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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
2/4/2009 15:22:38.03  
  
2009009878

### THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR FALLING WATERS

This Third Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Falling Waters (this "Third Amendment") is made as of this \_\_\_\_ day of November, 2008, by Dial Harrison, L.L.C., a Nebraska limited liability company (the "Declarant"), together with the additional signatories hereto.

#### PRELIMINARY STATEMENT

WHEREAS, on or about June 22, 2006, Declarant caused to be recorded the Declaration of Covenants, Conditions, Restrictions and Easements for Falling Waters with the Douglas County Register of Deeds, Instrument Number 2006070429 (the "Declaration") for the purposes of governing the ownership and use of the real estate subject thereto, which, as replatted, is legally described as follows:

- ✓ *(129)* Lots 46 - 172, inclusive, and Outlots B and C, in Falling Waters, a Subdivision located in Douglas County, Nebraska as surveyed, platted and recorded. *OC-11945*
- ✓ *(40)* Lots 1 - 4, inclusive, Lot 6, Lot 7, Lots 9 - 27, inclusive, and Lots 30 - 44, inclusive, of Replat 1 in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded. *OC-11946*
- ✓ *(4)* Lots 1 - 3, inclusive, and Outlot A of Replat 2, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded. *OC-11947*
- ✓ *(2)* Lots 1 and 2, Replat 3, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded. *OC-11948*
- ✓ *(2)* Lots 1 and 2, Replat 4, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded. *OC-11949*
- ✓ *(2)* Lots 1 and 2, Replat 5, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded. *OC-11950*

Upon recording return to:  
Mark LaPuzza  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Suite 300  
Omaha, NE 68114

*✓ 106 880*

WHEREAS, the Declaration contains ambiguous language and scrivener's errors which the Declarant desires to correct;

WHEREAS, Declarant subsequently caused the recording of a First Amendment to the Declaration, recorded on November 8, 2007, at Instrument Number 2007125917 (the "First Amendment") and a Second Amendment to the Declaration, recorded on November 19, 2007, at Instrument Number 2007129298 (the "Second Amendment");

WHEREAS, the First Amendment and the Second Amendment inadvertently and mistakenly failed to incorporate references to the correct lots for indexing purposes;

WHEREAS, the Declarant, pursuant to Article X, Section 3 of the Declaration, reserves the right to amend the Declaration in its discretion;

WHEREAS, Article X, Section 3 of the Declaration further provides that the Declaration may be amended by a writing signed by "not less than seventy percent (70%) of the Lot Owners;" and

WHEREAS, the Declarant, together with the undersigned, desire to amend the Declaration, the First Amendment and the Second Amendment for the purposes of clarifying the terms thereof, as amended, and for the purposes of supplementing the Declaration for the benefit of the owners of real estate subject thereto.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Definitions. Except as context clearly requires otherwise or as terms are otherwise defined herein, capitalized terms used in this Third Amendment shall be ascribed the same meaning as set forth in the Declaration.

2. Rescission of Amendments. The First Amendment and the Second Amendment are hereby rescinded and terminated, and shall be of no further force and effect. Pursuant to this Section, no provision of the First Amendment to the Declaration or the Second Amendment to the Declaration shall be effective upon the real estate subject to the Declaration.

3. Amendment. The Declaration shall be amended in the following particulars:

a. Article I, Section 3 of the Declaration shall be deleted in its entirety and replaced as follows:

Section 3. "Properties" shall mean and refer to that certain real estate described as follows:

Lots 46 - 172, inclusive, and Outlots B and C, in Falling Waters, a Subdivision located in Douglas County, Nebraska as surveyed, platted and recorded.

Lots 1 - 4, inclusive, Lot 6, Lot 7, Lots 9 - 27, inclusive, and Lots 30 - 44, inclusive, of Replat 1 in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

Lots 1 - 3, inclusive, and Outlot A of Replat 2, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

Lots 1 and 2, Replat 3, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

Lots 1 and 2, Replat 4, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

Lots 1 and 2, Replat 5, in Falling Waters, a Subdivision located in Douglas County, Nebraska, as surveyed, platted and recorded.

b. Article VI, Section 2 of the Declaration shall be deleted in its entirety and replaced as follows:

Section 2. The above ground finished and enclosed living area of main residential structures, exclusive of porches, breezeways, basements and garages, shall be not less than the following minimum sizes:

1. Lots 51 - 114 and Lots 122 - 172
  - a) One Story House 1650 sq. ft. min. main floor  
Exclusive with attached garage (garage area must be approximately at the same level as the main floor)
  - b) One and ½ Story House 2400 sq. ft. min. above grade
  - c) Two Story House 2400 sq. ft. min. above grade

For each dwelling, there must be erected a private garage for not less than three (3) cars (each car stall to be a minimum size of ten feet by twenty-one feet)

2. Lots 46 - 50 and Lots 115 - 121
  - a) One Story House 1500 sq. ft. min main floor  
Exclusive with attached garage (garage area must be approximately at the same level as the main floor)
  - b) One and ½ Story House 2000 sq. ft. min. above grade

- c) Two Story House 2000 sq. ft. min. above grade

For each dwelling, there must be erected a private garage for not less than two (2) cars (each car stall to be a minimum size of ten feet by twenty-one feet).

3. Lots 1 – 4, 6, 7, 9 – 27, 30 – 44, Replat 1  
and Lots 1 – 3, Replat 2

1200 sq. ft. Total area above grade

For each dwelling, there must be erected a private garage for not less than two (2) cars (each car stall to be a minimum size of ten feet by twenty-one feet).

- c. Article VI, Section 11 of the Declaration shall be deleted in its entirety and replaced as follows:

Section 11. A dwelling on which construction has begun shall be completed within one (1) year from the date upon which the foundation of such dwelling was commenced. A tree of a caliber of not less than three (3) inches must be planted in the front yard of each Lot within one (1) year of the substantial completion of the dwelling or occupation thereof, whichever occurs first.

- d. Article VI, Section 16 of the Declaration is hereby deleted in its entirety.

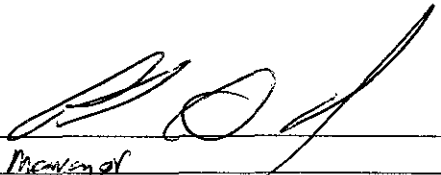
- e. The following language shall be added to the Declaration immediately following the last sentence of Article X, Section 3:

Without limiting the foregoing, Declarant shall retain the right to amend the Declaration to add to or subtract from the Properties any real estate owned by Declarant, to increase or reduce minimum square footage requirements of the Declaration, or to modify or remove design and construction standards.

4. Except as expressly amended herein, the Declaration shall continue in full force and effect according to its terms.

IN WITNESS WHEREOF, the undersigned have caused this Third Amendment to be executed, effective as of the day and year first written above.

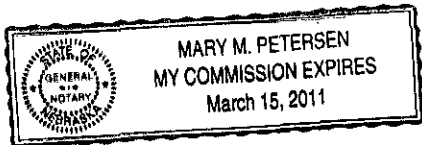
DIAL HARRISON, L.L.C., a Nebraska limited liability company, Owner of Lots 46 - 48, inclusive, 50 - 52, inclusive, 59 - 65, inclusive, 67, 68, 70, 72 - 76, 79, 81, 85, 86, 92, 97 - 99, inclusive, 107, 108, 111, 114 - 121, inclusive, 123 - 137, inclusive, 146, 148 - 151, inclusive, 154, 155, 158, 159, 168, 170 - 172, inclusive, Outlots B and C and Lot 44, Replat 1 and Outlot A, Replat 2

By:   
Its: Manager

STATE OF NEBRASKA     )  
                                          ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 10 day of Nov, 2008, by Patrick G Day, Member of Dial Harrison, L.L.C., a Nebraska limited liability company, on behalf of the Company.

Mary M Petersen  
Notary Public



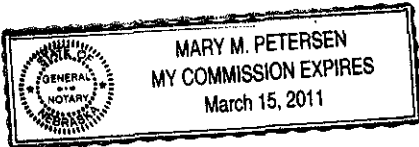
DIAL VILLAS AT HARRISON, L.L.C., a  
Nebraska limited liability company, Owner of Lots  
1 - 4, inclusive, 6, 7, 9 - 27, inclusive, 30 - 43,  
inclusive, Replat 1, Lots 1 - 3, inclusive, Replat 2,  
Lots 1 and 2, Replat 5

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
*Manager*

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 10 day of November,  
2008, by Parrick G Day, MANAGER of Dial Villas at  
Harrison, L.L.C., a Nebraska limited liability company, on behalf of the Company.

Mary M Petersen  
Notary Public



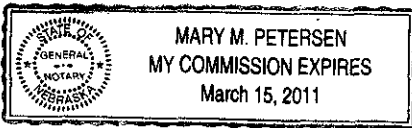
ROCKBROOK BUILDERS L.L.C., a Nebraska  
limited liability company, Owner of Lots 89, 105,  
110, 143, 147, 153, 165, 166

By: \_\_\_\_\_  
Its:                     *Manager*                    


STATE OF NEBRASKA    )  
                                          ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 10 day of November,  
2008, by           *Patrick G. Ray*                    ,           *Manager*                     of Rockbrook  
Builders L.L.C., a Nebraska limited liability company, on behalf of the company.

                    *Mary M Petersen*                      
Notary Public

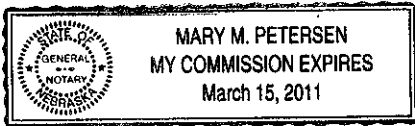


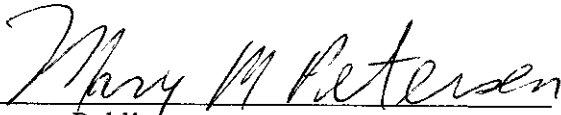
DIAL – HARRISON MODEL HOMES, L.L.C.,  
a Nebraska limited liability company, Owner of  
Lots 56, 58, 93, 102, 139, 163

By:   
Its: Manager

STATE OF NEBRASKA    )  
                                          ) ss.  
COUNTY OF DOUGLAS    )


The foregoing instrument was acknowledged before me this 10 day of November, 2008, by Patrick G. Day, Manager of Dial – Harrison Model Homes, L.L.C., a Nebraska limited liability company, on behalf of the Company.



  
Notary Public

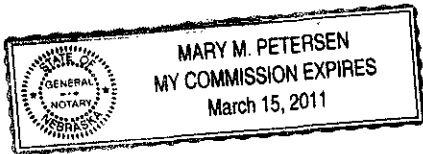


BLACKTIE BUILDERS L.L.C., a Nebraska  
limited liability company, Owner of Lots 77, 95,  
112, 113, 160 – 162, inclusive, 167, 169

By:   
Its: Manager

STATE OF NEBRASKA    )  
                                          ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 10 day of  
Nov, 2008, by Patrick C. Ray,  
Manager of Blacktie Builders L.L.C., a Nebraska limited liability company  
on behalf of the Company.



Mary M. Petersen  
Notary Public

CHARTER WEST NATIONAL BANK, Owner of  
Lots 66, 82, 96, 101, 104, 106, 140, 152 and 164

By: Stephen D. Bell  
Its: President

STATE OF NEBRASKA    )  
                                          ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 12 day of  
November, 2008, by Stephen D. Bell,  
President of Charter West National Bank.



Ron Bertucci  
Notary Public

Francis J. Gutchewsky  
Francis J. Gutchewsky, Owner of Lot 157

Delorus E. Gutchewsky  
Spouse of Francis J. Gutchewsky, Owner of Lot 157

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by Francis J. Gutchewsky.

Lori Miles  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by Delorus E. Gutchewsky, spouse of Francis J. Gutchewsky.

Lori Miles  
Notary Public



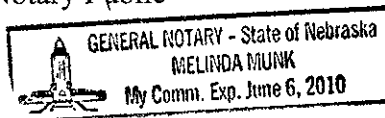
GATEWAY HOMES, INC., a Nebraska corporation, Owner of Lots 69, 80, 83, 88, 91, 94, 103, and 138

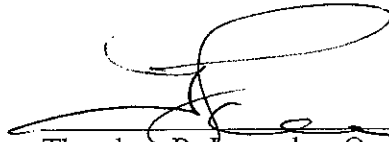
By: *[Signature]*  
Its: CEO

STATE OF NEBRASKA    )  
                                          ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of November, 2008, by Kevin Hebner, CEO of Gateway Homes, Inc., a Nebraska corporation, on behalf of the corporation.


*Melinda Munk*  
Notary Public

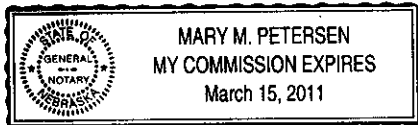


  
\_\_\_\_\_  
Theodore R. Lowndes, Owner of Lot 54

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 1 day of Dec, 2008, by Theodore R. Lowndes, an unmarried person.

  
\_\_\_\_\_  
Notary Public

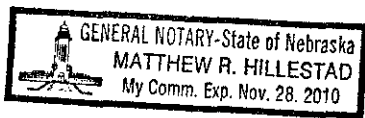


PROLINE CUSTOM HOMES, INC.,  
Owner of Lot 49

By: *John Barrett*  
Its: \_\_\_\_\_

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 1 day of December, 2008, by John C Barrett,  
\_\_\_\_\_ of Proline Custom Homes, Inc., on behalf of the Corporation.



*Matthew R. Hillestad*  
Notary Public

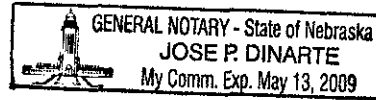
Matthew B. Reiser  
Matthew B. Reiser, Owner of Lot 145

Amanda L. Reiser  
Amanda L. Reiser, Owner of Lot 145

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 6 day of December, 2008, by Matthew B. Reiser.

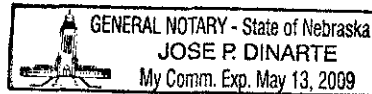
[Signature]  
Notary Public



STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 6 day of December, 2008, by Amanda L. Reiser.

[Signature]  
Notary Public

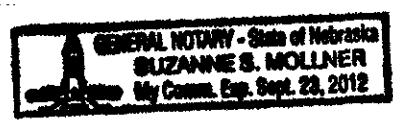


Todd Mollner  
Todd Mollner, Owner of Lot 122

N/A  
SPOUSE (if any), Owner of Lot 122

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 7 day of DECEMBER, 2008, by Todd Mollner.



Suzanne S. Mollner  
Notary Public

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 7 day of \_\_\_\_\_, 2008, by \_\_\_\_\_, (spouse of Todd Mollner, if any).

\_\_\_\_\_  
Notary Public



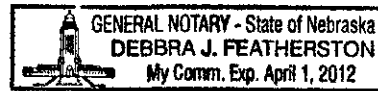
*Jason L. Halm*  
Jason L. Halm, Owner of Lot 100

*Tina Halm*  
Tina Halm, Owner of Lot 100

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of December, 2008, by Jason L. Halm.

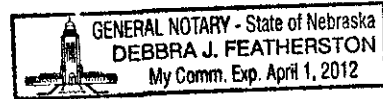
*Debbra J. Featherston*  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of December, 2008, by Tina Halm.

*Debbra J. Featherston*  
Notary Public



*Tony Anderson*  
Tony Anderson, Owner of Lot 142

*Paula Anderson*  
Spouse of Tony Anderson, Owner of Lot 142

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )



The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of December, 2008, by Tony Anderson, a married person.

*Richard King*  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )



The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of December, 2008, by Paula Anderson, spouse of Tony Anderson.

*Richard King*  
Notary Public



Douglas L. Rutherford

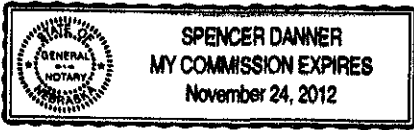
Douglas L. Rutherford, Owner of Lot 144

Kathleen A. Rutherford

Kathleen A. Rutherford, Owner of Lot 144

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January 2009, 2008, by Douglas L. Rutherford.



Spencer Danner  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of January 2009, 2008, by Kathleen A. Rutherford.



Spencer Danner  
Notary Public