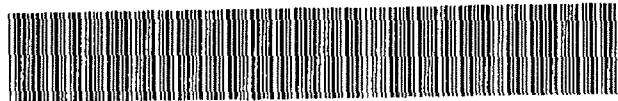




MISC 2009047245



MAY 12 2009 14:59 P 32

*K* *MISC*  
 FEI 306.50 *3* *See attached*  
 BKP \_\_\_\_\_ C/G \_\_\_\_\_ COMP *B*  
*32*  
*293* DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FY \_\_\_\_\_

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 5/12/2009 14:59:16.00



2009047245

THIS PAGE INCLUDED FOR INDEXING  
 PAGE DOWN FOR BALANCE OF INSTRUMENT

Return To: Next Page  
 \_\_\_\_\_  
 \_\_\_\_\_

Check Number  
107630

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF NEWPORT LANDING, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, made May 1, 2001 and amended on the date hereinafter set forth, is made by HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

Declarant, as the owner of certain real property located in Douglas County, Nebraska, and legally described as follows, subjected such property to a Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing, a subdivision in Douglas County, Nebraska, as recorded on May 23, 2001, Book 1383, Page 001-023 as Instrument Number 200107573:

Lots 2 through 127, inclusive, Lots 129 through 198, inclusive, Lots 200 through 259, inclusive, Lots 262 through 274, inclusive, and Lots 276 through 283, inclusive, in Bennington Lake, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, together with Lots 1 and 2, Bennington Lake Replat 2, Lots 1 and 2, Bennington Lake Replat 3, and Lot 1, Bennington Lake Replat 4, each being replats of Bennington Lake, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. 05-02879  
05-02897  
05-02898-Rep3  
05-02899-Rep4

herein referred to collectively as the "Lots" and individually as each "Lot."

Further, the following real estate, subject to the Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing, is owned by the Newport Landing Homeowners and Lake Association, a Nebraska not for profit corporation (the "Association"):

Lot 1, Bennington Lake, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. 05-02879

Such lot is herein referred to as the "Lake Lot."

Outlots 1 and 4 through 9, inclusive, Bennington Lake, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. 05-02879

Such lots are herein referred to collectively as the "Outlots" and individually as each "Outlot."

Lot 275, Bennington Lake, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska. 05-02879

Such lot is herein referred to as the "Island Lot."

and

Lots 1 and 2, Newport Landing, being a minor administrative subdivision of Lot 1, Bennington Lake Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska. 05 - 27265

The Lots, Lake Lot, Outlots, and the Island Lot are all part of the residential lake community known as Newport Landing. The Declarant desires to provide for the preservation of the values and amenities of Newport Landing, for the maintenance of the character and residential integrity of Newport Landing, and for the acquisition, construction and maintenance of common facilities for the use and enjoyment of the residents of Newport Landing.

The Declarant, pursuant to Article VI, Section 2 of the Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing, may amend the Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing

NOW, THEREFORE, the Declarant hereby declares that the Newport Landing Property shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Newport Landing Property and to permit the residents to realize the full enjoyment of the Lots. The Newport Landing Property shall be subject to all and each of the following conditions and other terms:

#### ARTICLE I DEFINITIONS

1. Association. "Association" shall mean and refer to the NEWPORT LANDING HOMEOWNERS AND LAKE ASSOCIATION, a Nebraska not for profit corporation.

2. Common Facility. "Common Facility" shall mean facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include, but shall not be limited to: (a) the Lake and Lake amenities and improvements; (b) recreational facilities such as tennis courts, health facilities, playgrounds and parks; (c) dedicated and non-dedicated roads, paths, ways and green areas; and (d) signs and entrances to Newport Landing. Common Facilities may be situated on property owned or leased by the Association, by Sanitary and Improvement District No. 425 of Douglas County, Nebraska, or on dedicated property.

3. Declaration. "Declaration" shall collectively mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Newport Landing, as such may be amended from time to time and to include the Newport Landing Lake Rules and Regulations (hereinafter referred to as "Lake Rules"), Exhibit A.

4. Development Review Committee or DRC. "Development Review Committee" or "DRC" shall mean the Declarant until the earlier of: (a) ten (10) years from the date this Declaration is recorded with the Douglas County Register of Deeds; or (b) the date Declarant records a "Termination of DRC Status" with the Douglas County Register of Deeds, at which time the Association, or a committee appointed by the Association, shall succeed to the status of the Development Review Committee and shall have all rights and perform all duties associated therewith.

5. Lake. "Lake" shall mean and refer to the lake constructed on and around the Lake Lot.

6. Member. "Member" shall mean and refer to each Owner of a Lot.

7. Newport Landing Property. "Newport Landing Property" shall mean collectively the Lots, Lake Lot, Outlots, and the Island Lot.

8. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). A purchaser of a Lot under a land contract or similar instrument shall be deemed to be the Owner of the Lot for purposes of this Declaration.

## ARTICLE II RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except for any Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility.

2. No residence, building, addition, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboard, dog house, pool house, flag pole, tennis court, mailbox, dock or shore station, or other external improvement, including shrubs, bushes, trees and other landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any of the Newport Landing Property, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by the Development Review Committee (DRC), as follows:

(a) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, grading plans, detailed landscaping plans, erosion control plans, and plot plans to the DRC (herein collectively referred to as the "plans"). Such plans shall include a description of the type, quality and color of materials proposed for the exterior of such Improvement and shall include proposed final grade elevations. All such plans shall include the names of the prime contractor responsible for all Improvements including construction, grading, landscaping, etc. Concurrent with submission of the plans, Owner shall notify the DRC of the Owner's mailing address and shall pay the DRC a plan review fee of \$250.

(b) The DRC (with or without the advice of professional engineers or other experts retained by the DRC, in its sole discretion) shall review such plans in light of the conditions and restrictions in Article II of this Declaration and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, it is intended that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the DRC in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Newport Landing subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the quality of the residential structures constructed and architecture shall be of a quality not less than that found in the Huntington Park, Barrington Park, and Eagle Run West subdivisions in Douglas County, Nebraska. Atypical improvements and home designs such as dome houses, "modular" homes, mobile homes, trailers, A-frame houses and log cabins will not be approved unless the DRC determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If the DRC determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots as a quality residential community, the DRC may refuse approval of the proposed Improvement.

(c) Written Notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by the DRC.

(d) No Owner, or combination of Owners, or other person or persons shall have any right to any action by the DRC, or to control, direct or influence the acts of the DRC with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon the DRC by virtue of the authority granted to the DRC in this Section, or as a result of any act or failure to act by the DRC with respect to any proposed Improvement.

3. No single-family residential structure shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. Except as otherwise specifically provided in this Declaration, or as specifically permitted in writing by the DRC, no Improvements may be erected or maintained on any of the Lots within thirty (30) feet of any street right-of-way abutting a Lot (the "Front Yard Area"), or within sixty (60) feet of the Lot's common boundary with the Lake Lot (the "Rear Yard Area"), or within seven (7) feet of the side boundaries of the Lot (the "Side Yard Area"). Notwithstanding the foregoing, a non-covered deck may be constructed up to a point which is not closer than forty (40) feet of the Lot's common boundary with the Lake Lot.

4. No Improvements of any type or kind shall be permitted on any Lot within eight (8) feet of the land side of the Sea Wall, unless otherwise specifically approved by the DRC.

5. Subject to written approval by the DRC and subject to Article II, Section 4, landscaping Improvements shall be permitted in the Front Yard Area and Side Yard Area and in that part of the Rear Yard Area that is not closer than forty (40) feet of the Lot's common boundary with the Lake Lot, and landscaping Improvements that do not exceed three (3) feet in height shall be permitted in the Rear Yard Area that is within (40) feet of the common boundary with the Lake Lot.

6. Except as otherwise approved in writing by the DRC, the exposed foundation walls of all residential structures (including garages) must be constructed of or faced with brick, stucco, EFIS or painted simulated brick. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, brick or stone. No vertical siding shall be permitted on exterior walls. All horizontal siding on exterior walls must be of overlap variety no greater than 6". The roof of all improvements shall be covered with shake, concrete, slate, tile, copper or asphalt of forty (40) year warranty quality or greater, or other materials approved in writing by the DRC.

7. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except three signs per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall a Lot be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner or Owners of any Lot or any resident thereof. The foregoing restriction in this Article II, Section 7 shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant or its agents and assigns, during the development and sale of Lots.

8. No exterior television or radio antenna or satellite receiving dish of any type shall be permitted on any Lot, provided, however, an antenna or dish that is designed to receive over-the-air programming signals that does not exceed one meter in diameter and that is attached directly to the residence, may be permitted if the location and size of the proposed antenna or dish is approved in writing by the DRC.

9. No repair of any boats, snowmobiles, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of twenty-four (24) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building construction operations, and then only in as neat and inconspicuous a manner as possible.

10. No boat, snowmobile, motorcycle, four wheeler, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure). No motor vehicle may be parked or stored outside on any Lot, except

automobiles, SUV's and passenger vans and trucks driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Article II, Section 10 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. This Article II, Section 10 shall not apply to construction barges used and stored upon the Lake during periods of active construction. All Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable governmental zoning ordinances.

11. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted outside, except for pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards.

12. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

13. All fences must be approved by the DRC pursuant to Section 2 of this Article II. Unless otherwise specifically approved by the DRC: (a) no fence shall extend beyond the front line of the main residential structure on the Lot; (b) no fence shall be constructed closer than forty (40) feet of the Lot's common boundary with the Lake Lot; (c) perimeter fences or hedges or mass plantings shall not exceed six (6) feet in height; (d) all fences shall be wrought iron, with columns permitted if constructed of brick or stucco; and (e) no hedges or mass plantings shall be permitted more than ten (10) feet in front of the front building line of the main residential structure on the Lot.

14. Owners shall take all necessary precautions to ensure that construction, landscaping and lawn maintenance activity does not result in erosion and does not contaminate the Lake. Owners shall install siltation fences and other erosion control devices during construction of Improvements and until their Lots are sodded or until seeded yards are reasonably established, which siltation fences and/or erosion control devices shall be installed in a manner which will eliminate or substantially reduce erosion and runoff of soil from the Lot to the Lake. The Declarant and the DRC may require Owners to install siltation fences or erosion control devices and measures in such locations, configurations, and designs as they may determine appropriate in their sole and absolute discretion.

15. No swimming pool may extend more than one foot above ground level. Exceptions to this rule may be granted by the DRC for "infinity pools" at the discretion of the DRC

16. Construction of any Improvement shall be completed within eighteen (18) months, unless otherwise approved by the DRC, from the date of commencement of excavation or construction of the Improvement. Each Owner agrees that failure to complete construction in a timely manner will be a nuisance and eye sore to the Newport Landing neighborhood and will hinder the Declarant's ability to maintain the desirability and attractiveness of the Newport Landing subdivision. Each owner further agrees that the damages to the Declarant for its breach of this Article II, Section 16, shall be difficult to measure precisely in money damages and therefore agrees to pay to Declarant the sum of Thirty and no/100 Dollars (\$30.00) per day as liquidated damages for each day that it violates this Article II, Section 16, which sum the Owner agrees is reasonable. The number of days for which damages shall be paid shall be measured from the date of first breach until both all external Improvements have been completed and until a certificate of occupancy has been issued by the applicable governing body. Declarant may enforce any breach of this Article II, Section 16, in the courts of Douglas County, Nebraska, and shall be entitled to recover as additional damages its expenses, costs and fees (including reasonable attorney fees to the extent permitted by law) in recovering such damages.

17. The final grade of the Lot must result in all surface water draining from the front of the Lot to the boundary of the Lot adjacent to the Lake Lot. As provided in Article II, Section 2, grading plans must be submitted to and approved by the DRC prior to commencement of Improvements to any Lot. The DRC shall review the grading plans in light of the master grading plan for Newport Landing, the requirements of this Declaration, and

commercially recognized development and engineering standards provided, however, it is ultimately the responsibility of every Owner to grade their Lot in a manner consistent with the master grading plan for Newport Landing.

18. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four feet (4') back of the street curb line on curbed streets and four feet six inches (4'6") back of the street line on non-curbed streets and shall be constructed by the Owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any conflicting requirements of the City of Bennington.

19. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

20. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Doghouses shall only be allowed adjacent to the rear of the residential structure, concealed from public view. No dog runs or kennels may be constructed or installed on any Lot. No kennel license shall be applied for to be used on any Lot. No livestock or agricultural-type animals shall be allowed in the Newport Landing subdivision, including pot-bellied pigs. No exotic animals shall be housed on any Lot. All Owners shall be in compliance with county and city ordinances regarding pets and animals.

21. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. All Lots must be fully sodded following completion of construction of the residential structure on the Lot. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

22. No residential structure shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one Owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot with the written approval of the DRC.

23. No temporary structure of any character, and no carport, trailer, modular home, open basement, tool shed, or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. An Owner may erect a swing set, playground equipment, pool house, gazebo, or other non prohibited structure on a Lot only after securing the prior written approval of Declarant. No structure or dwelling shall be moved from outside Newport Landing to any Lot without the written approval of the DRC.

24. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

25. Owners shall be permitted to construct shore stations, docks, or other boating convenience features on the Lake Lot as abuts their Lot ("Lake Improvements"), provided: (a) such Lake Improvements shall be subject to written approval of the DRC in accordance with the procedures of Section 2 of this Article II; (b) the construction and maintenance of such Lake Improvements shall not violate any of the provisions of this Declaration; (c) the construction and maintenance of such Lake Improvements shall conform with the requirements, conditions and restrictions of the Lake Rules, as hereinafter defined; (d) the construction and maintenance of such Lake Improvements shall not violate any of the provisions of the *Dock Construction & Construction in the Easement Guidelines*" attached as Exhibit C, as may be amended from time to time; and (e) the construction and maintenance

of such improvements shall not violate any of the covenants, terms, conditions, restrictions and easements as set forth in the Papio-Missouri River Natural Resources District (hereinafter PMNRD) Restrictions, as hereinafter defined.

26. All mailboxes on the Lots shall be constructed in compliance with the Federal and local Post Office regulations.

ARTICLE III  
COMMON AREAS, LAKE AND SEA WALL

1. The Declarant may from time to time convey to the Association or grant easements to the Association, at no expense to the Association, on such other terms and conditions, and within the sole discretion of Declarant, real and personal property for use as Common Facilities. Such property may include, without limitation, the Lake Lot.

2. Subject to applicable rules and restrictions, each Member shall have a right to use and enjoy Common Facilities, which right shall be appurtenant to and shall pass with the title of every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Facilities by other Owners.

3. The Members use of the Lake shall be limited by rules and regulations pertaining to such use as shall be established, amended and modified from time to time by the Association (the "Lake Rules"). The Lake Rules, as adopted by the Association and in effect as of the date of this Declaration, are attached as Exhibit "A" to this Declaration. The Lake Rules may include provisions restricting or eliminating the right of any Owner to use the Lake in the event of a violation of the Lake Rules. The Lake Rules, as amended from time to time, shall be available for all Owners for inspection in the offices of the Lake Manager or any other location as selected by Declarant. The Association shall endeavor to provide all Members with copies of any amendments or modifications to the Lake Rules within thirty (30) days following such amendment or modification. Notwithstanding the foregoing, the failure of the Association to provide Members with copies of amendments or modifications to the Lake Rules shall not be a condition as to the enforceability of the Lake Rules against the Members, it being an affirmative obligation of the Members to be familiar with and abide by the Lake Rules at all times. All Owners, by acceptance of delivery of a deed, assume all risks associated with using the Lake, and all Owners agree and covenant on their own behalf and on behalf of their guests, licensees and invitees, not to make any claim or institute any action whatsoever against Declarant or the Association, or their respective officers, directors, employees, owners or agents arising or resulting from use of the Lake or other Common Facilities, any damages that may be caused thereby, or for negligent design of the Lake.

4. The Declarant has constructed a seawall around the entire Lake Lot (the "Sea Wall"). **No attachments of any kind (temporary or permanent) may be made to the Sea Wall.** Owners are allowed to put drainage holes in the seawall consistent with the Owner's engineering plans for drainage and approved by the DRC and in compliance with the *Dock Construction & Construction in the Easement Guidelines* attached as Appendix C, as may be amended from time to time. Placing excessive force on the Sea Wall may cause damage to or failure of the Sea Wall. Each Owner shall repair and maintain that part of the Sea Wall on and adjacent to its Lot in good condition. In the event that an Owner fails to repair and maintain the Sea Wall in good condition, the Association or Declarant may make written demand upon an Owner to take such actions to repair and maintain the Sea Wall to good condition. Should an Owner fail to complete such repair and maintenance activities within thirty (30) days following delivery of written notice, then either the Declarant or the Association may cause such repair and maintenance to occur and charge the Owner of such Lot all of its expenses in conducting such maintenance and repair, plus a fifteen percent (15%) administrative charge. Assessment and demand for payment of such expenses shall be made in writing by Declarant. If such assessment is not paid within thirty (30) days after written demand, such assessment shall constitute a lien on the Lot, which lien shall attach, have the priority and be enforceable by the Association in the same manner as liens for assessments and dues as provided in Article IV of this Declaration.



ARTICLE IV  
HOMEOWNERS ASSOCIATION

1. The Association has been incorporated for the benefit of the residents of Newport Landing. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Newport Landing, including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may be situated on property owned or leased by the Association within or outside the Newport Landing subdivision, on private property subject to an easement in favor of the Association, on public property, or on property dedicated to a Sanitary and Improvement District.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the residents Newport Landing; and the protection and maintenance of the residential character of Newport Landing.

2. Membership and Voting. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Association shall have two classes of voting membership:

(a) Class A. The Class A Members shall be all Owners, with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they shall determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Members shall be Declarant and it shall be entitled to thirty-five (35) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(ii) On January 1, 2010.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to or required to by the following:

(a) The acquisition, development, maintenance, repair, replacement, operation, and administration of any Common Facilities, including the promulgation, enactment, amendment and enforcement of the Lake Rules and other rules and regulations relating to the use and enjoyment of any Common Facilities.

(b) The landscaping, mowing, watering, repair and replacement of parks, Outlots, Boat Ramp Lot, and other public property and improvements on parks and other public property, within or near Newport Landing such as but not limited to the walking trail, the fishing dock and the entrances.

(c) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

(d) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

(e) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(f) The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(g) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(h) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(i) General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(j) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of the Association. The Association shall:

(a) Maintain and repair the Common Facilities, and the signs which have or will be installed by Declarant at entrances to the Newport Landing subdivision in good repair and neat condition; and

(b) Maintain, repair, and replace as necessary all fences and trees, shrubs, and other natural barriers and green areas constructed on and along property owned by the Association, so that such are in good repair and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant. Lots owned by the Horgan Development Company shall not be subject to imposition of dues, assessments or Association liens.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Section 3 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) Seven Hundred Fifty and no/100 Dollars (\$750.00) per Lot; or

(b) In each calendar year beginning on January 1, 2002, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Lake Assessments. In addition to the imposition of dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, maintenance or improvement to the Lake (the "Lake Assessments"). The aggregate Lake Assessments in each calendar year shall be limited in amount to Five Hundred and no/100 Dollars (\$500.00) per Lot.

11. Assessments for Extraordinary Costs. In addition to the dues and Lake Assessments, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate of assessments under this section in each calendar year shall be limited in amount to One Thousand and no/100 Dollars (\$1,000.00) per Lot except as otherwise permitted by this Declaration.

12. Excess Dues and Assessments. With the approval of sixty percent (60%) of the voting interests of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

13. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6, above.

14. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

15. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with

respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

16. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

#### ARTICLE V EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest Communications, Telepartners, L.L.C., Cox Communications, and to any other company granted a franchise or license by the City of Bennington, Nebraska, to provide telecommunications within the Lots, their successors and assigns, to erect, operate and maintain, repair and renew poles, wires, crossarms, downguys and anchors, cables, conduits and other related facilities; and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power for the transmission of signals and sounds of all kinds, including signals provided by a cable television system, and the reception thereon, over, through, under and across a five (5) foot strip of land abutting the front boundary of each Lot and a five (5) foot strip of land abutting all side boundaries of the Lots, except where a sanitary sewer easement has been granted. Lot 284 is not included in the aforementioned side and front boundary lot line easements.

2. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants, valves and other related facilities, and to extend thereon pipes for the transmission of gas and water, on, through, under and across the five (5) foot strip of land abutting all streets; this license being granted for the use and benefit of all present and future Owners of these Lots. No permanent buildings, trees, retaining walls or loose rock wall or walls shall be placed on the above-described easementways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights granted herein.

3. In the event that ninety percent (90%) of all Lots within the subdivision are not improved within five (5) years after the date on which Qwest Communications telephone company files notice that it has completed installation of telephone lines to the Lots in the subdivision (herein the "Subdivision Improvement Date"), then the telephone company may impose a connection charge on each unimproved Lot in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00). A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on a Lot. Construction shall be considered as having commenced if a footing inspection has been requested on the Lot in question by officials of the City or other appropriate governmental authority. Should such charge be implemented by the telephone company and remain unpaid, then such charge may draw interest at the rate of twelve percent (12%) per annum commencing after the expiration of sixty (60) days from the time all of the following events shall have occurred: (1) the Subdivision Improvement Date; and (2) the telephone company sends each Owner of record a written statement or billing for Four Hundred Fifty and no/100 Dollars (\$450.00) for each unimproved Lot.

4. Other easements are provided for in the final plat of Bennington Lake which is filed in the Register of Deeds of Douglas County, Nebraska (Book 2041, Page 55).

5. Each Lot is restricted by covenants, conditions and easements of record with the Register of Deeds of Douglas County, Nebraska, relating to agreements with the PMNRD and the Lake and its operation, maintenance and repair (the "PMNRD Restrictions").

6. An easement is reserved for the Association and Declarant, and their respective agents, employees and contractors, on and across each of the Lots for ingress to and egress from the Lots as necessary or appropriate to effect repairs and maintenance to the Sea Wall in the event that the Owner fails to comply with its obligations under Article III, Section 4, of this Declaration, and as necessary and appropriate for the operation, maintenance and repair of the Lake and other Common Facilities as may be adjacent to the Owner's Lot.

ARTICLE VI  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant, the Association, or any Owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. This Declaration and the covenants, conditions, restrictions and easements of this Declaration shall run with and bind the land in perpetuity and shall be binding upon all persons or entities having or acquiring any right, title or interest in the Newport Landing Property. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than sixty percent (60%) of the Lots covered by this Declaration.

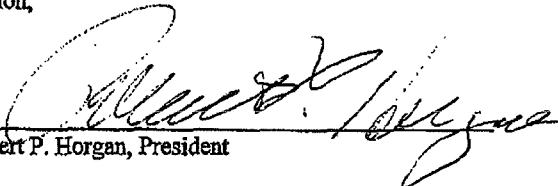
3. By written consent of the Declarant for a period of ten (10) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Newport Landing subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

4. HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

5. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 11 day of MAY, 2009.


HORGAN DEVELOPMENT COMPANY, a Nebraska corporation,

By:   
Robert P. Horgan, President

STATE OF NEBRASKA            )  
  ) ss.:  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of May, 2009, by Robert P. Horgan, President of HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, on behalf of the corporation.

  
Notary Public

 GENERAL NOTARY - State of Nebraska  
MARK JAMES LaPUZZA  
My Comm. Exp. Oct. 22, 2011

**EXHIBIT "A"**

**Lake Rules**



## NEWPORT LANDING LAKE RULES AND REGULATIONS

These Newport Landing Lake Rules and Regulations (hereinafter referred to as "Lake Rules") are amended effective \_\_\_\_\_, 2009, by the Newport Landing Homeowners and Lake Association, a Nebraska not-for-profit corporation.

### ARTICLE I DEFINITIONS

For purposes of these Lake Rules and Regulations, the terms below shall have the meanings as follows:

1. "Association" shall mean and refer to the Newport Landing Homeowners and Lake Association, a Nebraska not-for-profit corporation.
2. "Committee" shall mean the Lake Rules and Regulations Committee, if any, appointed by the Board of Directors of the Association.
3. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements and including all Exhibits, for Newport Landing, as such may be amended from time to time and recorded with the Register of Deeds of Douglas County, Nebraska.
4. "Family Member" shall mean and refer to the spouse of an Owner of a Lot and the children of an Owner of a Lot that reside full-time and permanently at the Lot.
5. "Guest" shall mean and refer to all persons who are using the Lake and Lake Facilities at the invitation and with the consent of an Owner or a Family Member of an Owner including other family members not permanently residing at the Lot.
6. "Lake" shall mean and refer to the lake constructed on or around the Lake Lot.
7. "Lake Facilities" shall mean and refer to any and all improvements or facilities constructed on or about the Lake and available for use of the Owners and their Family Members.
8. "Lake Lot" shall mean and refer to Lot 1, Bennington Lake, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.
9. "Lake Rules" shall mean and refer to these Newport Landing Lake Rules and Regulations, as amended and supplemented from time to time.
10. "Lot" shall mean each individual residential lot in the Newport Landing Subdivision.
11. "Newport Landing Subdivision" shall mean collectively the Lots, Lake Lot, Outlots, Island Lot, Marina Lot, and Boat Ramp Lot as defined in the Declaration, as such lots may be replatted or amended from time to time.
12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lots merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). A purchaser of a Lot under a land contract or similar instrument shall be deemed to be the Owner of a Lot for purposes of these Lake Rules.

13. "Permitted Watercraft" shall mean conventional recreational fishing, pontoon, house and ski boats powered by inboard or outboard motors, canoes, paddleboats, and sailboats, jet skis or wave runners, but shall exclude any and all other watercraft, including, without limitation, jet boats and air boats.

Any terms not herein defined with an initial capitalized letter shall have the meaning ascribed to them by the Declaration.

## **ARTICLE II LAKE USAGE**

1. All Owners and their respective Family Members shall have the right, in common with all Owners and Family Members, to use the Lake and Lake Facilities subject to the restrictions in these Lake Rules and the Declaration. Except for specified public use areas, the Lake and Lake Facilities may not be used by persons other than Owners, Family Members and Guests.

2. Guests shall be permitted to use the Lake and Lake Facilities subject to the following requirements:

(a) All usage of the Lake and Lake Facilities by Guests shall be in conformance with the Lake Rules and the Declaration;

(b) Guests must be accompanied by an Owner or a Family Member of an Owner at all times when using the Lake or Lake Facilities; and

(c) Guests shall be registered in accordance with any Guest registration requirements adopted by the Association.

## **ARTICLE III BOAT RAMP AND GAS PUMP USAGE**

1. The boat ramp may be used by Owners and Family Members only and all boat launching must be attended to personally by an Owner or a Family Member.

2. No boat ramp key is to be loaned at any time for any reason to persons not permanently residing at the Lake. If an authorized Owner needs a key he is to contact the lake manager. Boat ramp keys are not to be duplicated at any time. Lost or misplaced keys are to be replaced through the Lake Manager. Keys are never to be given or loaned to non-resident persons at any time. Contractors who need a key for a specific job shall contact the Lake Manager.

3. Due care and diligence must be used to prevent gasoline spillage into the Lake. Spillage upon and around the pump is the responsibility of the Owner to clean up to prevent leakage into the Lake.

4. Care and due diligence must be used when tying up to the dock for gas or when unloading and loading boats and watercraft so as not to damage the dock and ramp. Care is to be taken when approaching a boat already at the gas pump.

5. All problems with and malfunctions of the gas pump are to be immediately reported to the Lake Manager.

6. The gas pump and boat ramp are no wake zones.

7. The price of gas will be determined by the Association Board of Directors.

8. Owners who abuse the privilege of the use of the boat ramp and/or gas pump may be restricted from use of the pump and boat ramp at the discretion of the Association Board of Directors.

9. The Association shall have the right to shut down the gas pump either temporarily or permanently.
10. The gate across the boat ramp is to remain locked at all times when a boat is not being launched or retrieved from the water. It is the responsibility of each Owner to carefully secure the gate after use.

#### **ARTICLE IV BOATING RESTRICTIONS**

1. All Permitted Watercraft operating on the Lake must comply with these Lake Rules as well as the binding provisions of the Nebraska State Boat Act, Neb. Rev. Stat. §§ 37-1201 et seq. and binding regulations adopted there under, as amended from time to time (the "State Rules"). In the event of any conflict between the terms of these Lake Rules and the State Rules, the State Rules shall control unless the provisions of the Lake Rules are more stringent, in which event these Lake Rules shall control.
2. Permitted Watercraft and trailers may be parked or stored on a Lot for no longer than 24 consecutive hours unless stored in the garage. Notwithstanding the foregoing, Permitted Watercraft on trailers may be parked in a driveway of a Lot during the 15 day period between April 15 and April 30 and October 15 and October 30 to permit Owners to ready their Permitted Watercraft for usage and/or storage.
3. Each Lot Owner may install a dock in the Lake in front of their respective Lot. All boat docks must be constructed from a wood, polyethylene, vinyl, fiberglass, aluminum or non-rusting material and shall not extend more than 30 feet into the Lake from the Owner's Lake Lot line. Decking on boat docks can be made of redwood, vinyl or treated wood material. The plans for all docks, showing their material, configuration and size, shall be subject to approval by the DRC prior to their installation in accordance with the procedures set forth in Article II, Section 2, of the Declaration. Permitted boat lifts will be those made of aluminum such as "Shore Station-Hewitt" etc., or a non-rusting type of material as approved by the Association, with white or gray canopy covers, or of a canopy color approved by the Association. The plans for all boat lifts showing their size, materials, colors and configuration, must be approved by the DRC in accordance with the procedures set forth in Article II, Section 2, of the Declaration. Surrounding structures shall be of a typical and reasonable size including height and width such as a shore station, shore master lift with canopy. Such structures shall not have bathroom plumbing facilities. This includes that the structure will not have side walls. Similarly, the plans for all surrounding structures covering the shore stations or docks or other structures built out over the water, must be approved by the DRC in accordance with the procedures set forth in Article II, Section 2 of the Declaration and in accordance with the "Dock Construction & Construction in the Easement Guidelines" attached as Appendix C.
4. House Boats on the Lake are prohibited.
5. Lot Owners may not use the Lake for boating unless construction of their residence has commenced on their Lot and they have a DRC approved dock and boat lift in place.
6. All Permitted Watercraft on the Lake must be owned by an Owner or Family Member, must be registered with the Association, and must have affixed current Association registration sticker in a visible location on the starboard aft side.
7. While the State of Nebraska does not require motorized watercraft to carry liability insurance, it is strongly recommended that all Permitted Watercraft on the Lake be adequately insured and that the insurance be current to receive the necessary registration sticker to place on the Permitted Watercraft.
8. Boat speeding on the Lake is prohibited. The maximum permitted speed for Permitted Watercraft is 50 m.p.h. The boat launching, marina, shore, cove, and dock areas are NO WAKE Areas, and the entire Lake is a No Wake Area between sundown and sunrise.
9. All boats and skiers, and others being pulled by a boat, must remain a minimum of sixty (60) feet from the Lake shore and boat lifts and docks.

10. Any Permitted Watercraft found on the Lake or its shores that is not owned by an Owner or Family Member, or that does not contain the appropriate Association registration sticker may be removed by the Association or its duly authorized agent at the expense of the owner.
11. Permitted Watercraft may be restricted during special events and on weekends and holidays as deemed necessary by the Association.
12. No more than two (2) Permitted Watercraft from each Lot shall be operated on the Lake at any given time.
13. No Permitted Watercraft shall be equipped with sanitary facilities of any kind which are capable of directly discharging into the water.
14. The following are maximum boat and motor sizes for Permitted Watercraft operating on the Lake:
  - (a) Pontoon Boats. Maximum manufacturer's nominal length is 28 feet determined by the length of the pontoons. Decks not to extend beyond either end of the pontoons and with a maximum of 125 horsepower motors.
  - (b) Sailboats. Maximum manufacturer's nominal length is 24 feet.
  - (c) Inboard IV-Drive Ski Boats. Maximum manufacturer's nominal length is 23 feet with a maximum of 375 horsepower motors.
  - (d) Inboard/Outboard. Maximum manufacturer's nominal length is 23 feet with a maximum of 375 horsepower motors. No above-water or through-hull exhaust including adjustable (captain's call, silent choice, etc.).
  - (e) Outboard Boats. Maximum manufacturer's nominal length is 23 feet with a maximum of 220 horsepower. Boats under 18 feet 6 inches may have a maximum of 190 horsepower motors.
  - (f) Boat Motors. No motors may be altered or modified from their original factory production standards to increase their performance or horsepower. No above water or through hull exhaust systems allowed.
  - (g) Jet Skis, Wave Runners. All motors for jet skis, wave runners or similar watercraft shall have 4 cycle motors or direct injection 2-cycle motors complying with EPA's 2006 Emission Standards for Outboards and Personal Watercraft.
15. Boats pulling skiers, running in open waters or around islands must be run in a COUNTERCLOCKWISE direction.
16. All boats towing skiers, sleds, etc. must have an onboard observer, 12 years or older or be equipped with a wide-angle mirror.
17. Permitted Watercraft may not follow a person being towed (skier, etc.) closer than 200 feet (2/3 of a city block).
18. Permitted Watercraft may not operate between a downed skier and the towing boat.
19. Towlines may not be towed in the water for more than 300 feet (one city block). Towlines may not exceed 75 feet in length.
20. Permitted Watercraft shall be limited to a maximum of two towlines at one time except on weekends and holidays when only one towline shall be permitted.

21. Permitted Watercraft with a downed skier should turn around only while turning into or toward shore in order to pick up their skier.
22. Children under 12 years of age and younger must wear a U.S. Coast Guard approved life preservers when in a moving boat.
23. No one under the age of 14 years shall operate mechanically powered Permitted Watercraft at any time. No one under the age of 18 shall operate watercraft unless he or she has successfully completed a boater safety course and has been issued a valid boating safety certificate.
24. All Permitted Watercraft must use appropriate lights if on the lake at night.
25. Sailboats, canoes, rowboats, paddleboats, any other Permitted Watercraft not operating under mechanical power, any anchored vessel, and swimmers always have right of way over any other Permitted Watercraft operating under mechanical power.
26. Chasing waterfowl with Permitted Watercraft is prohibited.
27. All water skiers or persons being towed must wear a life jacket while being towed.
28. All Permitted Watercraft towing people must have an orange warning flag on board and show it when the person being towed is down.
29. All boats must have a U.S. Coast Guard-approved life saving device of Type I, II, or III, for each person on board. In addition, every boat shall carry at least one U.S. Coast Guard-approved throwable flotation device.
30. All boats must have an efficient whistle or other mechanical sound producing device.
31. Boat Houses built on the lake are prohibited.

#### **ARTICLE V SWIMMING/SCUBA DIVING**

1. The Lake is a recreational lake and Owners, Family Members and their Guests swim in the Lake at their own risk. Swimming across the main part of the lake is prohibited. Swimming is encouraged in "no wake" zones only. Swimming in and around docks must be undertaken with extreme care and is at the swimmer's own risk.
2. Swimming at the boat ramp, gas pump and marina areas is prohibited and swimming in any other area is at your own risk.
3. Scuba diving is allowed only by special permit from the Association and never on weekends or holidays or during special events.
4. All scuba divers must use a flag while diving. All Permitted Watercraft must stay 75 feet from this flag.

#### **ARTICLE VI FISHING**

1. All fishermen must comply with these Lake Rules as well as the binding State of Nebraska fishing rules and regulations (the "State Rules"). In the event of any conflict between the terms of these Lake Rules and the

State Rules, the State Rules shall control unless the provisions of the Lake Rules are more stringent, in which event these Lake Rules shall control.

2. Except for specified public use areas, fishing shall be permitted only for Owners, Family Members and Guests. For persons permitted to fish in areas not designated for public use, fishing by Owners, Family Members and Guests shall be limited to the Owners' private property and from nonresidential lots (Outlots) which are under the ownership and control of the Newport Landing Homeowners' Association.

3. All fishing shall be catch and release until the fish population has been established and these rules are modified.

4. No cleaning of fish shall be permitted around the Lake except in approved fish clean stations.

5. Fishermen shall not leave dead fish on or about the Lake.

6. Ice fishing with a maximum 10 inch diameter hole is permitted.

7. Anglers are limited to 2 lines with 2 hooks on each line. One hook means a single double or treble-pointed hook. All hooks attached to artificial bait or lure are counted as one hook. These limits apply to all fishing, including rod and reel, poles, float lines, bank lines, setlines and all other types.

8. It is prohibited to possess a net (other than landing net) or seine of any type on the Lake.

9. It is prohibited to use minnows on the Lake, except those legally collected from the Lake.

10. Digging, seining and trapping for bait or any purpose is prohibited.

11. It is prohibited to import or transport carp, sucker, goldfish, buffalo, quillback, gar, gizzard shad or bowfin into the Lake.

#### **ARTICLE VII SNOWMOBILING AND WINTER USAGE**

1. Use of the Lake and Lake Facilities during the winter months is at the sole and exclusive risk of the Owners, Family Members and Guests. Use of the Lake and Lake Facilities is prohibited when ice conditions are dangerous. The Association will not be monitoring the ice conditions and judgment as to the ice conditions will be in the discretion of each individual.

2. Recreational snowmobiles and four-wheelers shall be permitted on the Lake. All snowmobiles and four-wheelers must enter the Lake from the boat ramp at the marina. No racing of these vehicles shall be permitted. The speed limit on the Lake shall be 50 m.p.h.

3. No one under the age of 14 years shall operate snowmobiles or four-wheelers on the Lake. Each Owner shall be limited to the operation of no more than four snowmobiles at any one time on the Lake.

4. Ice fishing on the Lake shall be permitted subject to compliance with the fishing rules in Article IV of these Lake Rules. No ice fishing tents or huts may be left on the Lake overnight.

5. No cars, trucks, or other similar motor vehicles shall be permitted on the frozen surface of the Lake.

#### **ARTICLE VIII LAWN MAINTENANCE AND**

## MANAGEMENT PRACTICES

1. These practices are formulated in response to the Corp of Engineers Section 404 permit for the construction of the lake and to minimize adverse effects to the water quality of the Lake. It is recommended that turf on all Lots be Super Turf II without the perennial rye or equivalent. These regulations discourage the use of bluegrass, but if it is to be used, it should be Sure Shot Kentucky Bluegrass Blend or equivalent. Perennial rye grass, zoysia grass or buffalo grass should not be used.

2. **Mowing:** It is recommended to return clippings to the lawn as this can provide up to 25% of the nitrogen required for the lawn. The use of a mulching mower is recommended. Following is the recommended mowing schedule:

<u>Grass Species</u>	<u>Mower Setting</u> <u>Spring/Fall</u>	<u>Mow When</u> <u>Grass Is</u>
Turf Type Tall Fescue (Super Turf II)	2½" - 3"	3½" - 4"
Kentucky Bluegrass	2"	3"

To cool the turf plant and reduce stress in June, July and August, raise the mower height one inch.

3. **Fertilizing:** The rate of fertilizer application, the frequency of application and the source of the nitrogen will determine how fast the lawn grows. Under no circumstances are phosphates allowed to be used in lawn treatments. The following fertilizer plan is recommended:

<u>Grass Species</u>	<u>Timing</u>	<u>Nitrogen</u> <u>1,000 Sq. Ft.</u>
Turf Type Tall Fescue	April 20 - 28	0.50 lbs.
	May 5 - 15	0.50 lbs.
	June 5 - 10	0.75 lbs.
	Sept. 1 - 10	0.75 lbs.
	Oct. 20 - Nov. 10	1.00 lbs.
Kentucky Bluegrass	April 20 - 28	1.00 lbs.
	May 5 - 15	0.75 lbs.
	June 5 - 10	1.00 lbs.
	Sept. 1 - 10	1.00 lbs.
	Oct. 20 - Nov. 10	1.50 lbs.

4. **Watering:** Turf Type Tall Fescue should require about one-half inch of water every five or six days in the driest period of the summer.

Kentucky bluegrass should require about one inch of water every five or six days in the driest period of the summer.

The best time to water is early morning. The worst time to water is in the evening because the lawn stays wet all night which encourages disease development. Lawns watered too frequently tend to develop shallow root systems which may make them more susceptible to grub damage and heat/drought stress. If water runs off the lawn before the recommended amount is applied, turn the sprinkler off, let the water soak in for about one hour, then continue watering.

5. **Pest Control:** All pesticide applications should be on a specific grass type basis except for pre-emergence weed control in the spring, and grub control in mid-summer. Weed control, other than pre-emergence, should be spot treated applications rather than broadcast. All granular pesticides should be swept or blown onto the lawn off driveways and sidewalks after applications. Fungicide applications should be avoided if possible.

**ARTICLE IX  
MISCELLANEOUS**

1. These Lake Rules may be amended from time to time by the Board of Directors of the Association. The Lake Rules, as amended from time to time, shall be made available to all Owners upon request.

2. There is a punitive system for the violation of the Lake Rules. Any Owner who shall have violated or permitted authorized or allowed the violation of these Lake Rules by a Family Member or Guest shall be subject to fines and suspensions as provided in these Lake Rules. The first offense is a warning. The second and subsequent offenses shall result in fines up to \$1,000.00 or recompense commensurate with the damages caused. In the event of three or more offenses in any one calendar year, the Owners and related Family Member privileges to use the Lake and Lake Facility shall be suspended for the longer of one (1) year following notice of the third offense or until reinstatement is granted by the Association Board of Directors after written application for reinstatement is made to the Association Board.

3. The Owners, Family Members and Guests assume all risks associated with using the Lake and all Owners agree and covenant, on their own behalf and on behalf of their Family Members and Guests, not to make any claim or institute any action whatsoever against the Association, the developer, or their respective officers, directors, employees or agents arising or resulting from their use of the Lake and Lake Facilities.

4. Failure to enforce a covenant, provision or Lake Rule in part or in whole, in one or several instances, in no way prevents the Association from enforcing any covenant, provision and/or Lake Rules in the main or for any specific provision violation, current or future.

5. Each Owner agrees to indemnify and hold harmless the Association, and its officers, directors, employees, and agents from and against any and all liability, loss, or damage suffered or incurred by the Association, its officers, directors, employees or agents arising or resulting from the negligent or wrongful acts or omissions to act of the Owner, the Owner's Family Members and Guests pertaining to the Lake and the Lake Facilities.

6. In the event of a conflict between the terms and conditions of these Lake Rules and the terms and conditions of the Declaration, the terms of the Declaration shall control.

IN WITNESS WHEREOF, these Lake Rules have been amended and adopted as of the date and year first above written.

NEWPORT LANDING HOMEOWNERS  
AND LAKE ASSOCIATION, INC., a  
Nebraska not for profit Corporation

By: \_\_\_\_\_  
William Fleming,  
President, Newport Landing  
Homeowners and Lake Association



**EXHIBIT C**

**Dock Construction & Construction  
in the Easement Guidelines**

## **Dock Construction & Construction in the Easement Guidelines**

### **General Residential Boat Dock Construction**

Construction of any facilities in the lake or wall easement shall be in compliance with the **Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing and Newport Landing Lake Rules and Regulations, May 2001**, and interim changes. Improvements, including but not limited to, docks, stairs, ladders, decks, patios and utilities within the easement areas shall be submitted to the Development Review Committee or DRC. Improvements shall be described either by quality sketches, plans, specifications, or a combination thereof. Improvements are to be constructed of high quality materials. Approval of the construction, methods and materials used shall be obtained from the DRC or by the Lake Management Representative, Rich Melkus, unless waived by written authorization. Inspections during or after construction for compliance (not for safety, structural adequacy or code compliance) of rules and regulations may be required. All facilities and utilities shall be in compliance with applicable codes. The DRC and or Lake Management Representative has the right to limit the size, quantity or location of facilities or utilities within the lake and easement areas.

#### **Requirements:**

##### **A. Posts, Post Holes & Excavation (Water Side of Wall)**

1. Any post holes for docks that require excavation that are located to within the 5 (five) feet width zone (as measured from the face of the seawall sheeting) will be required to be filled with concrete (wet mix only). A 28 day concrete strength of at least 2,000 psi is required.
2. All post holes shall be located such that the edge of any hole shall not be located closer than 6" to the face of the sheeting, nor come into contact with the cementitious material (flowable fill) encompassing the base of the sheeting.
3. No more than 24 (twenty-four) inches total length of excavation may take place within the 5 (five) feet width zone of lake bed along any 10'(ten) feet length of wall. Posts requiring closer spacings shall be placed at different times.
4. Posts, posts bases or concrete pedestals shall be a minimum 5 (five) feet below the bottom of existing lake bed elevation.
5. All holes within the 5 (five) feet width zone shall be excavated and filled with concrete within a 12 (twelve) hour period. The top 6 to 12 inches of the holes may be filled with existing, hand compacted soil. Post holes shall not be excavated or left open during periods of precipitation.
6. Concrete shall cure a minimum 2 (two) days prior to applying construction loads to the posts. Other posts within the 10 (ten) feet length of wall may be constructed during the

cure period, provided that the original holes have been completely backfilled and item 3 above still applies.

B. Posts & Post Holes (Land Side of Wall)

1. Post holes required for ramps are to be located such that the edge of the excavated hole shall be no closer than 8' from the edge of the concrete cap.
2. Soil placement for post hole backfilling shall be compacted to the original density, and prevent water infiltration and accumulation, and final grading shall prevent ponding of water.
3. Attachments to posts placed within the 15' easement area shall not be used to moor watercraft, fixtures or other appurtenances capable of producing horizontal loads toward the direction of the Lake.

C. Patios And Slabs

1. Adequate drainage toward the lake should be maintained, without concentrating flows to specific areas unless proper drainage facilities are approved by the DRC.
2. Topsoil shall be removed to the subgrade elevation, and subgrade shall be scarified and recompact, but all improvements, including topsoil removal and subgrade preparation within the 15' seawall easement shall be confined to the top 9" of the final lot surface elevations. The only exception occurs where the 6" clay cap must be constructed in beach applications.
3. 1" expansion joint material should be placed between the concrete patio and the seawall concrete coping, the joint shall be sealed with a hot tar following installation.
4. In all cases, heavy construction equipment should be kept away from the wall at least 15' to avoid exerting horizontal loads on the seawall.

D. Materials

1. All boat docks shall be constructed from a wood, polyethylene, vinyl, fiberglass, aluminum or non-rusting material.
2. Decking on boat docks shall be redwood, vinyl or treated wood material.

E. Wall Loadings

1. Connections to vinyl sheeting, timber wales or concrete cap are not permitted. Any device capable of producing a horizontal load of any type will not be allowed in any case.

2. Limited vertical loads may be placed on the concrete cap of the wall, provided that the contact area to the wall will not produce more than 100 (one-hundred) pounds of vertical force per linear foot of contact area as measured parallel to the wall cap. The minimum width of contact shall be 3 (three) feet parallel, and shall not be capable of transferring a horizontal load under any condition.
3. Dock steps or ramps that bridge over the wall cap will be permitted, contingent upon review and approval of the DRC.
4. The ground area immediately behind (landside) of the wall shall be limited to a 100 (one-hundred) pound-per square foot (PSF) loading at all locations within the 15' Seawall Easement area. Temporary loads from vehicles, maintenance equipment, tractors and lawn/landscaping equipment, that exceed a 1,000 pound wheel load shall be kept more than 8 feet from the edge of concrete cap. Loads producing more than 500 pound per wheel shall be kept a minimum distance of 5 (five) feet from the concrete cap. Wheel loads producing 200 pounds per wheel shall maintain a minimum 2 (two) feet distance from the concrete cap.
5. At no time will excavations be allowed within the 8 (eight) feet distance behind the concrete cap. Other Excavations within the 15' Seawall Easement are contingent upon review and approval of the DRC.
6. The homeowner shall be responsible for damage to the wall during dock construction.
7. The bottom of Lake elevation shall not be lowered or altered from the existing ...

#### F. Dock Limitations

1. Docks shall not extend into the lake more than 30 (thirty) feet as measured from the front face of the sheeting.
2. Docks shall comply with the **Declaration of Covenants, Conditions, Restrictions and Easements of Newport Landing**.
3. The Owner and/or owner's Designer shall be responsible for adequate design of the dock facility. The DRC or its representative Engineers shall not be liable for adequacy in the design of the dock or it's use. Review of the design is for examination and compliance of the DRC requirements and for the protection and compatibility of the seawall. This review does not relieve the lot Owner, owner's Designer or owner's Contractor of meeting requirements of plans, specifications, codes or covenants.

#### Utilities Near Seawall

##### A. Underground Sprinkler Systems

1. Underground sprinkler systems should not be located within 15' of the seawall. Sprinkler systems shall maintain the watertight integrity at all times, and shall be immediately repaired if any underground leakage is detected.
2. Sprinklers shall be set and timed to prevent excessive saturation of the soil within the seawall easement. Over-watering in the easement zone should be avoided at all times. Watering within the easement should be restricted until the lake has reached final pool elevation, to prevent excessive hydrostatic loading on the wall. Watering shall not exceed the recommended amounts listed in Article VI of the **Newport Landing Lake Rules and Regulations, May 2001**, and interim changes.

#### B. Electrical Utilities.

1. Electrical utilities crossing through the seawall easement shall be installed by a Licensed Electrician, and meet all local electrical code requirements.
2. Electrical utilities crossing through the seawall easement shall be carried through a rigid, watertight conduit placed below ground. Conduit shall be buried with a marking tape within the easement area for ease of identification during excavation for wall maintenance or repairs.
3. The bottom of trench for conduits in the wall easement shall not be located greater than 9" below the top of wall elevation. Minimum cover shall be the greater of 6" or as per code. Material excavated shall be replaced and compacted to original compaction.
4. Conduits shall be watertight, and shall not be capable of carrying water or draining water in the easement area. Conduits shall not induce loads into the seawall.
5. Normally, conduits shall not be allowed to be constructed under the concrete cap or through the vinyl sheeting of the seawall, and shall be routed to pass over the concrete cap of the wall. Special construction of the conduit under the concrete cap will be allowed within compliance of the Detail titled "Utility Placement Under Concrete Cap (Non-Sand Lots)".
6. For conduits under 9" sand lot locations, the utility may be placed in the top 9" of soil under the 9" sand layer. Any excavation within 8 feet of the back face of the concrete wall cap shall be hand excavated, and conducted in such a manner to prevent damage to the geogrid reinforcing. Contact the Lake Management Representative, Rich Melkus at least 24 hours prior to any excavation below the 9" sand layer. Owner is responsible for repairing damage to the geogrid. Repair methods shall be approved by the DRC. Inspection of the trench is required prior to placement of the conduit. Installation shall comply with the detail titled "Utility Placement Under Concrete Cap (9" Sand Lots)". All material excavated to place the conduit shall be replaced and compacted to equal or greater density of the material prior to its removal.

#### C. Storm Discharge Pipe Wall Penetrations

1. Pipe penetrations through the seawall for storm drainage will be allowed provided the

following conditions and restrictions are adhered to:

- a. The Contractor to perform the drainage work within the wall easement shall be familiar, knowledgeable and experienced with the use and placement of geogrids on previous projects.
  - b. Any excavation within 8 feet of the back face of the concrete wall cap shall be hand excavated, and conducted in such a manner to prevent damage to the geogrid reinforcing. After exposure, the geogrid may be cut in a direction perpendicular to the wall, and shall be placed back at the original location, and the soil properly replaced and compacted to original compaction requirements after placement of the drain pipe. Damaged or improperly cut geogrid shall be replaced as directed by the DRC's representative Engineer at the Contractor's or lot Owner's expense. Notification of the Lake Management Representative, Rich Melkus, shall be provided at least 24 hours prior to any backfilling or geogrid installment.
  - c. Maximum size of the drainage pipe shall be 6 inches diameter. Pipes shall be spaced no closer than 20 feet to other drain pipe penetrations, nor closer than 10 feet from adjoining property lot lines.
  - d. Penetrations through the vinyl sheet piling shall be made below the timber wale with the pipe invert (flowline) at least 3" above the design water line elevation of 1136.0. The penetration shall be concealed by use of a cover or shield to make the penetration inconspicuous. Approval of the cover shall be obtained prior to construction.
  - e. The drain pipe shall be solid, smooth wall, non-perforated PVC within the first 10 feet behind the seawall, and shall be placed with a cutoff wall or collar at a location 8 feet behind the wall. The cutoff wall or collar shall extend the greater of 12 inches beyond the limits of the pipe or 4" wider and deeper than dimensions of the excavated trench, to 4" above the pipe crown.
  - f. Silt-tight fittings shall be placed around the pipe at the wall penetration location. Metal connecting fasteners shall be stainless steel. Self tapping screws into the vinyl sheeting are not allowed.
2. Plans and materials shall be submitted to the DRC for review prior to construction. Inspection shall be required during and after the construction of the wall penetrations by the Lake Management Representative, Rich Melkus. The lot Owner and/or owner's Contractor shall be responsible for adequate design and installation of the wall penetration and its maintenance. The DRC or its representative Engineers shall not be liable for adequacy in the design of the penetration or its use. Review of the design is for examination and compliance of the DRC requirements and for the protection and compatibility of the seawall. This review does not relieve the Owner, owner's Designer or owner's Contractor of meeting requirements of plans, specifications, codes or covenants or of damage that may occur to the seawall from placement and use of the drainage facility.

#### D. Other Utilities

1. Cables and Wires - Video, audio, fiber optic, low voltage, or telephone cables and wires within the 15' seawall easement shall be placed in a rigid metallic conduit, and follow the recommended practice for Section B, Electrical Utilities, above.
2. Potable Waterlines - Potable waterlines shall not be allowed to be buried within the 15' seawall easement without review and written approval of the DRC. Waterlines within the Easements shall be placed perpendicular to the wall, and shall be metallic. Potable water lines shall be capable of being shut off and easily drained, and shall be shut off and drained during freezing periods (November through March). Potable water lines shall maintain watertight integrity at all times, and shall be immediately repaired if any underground leakage is detected. The homeowner shall be liable for damage to the wall caused by leakage of the waterlines. All installations shall follow the recommended practice for installation of Electrical Utilities, be placed with marking tape and constructed as per the Detail "Utility Placement Under Concrete Cap".
3. Natural gas or propane pipelines shall not be allowed in the 15' seawall easement without review and written approval of the DRC. All installations shall follow the recommended practice for installation of Electrical Utilities, be placed with marking tape and constructed as per the Detail "Utility Placement Under Concrete Cap".
4. Other utilities require review and written approval by the DRC.

