either side of the boundary of the Real Property. Additionally, said easement shall extend anywhere else under the Real Property where there is a necessity for access for the aforesaid purposes. All utility connections, including, but not limited to, telephone and electric power service shall be underground and no Grantee shall erect any poles on the Real Property for aerial erection of any utility lines. Nothing contained herein shall be construed as imposing upon Grantor an obligation to provide any such utilities or services. Furthermore, the right to sell, lease or otherwise negotiate as to such lines, utilities, or other facilities for the providing of ser-

VICES by any municipality, governmental agency, or other utility company is hereby expressly reserved by Grantor.

6. Duration of Restrictions.

The provisions hereof, including the reservations, restrictions, covenants, conditions and easements herein set forth shall run with the land and shall be binding upon any and all Grantees, their successors and assigns, and all persons or parties claiming under him or them for a period of ten (10) years from the date hereof, at which time all such provisions shall automatically be extended for successive periods of ten (10) years each, unless prior to the expiration of such first period of ten (10) years, the Grantor and Grantees (or successors and assigns of each) shall have executed and recorded an instrument changing the provisions hereof, in whole or in part, the provisions of said instrument to become operative at the expiration of the first ten (10) year period in which such instrument is executed and recorded. The restrictions may be amended, as above stated, with the consent of ninety percent (90%) of the lot owners at the end of the first ten (10) year period, and by seventy-five percent (75%) of the lot owners at the end of any successive ten (10) year period.

7. Enforcement of Restrictions.

In the event of any violations, or attempted violations, of any of the provisions hereof, including any of the reservations, restrictions, covenants, conditions and easements herein contained, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of these provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with these provisions; and it shall not be a prerequisite to granting of such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce these provisions may recover such damages as such person has sustained by reason of the violation of these provisions. Grantee (its, her, his or their successors and assigns) hereby consents to the aforementioned remedies provided to Grantor (its successors or assigns). It shall be lawful for the Grantor, or any other Grantee from Grantor of other real property who is expressly designated as a third party beneficiary of the terms and conditions hereof, to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate, any of these provisions.

8. Partial Invalidity of Restrictions.

In the event that any portion of the provisions herein shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, such partial invalidity shall not affect, alter or impair any other provisions hereof which were not thereby held invalid; and such other provisions, including restrictions, reservations, covenants, conditions, and easements shall remain in full force and effect, binding in accordance with their terms.

9. Effect of Violation on Mortgagees.

No violation of the provisions herein contained, or any portion thereof, shall affect, or otherwise impair the lien of any mortgage or deed of trust presently or hereafter placed of record with respect to the property or otherwise affect the rights of the mortgagee under such mortgage or deed of trust; any such mortgage, lien or deed of trust, may nevertheless be enforced in accordance with its terms and provisions.



10. Land Use and Building Type.

The property shall be used for residential purposes only, and only one detached single family dwelling shall be constructed on any one lot. No commercial activity of any kind shall be conducted on or from any of said lots, except that a lot owner may from time to time rent his home to another for residential purposes. As an exception, Grantor shall be allowed to maintain a sales office on the Real Property, and to operate and/or sell a convenience store on one lot on the Real Property, just adjacent to Highway 118.

11. Construction of Buildings and Other Structures.

All buildings and structures on the Real Property shall be architecturally in harmony with the primary residential buildings, and subject to prior approval by the Architectural Control Committee. No tent, house trailer, single- or double-wide mobile home, or other temporary structure of any kind may be placed, constructed or maintained on any of said Real Property except as temporarily ancillary to a construction project on said Real Property. High quality pre-built construction shall be acceptable subject to the prior approval of the above-named committee. Buildings shall be constructed of cured redwood or cedar materials, or with brick or masonry veneer over at least seventy-five percent of the facade, or of adobe materials, all subject to the approval of the above-named Committee. In conjunction with the occupancy of a family dwelling, it shall not be considered a violation of these restrictions to park an unoccupied self-propelled recreational vehicle on a lot for short term periods. It is further provided that any construction material having a life of less than twenty-five (25) years shall not be utilized in the construction of any improvement on the Real Property.

12. Building Size.

In no event shall any residence be erected on any part of said Real Property having a living area of less than 1,400 square feet, exclusive of porches, garages or other appendages.

13. Architectural Control.

No building shall be erected, placed, or altered on any lot until the construction plans and a diagram showing the location of the structures have been approved by the Architectural Control Committee as to general compatibility of external design with existing structures, as to external conformance to overall development quality standards, and as to location with respect to topography and finish grade elevation.

14. Architectural Control Committee, Membership and Procedure.

The initial Architectural Control Committee is composed of J. W. EVANS, JEAN ANNE FORT, and KIMBALL MILLER. A majority of the Committee may elect successors, in event of resignation or vacancy, or designate a representative to act for it at any time or for any period. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor; a resignation is effective when given in writing to the remaining Committee members. Neither the members of the Committee, or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such Committee and of its designated representative and requirement of this covenant shall cease on and after twenty (20) years from date of this instrument. Notwithstanding the above conditions, at the point in time that Grantor no longer owns a majority of

the number of lots in this subdivision, the Grantor shall arrange for an election by all the then record owners, excluding Grantor, of the lots in this subdivision. The lot owners, in such election, shall have the power through a duly recorded instrument to select new Committee members who are persons, other than Grantor, owning lots in the subdivision, and to extend the period during which the Committee shall exercise the powers and duties herein defined. The Committee's approval or disapproval as required in these covenants shall be in writing. In the event this Committee, or its designated representative, fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with. There shall be no review of any action of the Architectural Control Committee except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall such committee be subject to any suit by anyone for damages.

15. Setback Requirements and Fencing.

No building or other structure shall be erected within fifty feet (50') from the boundary or property lines of the Real Property. Fifteen feet (15') of said fifty feet (50') shall be designated as an easement for utility purposes. This building line restriction may be waived in the event mountainous terrain is encountered and it is impractical to comply therewith. There shall be no restrictions on the Grantee's right to fence all or any part of his Real Property; SAVE AND EXCEPT, that in the event any Grantee shall fence any portion of any easement, Grantor, its successors and assigns shall have the absolute right to enter into such easement for the purpose of egress and ingress for the maintenance of any utility lines placed thereon. The Grantor, its successors and assigns shall have no liability for any damage to said fence. Provided, however, that any such fencing shall be at least a standard barb wire fence type, normally utilized by farmers and ranchers in the area with four-inch (4") cedar posts, no more than twenty feet (20') apart, and two (2) stays between posts constructed so as not to sag or hang limp, and in no event higher than six feet (6'). Said fencing may also be of better quality.

16. Right to Maintain Certain Farm or Ranch Animals.

It is expressly understood and agreed that the Grantee may keep horses, burros, and all animals part of any F.F.A. or 4-H project; however, swine shall be specifically prohibited. Any such animal kept by Grantee shall be subject to a duty of confinement by fencing by Grantee, so as to prevent any trespass upon the property of any other landowner. The Grantee agrees to be solely responsible for any damage done by animals kept by him. Furthermore, the ownership of any such animals shall be subject to the Grantee maintaining sanitary conditions with respect to the property. No restrictions herein shall be construed to prevent the maintaining of cats, dogs, or other domestic pets in reasonable numbers normally connected with a family residence if said animals are confined to the property of the owner. In no event shall there be more than five (5) animals of any kind kept on Grantee's Real Property.

17. Firearms Restrictions.

No discharge of firearms and/or hunting shall be permitted anywhere on the Real Property.

18. Trash and Garbage.

No trash, garbage, construction debris or other refuse may be dumped or disposed of or allowed to remain upon any part of the Real Property, vacant or otherwise. No building materials of any kind or character shall be placed or stored upon the Real Property until the Grantee is ready to commence improvements, and then such materials shall be placed within the property lines of Grantee's property. No noxious or undesirable things or use whatsoever shall be permitted on any Real Property. Any and all trash and/or garbage shall be kept in sealed containers and in sanitary conditions, and is Grantee's responsibility.

19. Sanitation and Sewage.

No outside toilets will be permitted, and no installation of any kind for disposal of sewage shall be allowed which would result in raw, treated or untreated sewage or septic tank drainage on or into the surface, subsurface, alleys, ditches, or water bodies. Any septic tank or sewage disposal system shall meet all standards of any federal, state, county, or municipal regulatory authority entitled by law to approve, regulate, or supervise same, and the latter shall be the sole responsibility of Grantee. All federal, state, county, and municipal (if any) health and sanitation statutes, rules ordinances or regulations must be complied with at all times. An open or closed cesspool shall not be permitted.

20. Water Wells.

Grantee shall have the right to be connected with water wells owned and operated by a water supply company affiliated with Grantor, or any successor to said company, for personal and domestic consumption of Grantee in connection with ownership of the Real Property. Connection, sale of water and other services shall all be provided at rates approved by the concerned regulatory body. Grantee shall not drill any wells on the Real Property.

21. Signs.

No sign or advertising device may be displayed by Grantee on the Real Property except in the event of sale. There may be one (1) "FOR SALE" sign containing no more than ten (10) square feet in area displayed on the Real Property owned by any Grantee at any one time. The Grantor is excepted from this restriction.

22. Subdividing.

The Real Property, as that term is defined herein, may not be resubdivided by the Grantee, his successors or assigns.

23. Maintenance of Roads.

Grantor shall be under no obligation to maintain the roads or easements for the purpose of ingress and egress. Grantee acknowledges and recognizes that a portion of the Real Property may underlie the roads and easements retained in connection herewith if any, and does hereby acknowledge that such road easement exists over and upon the Real Property.

24. Restrictions on Interruption of Natural Drainage.

Grantee shall not be permitted to erect any improvements or make any alterations in the natural terrain of the property so as to cause an impounding of water or otherwise alter the natural flow of water upon the property. As an exception,

Grantee shall be permitted to lay earthworks and foundation for a residence and normal yard landscaping, which may cause some such impounding or alteration of water flow. Nothing contained herein shall be construed as preventing Grantee from diverting water from its natural flow in order to prevent damage to Grantee's realty or improvements.

25. Easement for the Purpose of Ingress and Egress.

Grantor does hereby acknowledge the implied easement for the purpose of ingress and egress for the benefit of Grantees herein, SAVE AND EXCEPT as restricted by the dedication of the common area as shown in paragraph "4" above.

26. Lighting Restrictions.

General outside lighting used in connection with the occupancy of a residence shall be kept at a minimum required for safety and security. All lighting shall comply with standards set by ordinance of the Jeff Davis County Commissioner's Court. There shall be no excessive lights and there shall be no sirens, bells or other noise making devices.

27. Orchards.

Notwithstanding anything to the contrary contained herein, the operation or development of an orchard or garden shall not be considered to be a commercial use as defined in these restrictions.

28. Motor Bikes.

Motor bikes and motorcycles are permitted on dedicated roads and common areas. There shall be a maximum speed limit of twenty (20) miles per hour, and no racing or speeding shall be permitted.

29. Commercial Areas.

Grantor reserves the right in the plat and dedication of any adjacent property to designate an area or areas to be designated as commercial area or areas.

EXECUTED this 7th day of October, 1987.

FORT DAVIS ESTATES

By: J.W. Evans

J.W. Evans

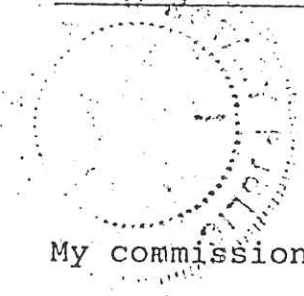
Partner



THE STATE OF TEXAS )  
 )  
COUNTY OF JEFF DAVIS )

BEFORE ME, the undersigned authority, on this day personally appeared J. W. EVANS, known to me to be the person and partner whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act of FORT DAVIS ESTATES, a Texas general partnership of which s/he is a partner, for the purposes and consideration expressed and in the capacity stated therein, and that s/he was authorized to do so.

SUBSCRIBED AND SWORN TO this 7th day of October, 1987.



Nancy Allen Hemphill  
NANCY ALLEN HEMPHILL  
Notary Public in and for  
The State of Texas

My commission expires: 6/4/88



ng 286.835 acres of land lying wholly within Survey No. 4, Houston & Texas Central Railway Company Block 2, Abstracts 1855 (S 1/2) and 1861 (N 1/2), Jeff Davis County, Texas, encompassing all of Fort Davis Estates (Unit One), a subdivision recorded in Map File 2, Slot 5-B of the Plat Records of Jeff Davis County, Texas, a part of that certain 4480 acres termed Mulhern Ranch as described in Last Will and Testament of Katherine Espy Evans on 15 September 1981, Par. II, to J. W. Evans and recorded in Vol. 106, pp. 564-568 of the Deed Records of Jeff Davis County, Texas, and more particularly described by metes and bounds as follows (the bearings shown are true bearings from North meridian at U.S.C. & G.S. Triangulation Station "Davis" lying East 1869.06 feet and North 1071.15 feet from this Point of Beginning):

Beginning at a 3/4-inch steel stake set by 2-way fence corner post found marking the NW corner of Survey No. 4, being also the NW corner of said 4480 acres:

THENCE with N boundary of Block 2 N 89° 40' 29" E, at 1713.84 feet passing a 3/4-inch steel stake set in fence at Section corner and continuing a total of 2509.16 feet to a 3/4-inch steel stake set in W right-of-way of Texas State Highway 118, the NE corner of this described land and of Lot 8 of said subdivision;

THENCE with said W R.O.W. of State Highway 118 as follows:

S 36° 04' 28" E at 805.08 feet passing a 4-inch concrete R.O.W. monument, 807.24 feet to a 3/4-inch steel stake set at Point of Curve;

Along the arc of a curve to the right, having a radius of 5679.58 feet and turning 9° 40' 12", 958.57 feet (long chord bears S 31° 14' 22" E 957.43 feet) to the 4-inch concrete R.O.W. monument at Point of Tangent;

S 26° 24' 22" E 1958.70 feet to a 4-inch concrete R.O.W. monument;

And S 26° 23' 10" E 177.63 feet to a 3/4-inch steel stake marking the SE and eastmost corner of this described land and the SE corner of Lot 98 of said subdivision;

THENCE with S boundary of Lot 98 in said subdivision as follows:

S 55° 00' 00" W 200.00 feet to a 3/4-inch steel stake;

And N 45° 47' 27" W 255.95 feet to a 3/4-inch steel stake in S R.O.W. of Maj. Bliss;

THENCE with said S R.O.W. as follows:

Along the arc of a curve to the right, having a radius of 100.00 feet and turning 118° 55' 44", 207.57 feet (long chord bears S 72° 26' 51" W 172.26 feet) to a 3/4-inch steel stake;

And along the arc of a curve to the right, having a radius of 600.00 feet and turning 54° 52' 24", 574.63 feet (long chord bears S 74° 07' 44" W 552.92 feet) to a 3/4-inch steel stake set in R.O.W. of Lt. Gibbons;

THENCE S 49° 56' 53" W across Lt. Gibbons 199.74 feet to a 3/4-inch steel stake in S R.O.W. of Maj. Morrow;

THENCE with said S R.O.W. as follows:

N 85° 00' 00" W 799.79 feet to a 3/4-inch steel stake at Point of Curve;

Along the arc of a curve to the left, having a radius of 1000.00 feet and turning 23° 35' 00", 411.61 feet (long chord bears S 83° 12' 30" W 408.71 feet) to a 3/4-inch steel stake at Point of Tangent and Point of Curve;

Along the arc of a curve to the right, having a radius of 878.06 feet and turning 37° 10' 00", 569.58 feet (long chord bears West 559.65 feet) to a 3/4-inch steel stake set at Point of Tangent;

N 71° 25' 00" W 217.41 feet to a 3/4-inch steel stake set at Point of Curve;

And along the arc of a curve to the right, having a radius of 800.00 feet and turning 31° 45' 00", 443.31 feet (long chord bears N 55° 32' 30" W 437.66 feet) to a 3/4-inch steel stake set at Point of Tangent, the SE corner of Lot 87 of said subdivision;

THENCE S 74° 07' 04" W 451.03 feet to a 3/4-inch steel stake set for SW corner of Lot 87 in R.O.W. of Col. Shafter;

THENCE N 34° 23' 19" W across Col. Shafter 180.28 feet to a 3/4-inch steel stake marking SE corner of Lot 86;

THENCE N 86° 24' 38" W 330.93 feet to a 3/4-inch steel stake set in W boundary fence of Survey No. 4, the SW corner of this described land;

THENCE with said W boundary fence N 0° 41' 54" W 3254.12 feet to the Point of Beginning, constituting 286.835 acres within the described boundary.

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FILED FOR RECORD THE 9th DAY OF October A.D., 1987,  
AT 10:00 A.M., AND DULY RECORDED THIS THE 9th DAY OF  
October, 1987, AT 1:30 P.M.

Peggy Robertson  
PEGGY ROBERTSON, COUNTY CLERK  
JEFF DAVIS COUNTY, TEXAS

BY: \_\_\_\_\_  
DEPUTY