

GORDON E. SAUER, TRUSTEE, ET AL TO

THE PUBLIC

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

WHEREAS, Gordon E. Sauer, Trustee of the 290 East Irrevocable Trust and Joy Beth Kolmeier "Sauer-Kolmeier" are the current owners of that 72.5 acres of land being described by metes and bounds in the first of a series of Gift Deeds from Hilmar Weinheimer, Sr., et al to Doris Kolmeier, recorded in Volume 151, Page 105 of the Deed Records of Gillespie County, Texas; and

WHEREAS, Sauer-Kolmeier will hold, sell and convey the above described Property subject to certain protective covenants, reservations, conditions, restrictions and charges as hereinafter set forth:

NOW, THEREFORE, it is hereby declared that all of the above referred Property shall be held, sold and conveyed subject to the following restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the land and shall be binding on all parties having a right, title or interest in or to the above described Property or any part thereof, and their heirs, successors and assigns, and which restrictions, covenants and conditions shall inure to the benefit of each owner thereof, and any contract or deed which may hereafter be executed in connection with said Property, or any part thereof, shall be conclusively held to have been executed, delivered and accepted subject to the terms and conditions contained in this instrument, regardless of whether or not such terms and conditions are specifically set out in said contract or deed.

I.

DEFINITIONS

1.01. "Owner" shall refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the above described Property, excluding however, those having any interest therein merely as security for the performance of an obligation.

1.02. "Tract" shall refer to any portion of the Property, as owned by any Owner.

II.

RESTRICTIONS

1. No dwelling home shall be moved onto any tract. Any dwelling shall be constructed on site. Relocation or reconstruction of a structure of historic quality and integrity shall be permitted. No mobile, modular, pre-manufactured and/or industrial built home shall be used as a dwelling or stored on any tract except as a temporary construction office during active construction of a building, but not longer than twelve (12) months.
2. Swine shall not be kept on any tract other than in connection with a sanctioned 4-H or FFA livestock project. Other livestock, pet and poultry shall be permitted provided said livestock is kept within the boundaries of said tract at all times, and they are not offensive to adjacent landowners by smell, sound, or otherwise. There shall not be any commercial feeding operations or commercial breeding of animals, except horses, conducted thereon. Animals used for grazing said property while simultaneously raising young (i.e. cow/calf operation) shall not be considered commercial breeding of animals.
3. No structure of a temporary character, trailer, camper, tent, shack, garage, or other outbuilding shall be used on any tract at any time as a residence, either temporarily or permanently, subject to the preceding Section 1..
4. Tracts shall not be used for any commercial purposes, including RV parks, except permanent agricultural crops including vineyards, fruit trees, flowers, native species, pecan groves and permanent grass (hay meadows or grazing pastures) shall be permitted. No industrial pursuit or enterprise shall be permitted to be conducted on any tract. Industrial pursuit or enterprise shall mean engaging in the manufacture or assembly of goods or processing of raw materials unserviceable in their natural state for sale or distribution to third parties, including but not limited to, those activities

as set forth in 4.a.:

- a. Auto painting and repair; heavy machinery operation or storage; welding or machine shop or machining business; concrete products manufacture
 - b. Agricultural use and the processing of agricultural goods into commercial products are not declared to be prohibited industrial pursuit or enterprise (for example-winery, including wine tasting operations and related wine industry enterprises).
 - c. Servants and/or guest quarters which may also be operated as Bed and Breakfasts, combined with any existing Bed and Breakfast structures, not to exceed two (2) total units per twenty (20) acre tract, are permitted, subject to further limitation as hereinafter set forth.
 - d. Cottage industries, such as an artisan, i.e. artist, painter, photographer, wood, metal, clay or glass sculptor or fabricator and other similar activities are permitted.
5. In addition to structures permitted in Section 4.c., an owner may construct other ancillary structures necessary to fulfill their use and enjoyment of the property, such as barns or stalls, a studio, a workshop or storage facility. The ancillary buildings are for the personal use and benefit of the owners and are not available as rentals to the general public, which would increase traffic throughout the Property.
 6. No churches or houses of worship shall be erected or placed upon the Property.
 7. No cellular tower or other type of commercial tower shall be erected or placed upon the property.
 8. Abandoned or inoperative equipment, vehicles, or junk shall not be permitted or stored on any tract or any portion of the ingress, egress easement.
 9. Noxious or offensive activity shall not be permitted on any tract, nor shall anything be done thereon which shall be an annoyance or nuisance to the owners of the tracts. (Example - constant discharge of firearms). However, this doesn't preclude owners from pursuing hunting activities of Texas wildlife and game. Owners are to keep said property free of litter at all times. Disposal of any kind shall not be allowed that would adversely affect the natural beauty and value of the Properties. Garbage or refuse shall not be buried on any tract.
 10. Surfacing, mining (including, but not limited to stone, gravel, sand, caliche), exploration of any type which will damage the surface is prohibited. Road material,

including gravel or caliche, used to construct roads on the property may be removed and utilized, after which the removal site shall be restored as much as possible to its original condition.

11. No portion of the property shall be subdivided to have tracts containing less than twenty (20) acres; EXCEPT THAT, a tract consisting of twenty (20) acres or more, may be subdivided into one (1) or more tracts having a minimum of 10 acres and further that such tract of 10 or more acres is owned by a family descendant within the first degree. In such event, each such tract of 10 acres or more is limited to one principal residence and one additional structure to accommodate servants quarters or guest quarters, however in such event, the principal residence and servants/guest quarters, may not be operated as a B&B.
12. No building or structures of any type, except a well or pump house, may be erected on any tract nearer than one hundred (100) feet from a common interior side property line of any tract and not nearer than three hundred (300) feet from the property line adjacent to the access road easement of any tract. In the event there is a resubdivision into 10 acres or more, the side setback lines are reduced to two hundred (200) feet.
13. A tract shall not serve as the servient estate for road easements to other property outside of the Property nor for the dedication and installation of any public road or roads, other than the road easement granted to the owners of 66 acres of land, such easement being recorded under Register No. _____, Official Public Records of Gillespie County, Texas.
14. A. ROADWAY EASEMENT. Attached hereto as Exhibit "A" is a description of a thirty (30) foot wide roadway providing access to the Tracts within the Property. Declarant hereby assigns a perpetual, non-exclusive ingress, egress and regress easement, over, across an upon the roadway for the uninterrupted access to and from the Tracts for the use and benefit of the Owners, their heirs, successors, assigns, and their agents, invitees, guests and permittees. The easement shall be appurtenant to each and every Tract within the Property.

ALL ROADWAYS OF THE PROPERTY, AN UNPLATTED SUBDIVISION IN GILLESPIE COUNTY, TEXAS, (THE "SUBDIVISION") SHALL BE PRIVATELY MAINTAINED BY THE OWNERS OF TRACTS IN THE SUBDIVISION. GILLESPIE COUNTY, TEXAS SHALL NOT BE RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF THE ROADWAY. THE ROADWAY WITHIN THE SUBDIVISION WILL BE MAINTAINED AND REPAIRED BY MAINTENANCE ASSESSMENTS WHICH ARE COLLECTED FROM OWNERS OF TRACTS WITHIN THE SUBDIVISION. BY ACCEPTANCE OF A DEED TO A TRACT WITHIN THE SUBDIVISION, EACH OWNER OF SUCH TRACT COVENANTS AND AGREES TO WAIVE ANY RIGHT SUCH OWNER MAY

HAVE TO DEMAND OR COMPEL THE MAINTENANCE OR REPAIR OF THE ROADWAYS OF THE SUBDIVISION BY GILLESPIE COUNTY, TEXAS AND IS ESTOPPED FROM DOING SO.

- B. MAINTENANCE AGREEMENT. Each owner, by acceptance of a Deed, whether or not it shall be so expressed in such Deed, agrees to pay a prorata share of all assessments which may be made for the purpose of maintaining, repairing and replacing the road and repairing, maintaining and replacing the electronically controlled access gate. These expenses (herein "maintenance expenses") may include, but shall not be limited to, the reconstruction, repair, maintenance, upkeep or replacement of (1) the roadway, shoulders and culverts to the condition in which it existed on April ____, 2020, and (2) the costs of professional and other outside services, labor, equipment, and materials necessary to carry out the purpose as set out herein.

Each owner shall be obligated to pay, and agrees to pay, a prorata portion of the maintenance expenses. The proportionate share which shall be due by each Owner shall be determined by multiplying the assessment fraction (the numerator is the number of tracts owned by an Owner of the Property and the denominator is the total number of Tracts in the Property) by the amount expended or proposed to be expended, for maintenance expenses.

At anytime an Owner shall propose the expenditure of funds for maintenance expenses, notice shall be given to each owner in writing at their mailing address for receipt of tax statements from the County of Gillespie, Texas, thirty (30) days prior to the proposed date of the meeting to consider proposed maintenance expenses, together with a notification of the place of meeting which shall be in Gillespie County, Texas. A quorum for the purpose of approving a proposal for maintenance expense expenditure shall be the attendance of Owners or their agent designated by written proxy, owning at least 50% of the Tracts within the Property. Approval by Owners or their agent designated by written proxy, representing more than 50% of the Tracts in attendance at a quorum shall be required for the approval of an assessment for the maintenance expenses. The Owners present at a called meeting who have approved the maintenance expense expenditure shall designate an Owner who will contract for the improvements which have been proposed and who will receive from each Owner their maintenance assessment. Any Owner who shall fail to deliver their maintenance assessment to the designated Owner, within fifteen (15) days of the date of receipt of notice of assessment, shall be in default. In the event any Owner shall advance the amount which is due by the defaulting Owner for the payment of the Owner's assessment, the advancing Owner shall be entitled to recover from the defaulting Owner the amount in default, interest at the rate of 10.00% per annum from and after the date that the defaulted amount is advanced by the advancing Owner, together with court costs and reasonable and necessary attorney's

fees incurred in collection. The assessments, together with interest, court costs and reasonable and necessary attorney's fees shall be a charge on the defaulting Owner's Tract and shall be secured by a continuing lien upon the Tract provided a notice of lien has been filed in the Official Public Records, Gillespie, County, Texas. The inception date of the lien shall be the date of its filing. The lien to secure the payment of maintenance assessments shall be subordinate to the lien of any home equity, purchase money or improvement lien made upon the tract. The validity, enforcement, and priority of the lien shall be subject to the filing of a notice of default in the payment of maintenance assessments in the Official Public Records of Gillespie County, Texas.

- C. **EXCESS DAMAGE.** In addition to the foregoing, any Owner however, shall solely bear all expense in connection with any unusual repairs brought about as a result of excessive weights or use during construction period or otherwise. As examples, such excessive weights or uses shall include, but not be limited to, concrete trucks, well drilling rigs, dozers or other heavy or unusual equipment bringing about damage to the roadway and surface beyond reasonable wear and tear occasioned by normal day to day vehicular traffic by Owners.

The above restrictive covenants shall run with and bind the herein described premises and shall be effective until the expiration of twenty-five (25) years after the date of this deed, and shall be binding upon the Grantee, their successors or assigns.

III.

GENERAL PROVISIONS

3.01. **ENFORCEMENT.** Declarant, its successors or assigns, or any Owner, along with Joyce Pyka, Greg Pyka and James Pyka, their successors and assigns, the owners of that 66 acres described in the first of a series of Gift Deeds from Hilmar Weinheimer, Sr., et al to Joyce Pyka, recorded in Volume 151, Page 109 of the Deed Records of Gillespie County, Texas, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, conditions, and restrictions of this Declaration, EXCEPT THAT, Joyce Pyka, Greg Pyka and James Pyka shall not have the right to enforce Article II., Section 13.A., B. and C.. Failure of Declarant or any Owner to

take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default. Declarant, for itself, its successors or assigns, reserve the right to enforce this Declaration, though it may have previously sold and conveyed all Tracts controlled hereby. The reservation by Declarant of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and Declarant shall not be subjected to any claim, demand, or cause of action from any Owner by virtue of not enforcing any term, provision, covenant, conditions or restrictions herein contained.

3.02. PARTIAL INVALIDITY. Invalidation of any one of the covenants or restrictions, contained herein, by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

3.03 AMENDMENT. Notwithstanding anything to the contrary, Declarant shall have the right at any time, at its sole discretion and without any joinder or consent of any other party to amend this Declaration for the purposes of correcting any error, ambiguity or inconsistency appearing herein or for any reason whatsoever deemed necessary for the benefit of the overall development as determined by Declarant in its sole judgement. Said amendment shall be effective upon filing of the instrument containing such amendment in the office of the County Clerk of Gillespie County, Texas.

3.04 WAIVER AND LACHES. The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist on such Owner's Tract which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Tract, hereby waives the affirmative defenses of the

statute of limitations, waiver and laches with respect to covenant

violations. Failure of Declarant, or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

EXECUTED this ____ day of _____, 2020.

290 EAST IRREVOCABLE TRUST

By: GORDON E. SAUER, Trustee

JOY BETH KOLMEIER

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the ____ day of _____, 2020, by JOY BETH KOLMEIER.

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the ____ day of _____, 2020, by GORDON E. SAUER, TRUSTEE, of the 290 EAST IRREVOCABLE TRUST, on behalf of said Trust.

Notary Public in and for the State of Texas