

Master B2 Paragraph: BELA.B2M

Both 3 pages

Paragraph #:1
BENNINGTON LAKE

Paragraph #:2

This property is located within the boundaries of Sanitary and Improvement District #425. NOTE: Information should be obtained from the Clerk of the Sanitary and Improvement District as to the existence of any pending special assessments not currently certified to in the office of the county treasurer, which may affect subject property.

Paragraph #:3

Easements and Restrictive Covenants for Dam Site 6, Bennington Lake Project filed August 27, 1998 in Book 1261 at Page 178 of the Records of Douglas County, Nebraska, which contains a reservoir easement and a perpetual easement consisting of the right to flow water and sediment upon and to inundate subject property up to elevation of 1,140.0 feet above mean sea level subject to certain terms and conditions as contained therein.

Paragraph #:4

Memorandum of Amended Agreement filed August 27, 1998 in Book 1261 at Page 191 of the Records of Douglas County, Nebraska, executed by and between SID #425, Papio-Missouri River Natural Resources District and Horgan Development Company, a Nebraska Corporation, which contains certain amendments, terms and conditions as described therein.

Paragraph #:5

Dam Complex Easement Agreement - Dam Site 6 - Bennington Lake Project filed August 27, 1998 in Book 1261 at Page 203 of the Records of Douglas County, Nebraska, executed by and between SID #425, Papio-Missouri River Natural Resources District and Horgan Development Company, a Nebraska Corporation which grants easement to the said SID #425 and Horgan Development Company, its successors and/or assigns, across that part of the Dam Complex as described therein for installation and maintenance of "The Trail System". Easement granted to the public for ingress and egress over a portion of property as described therein, by means other than motorized vehicles, and subject to such written usage rules and regulations as may be adopted from time to time by the SID #425 its successors and approved by the Natural Resources District (NRD). Temporary Easement granted to SID #425 for installation and maintenance of principal spillway as contemplated by the Amended Agreement, said easement being subject to termination as described therein. Temporary Easement granted to Horgan Development Company, its successors and assigns, for installation and maintenance of the Dam as contemplated by the Amended Agreement, said easement being subject to termination as described therein. Easement granted for installation and maintenance of recreational and park facilities to SID #425 and Horgan Development Company, and to the Public for use of same "Fishing Facilities" over a portion of land as described therein.

Paragraph #:6

Easement granted Horgan Development Company for installation and tenant effluent pipe from the "Treatment Facility Complex" as described therein. Easement granted to owners of residential lots as described therein and Horgan Development Company to flow water and sediment onto and inundate the Dam Complex up to elevation 1,149 feet above mean sea level as referenced therein and to travel on, upon, ac

ross and under the water surface covering the Dam Complex. The NRD hereby grants to the SID and Horgan Development Company its successors and assigns, an easement to come up and travel across the Dam Complex without obligation to perform shoreline maintenance, seeding, mowing and weed control on and upon the face of the Dam subject to certain conditions therein, and without obligation to construct and maintain fish habitat on and below the surface of the water covering the Dam Complex. NRD grants to the SID a perpetual easement on, upon, across and under that part of the Dam Complex described therein for installation and maintenance of a storm sewer (detention basin principal spillway) and related facilities. Easement granted to SID and Horgan Development Company, its successors and assigns, on, upon, across and under that part of the Dam Complex described therein for installation and maintenance of a sanitary sewer, electricity, cable, gas, water, telephone and other utilities and related facilities. All said easements and conditions subject to certain terms and provision as described therein.

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Paragraph #:7

Channel Improvement Easement Agreement - Dam Site 6 - Benningtion Lake Project filed August 27, 1998 in Book 1261 at Page 233 of the Records of Douglas County, Nebraska, executed by and between SID #425, Papio-Missouri River Natural Resources District and Horgan Development Company, a Nebraska Corporation, which contains certain easements over and upon subject property as described therein, subject to certain terms and conditions contained therein.

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Paragraph #:8

Wetlands Complex Easement Agreement - Dam Site 6 - Benningtion Lake Project filed August 27, 1998 in Book 1261 at Page 254 of the Records of Douglas County, Nebraska, executed by and between SID #425, Papio-Missouri River Natural Resources District and Horgan Development Company, a Nebraska Corporation, which contains certain easements over and upon subject property as described therein, subject to certain terms and conditions contained therein.

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Paragraph #:9

Plat and Dedication filed July 27, 1999 in Book 2128 at Page 001 of the Records of Douglas County, Nebraska, granted Easement to Omaha Public Power District, US West Communications and any franchise granted by the City of Benningtion to provide telecommunications, for installation and maintenance of facilities on, over, through and under a five foot strip of land adjoining the front and side boundary lines. Easement granted to Metropolitan Utilities District over a five foot strip of land abutting all streets. 40 foot Sanitary Sewer Easement to SID #425 affecting portions of certain lots as shown thereon.

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Paragraph #:10

Protective Covenants filed May 23, 2001 in Book 1383 at Page 001 of the Records of Douglas County, Nebraska, which contains certain terms, provisions and conditions as described therein. Incorporation of the Newport Landing Homeowners Association, together with association dues and assessments as described therein. Provision for Architectural Control contained therein. Easement granted to Omaha Public Power District, QWEST Communications, Telepartners LLC, and Cox Communications for installation and maintenance of facilities on, over, through and under a five foot strip of land adjoining the front and side boundary lines as described therein. Easement granted to Metropolitan Utilities District over a five foot strip of land abutting all streets. Provision for possible telephone connection charges \$450.00 for all unimproved lots within 5 years from the date of platting. Provisions for Newport Landing Lake Rules and Regulations together with certain terms, conditions, provisions and limitations as described therein.

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Paragraph #:11

Reservations of platted easements filed May 23, 2001 in Book 1383 at Page 25 of the Records of Douglas County, Nebraska, executed by Horgan Development Company, a Nebraska Corporation, which reserves and grants all sanitary sewer drainage and storm sewer and grading easements located and shown upon the Plat and Dedication of Bennington Lake dated May 28, 1999 filed July 27, 1999 in Book 2128 at Page 001 of the Records of Douglas County, Nebraska to SID No. 425, its successors and/or assigns, as to Lots 1 through 284 inclusive and Outlots 1 through 12 inclusive Bennington Lake.

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Paragraph #:12

Plat of Amendment filed January 5, 2000 in Book 1322 at Page 479 of the Records of Douglas County, Nebraska, Amends the original Plat and Dedication filed July 27, 1999, in Book 2128 at Page 001 of the Records of Douglas County, Nebraska, to amend the interior lots lines common to Lots 16 and 17 and Lots 113 through 118 and Lots 126 and 127 Bennington Lake as shown thereon and described therein.

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Note: P/Rel of UCC's BK 33/3 only rels OL 2, 3 + 10
Note: P/Rel of DT. BK 5425/682 only rels OL 23 + 10
UCC's, 158/96 NW¹/₄ Term 46/124.

~~158/97 Term 46/124~~

~~158/99 W¹/₂ NE TERM/ 46/124~~

~~159/14 Term 46/124~~

~~159/28 SE¹/₄ TERM 46/124~~

• 5183/237 NW¹/₄

• 5183/467 NE¹/₄

• 5183/721 W¹/₂ NE¹/₄

• 5190/175 E¹/₂ NE¹/₄

• 5194/528 SE¹/₄

Note All UCC's released by 46/124

~~4561/646~~ All Rel. 5832/124.

• 5183/87 NWSE.

• 5183/575 1 AC. SE Cor. of SW $\frac{1}{4}$.

~~158/98~~ 1 AC SE Cor. of SW $\frac{1}{4}$ term 46/124

~~158/94~~ NW $\frac{1}{4}$ of SE $\frac{1}{4}$ term 46/124

• 5186/287 SW $\frac{1}{4}$ exc. part.

~~159/6~~ All SW $\frac{1}{4}$ exc. part term 46/124

• 5189/714 Pts. NW $\frac{1}{4}$.

~~159/13~~ N $\frac{1}{2}$ NW $\frac{1}{4}$ + part SE $\frac{1}{4}$ NW $\frac{1}{4}$

• 6094/220 - All.

EXHIBIT "A"

1. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated December 31, 1997, and filed with the Douglas County Register of Deeds on December 31, 1997, in Book 5183, at Page 237.
2. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated December 31, 1997, and filed with the Douglas County Register of Deeds on December 31, 1997, in Book 5183, at Page 467.
3. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated December 31, 1997, and filed with the Douglas County Register of Deeds on December 31, 1997, in Book 5183, at Page 721.
4. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated January 5, 1998, and filed with the Douglas County Register of Deeds on January 9, 1998, in Book 5190, at Page 175.
5. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated January 15, 1998, and filed with the Douglas County Register of Deeds on January 15, 1998, in Book 5194, at Page 528.
6. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated December 29, 1997, and filed with the Douglas County Register of Deeds on December 31, 1997, in Book 5183, at Page 87.
7. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated January 8, 1998, and filed with the Douglas County Register of Deeds on January 8, 1998, in Book 5189, at Page 714.
8. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated December 31, 1997, and filed with the Douglas County Register of Deeds on December 31, 1997, in Book 5183, at Page 575.
9. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank Iowa, N.A., is Beneficiary in the sum of Twenty Million Dollars dated January 5, 1998, and filed with the Douglas County Register of Deeds on January 5, 1998, in Book 5186, at Page 287.
10. Deed of Trust with Power of Sale in which Horgan Development Company is Trustor; Dan D. Stoller, Esq., is Trustee; and Firststar Bank, N.A., formerly Firststar Bank Iowa; is beneficiary in the sum of Twenty-five Million Dollars dated May 31, 2000, and filed with the Douglas County Register of Deeds on July 3, 2000, in Book 6094, at Page 220.

MISC.

1261/178 8/27/98.

Easements and restrictive covenants Dam Site 6 Bennington Lake Project which contains a reservoir easement; a perpetual easement consisting of the right to flow water + sediment upon + to inundate subject property up to elevation of 1140.0 ft. above mean sea level upon certain terms, covenants + conditions contained therein.

Misc.

1261/199 8/27/98

memorandum of Amended agreement. Executed by + Between SID #425, Papio-Missouri River Natural Resources District and Horgan Development Company a Nebraska Corporation upon the terms + conditions contained therein.

MISC.

1261/203 8/27/98

Dam Complex Easement Agreement Dam Site 6 - Bennington Lake Project Executed by + Between: SID #425, Papio-Missouri River Natural Resources District + Horgan Development Company a NE Corp.

check this Do need to show?

→ see attached

2010/1/20
rated herein by this reference. The real estate legally described in Exhibit "D1A" and "D1B" is hereinafter referred to as "the Dam Complex," the property legally described in Exhibit "D2" is hereinafter referred to as "the Improved Channel," and the property legally described in Exhibit "D3" is hereinafter referred to as "the Dam Complex."

In conjunction with the development of the Project, including the construction, maintenance and operation of the reservoir, dam, and other flood control improvements, it is necessary for HDC and the SID to reserve certain easements on, upon, across, and under the Dam Complex, Improved Channel, and Wetlands Complex. This Easement Agreement is entered into for purposes of reserving easements pertaining to the Dam Complex.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I Dam Complex Easements

- A. The NRD hereby grants to the SID and HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement across that part of the Dam Complex legally described on Exhibit "D4A" and "D4B" attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace, the Trails System.
- B. The NRD hereby grants to the public a perpetual right, privilege and easement to utilize, come upon, and travel across that part of the Dam Complex legally described on Exhibit "D4A" and "D4B" attached hereto, by means other than motorized vehicles, and subject to such written usage rules and regulations as may be adopted from time to time by the SID or its successors and approved by the NRD, which approval shall not be unreasonably withheld.
- C. The NRD hereby grants to the SID, a temporary right, privilege and easement on, across, upon, and under the Dam Complex to construct the principal spillway as contemplated by the Amended Agreement, which easement will terminate upon certification of completion by the Engineers and final acceptance by the NRD of the contemplated improvements.
- D. The NRD hereby grants to HDC, and the successors and assigns of HDC, a temporary right, privilege and easement on, across, upon and under the Dam Complex to construct the Dam as contemplated by the Amended Agreement, which easement will terminate upon certification of completion by the Engineers and final acceptance by the NRD of the contemplated improvements.

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E. The NRD hereby grants to the SID and HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement across that part of the Dam Complex legally described on Exhibit "D5," attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair and replace the recreational and park facilities defined as the "Fishing Facilities" in the Amended Agreement.

F. The NRD hereby grants to the public a perpetual right, privilege and easement to utilize, come upon, and travel across that part of the Dam Complex legally described on Exhibit "D5" attached hereto and incorporated herein by this reference, to access and use the recreational and park facilities defined as the "Fishing Facilities" in the Amended Agreement, and subject to such usage rules and regulations as may be adopted from time to time by the SID and approved by the NRD, which approval shall not be unreasonably withheld.

G. The NRD hereby grants to HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement across that part of the Dam Complex legally described on Exhibit "D6" attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace effluent pipe from the Treatment Facility Complex.

H. The NRD hereby grants to the owners of residential lots on the Section 9 Property, their families, guests, and invitees, and HDC, a perpetual right, privilege and easement to flow water and sediment onto and inundate the Dam Complex up to elevation 1,149 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929; and to travel on, upon, across and under the water surface covering the Dam Complex.

I. The NRD hereby grants to the SID and HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement to come upon and travel across the Dam Complex: (i) without obligation, to perform shoreline maintenance, seeding, mowing, and weed control on and upon the face of the Dam if it is not being maintained in an aesthetically pleasing manner; and (ii) without obligation, to construct and maintain fish habitat on and below the surface of the water covering the Dam Complex.

J. The NRD hereby grants to the SID a perpetual right, privilege, and easement on, upon, across and under that part of the Dam Complex as legally described on Exhibit "D7," attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace a storm sewer (detention basin principal spillway) and related facilities.

K. The NRD hereby grants to the SID and HDC, and their respective agents, contractors, successors and assigns, a perpetual right, privilege, and easement on, upon, across and under that part of the Dam Complex as legally described on Exhibits "D8A" and "D8B," attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace a sanitary sewer, electricity, cable, gas, water, telephone and other utilities, and related facilities.

17205

ARTICLE II
Miscellaneous

A. Prior to performing any construction, operation, maintenance, repair or replacement activity as described in the foregoing Article I which is not addressed by the Comprehensive Plan developed in accordance with the Amended Agreement (the "Comprehensive Plan") or the NRD approved Operations and Maintenance Manual (herein the "O&M Manual") the SID or HDC, as applicable, shall give the NRD reasonable advance notice of the commencement of such activity, and shall prepare written plans and specifications for such activity, and shall obtain the written approval of such plans and specifications, which approvals shall not be unreasonably withheld. Construction, operation, maintenance, repair or replacement activities, as described in the foregoing Article I, shall be performed in accordance with the Comprehensive Plan, the O&M Manual or the respective NRD approved plans and specifications, as applicable.

B. Nothing contained in this Easement Agreement shall be construed: (i) as limiting the right of the NRD to make necessary improvements or modifications to the Dam, provided, however, that prior to performing any improvements or modifications which are not contemplated by the Comprehensive Plan the NRD shall give HDC and the SID reasonable advance notice of the commencement of such activity, and shall obtain the written approval of the plans and specifications by HDC or the board of directors for the lake homeowners association for the property adjacent Section 9 which consent shall not be unreasonably withheld; (ii) as imposing such improvements or modifications, and shall obtain the written approval of the plans and specifications by HDC or the board of directors for the lake homeowners association for the property adjacent Section 9 which consent shall not be unreasonably withheld; (iii) as imposing any duty upon the NRD to operate, maintain, repair or replace the Trails System, Fishing Facilities, or other recreational and park facilities in the Dam Complex, or the sanitary sewer, electricity, cable, gas, water, telephone, and other utilities and storm sewer and related facilities, or improvements comprising the Treatment Facility, located in the Dam Complex; or (iii) as imposing any duty upon the NRD to dredge or remove accumulated silt and other accumulated materials from the Dam Complex or from the Reservoir.

C. HDC, at its own cost and expense, shall promptly repair any sloughing or erosion of the Dam, and remediate any persistent surface seepage in the Dam, caused solely by operation, maintenance, repair or replacement of the Treatment Facility effluent pipe.

D. All construction, repair or replacement activities described in the foregoing Article I shall be performed in conformance with such permits as may be necessary and which shall be the acting party's duty to obtain.

E. The easements granted herein shall run with the land, inure to the benefit of, and be binding upon, the parties and their respective heirs, personal representatives, successors and assigns.

F. No waiver of any breach of any of the easements or agreements contained in this Easement Agreement shall be construed as or constitute a waiver of any other breach, or a

upon the terms +
conditions contained
therein.

MISC.

1261/ 8/27/98
233 8/27/98

same
as above

→ see
attached

Channel/Improvements Easement Agreement
Dam Site Co-
Bennington Lake Project.
Executed by + Between;
(same as Last
DOC.) upon the terms
+ conditions contained therein

MISC.

1261/ 8/27/98
254 8/27/98

same
as above

→ see
attached.

Wetlands Complex
Easement Agreement
Dam Site Co-
Bennington Lake
Project.
Executed by + between;
Same as above,
upon the terms
+ conditions contained
therein.

Immediately preceding the execution of this Easement Agreement, HDC, as Grantor, conveyed to the NRD by warranty deed the real property in Douglas County, Nebraska, which is legally described in Exhibits "C1A," "C1B," "C2," and "C3" attached hereto and incorporated herein by this reference. The real estate legally described in Exhibit "C1A" and "C1B" is hereinafter referred to as "the Dam Complex," the property legally described in Exhibit "C2" is hereinafter referred to as "the Improved Channel," and the property legally described in Exhibit "C3" is hereinafter referred to as "the Wetlands Complex."

In conjunction with the development of the Project, including the construction, maintenance and operation of the reservoir, dam, and other flood control improvements, it is necessary for HDC and the SID to reserve certain easements on, upon, across, and under the Dam Complex, Improved Channel, and Wetlands Complex. This Easement Agreement is entered into for purposes of reserving easements pertaining to the Improved Channel.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
Channel Improvements Easements

A. The NRD hereby grants to HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement to come upon and travel across that part of the Improved Channel as legally described on Exhibit "C4" attached hereto and incorporated herein by this reference.

B. The NRD hereby grants to the SID a temporary right, privilege and easement to construct the Channel Improvements contemplated by the Amended Agreement, on, across, upon, and under the Improved Channel, which easement will terminate upon certification of completion by the Engineers and final acceptance by the NRD of the contemplated improvements.

C. The NRD hereby grants to HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement on, across, upon and under that part of the Improved Channel as legally described on Exhibit "C5," attached hereto and incorporated herein by this reference, to: (i) construct, operate, maintain, inspect, repair, and replace a weir and influent and effluent pipes which will be used to drain water from the Big Papillion Creek and pump water into the reservoir to be constructed on the Section 9 Property; and (ii) construct, operate, maintain, inspect, repair, and replace other improvements which may be necessary or appropriate for the operation of Treatment Facility which will be constructed, operated and maintained by HDC or the successors and assigns of HDC.

D. The NRD hereby grants to the SID and HDC, and their respective successors and assigns, a perpetual right, privilege and easement on, upon, across, and under that part of

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the Improved Channel as legally described on Exhibit "C6," attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace sanitary sewer, electricity, cable, gas, water, telephone, and other utilities and related facilities.

ARTICLE II
Miscellaneous

A. Prior to performing any construction operation, maintenance, repair or replacement activity as described in the foregoing Article I which is not addressed by the Comprehensive Plan developed in accordance with the Amended Agreement (the "Comprehensive Plan") or the NRD approved Operations and Maintenance Manual (herein the "O&M Manual"), the SID or HDC, as applicable, shall give the NRD reasonable advance notice of the commencement of such activity, and shall prepare written plans and specifications, to be approved by the NRD in writing, for such activity, which approvals shall not be unreasonably withheld. Construction, operation, maintenance, repair or replacement activities, as described in the foregoing Article I, shall be performed in accordance with the Comprehensive Plan, O&M Manual or the respective plans and specifications, as applicable.

B. Nothing contained in this Easement Agreement shall be construed: (i) as limiting the right of the NRD to make necessary improvements or modifications to the Channel Improvements, provided, however, that prior to performing any improvements or modifications which are not contemplated by the Comprehensive Plan, the NRD shall give HDC and the SID reasonable advance notice of the commencement of such activity, shall prepare written plans and specifications for such improvements or modifications, and shall obtain the written approval of the plans and specifications by HDC or the board of directors for the homeowners association for the property in Section 9 which consent shall not be unreasonably withheld; (ii) as imposing a duty upon the NRD to operate, maintain, repair, or replace the aforementioned weir, influent and effluent pipes, or other portions of the Treatment Facilities or the aforementioned sanitary sewer, electricity, cable, gas, water, telephone and other utilities and related facilities; or (iii) imposing any duty upon the NRD to dredge or remove accumulated silt and other accumulated materials from the Channel Improvements or from the Reservoir.

C. HDC, at its own cost and expense, shall promptly repair any sloughing or erosion of the Channel Improvements caused solely by the operation, maintenance, repair or replacement of the Treatment Facility Improvements situated solely within or on that part of the Improved Channel as legally described on Exhibit "C5."

D. All construction, repair or replacement activities described in the foregoing Article I shall be performed in conformance with such permits as may be necessary and which shall be the acting party's duty to obtain.

E. The easements granted herein shall run with the land, inure to the benefit of, and be binding upon, the parties and their respective heirs, personal representatives, successors, and assigns.

F. No waiver of any breach of any of the easements or agreements contained in this Easement Agreement shall be construed as or constitute a waiver of any other breach, or a waiver, acquiescence or consent to any further or succeeding breach of the same or any other easement or agreement.

G. If any term or provision of this Easement Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Easement Agreement shall not be affected thereby, but each remaining term or provision shall be valid and enforced to the fullest extent permitted by law.

H. All terms of this Easement Agreement with an initial capitalized letter which are not otherwise defined herein, shall have the meaning ascribed to them by the Amended Agreement. This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement to be effective as of the date and year first above written.

This Easement Agreement is executed by the NRD on this ~~26th~~ day of August, 1998.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By: Steven G. Oltmans
Steven G. Oltmans, General Manager

This Easement Agreement is executed by HDC on this 13th day of August, 1998.

HORGAN DEVELOPMENT COMPANY,
a Nebraska corporation

By: Robert P. Horgan
Robert P. Horgan, President

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incorporated herein by this reference. The real estate legally described in Exhibit "W1A" and "W1B" is hereinafter referred to as "the Dam Complex," the property legally described in Exhibit "W2" is hereinafter referred to as "the Improved Channel," and the property legally described in Exhibit "W3" is hereinafter referred to as "the Wetlands Complex."

In conjunction with the development of the Project, including the construction, maintenance and operation of the reservoir, dam, and other flood control improvements, it is necessary for HDC and the SID to reserve certain easements on, upon, across, and under the Dam Complex, Improved Channel, and Wetlands Complex. This Easement Agreement is entered into for purposes of reserving easements pertaining to the Wetlands Complex.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
Wetlands Complex Easements

A. The NRD hereby grants to the SID and HDC, and the successors and assigns of HDC, a temporary right, privilege and easement on, across, upon and under the Wetlands Complex as legally described in Exhibit "W3," to construct the Sediment Retention Structure, roadway embankment, bypass channel, and all other facilities necessary for the Wetlands, which easement will terminate upon certification of completion by the Engineers and final acceptance by the NRD of the contemplated improvements.

B. The NRD hereby grants to the SID and HDC, and the successors and assigns of HDC, a perpetual right, privilege and easement on, across, upon, and under that part of the Wetlands Complex legally described on Exhibit "W4" attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace the Sediment Retention Structure.

C. The NRD hereby grants to HDC, and the successors and assigns of HDC, a perpetual right, privilege, and easement on, upon, across, and under the Wetlands Complex to dredge or remove accumulated silt and other accumulated materials from the Wetlands Complex.

D. The NRD hereby grants to the SID, and its successors and assigns, a perpetual right, privilege and easement on, across, upon, and under that part of the Wetlands Complex legally described on Exhibit "W5" attached hereto and incorporated herein by this reference, to construct, operate, maintain, inspect, repair, and replace, a sanitary sewer lift station and related facilities.

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ARTICLE II
Miscellaneous

A. Prior to performing any construction, operation, maintenance, repair or replacement activity as described in the foregoing Article I which is not addressed by the Comprehensive Plan developed in accordance with the Amended Agreement (the "Comprehensive Plan") or the NRD approved Operations and Maintenance Manual (herein the "O&M Manual"), the SID or HDC, as applicable, shall give the NRD reasonable advance notice of the commencement of such activity, and shall prepare written plans and specifications, to be approved by the NRD in writing, for such activity, which approvals shall not be unreasonably withheld. Construction, operation, maintenance, repair or replacement activities, as described in the foregoing Article I, shall be performed in accordance with the Comprehensive Plan, the O&M Manual or the respective plans and specifications, as applicable.

B. Nothing contained in this Easement Agreement shall be construed: (i) as limiting the right of the NRD to make necessary improvements or modifications to the Wetlands, provided, however, that prior to performing any improvements or modifications which are not contemplated by the Comprehensive Plan, the NRD shall give HDC and the SID reasonable advance notice of the commencement of such activity, shall prepare written plans and specifications for such improvements or modifications, and shall obtain the written approval of the plans and specifications by HDC or the board of directors for the homeowners association for the property in adjacent Section 9 which consent shall not be unreasonably withheld; (ii) as imposing a duty upon the NRD to operate, maintain, repair, or replace the Sediment Retention Structure or its spillway; or (iii) as imposing any duty upon the NRD to dredge or remove silt and other accumulated materials from the Wetlands Complex or from the Sediment Retention Structure.

C. All construction, repair or replacement activities described in the foregoing Article I shall be performed in conformance with such permits as may be necessary and which shall be the acting party's duty to obtain.

D. The easements granted herein shall run with the land, inure to the benefit of, and be binding upon, the parties and their respective heirs, successors, assigns, agents and contractors.

E. No waiver of any breach of any of the easements or agreements contained in this Easement Agreement shall be construed as or constitute a waiver of any other breach, or a waiver, acquiescence or consent to any further or succeeding breach of the same or any other easement or agreement.

F. If any term or provision of this Easement Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Easement Agreement