

**CORRECTED**  
**EASEMENT AND WATER SYSTEM MAINTENANCE AGREEMENT**

THE STATE OF TEXAS           §  
   §  
 COUNTY OF JEFF DAVIS       §

**Grant of Easement**

1. FORT DAVIS ESTATES, a Texas General Partnership, hereinafter called "Grantor", for good and valuable consideration paid by all record owners of lots within Fort Davis Estates subdivision, Jeff Davis County, Texas, hereinafter collectively called "Grantees", the receipt of which is hereby acknowledged, does hereby GRANT, SELL, and CONVEY unto Grantees a nonexclusive easement and right-of-way for purposes of ingress and egress and maintenance of a water system upon and across certain lands in Jeff Davis County, Texas, described as follows:

That portion of Section 4, Block 2, H&TC Ry. Co. Survey, lying Northeast of the right-of-way of State Highway 118, in Jeff Davis County, Texas.

**Duration of Easement**

2. The easement, rights, and privileges herein granted shall be perpetual. Grantor hereby bind Grantor, Grantor's successors and assigns, and legal representatives to warrant and forever defend the above-described easement and rights unto Grantees, their heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

**Character of Easement**

3. The easement and right of maintenance granted herein is appurtenant to the following lands, to wit:

All lots within Fort Davis Estates, a subdivision in Jeff Davis County, Texas, according to the map or plat on file with the Jeff Davis County Clerk.

The easement and right of maintenance granted herein shall not be severable from the ownership of the lots in said Fort Davis Estates, and shall pass in any conveyance of any lot to the new owner.

**Purpose of Easement**

4. Except as hereinafter restricted, the right-of-way, easement, rights, and privileges herein granted shall be used for the purpose of providing to Grantees ingress and egress across said Section 4, Block 2, H&TC Ry. Co. Survey, to travel to the existing water well of Grantor, or any replacement water wells of Grantor, and to the associated pipeline and distribution system for said wells, and to all other associated machinery, equipment, and apparatus. To the extent possible, ingress and egress shall be along existing roads.

**Rights Reserved**

5. Grantor retains and reserves and shall continue to enjoy the use of the surface of the easement property for any and all other purposes.

**Grantees' Water System Maintenance Rights**

6. Grantees, Grantees heirs, successors, and assigns shall have the right to keep and maintain in good repair and condition, at Grantee's sole expense, the above-described wells and water system, on the following terms: Grantees right of access and maintenance shall arise only after providing written notice to Grantor of a specific need for maintenance of the well and/or water system, if the specified maintenance is not performed by Grantors within three (3) days after written notice is given. Maintenance thus initiated by Grantees shall be performed only by a licensed, qualified technician in accordance with the plans and specifications for the well and water system, which plans and specifications shall be made available by Grantor, upon request. All maintenance performed by any technician, upon the initiative of Grantees, shall be performed in a good and workmanlike manner and Grantees shall be liable to Grantor for any damage to the well and/or water system due to such maintenance not being performed in a good and workmanlike manner. Grantor shall have no liability to Grantees for any malfunctions of the well and/or water system that are due in whole or in part to improper maintenance performed by, or initiated by, any technician acting upon Grantees' request. Grantees' right of maintenance shall include servicing and repair of the existing well and water system only and shall not include the right to upgrade the well and water system to a different type of water treatment, or to change to standards other than those then being complied with by Grantor with the then existing water system.

#### Indemnity

7. Each Grantee shall be responsible and indemnify Grantor for losses caused by that Grantee or that Grantee's agents, servants, or contractors in the course of their use of the easement for access and maintenance, for:

- A. Any damage to or death of Grantor's or Grantor's lessee's livestock;
- B. Any interference with the agricultural operations of Grantors or any other persons engaged in such operations in Section 4, Block 2, H&TC Ry. Co. Survey, with Grantor's consent, including but not limited to leaving a gate open through which livestock can escape; and
- C. Any other damage to Grantor or Grantor's property.

If Grantors suffer losses from any of the above, then that responsible Grantee shall be liable to and shall indemnify Grantor for such losses. Furthermore, the responsible Grantee shall also indemnify and hold harmless Grantor for any claims made by third parties against Grantor and arising out of the use of the easement for access and maintenance by that Grantee or That Grantee's agents, servants or contractors. This indemnity shall include all costs of defense, including any attorney's fees and court costs actually incurred by Grantor.

#### Loss of Water Supply

8. If the well now providing water to the Fort Davis Estates subdivision goes dry or produces an inadequate amount of water to supply, for domestic purposes, the owners of lots in Fort Davis Estates, the Grantor shall make available other water from other sources, either from wells or otherwise, in order that a domestic water supply shall continue to be available to Grantees. Grantees also shall have the right of access and maintenance as stated above to any new source of water supply provided by Grantors as long as water continues to be provided from a non-public water supply system.

#### Water System Requirements and Charges for Water

9. Grantor reserves the right at a later date to modify the system in accordance with any requirements for treatment and/or chlorination, and to begin assessing charges for water, subject to any relevant regulatory provisions for sale of water by a private water system, at such time as the State of Texas requires chlorination of water supply or other mandated treatment.

#### Entire Agreement

10. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

#### Binding Effect

11. This agreement shall bind and anure to the benefit of the respective parties, their personal representatives, successors, and assigns. After the point in time which a Grantee, or a Grantee's successor in interest no longer owns any lots in Fort Davis Estates subdivision, no new rights or obligations of that Grantee shall arise under this Agreement.

This instrument is made in place of and to correct the EASEMENT AND WATER SYSTEM MAINTENANCE AGREEMENT ("the Agreement"), dated May 4, 1999, and recorded in Vol. 163, Pg. 457, Official Public Records of Jeff Davis County, Texas. By mistake the Agreement identified CURTIS EDWARD EVANS and JEAN ANNE EVANS FORT, individuals, as the "Grantors" in the Agreement. The Agreement should have identified FORT DAVIS ESTATES, a Texas General Partnership, as the "Grantor" in the Agreement, and CURTIS EDWARD EVANS and JEAN ANNE EVANS FORT should have signed in their capacities as partners. This correction Deed is made by Grantor to correct that mistake, is effective on May 4, 1999, and in all other respects confirms the former Agreement.

FORT DAVIS ESTATES,  
a Texas General Partnership

By: [Signature]  
CURTIS EDWARD EVANS, Partner

By: [Signature]  
JEAN ANNE EVANS FORT, Partner

(Acknowledgment)

STATE OF TEXAS  
COUNTY OF JEFF DAVIS

This instrument was acknowledged before me on the 13th day of October, 1999,  
by CURTIS EDWARD EVANS and JEAN ANNE EVANS FORT, Partners, on behalf of  
FORT DAVIS ESTATES, a Texas General Partnership.



Marla D. Livingston  
Notary Public, State of Texas  
Notary's name (printed):  
Marla D. Livingston  
Notary's commission expires:  
August 20, 2002

FILED FOR RECORD THE 13th DAY OF October, A.D., 1999  
AT 4:00 P.M., AND DULY RECORDED THIS THE 14th DAY OF  
October, A.D., 1999, AT 11:30 A.M.

SUE BLACKLEY, COUNTY CLERK  
JEFF DAVIS COUNTY, TEXAS