



MISC Inst. # 2020087252, Pg: 1 of 7 Rec Date: 08/12/2020 14:11:25.573

Fee Received: \$46.00 By: JS

Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

MA

WHEN RECORDED RETURN TO:

*Amy Jorgensen, Esq.
3114 St. Mary's Avenue
Omaha, NE 68105*

**THIRD AMENDMENT TO THE DECLARATION OF RESTRICTIONS,
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
GAVIIDAE AND ACKNOWLEDGEMENT OF COURT ORDER APPROVING
PLAT RELATING TO
DECLARATION OF RESTRICTIONS, COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR GAVIIDAE**

THIS THIRD AMENDMENT TO THE DECLARATION OF RESTRICTIONS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR GAVIIDAE AND ACKNOWLEDGEMENT OF COURT ORDER APPROVING PLAT RELATING TO DECLARATION OF RESTRICTIONS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR GAVIIDAE (this "Agreement") is made and entered into as of July 21, 2020, by PBK VALLEY, LLC, a Nebraska limited liability company ("**Declarant**").

A. Reference is made to that certain Declaration of Restrictions, Covenants, Conditions, Restrictions And Easements For Gaviidae dated August 5, 2009 and recorded in the Office of the Douglas County Register of Deed on August 20, 2009 as Instrument No. 2009091751, as amended by that certain First Amendment to the Declaration of Restrictions, Covenants, Conditions, Restrictions And Easements For Gaviidae dated September 22, 2009 and recorded in the Office of the Douglas County Register of Deed on September 29, 2009 as Instrument No. 2009105763 and by that certain Second Amendment to the Declaration of Restrictions, Covenants, Conditions, Restrictions And Easements For Gaviidae dated October 23, 2017 and recorded in the Office of the Douglas County Register of Deed on October 26, 2017 as Instrument No. 2017086638 (collectively, the "**Declaration**"), recorded against the real property legally described on Exhibit A attached hereto and incorporated herein by this reference

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B. Capitalized terms used in this Agreement but not otherwise defined in this Amendment shall have the meaning assigned in the Declaration.

C. Pursuant to Section 13.2 of the Declaration, the Declaration may be modified or amended by the terms of a recorded document executed by Declarant alone until the expiration of the Period of Declarant Control.

D. Pursuant to Section 1.19 of the Declaration, the Period of Declarant Control commenced with the recording of the Declaration and continues for as long as Declarant owns at least one (1) Lot, unless and until the Declarant elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations pursuant to Article XVI of the Declaration.

E. As of the date of this Agreement, Declarant owns at least one (1) Lot.

F. Pursuant to Article XVI of the Declaration, any or all of the rights, powers and reservations of Declarant contained in the Declaration may be assigned by Declarant from time to time to any Person who will assume the duties of Declarant. To date, no such assignment has been made.

G. Therefore, Declarant has the right, power and authority, on its own, to execute this Agreement.

H. Pursuant to Section 8.5 of the Declaration, no Lot shall be subdivided or separate into smaller Lots by and Owner by deed or otherwise without the prior written approval of Declarant during the Period of Declarant Control and thereafter by the Architectural Committee.

I. Pursuant to an administrative replat recorded in the Office of the Douglas County Register of Deed as Instrument No. 2017-072868, the owner of Lot 37, Gaviidae (Steven and Brandelyn Goldapp), and the owner of Lot 36, Gaviidae (WSTY, LLC), adjusted the property line between their two lots, which are now known as Lot 1 (Steven and Brandelyn Goldapp) and Lot 2 (WSTY, LLC), Gaviidae Replat One.

J. The administrative replat adjusting the lot line between the two lots was recorded without the prior written approval of Declarant or the Architectural Committee but has been judicially approved and declared valid by the District Court of Douglas County, Nebraska pursuant to that certain Stipulated Judgment filed May 13, 2020 in the District Court of Douglas County, Case No. CI 19-2041 (the "Order") and which Order is attached hereto as Exhibit "C" and incorporated herein by this reference.

K. In addition, pursuant to the Order, the Court declared Lots 1 and 2, Gaviidae Replat One, to be part of the Gaviidae Subdivision and subject to the terms and conditions of the Declaration.

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This Agreement is being recorded, in part, to recognize and acknowledge the Order and the effect on Lots 1 and 2, Gaviidae Replat One, with respect to the Declaration. Except as set forth below, all terms and conditions of the Declaration shall remain unmodified, including, without limitation, Section 8.5 of the Declaration and shall remain in full force and effect.

NOW, THEREFORE, IN ADDITION TO THE ACKNOWLEDGEMENTS SET FORTH ABOVE, pursuant to Section 13.2 of the Declaration, Declarant hereby amends the Declaration as follows:

1. Definitions. Terms used in this Agreement shall have the meaning set forth in the Declaration except as otherwise defined herein.2. Net Acres; Percentage Assessment; Exhibit B to Declaration. Exhibit "B" to the Declaration is hereby amended and modified to reflect that the lot identified on Exhibit B as Lot 36 is now known as Lot 2 Gaviidae Replat One and the lot identified on Exhibit B as Lot 37 is now known as Lot 1 Gaviidae Replat One. Based on the square feet of each lot as reflected in Gaviidae Replat One, the Net Acres and Percentage Assessment shall be amended as set forth below.

For Lot 36/Lot 2 Gaviidae Replat One, the "Net Acres" is hereby amended to be .31 acres (decreased from .36 acres) and the "Percentage Assessment" is hereby amended to be .77 (decreased from .89).

For Lot 37/Lot 1 Gaviidae Replat One the "Net Acres" is hereby amended to be .77 acres (increased from .72 acres) and the "Percentage Assessment" is hereby amended to be 1.90 (increased from 1.78)

As set forth in the Declaration, the Net Acres and Percentage Assessment as amended shall be used, among other things, to determine the assessments set forth in the Declaration (Regular, Special, Reimbursement and Capital Improvement) including, without limitation, levying each Lot's assessment based on a uniform rate to the Percentage Assessment.

In the event the acreage of any lots are modified or otherwise adjusted or if an Outlot is converted to a Lot, Exhibit B will be further amended to reflect an adjustment of each lot's Net Acres and Percentage Assessment.

2. Effect of Acknowledgement. On and after the date of this Agreement, the terms "Declaration", "Agreement", or terms of similar import shall include this Agreement.

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Exhibit A
LEGAL DESCRIPTION

Lots 1 through 35, inclusive, and Outlots 1 through 8, all in Gaviidae, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska

and

Lots 1 and 2, Gaviidae Replat One, as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT C

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

PBK VALLEY, LLC, a Nebraska Limited Liability Company

Plaintiff,

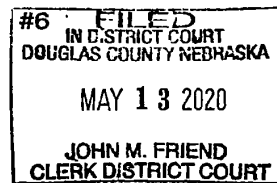
v.

STEVEN GOLDAPP, BRANDELYN GOLDAPP, and WSTY, LLC, a Nebraska Limited Liability Company,

Defendants

CASE NO. CI 19-2041

STIPULATED JUDGMENT



This matter comes before the Court on the Stipulation for Judgment filed by the parties on May 11th, 2020. Having reviewed the Stipulation and being fully advised in the premises, the Court hereby approves the Stipulation for Judgment and makes its order and decree consistent therewith:

1. The Court hereby approves the Gaviidae Replat One Lots 1 and 2 recorded in the office of the Register of Deeds of Douglas County, Nebraska as Instrument No. Misc. 2017072868 September 14, 2017 (the "Replat") and declares the Replat to be a valid instrument, having previously been approved by the City of Valley and having met all requirements for recorded instruments under the Nebraska Statutes.

2. The Court declares Lots 1 and 2 as reflected in the Replat to be part of the Gaviidae Subdivision and subject to the terms and conditions of the Declaration of Covenants, Conditions, Restrictions and Easements for Gaviidae which was filed for record in the office of the Register of Deeds of Douglas County, Nebraska, at Instrument Number Misc 2009091751 on August 22, 2009 and any amendments thereto filed for record in the office of the Register of Deeds of Douglas County, Nebraska.

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3. The Court hereby enters judgment on all claims and counterclaims filed in this action consistent with the above findings with each party to pay its respective costs and fees.

IT IS SO ORDERED.

DATED this 11th day of May, 2020.


MICHAEL J. COFFEY
DISTRICT COURT JUDGE

