PRAIRIE QUEEN
SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as “Agreement”) made this __________ day of __________, 2017, by and between Prairie Queen, LLC, a Nebraska limited liability company (hereinafter referred to as “DEVELOPER”), and the CITY OF PAPILLION, a municipal corporation (hereinafter referred to as “CITY”).

RECITALS:

DEVELOPER is the owner of the parcels of land legally described in the attached Exhibit A, attached hereto, which parcels to be developed are within CITY’S zoning and platting jurisdiction (the “Property”); and

DEVELOPER has requested CITY to approve a phased platting of the area to be developed, the entirety of which is to be known as Prairie Queen (included within the definition of “Development Area”). The initial phase of the Development Area is depicted in the Final Plat exhibit attached hereto as Exhibit B. The Parties acknowledge that the Development Area is intended to expand to incorporate future phases as DEVELOPER requests that CITY approve future plittings of subsequent phases of Prairie Queen; and

Given that Prairie Queen is within CITY’s city limits, DEVELOPER does not have the option to form a sanitary and improvement district to facilitate the construction and financing of the Public Improvements; and

Prairie Queen will facilitate the construction of a new public street (130th Street) connecting Lincoln Road and Cornhusker Road along the east side of the Development Area, which will provide access and parking for the Prairie Queen Recreation Area. Accordingly, this Agreement is subject to and conditioned on CITY and DEVELOPER executing a separate agreement to address the allocation of costs and construction responsibilities for said Public Improvement (the “Construction and Reimbursement Agreement”); and

DEVELOPER desires to provide for the construction, installation, and location of certain improvements within the Development Area, as defined in Section 1 of this Agreement; and

DEVELOPER and CITY desire to agree on the method of installation and the allocation of expenses for the Public Improvements; and
CITY and DEVELOPER desire to set forth in this Agreement their respective understandings and agreements with regard to the development of the Development Area.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1

DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, the following words and phrases shall have the following meanings:

A. "Cost(s)" or "Entire Cost", being used interchangeably, of each Private Improvement or Public Improvement shall mean all construction costs, engineering fees, design fees, attorneys' fees, inspection fees, testing expenses, publication costs, financing costs (which shall include interest), and all other related or miscellaneous costs or expenses incurred by DEVELOPER in connection with said Private Improvements or Public Improvements.

B. "Dedicated Street(s)" shall mean those areas, including curbing and turn lanes, to be dedicated, constructed, modified, or improved within that portion of the Development Area designated as "Dedicated Right of Way" in Exhibit B, any other areas to be dedicated as right-of-way pursuant to any future replat(s) of the Development Area, and any abutting right(s)-of-way, including 132nd Street, Lincoln Road and Cornhusker Road.

C. "Development Area" shall mean the real property situated within the area identified or depicted in Exhibit B, any subsequent amendments to Exhibit B to incorporate future phases as such amendments are adopted, all Dedicated Streets, and any portion of real property situated within Prairie Queen Recreation Area to be used for Post-Construction Stormwater Management purposes for the Development Area.

D. "Final Plat" shall mean the final plan of the plat, subdivision, or dedication of land, attached as Exhibit B, and any subsequent amendments to Exhibit B to incorporate future phases as such amendments are adopted.

E. "Frontage" shall mean the entire length of the Development Area or individual lot property line, as referenced herein, that abuts a particular public street, road, or intersection.

F. "Party", when capitalized, shall mean CITY or DEVELOPER, individually, and "Parties", when capitalized, shall mean CITY and DEVELOPER, collectively.

G. "Private Improvement(s)" shall mean those improvements or betterments required by or otherwise undertaken by DEVELOPER pursuant to this Agreement on, to, or otherwise benefiting the Development Area other than those improvements identified as Public Improvements in Section 1(I).
H. “Proportional Cost Sharing” or “Proportional Cost Share” shall mean that the responsibility for the Entire Cost of a particular public street, intersection, sidewalk, traffic signal, or other applicable Public Improvement(s), as specifically identified in this Agreement or in an amendment to this Agreement, as applicable, less any amount contractually assumed by a local governmental entity, shall, by default, be divided among all fronting developments proportional to said developments’ Frontage to said public street or intersection. The default proportionality of said division may be adjusted by a corresponding construction agreement among all requisite Parties that specifically addresses the responsibility for the Entire Cost of a particular public street, intersection, traffic signal, or other applicable Public improvements.

I. “Public Improvement(s)” shall mean:

   (1) All installations, modifications, or improvements of Dedicated Streets.

   (2) All concrete sidewalks to be constructed, installed, or improved along any Dedicated Streets, and lying within the boundaries of any Dedicated Street right-of-way, as contemplated in this Agreement or identified in Exhibit C.

   (3) All Dedicated Street signage, traffic control signage, and traffic signal improvements required by, and meeting the standards of, the “Manual of Uniform Traffic Control Devices” but only if first approved in writing by CITY’s Public Works Department and only if located at a Dedicated Street intersection or related to the Development Area.

   (4) All “Sanitary and Wastewater Sewers” to be constructed and installed within the boundaries of the Development Area or other areas specifically approved by Sarpy County and CITY, as applicable. Sanitary and Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, and related appurtenances, as shown in Exhibit D.

   (5) The “Water Distribution System” to be designed by Metropolitan Utilities District and constructed by DEVELOPER within the boundaries of the Development Area or other areas specifically approved by CITY.

   (6) All “Storm Sewers” and “Erosion Control Measures” to be constructed within the boundaries of the Development Area or within other areas specifically approved by CITY and prepared by DEVELOPER’s engineer, including all necessary storm sewers, inlets, manholes, lines, pipes, and related appurtenances, as shown in Exhibit E.

   (7) The “Gas Distribution System,” if applicable, to be constructed and installed by Black Hills Energy within the boundaries of the Development Area or within other areas specifically approved by CITY.

   (8) The “Lighting System” for any Dedicated Streets to be constructed and installed by the Omaha Public Power District within the boundaries of the
Development Area or within other areas specifically approved by CITY, including any decorative, ornamental, or other lighting not conforming to CITY standards but which has been specifically approved by CITY.

(9) The "Electrical Power Service" to be constructed and installed by the Omaha Public Power District within the boundaries of the Development Area or within other areas specifically approved by CITY. The Electrical Power Service shall include all electrical utility lines and other devices, other than the Lighting System, so constructed and installed for the benefit of the Development Area.

J. "Sanitary and Wastewater Sewer System" shall mean, collectively, all sanitary and wastewater sewer system components within the Development Area including, but not limited to, all such components listed under Section 1(I)(4).

K. "Storm Sewer System" shall mean, collectively, all storm sewer system components within the Development Area including, but not limited to, all such components listed under Section 1(I)(6).

L. "Street Intersection(s)" shall mean the area of the street between the returns of the various legs of the intersection, but in no case shall said area extend in any direction beyond a straight line drawn perpendicular from the centerline of the street to the adjacent lot corner.

M. "Warranted" shall refer to the status of an applicable Public Improvement, as specifically and exclusively referenced in Section 5(R)(4), Section 5(R)(6), Section 5(R)(7), Section 5(R)(8), and Section 7(A) of this Agreement, once certain criteria are met. Specifically, any such Public Improvement shall be considered Warranted as soon as either of the following occurs: (1) it is deemed so by a third-party review of a Traffic Impact Study or (2) CITY’s promotion of public health, safety, and welfare is negatively impacted in an unforeseen manner as a direct result of the development and uses of the Development Area and the construction and installation of such Public Improvement would likely mitigate said negative impact or prevent said negative impact from reoccurring.

SECTION 2

STANDARDS, AUTHORITY, AND DOCUMENTATION

A. Standards for Private Improvements and Public Improvements. DEVELOPER, and their respective successors and assigns, as applicable, shall cause all Private Improvements and Public Improvements to be acquired, constructed, and installed, as applicable, in accordance with the terms and conditions of this Agreement.

B. Adherence and Construction Contracts. DEVELOPER shall abide by, and incorporate into all of their construction contracts for the Private Improvements and Public
Improvements, as applicable, the provisions required by the regulations of Sarpy County, the Nebraska Department of Transportation ("NDOT"), and CITY, as applicable, pertaining to construction of the Private Improvements and Public Improvements in developments/subdivisions and testing procedures. Said contracts shall also provide that the contractor(s) or subcontractor(s) constructing or installing the Private Improvements and Public Improvements shall have no recourse against CITY for any costs, claims, or matters arising out of, or related to in any way whatsoever, said construction or installation including, without limitation, the Cost for the Private Improvements and Public Improvements, construction oversight of the Private Improvements and Public Improvements, or the design or preparation of plans and specifications for the Private Improvements and Public Improvements.

C. Water Distribution System. The Parties acknowledge that, at the time of this Agreement’s execution, the Development Area will be within the Metropolitan Utilities District service area for the Water Distribution System. DEVELOPER shall be responsible for entering into any agreements required by Metropolitan Utilities District or its successors for such services, making payment for any applicable connection fees or service charges, and completing any improvements required for such services.

D. Storm Sewer System. The Parties acknowledge that the Development Area is within the Sarpy County service area for the Storm Sewer System; however, DEVELOPER shall be responsible for maintaining those portions of the Storm Sewer System within the Development Area that are not within the public rights-of-way or within any perpetual drainage easements dedicated to CITY for roadway improvements or for the drainage and conveyance of stormwater and other runoff.

E. Sanitary and Wastewater Sewer System. The Parties acknowledge that, at the time of this Agreement’s execution, the Development Area will be within the Sarpy County service area for the Sanitary and Wastewater Sewer System. DEVELOPER shall be responsible for entering into any agreements required by Sarpy County for such services, making payment for any applicable connection fees or service charges, and completing any improvements required for such services.

F. Before Commencing Work on Public Improvements. Before commencing any work in connection with any individual Public Improvement, excluding the Water Distribution System, DEVELOPER shall first:

1. Deliver to the Papillion City Clerk documentation of Metropolitan Utilities District’s approval for water connection for the Development Area;

2. Make payment for all applicable fees due to CITY, Sarpy County, and Metropolitan Utilities District in relation to said construction and installation of said individual Public Improvement;
(3) Deliver to the Papillion City Clerk duly executed copies of an Agreement for Sewer Connection and Wastewater Service for that phase of the Development Area associated with Public Improvement that is to be commenced;

(4) Obtain approval from CITY and Sarpy County, as applicable, for the specifications and technical terms of any other agreement(s) or plan(s) for, or relating to, the construction or installation of the applicable Public Improvement(s) prior to DEVELOPER's execution of any such agreement(s) or plan(s). Once DEVELOPER obtains approval from CITY and Sarpy County, as applicable, DEVELOPER shall deliver to the Papillion City Clerk duly executed copies of any agreement(s) or plan(s) for work required for, or otherwise entered into, in connection with said Public Improvement(s). Such agreement(s) or plan(s) shall include, but not be limited to, any required bonds, insurance certifications, and all plans for said Public Improvement(s). Any such agreement(s) or plan(s) shall include details describing the manner and means of any additional connections required by or for the Sanitary and Wastewater Sewer System or the Storm Sewer System prepared by DEVELOPER's engineer;

(5) Obtain and file of record any permanent easements required by CITY and Sarpy County, as applicable, for all applicable Public Improvements. Public Improvements which may invoke this requirement may include, but shall not necessarily be limited to, sanitary and wastewater sewer, storm sewer, water lines, and Post-Construction Stormwater Management, including all appurtenances, as determined by the City Engineer. Said easements shall be prepared and filed in a form satisfactory to CITY pursuant to Section 5(G) of this Agreement entitled Easements;

(6) Obtain, and show proof of, general liability insurance and performance bonds equivalent to the total construction costs for all the Public Improvements within the corresponding phase of the Development Area; and

(7) Obtain approval from CITY for the construction and installation of the applicable Public Improvements, and obtain all necessary agreements, permits, and approvals pursuant to Section 2(H), entitled All Necessary Agreements, Permits, and Approvals, as applicable.

G. No Recourse Against CITY. Any contracts entered into by DEVELOPER for the construction or installation of the Public Improvements shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any Costs, claims, or matters arising out of, or related to in any way whatsoever, said construction or installation including, without limitation, the Cost for the Public Improvements, construction oversight of the Public Improvements, the design or preparation of plans and specifications for the Public Improvements, or the construction of the Public Improvements.
H. **All Necessary Agreements, Permits, and Approvals.** Prior to commencing any work within any public right(s)-of-way or on any other property owned by a governmental entity, such as CITY, DEVELOPER shall enter into all necessary agreements and obtain all necessary easements, permits, and approvals from all requisite governmental entities exercising authority over said right(s)-of-way or property. In the event CITY requests copies of any such agreements, permits, or approvals, DEVELOPER shall provide said copies to CITY in a timely manner.

I. **Connection to COUNTY’s Sanitary and Wastewater Sewer System.** CITY hereby grants permission to DEVELOPER to connect the Sanitary and Wastewater Sewer System to the sanitary and wastewater system of COUNTY subject to the terms and conditions of this Agreement and the terms and conditions of a separate County Industrial Sewer Connection Agreement regarding Prairie Queen.

J. **Public Improvements to become Unencumbered Assets of CITY.** DEVELOPER agrees that the following Public Improvement shall become unencumbered assets of CITY upon CITY’s determination that such Public Improvements have been constructed or installed in accordance with the terms of this Agreement: i) Dedicated Streets, including but not limited to paving, curbing, turn lanes, sidewalks, signage, traffic control signage, and traffic signals, ii) any part of the Sanitary and Wastewater Sewer that is not made an asset of Sarpy County pursuant the terms and conditions of a separate County Industrial Sewer Connection Agreement regarding Prairie Queen, and iii) any part of the Storm Sewer System that services the Dedicated Streets. The Parties agree to immediately take any further reasonable actions deemed necessary or desirable by CITY to further document that the aforementioned Public Improvements are an unencumbered asset of CITY.

**SECTION 3**

**REPRESENTATIONS AND ACKNOWLEDGEMENTS**

A. **DEVELOPER Representations and Acknowledgments.** DEVELOPER represents and warrants to CITY as follows:

(1) DEVELOPER is a limited liability company organized under the laws of the State of Nebraska. DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.

(2) DEVELOPER is the owner of record of the Property and possesses the rights and authority necessary to make decisions affecting the Property.

(3) DEVELOPER has the full power and authority to enter into, deliver, and perform their obligations under this Agreement and each of the documents related hereto.

(4) DEVELOPER has taken all necessary action to authorize DEVELOPER’S execution, and delivery of, and its performance under, this Agreement and as
such, this Agreement constitutes DEVELOPER’S valid and binding obligation, enforceable against DEVELOPER in accordance with its terms.

(5) DEVELOPER shall cause all Private Improvements and Public Improvements to be constructed and installed in accordance with the applicable terms and conditions of this Agreement and the City of Papillion Code.

(6) DEVELOPER agrees to reasonably cooperate with CITY for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents.

(7) DEVELOPER shall comply with the terms of this Agreement and the provisions of any agreement submitted to CITY now, at any time in the future, or otherwise entered into by or on behalf of DEVELOPER pursuant to this Agreement, which agreements shall not be amended or assigned without prior written approval from CITY pursuant to Section 8(E) of this Agreement entitled Assignment.

(8) Subject to Section 8(D) of this Agreement, entitled Indemnity, DEVELOPER shall defend, indemnify, and hold CITY harmless from and against any responsibility, claim, damage, loss, liability, or obligation resulting or arising from, out of, or otherwise occurring in connection with this Agreement and the construction, financing, and installation of the Private Improvements and the Public Improvements, except to the extent the same is caused by the gross negligence or intentional acts of the CITY.

(9) DEVELOPER has not employed or retained any company or person, other than a bona fide employee or contracted consultant of DEVELOPER, to solicit or secure this Agreement and has not paid or agreed to pay any entity or person other than a bona fide employee or contracted consultant working for DEVELOPER any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

(10) DEVELOPER shall cause CITY to be named as an additional insured under any casualty and liability policies of insurance, as well as under all payment and performance bonds, obtained by DEVELOPER (whether or not required by this Agreement) or any other person in connection with the construction or operation of the Public Improvements.

(11) DEVELOPER shall make commercially reasonable efforts to ensure that all documents, contracts, and instruments submitted to CITY now, at any time in the future, or otherwise entered into by or on behalf of DEVELOPER, in all material respects, be fully authorized, valid, binding, and enforceable in accordance with their terms.
(12) DEVELOPER shall cause all personal property and real estate taxes and assessments levied on the Development Area to be paid prior to the Final Plat approval by CITY.

B. CITY Representations and Acknowledgments. CITY represents and warrants to DEVELOPER as follows:

(1) CITY agrees to reasonably cooperate with DEVELOPER, its agents, and contractors for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents.

(2) Neither CITY nor any of its officers, agents, or employees:

i. Is acting as attorney, architect, engineer, or otherwise in the interest or on behalf of DEVELOPER in furtherance of this Agreement;

ii. Owing any duty to DEVELOPER or any other person because of any action CITY or DEVELOPER has undertaken, or in the future will undertake in furtherance of this Agreement, including any CITY inspection or CITY approval of any matter related to the same; and

iii. Shall be liable to any person as a result of any act undertaken by CITY or DEVELOPER to date, or at any time in the future in furtherance of this Agreement unless caused by the gross negligence or intentional acts of CITY, and, to the maximum extent permitted by law, DEVELOPER hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against CITY, its officers, agents, or employees except for matters caused by the gross negligence or intentional acts of CITY.

SECTION 4
APPORTIONMENT OF COSTS

A. Apportionment of Costs. The Entire Cost of all Public Improvements contemplated within this Agreement, and not otherwise addressed in the Construction and Reimbursement Agreement, shall be borne by, and be at the sole expense of, DEVELOPER. Accordingly, the credit of CITY shall not be used for engineering, procurement, or construction of any betterments or the Public Improvements, or any other Costs related to the installation and construction of the Public Improvements contemplated within this Agreement, except those Public Improvements specifically identified in the Construction and Reimbursement Agreement.

SECTION 5
OTHER OBLIGATIONS
A. **ADA Ramp Curb Drops.** DEVELOPER shall be responsible for providing curb drops for ADA ramps at all intersections with sidewalks that are within the Development Area as part of the final construction drawings.

B. **Building Permits.** DEVELOPER acknowledges that CITY shall not issue a building permit for DEVELOPER’s construction of improvements on the Property unless:

1. The Property is served by a public road. In the event that construction of any Dedicated Streets or alleys associated with an individual phase is not complete on the date DEVELOPER applies for a building permit for a lot within such corresponding phase, DEVELOPER, the City of Papillion Chief Building Official, the City Engineer, and the Papillion Fire Chief will cooperate in determining an appropriate temporary access to serve such phase before City issues a building permit for the Property. DEVELOPER shall be responsible for providing temporary street signage, including street names and stop signs, for such temporary access as determined appropriate by CITY.

2. Either water service or a water tanker is readily available which is sufficient to fight a fire during construction of the building contemplated in the corresponding building permit.

C. **Commencement of Public Improvements.** CITY agrees that DEVELOPER may commence the timely and orderly installation of the Public Improvements financed by DEVELOPER following the execution of this Agreement, provided that DEVELOPER complies with all obligations enumerated under Section 2(F) of this Agreement.

D. **Civil Defense Siren and Storm Warning System.** The Parties acknowledge that sufficient civil defense siren coverage is available in each phase of the Development Area. Accordingly, DEVELOPER shall pay, for the corresponding phase, its pro-rata share of siren Cost based on the areas of coverage as determined by the Director of the Sarpy County Civil Defense Agency.

E. **Compliance with Statutes, Ordinances, and Laws.** DEVELOPER shall comply with all state statutes, CITY ordinances, and federal laws in relation to the development of the Development Area. DEVELOPER shall also require strict compliance with all such state statutes, CITY ordinances, and federal laws by the owner, agent, occupant, or any person acquiring possession, charge, or control of any lot or ground within the Development Area, or any part of any lot within the Development Area.

F. **Construction Obligations.** Upon the execution of this Agreement, DEVELOPER is obligated to construct all Public Improvements according to the terms and conditions contemplated herein; however, this Agreement shall not in any way be construed to create any obligation on the part of DEVELOPER to develop the Development Area or construct any of the Public Improvements or Private Improvements in the event the plans envisioned by DEVELOPER are not carried out, DEVELOPER fails to obtain
any financing it deems necessary or desirable, or the approvals obtained from CITY are withdrawn or terminated.

G. **Easements.** DEVELOPER shall be responsible for recording with the Sarpy County Register of Deeds a separate instrument for each easement: (1) dedicated by the Final Plat for which CITY deems that a separate instrument is required or (2) otherwise contemplated herein which relates to the development of the Development Area. Prior to recording, all such instruments shall include a prescription outlining the rights, terms, and maintenance responsibilities of the corresponding easements and shall be prepared in a form that must be approved by CITY prior to recording.

H. **Fees.**

(1) **Arterial Street Improvement Program (ASIP) Fee.** All new building permits shall be subject to the Arterial Street Improvement Program (ASIP) Fee, as established in the Papillion Master Fee Schedule for “New Multifamily Residential Construction Per Development Acre”, at the time of building permit application.

(2) **Park Fees.** In the event that CITY adopts a park fee that applies to multi-family residential, DEVELOPER shall be exempt from collection of said fee for all phases of the Development Area.

(3) **Review Fee.** DEVELOPER shall pay to CITY a fee of one percent (1%) of the construction cost of Public Improvements to cover engineering, legal, and other miscellaneous expenses incurred by CITY in connection with any necessary review of plans and specifications in connection with the construction projects performed by DEVELOPER. Fee shall be paid prior to the issuance of any building permit.

(4) **Sanitary and Wastewater Sewer Connection Fees.** Pursuant to Sarpy County’s Sanitary Sewer Connection Fee Regulations, DEVELOPER shall remit no less than the requisite Sanitary Sewer Connection Fees to Sarpy County prior to the filing of the Final Plat associated with each phase. Thereafter, any remaining Sanitary Sewer Connection Fees payable to Sarpy County shall be paid for privately by the individual lot owner(s) at such time that said owner(s) apply for a building permit from CITY for any structure that requires connection to Sarpy County’s sanitary sewer system. The amount of the Sanitary Sewer Connection Fees remitted to Sarpy County prior to the filing of the Final Plat associated with each phase shall be calculated based on the rates established by Sarpy County in place at the time payment to Sarpy County is made. The amount of any remaining Sanitary Sewer Connection Fees remitted thereafter, but prior to the issuance of any building permit from CITY, shall be calculated based on the rates established by Sarpy County in place at the time the remaining payment(s) to Sarpy County are made. As part of the building permit application to CITY, each individual lot owner shall provide written documentation from Sarpy County that all requisite Sanitary Sewer Connection Fees have been remitted for the lot for which a building permit is being sought.
(5) **Water Connection Fees.** DEVELOPER, its successors, or assigns shall remit Water Connection Fees to Metropolitan Utilities District prior to the issuance of any building permit by CITY. The amount of the Water Connection Fees shall be calculated based on the rates established by Metropolitan Utilities District. As part of the building permit application to CITY, DEVELOPER, its successors, or assigns shall provide written documentation from Metropolitan Utilities District that such fees have been remitted.

(6) **Watershed Fee.** All new building permits shall be subject to the Papillion Creek Watershed Fee as described in the Papillion Master Fee Schedule for “Multifamily beyond 4-Plexes” per development acre at the time of building permit application and as agreed to by the Papillion Creek Watershed Partnership.

(7) **Not an Exhaustive List.** The foregoing is a list of fees that apply as of the date of this Agreement, but it is not intended to act as an exhaustive list of fees. Other fees may apply.

I. **Fire Hydrants.** Pursuant to Chapter 170, Subdivision of Land, Section 170-20 of the City of Papillion Code, fire hydrants for the protection of Prairie Queen shall be provided by DEVELOPER. The type of hydrant and control valves and the location of the hydrants must be approved by the Papillion Fire Chief.

J. **Impact on Property Beyond the Development Area.** DEVELOPER shall undertake such acts, responsibilities, and obligations as may be necessary or appropriate to prevent and control any adverse impact on any real estate or property beyond the Development Area directly or indirectly caused by DEVELOPER's construction and installation of the Private Improvements and the Public Improvements.

K. **No Septic Systems.** DEVELOPER acknowledges that no septic systems, or other onsite sewage systems, shall be allowed within the Development Area.

L. **Obligations Related to Prairie Queen Recreation Area.** Given the proximity of Prairie Queen to CITY’s property, which includes the Prairie Queen Recreation Area, and DEVELOPER’s proposal to construct permanent PCSMP basins on or near said property, DEVELOPER shall abide by the following:

(1) Subject to Section 5(N) of this Agreement, entitled *Post-Construction Stormwater Management*, and Section 5(G) of this Agreement, entitled *Easements*, DEVELOPER shall record easements from CITY for any permanent or temporary PCSMP basins ("any PCSMP basins") located on CITY’s property prior to commencing work on said basins.

(2) DEVELOPER shall provide all plans, specifications, maintenance agreements, and calculations for any PCSMP basins intended to serve Prairie Queen to CITY and the Papio-Missouri River Natural Resources District (the “NRD”) for review and approval. DEVELOPER shall not commence any work on any PCSMP basins without first receiving said approval from both CITY and the NRD.
(3) DEVELOPER shall provide flood pool calculations to CITY and the NRD for review and approval. DEVELOPER shall not commence any work on any PCSMP basins outside the boundaries of Prairie Queen without first receiving said approval from both CITY and the NRD.

(4) DEVELOPER shall be responsible for the maintenance of all temporary and permanent PCSMP basins established to serve Prairie Queen. DEVELOPER shall also enter into an escrow agreement with CITY to provide funds for the maintenance of any PCSMP basins established to serve Prairie Queen. The escrow agreement shall authorize CITY, to use such funds to perform maintenance on any PCSMP basins in the event such maintenance is not completed by DEVELOPER within a timely manner, as determined by CITY. The escrow agreement shall also authorize CITY, to use such funds to address any damage to any CITY property that may be caused due to the insufficiency or failure of any PCSMP basin established to serve Prairie Queen. Such escrow agreement must be executed by DEVELOPER and CITY prior to DEVELOPER commencing work on any PCSMP basins.

(5) All agreements related to the Prairie Queen Recreation Area, and to which DEVELOPER is a necessary party, shall be fully executed prior to the commencement of any work contemplated by such agreements.

(6) Pursuant to Section 2(H) of this Agreement, entitled All Necessary Agreements, Permits, and Approvals, the applicant shall obtain all necessary approvals from the Papillion City Council prior to the commencement of any work which requires such approvals.

M. One Call System. CITY shall provide public sanitary and wastewater sewer line locating services, as well as any other utilities that CITY or DEVELOPER is responsible for, excluding the water system, after DEVELOPER provides as-built drawings on state plane coordinates for all utilities owned and located within the Development Area for which locating services will be provided. Such as-built drawings shall be provided as: (1) an Auto-CAD file and (2) a printed paper copy.

N. Post-Construction Stormwater Management. DEVELOPER, its successors, or assigns shall be responsible for detention facility construction and maintenance in compliance with the Post Construction Stormwater Management Plan (“PCSMP”) requirements of CITY. In the Conceptual PCSMP Exhibit, attached as Exhibit F, DEVELOPER proposes to construct permanent PCSMP basins on the Prairie Queen Recreation site adjacent to the proposed 130th Street (Lakeside Street) in order to service the Development Area. Accordingly, a separate permanent easement must be secured by DEVELOPER from CITY and recorded with the Sarpy County Register of Deeds for the permanent PCSMP basins prior to commencing work on said basins. Said permanent easement must authorize the location of the proposed permanent PCSMP basins on the Prairie Queen Recreation site and include a prescription which outlines the rights, terms, and maintenance responsibilities of the easements subject to Section 5(G) of this Agreement, entitled Easements, and Section 5(L) of this Agreement,
entitled *Obligations Related to the Prairie Queen Recreation Area Site*. CITY shall not have any responsibility for maintenance or repair of any such permanent PCSM basin, facility, or appurtenances located within, or related to, the Development Area now or anytime in the future. In the event DEVELOPER does not obtain said permanent easement from CITY, offsite PCSM detention and treatment will not be allowed and all requisite PCSM basins shall be located on private property within the boundaries of Prairie Queen.

**O. Protection of the Prairie Queen Recreation Area.** Due to the Development Area’s immediate adjacency to the Prairie Queen Recreation Area, DEVELOPER shall abide by the following additional terms to ensure the protection of the Prairie Queen Recreation Area, Prairie Queen Lake, and any amenities or fixtures thereon:

(1) **No Inundation, Damage, or Disturbance.** DEVELOPER shall take all necessary steps to ensure that DEVELOPER’s development of the Development Area shall not result in any inundation of soil, erosion disturbance of any existing surface of the Prairie Queen Recreation Area, or damage as a result thereof (collectively, “Damage”) to the Prairie Queen Recreation Area, Prairie Queen Lake, or any amenities or fixtures thereon unless explicitly permitted by City in advance in writing.

(2) **Mitigation of Any Damage.** In the event DEVELOPER’s development of the Development Area results in Damage to the Prairie Queen Recreation Area, Prairie Queen Lake, or any amenities or fixtures thereon, DEVELOPER agrees to immediately take all necessary steps required by the City Administrator and the City Engineer to mitigate said Damage. To ensure the prompt and satisfactory completion of such mitigation, the City Administrator and City Engineer may require that DEVELOPER enter into an escrow agreement with CITY that is sufficient to cover the anticipated cost of such mitigation. In lieu of an escrow agreement, CITY may also elect, at CITY’s sole discretion, to reduce the CITY’s reimbursement obligation, or any pro rata share thereof, by the actual cost of any expenses incurred by CITY in mitigating such Damage pursuant to the terms of the Construction and Reimbursement Agreement.

**P. Right-of-Way Grading.** All rights-of-way for Dedicated Streets and related sidewalks shall be graded full width with a two percent (2%) grade projecting from the top of curb elevation to the edge of the right-of-way.

**Q. Subsequent Replatting.** In the event DEVELOPER wishes to replat any portion of the Development Area, CITY’s approval of such replat(s) shall be contingent upon, but not limited to, DEVELOPER dedicating and filing of record all permanent easements necessary to provide access to the subdivided lots, if such dedication and recording is deemed necessary by CITY. All such easements must meet CITY’s approval prior to dedication pursuant to Section 5(G) of this Agreement entitled *Easements*.

**R. Timing of Improvements to Certain Dedicated Streets, Alleys, and Sidewalks.*
(1) 130th Street. DEVELOPER shall be the lead agency for construction of 130th Street. Further, DEVELOPER shall construct 130th Street pursuant to the terms of the Construction and Reimbursement Agreement; provided that no residential building shall be occupied within Phase 2 until the construction of that portion of 130th Street abutting the Phase 2 lots is accepted by the City Engineer. DEVELOPER shall have sole fiscal and construction responsibility for any amenities to be located within the 130th Street right-of-way.

(2) 132nd Street Widening and Corresponding Left Turn Lanes. DEVELOPER shall construct the third lane of 132nd Street and the corresponding left turn lanes required for the Development Area in two parts.

i. Part 1 of the 132nd Street Widening and Superior Drive Left Turn Lane. DEVELOPER shall construct the third lane of 132nd Street between the southern boundary of the Development Area and to a point 530 feet north of Superior Drive ("Part 1 – 132nd Street") and construct the southbound left turn lane required for Superior Drive at the intersection of Superior Drive and 132nd Street before CITY shall authorize the connection of Superior Drive to 132nd Street.

The Parties acknowledge that Superior Drive may be temporarily terminated by DEVELOPER at a point to be approved by the City Engineer. DEVELOPER shall construct the connection to 132nd Street prior to commencement of the Public Improvements for Phase 3 of the Development. In the event that Superior Drive is temporarily terminated, DEVELOPER shall construct the alley that connects to Superior Drive to provide turnaround access for emergency services prior to the issuance of any building permits.

Notwithstanding the following, CITY reserves the right to require DEVELOPER to construct Part 1 – 132nd Street and connect Superior Drive to 132nd Street should CITY determine that such connection is required for CITY’s promotion of public health, safety, and welfare.

ii. Part 2 of the 132nd Street Widening and Longshore Avenue Left Turn Lane. DEVELOPER shall construct the third lane of 132nd Street between Cornhusker Road and Superior Drive ("Part 2 – 132nd Street") and construct the southbound left turn lane for Longshore Avenue required at the intersection of Longshore Avenue and 132nd Street before CITY shall authorize the connection of Longshore Avenue to 132nd Street.

The Parties acknowledge that Longshore Avenue may be temporarily terminated by DEVELOPER at a point to be approved by the City Engineer. DEVELOPER shall construct the connection to 132nd Street with the Public Improvements for Phase 6 of the Development. In the event that Longshore Avenue is temporarily terminated, DEVELOPER shall construct the alley that connects to Superior Drive to provide
turnaround access for emergency services prior to the issuance of any building permits.

Notwithstanding the following, CITY reserves the right to require DEVELOPER to construct Part 2 – 132nd Street and connect Longshore Avenue to 132nd Street should CITY determine that such connection is required for CITY’s promotion of public health, safety, and welfare.

(3) Grant Street Island. The intersection of 132nd Street and Grant Street shall be limited to right-in/right-out turn movements. DEVELOPER shall construct a pork chop island within 132nd right-of-way at the intersection of 132nd Street and Grant Street at such time that DEVELOPER constructs Grant Street.

(4) Longshore Avenue Right Turn Lane. DEVELOPER shall construct the northbound right turn lane for Longshore Avenue at the intersection of 132nd Street and Longshore Avenue when the connection to 132nd Street occurs.

(5) Osprey Lane Island. The intersection of 132nd Street and Osprey Lane shall be limited to right-in/right-out turn movements. DEVELOPER shall construct a pork chop island within 132nd right-of-way at the intersection of 132nd Street and Osprey Lane at such time that DEVELOPER constructs Part 1 – 132nd Street. Until such time that said pork chop island is constructed, DEVELOPER shall install and maintain delineators along the centerline of 132nd Street to limit traffic movements at the intersection of 132nd Street and Osprey Lane to right-in/right-out. DEVELOPER shall obtain the approval from the City Engineer for the type and location of the delineators prior to installation.

(6) 132nd Street and Lincoln Road Traffic Signal & Intersection Improvements. DEVELOPER shall be responsible for a 50% Proportional Cost Share for the traffic signal and intersection improvements at the intersection of 132nd Street and Lincoln Road, including but not limited to, northbound and southbound left turn lanes, at the intersection of 132nd Street and Lincoln Road; provided that CITY agrees to assume such obligation if: (i) the traffic signal is not Warranted within ten (10) years of the effective date of this Agreement or (ii) DEVELOPER completes full build-out of the Development Area and a Traffic Impact Study provided by DEVELOPER shows that the traffic signal is not Warranted. CITY shall provide DEVELOPER with at least six (6) months advance notice of DEVELOPER’s responsibility for a 50% Proportional Cost Share for such traffic signal and intersection improvements.

(7) 132nd Street and Cornhusker Road Traffic Signal & Intersection Improvements. DEVELOPER shall be responsible for a 25% Proportional Cost Share for the traffic signal and intersection improvements at the intersection of 132nd Street and Cornhusker Road; provided that CITY agrees to assume such obligation if: (i) the traffic signal is not Warranted within ten (10) years of the effective date of this Agreement or (ii) DEVELOPER completes full build-out of the Development Area and a Traffic Impact Study provided by DEVELOPER shows that the traffic
signal is not Warranted. CITY shall provide DEVELOPER with at least six (6) months advance notice of DEVELOPER’s responsibility for a 25% Proportional Cost Share for such traffic signal and intersection improvements.

(8) **Alleys.** DEVELOPER shall construct the alleys within Phase 1, Phase 3, Phase 4, Phase 5, and Phase 6 prior to the issuance of any building permit for any structure to be constructed within Phase 1, Phase 3, Phase 4, Phase 5, and Phase 6. Alleys within Phase 2 may be constructed by DEVELOPER in conjunction with the construction of the structures within Phase 2; provided that temporary access shall be provided to all structures pursuant to the terms of Section 5(B)(1) and no residential building shall be occupied until such time that the construction of the corresponding alleys is complete. In the event that construction of any Dedicated Streets or alleys associated with an individual phase is not complete on the date DEVELOPER applies for a building permit for a lot within such corresponding phase, DEVELOPER, the City of Papillion Chief Building Official, the City Engineer, and the Papillion Fire Chief will cooperate in determining an appropriate temporary access to serve such phase before City issues a building permit for the Property.

(9) **130th Street Sidewalks.** DEVELOPER shall construct sidewalks within the 130th Street right-of-way with each corresponding part of the construction of 130th Street.

(10) **132nd Street Sidewalk.** In the event that 132nd Street is improved to an urban cross-section, DEVELOPER shall construct a sidewalk along the east side of the 132nd Street right-of-way within one year of such improvement of 132nd Street.

(11) **Cornhusker Road Sidewalk.** In the event that Cornhusker Road is improved to an urban cross-section, DEVELOPER shall construct a sidewalk along the south side of the Cornhusker Road right-of-way within one year of such improvement of Cornhusker Road.

(12) **Lincoln Road Sidewalk.** In the event that the existing Lincoln Road sidewalk is damaged or requires alteration as a result of the development of the Development Area, DEVELOPER shall reconstruct Lincoln Road as directed by the City Engineer.

S. **Traffic Impact Studies.** DEVELOPER, its successors, or assigns shall fully comply with the following, if Warranted:

(1) DEVELOPER shall fully finance and cause the completion of a Traffic Impact Study for any Dedicated Street as soon as it becomes necessary in order to promote public health, safety, and welfare or immediately upon request made by the City Administrator or the City Engineer, whichever occurs sooner and thereafter promptly provide said study to CITY. This provision shall not be construed to limit the number of studies that may be requested or conducted
during development of the site. Notwithstanding the foregoing, CITY may not require DEVELOPER to cause the completion of a Traffic Impact Study for any Dedicated Street for which DEVELOPER has previously completed a Traffic Impact Study unless a change in circumstances has occurred that renders such previously completed Traffic Impact Study insufficient to address the applicable health, safety, or welfare concern. DEVELOPER shall perform a final Traffic Impact Study upon request of CITY after CITY confirms that full build-out of the Development Area is complete. After completion of such final Traffic Impact Study, DEVELOPER shall have no obligation to perform any subsequent Traffic Impact Study.

(2) DEVELOPER shall timely reimburse CITY for the Cost of contracting a third-party review of every Traffic Impact Study that is submitted to CITY pursuant to this Agreement. Said third-party review shall be conducted by a third-party reviewer of CITY’s choosing.

SECTION 6

OUTLOTS IN PRIVATE OWNERSHIP

A. Ownership and Maintenance of Outlots. DEVELOPER shall be responsible for owning and maintaining any outlot(s) within the Development Area or forming an association (the “Property Owners Association”) to maintain said outlot(s). CITY shall not have any responsibility for maintenance of outlots that are not under CITY’s ownership.

B. Prohibition Against Construction and Transfer of Title to Outlots. No building(s) shall be constructed on any outlot(s) within the Development Area. If DEVELOPER retains ownership of any outlot within the Development Area, DEVELOPER agrees that, at least sixty (60) days prior to closing on the sale, donation, or other transfer of said outlot(s) to any entity other than the Property Owners Association, DEVELOPER shall provide written notice to the transferee of the forgoing restriction which prohibits the construction of any buildings on any outlots within the Development Area. Further, DEVELOPER shall provide CITY with notice of such intended transfer and a copy of the written notice that DEVELOPER provided to the transferee that no buildings can be constructed on said outlot.

C. Property Taxes. DEVELOPER agrees to pay all property taxes due for any outlot(s) owned by DEVELOPER in a timely manner to prevent said outlot(s) from being offered at the Sarpy County tax sale.

SECTION 7

PHASING OF PUBLIC IMPROVEMENTS
A. **Phasing.** CITY and DEVELOPER acknowledge that it is anticipated that Prairie Queen will be final platted in phases as shown on Exhibit G ("Phase 1", "Phase 2", "Phase 3", "Phase 4", Phase "5", and "Phase 6" respectively). Unless CITY grants DEVELOPER an extension, the Public Improvements associated with each phase shall be installed within one (1) year of the date that the Final Plat that corresponds with each phase is recorded with the Sarpy County Register of Deeds, with the exception of those improvements identified in Section 5 as to be deferred until a future phase or until Warranted. In the event that Phase 2, Phase 3, Phase 4, Phase 5, or Phase 6 are not platted as contemplated and are developed by an entity other than DEVELOPER, DEVELOPER agree to cause the financing and construction of the Public Improvements associated with Phase 1 that are being deferred to the future phases immediately and prior to the development of such other phase(s) by such other entity. In the event that an applicable Public Improvement is deemed Warranted, DEVELOPER agrees to cause the financing and construction of such Public Improvement, regardless of the phasing of the said Public Improvement, within a period of one (1) year from the date such Public Improvement is deemed Warranted by CITY, unless such time is extended by CITY.

B. **Successors or Assigns for Future Phases.** The Parties acknowledge that DEVELOPER may, with approval of CITY, assign its obligations for Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6 to a subsequent successor, which may include, but not necessarily be limited to, another developer, a sanitary and improvement district, or both, as applicable.

C. **Final Platting of Future Phases.** In the event DEVELOPER, or any successor or assign, as applicable, wishes to final plat any portion of Phase 2, Phase 3, Phase 4, Phase 5, or Phase 6, CITY’s approval of such final plat shall be contingent upon, but not be limited to, DEVELOPER, or its successors or assigns, as applicable, adhering to DEVELOPER’s corresponding obligations set out within this Agreement with respect to Phase 2, Phase 3, Phase 4, Phase 5, or Phase 6. The Parties further acknowledge that CITY and DEVELOPER, or its successors or assigns if DEVELOPER does not own such future phase at the time of platting, shall agree on additional terms regarding DEVELOPER’s, or its successors’ or assigns’, obligations as applicable with respect to the development of such because this Agreement, does not fully establish all obligations with respect to Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6 given that such future phases are not yet final platted but are anticipated to be final platted at some time in the future. Such additional obligations shall be memorialized either as an amendment to this agreement or as a new subdivision agreement specific to Phase 2, Phase 3, Phase 4, Phase 5, or Phase 6, as applicable. This requirement is intended to ensure that the Development Area, Phase 2, Phase 3, Phase 4, Phase 5, and Phase 6 are developed in a way that promotes safety, connectivity, and compatibility.

**SECTION 8**

**MISCELLANEOUS**

A. **Incorporation of Recitals.** The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.
B. **Agreement Binding.** The provisions of this Agreement, and all exhibits and documents attached or referenced herein, shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties, their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the real estate described in the attached Exhibit A. Every time the phrase “successors or assigns”, or similar language, is used throughout this Agreement, it is to be attributed the same meaning as this “Agreement Binding” provision. No special meaning shall be attributed to any instance herein in which the name of a Party is used without the phrase “successors and assigns”, or similar language, following immediately thereafter, unless expressly stated otherwise.

C. **Termination of Agreement.** This Agreement shall not be terminated except by written agreement between DEVELOPER and CITY, subject to Section 8(L) in the event a Party to this Agreement or subsequent amendments dissolves, or ceases to exist by some other means, without any valid successors or assigns.

D. **DEVELOPER Indemnity.** DEVELOPER shall defend, indemnify, and hold CITY and its respective employees, agents, and assigns harmless from and against any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, resulting or arising from or out of or otherwise occurring in relation to any negligence, intentional acts, or lack of performance, subdivision layout, or public improvement design, bidding, construction, and installation by DEVELOPER or DEVELOPER’s employees, agents, contractors, subcontractors, or other representatives in relation to this Agreement or the financing or development of the Development Area, except to the extent such injury is caused by the gross negligence or intentional acts of CITY. Other litigation costs, as referenced herein, shall include reasonable attorneys’ fees, consultants’ fees, and expert witness fees. Without limiting the generality of the foregoing, such indemnity shall specifically include, but not be limited to:

(1) Any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever to any person or entity which may otherwise arise from, out of, or may be caused by DEVELOPER’s breach, default, or failure to perform or properly perform any of DEVELOPER’s obligations required by any warranty, representation, obligation, or responsibility arising out of state, federal, or local law, or from any provision of this Agreement;

(2) Any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever to any person or entity which may otherwise arise from, out of, or may be caused by any damage to the Prairie Queen Recreation Area, Prairie Queen Lake, or any amenities or fixtures thereon by DEVELOPER or DEVELOPER’s respective employees, agents, contractors, subcontractors;
(3) Any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever to any person or entity which may otherwise arise from, out of, or may be caused by any unlawful or improper discharge by DEVELOPER, or DEVELOPER’s respective employees, agents, contractors, subcontractors, and assigns into any Wastewater Sewer System or Storm Sewer during the term of this Agreement;

(4) Any injury, loss, or damage to any person occurring while said individual is on any premises within the Development Area; and

(5) Any claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever resulting or arising from or out of or otherwise occurring in relation to any means of acquisition of real or personal property, including right-of-way or easements, related to the Development Area, by DEVELOPER or DEVELOPER’s respective employees or agent.

E. CITY Indemnity. CITY shall defend, indemnify, and hold DEVELOPER and its respective employees, agents, and assigns harmless from and against any and all claims, suits, demands, penalties, court costs, attorneys’ fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, resulting or arising from or out of or otherwise occurring in relation to any gross negligence or intentional acts by CITY, or CITY’s employees, agents, contractors, subcontractors, or other representatives in relation to this Agreement or the Property, except to the extent such injury is caused by the negligence or intentional acts of DEVELOPER. Other litigation costs, as referenced herein, shall include reasonable attorneys’ fees, consultants’ fees, and expert witness fees.

F. Assignment. Except as provided in Section 7(B), neither this Agreement nor any obligations hereunder shall be assigned without the express written consent of CITY, which may be withheld in CITY’s sole discretion.

G. No Waiver of Regulations. None of the foregoing provisions shall be construed to imply any waiver of any provision of the zoning or planning requirements or any other section of the Papillion Zoning Code or Ordinances.

H. No Continuing Waivers. A waiver by any Party of any default, breach, or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach, or failure.

I. Severability. In the event that any provision of this Agreement proves to be invalid, void, or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.
J. **Governing Law.** In performing the obligations of this Agreement, the Parties shall conform to all existing and applicable CITY ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

K. **Forum Selection and Personal Jurisdiction.** Any lawsuit arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by a court of competent jurisdiction located in Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in such court located in Nebraska.

L. **Entire Agreement.** This Agreement and all exhibits and documents attached or referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire understanding and all agreements of the Parties. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between or among any of the Parties, whether individually or collectively, concerning the subject matter under this Agreement.

M. **Modification by Agreement.** This Agreement may be modified or amended only by a written agreement executed by all Parties. In the event a party to this Agreement or subsequent amendment(s) dissolves, or ceases to exist by some other means, without any valid successors or assigns, said party shall be considered to be without signing authority; therefore, the signature of said party shall not be required in order to validly execute subsequent modifications or amendments to this Agreement. Any modifications to this Agreement must cause this Agreement and all performance obligations hereunder to conform to the requirements of any applicable laws, rules, regulations, standards, and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto, without cost to CITY.

N. **Notices, Consents, and Approvals.** Unless expressly stated otherwise herein, all payments, notices, statements, demands, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For DEVELOPER:
Gerald S. Reimer
Prairie Queen LLC
4880 S 131st Street, Suite #3
Omaha, NE 68137

With Copy to:
Brian R. Schumacher
Baird Holm LLP
1700 Farnam Street, Suite 1500
For CITY:
City Clerk
City of Papillion
122 East Third Street
Papillion, NE 68046

Such addresses, names, or titles may be changed from time to time by written notice to all other Parties.

O. **No Unreasonable Withholding, Conditioning, or Delays.** Unless otherwise stated herein, the Parties shall not unreasonably withhold, condition, or delay any approvals or consents requested by another Party.

P. **Related Contract(s) Voidable.** No elected official or any officer or employee of CITY shall have a financial interest, direct or indirect, in any CITY contract related to this Agreement. Any violation of this section with the knowledge of the person or limited liability company contracting with CITY shall render such contract(s) voidable by the Mayor or City Council.

Q. **Non-Discrimination.** In the performance of this Agreement, the Parties, their agents, contractors, subcontractors, and consultants shall not discriminate, or permit discrimination, against any person on account of disability, race, color, sex, age, political or religious opinions or affiliations, or national origin in violation of any applicable laws, rules, or regulations of any governmental entity or agency with jurisdiction over any such matter.

R. **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.

S. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one executed instrument.

T. **Approval of Final Plat.** DEVELOPER acknowledges that CITY’s approval of the Final Plat is specifically subject to and conditioned on DEVELOPER’s execution and compliance with this Agreement.

U. **Approval of the Construction and Reimbursement Agreement.** DEVELOPER acknowledges that CITY’s approval of the separate Construction and Reimbursement Agreement is specifically subject to and conditioned on DEVELOPER’s execution and compliance with this Agreement. Similarly, CITY’s approval of this Agreement is specifically subject to and conditioned on CITY and DEVELOPER’s execution and compliance with the Construction and Reimbursement Agreement.

V. **Mixed Use Development Agreement.** DEVELOPER acknowledges that this is a Mixed Use District, as shown in Exhibit H, and that CITY’s approval of the Mixed
Use Development Agreement is specifically subject to and conditioned on DEVELOPER’s execution and compliance with this Agreement. Similarly, CITY’s approval of this Agreement is specifically subject to and conditioned on CITY and DEVELOPER’s execution and compliance with the Mixed Use Development Agreement.

(Signatures on following pages.)
IN WITNESS WHEREOF, the Parties have fully executed this Subdivision Agreement as of the Effective Date set forth above.

ATTEST:

CITY OF PAPILLION,
a Municipal Corporation of the State of Nebraska

By:

David P. Black, Mayor

Nicole L. Brown, City Clerk

SEAL
DEVELOPER:

PRAIRIE QUEEN, LLC,
a Nebraska limited liability company

By: URBAN WATERS I, LLC, as Manager of Prairie
Queen, LLC

By: __________________________
    Gerald S. Reimer, Manager of Urban Waters I, LLC

STATE OF NEBRASKA   

) ss.

COUNTY OF ________

On this ______ day of ______________________, 2017, before me, a notary public, in and
for said county and state, personally came Gerald S. Reimer, Manager of Urban Waters I, LLC,
as Manager of Prairie Queen, LLC, a Nebraska limited liability company, known to me to be the
identical person who executed the above instrument and acknowledged the execution thereof to
be of his voluntary act and deed on behalf of said limited liability company.

______________________________
Notary Public
SUBDIVISION AGREEMENT
TABLE OF CONTENTS

INTRODUCTION STATEMENT

RECITALS

SECTIONS:

1 Definitions
2 Standards, Authority, and Documentation
3 Representations and Acknowledgements
4 Apportionment of Costs
5 Other Obligations
6 Outlots in Private Ownership
7 Phasing of Public Improvements
8 Miscellaneous

EXHIBITS:

A Plat Legal Description with Metes and Bounds
B Final Plat
C Streets and Walks
D Sanitary Sewer
E Erosion Controls and Storm Sewers
F Post-Construction Stormwater Management Plan (PCSMP)
G Phasing Plan
H Mixed Use Plan
EXHIBIT A - PLAT LEGAL DESCRIPTION WITH METES AND BOUNDS

FINAL PLAT, PRAIRIE QUEEN, LOTS 1 THROUGH 9

A TRACT OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 30, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M. SARPY COUNTY, NEBRASKA. SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 30; THENCE N87°02'27"E ON THE NORTH LINE OF THE NORTHWEST 1/4, A DISTANCE OF 50.00 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SOUTH 132ND STREET; THENCE S02°41'20"E, ON THE EASTERLY RIGHT OF WAY LINE OF SOUTH 132ND STREET, A DISTANCE OF 1335.83 FEET TO THE POINT OF BEGINNING; THENCE N87°23'34"E A DISTANCE OF 405.61 FEET; THENCE WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 51.20 FEET, WITH A RADIUS OF 130.00 FEET, WITH A CHORD BEARING OF S81°19'26"E, WITH A CHORD LENGTH OF 50.87 FEET; THENCE S70°02'27"E A DISTANCE OF 45.70 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 56.00 FEET, WITH A RADIUS OF 70.00 FEET, WITH A CHORD BEARING OF N87°02'32"E, WITH A CHORD LENGTH OF 54.52 FEET; THENCE S25°52'30"E A DISTANCE OF 60.00 FEET; THENCE S64°07'30"W A DISTANCE OF 65.73 FEET; THENCE WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 49.24 FEET, WITH A RADIUS OF 60.00 FEET, WITH A CHORD BEARING OF S40°36'58"W, WITH A CHORD LENGTH OF 47.87 FEET; THENCE WITH A COMPOUND CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 71.56 FEET, WITH A RADIUS OF 470.00 FEET, WITH A CHORD BEARING OF S12°44'43"W, WITH A CHORD LENGTH OF 71.49 FEET; THENCE S77°37'30"E A DISTANCE OF 75.65 FEET; THENCE S44°04'36"E A DISTANCE OF 33.58 FEET; THENCE S02°41'44"E A DISTANCE OF 360.03 FEET; THENCE S77°37'48"E A DISTANCE OF 109.04 FEET; THENCE S11°12'12"W A DISTANCE OF 69.51 FEET TO THE NORTH LINE OF LINCOLN ROAD; THENCE, ON SAID NORTH LINE, WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 249.53 FEET, WITH A RADIUS OF 1089.00 FEET, WITH A CHORD BEARING OF N85°57'12"W, WITH A CHORD LENGTH OF 248.98 FEET; THENCE S87°29'00"W, ON SAID NORTH LINE, A DISTANCE OF 128.39 FEET; THENCE N02°41'18"W A DISTANCE OF 94.36 FEET; THENCE S87°18'42"W A DISTANCE OF 153.00 FEET; THENCE N02°41'18"W A DISTANCE OF 188.29 FEET; THENCE S87°23'31"W A DISTANCE OF 90.78 FEET; THENCE S54°37'59"W A DISTANCE OF 33.27 FEET TO THE EAST LINE OF 132ND STREET; THENCE N02°41'20"W, ON SAID EAST LINE, A DISTANCE OF 419.02 FEET BACK TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 7.566 ACRES MORE OR LESS.
EXHIBIT C - STREETS AND WALKS

Note: Cornhusker and 132nd sidewalk to be done when these streets are improved to an urban section street.
Note: Cornhusker and 132nd sidewalk to be done when these streets are improved to an urban section street.
NOTE: USE TRASH SKIMMER SCREENS OF STIFF NON-CORROSIVE MATERIAL TO PROTECT PERFORATED RISER. ALSO, EXTEND FROM THE TOP OF THE RISER TO 2 FT. BELOW THE PERMANENT POOL LEVEL.

NOTES 1. STRUCTURE POND 3 = 8" RISER DIAMETER 2. 9-1/2" DIAMETER AIR VENT IN THREADED CAP 3. DUCTILE IRON OR STEEL PIPE (PROTECT PIPE WHEN REMOVING SEDIMENT FROM PONDS) 4. WATER QUALITY RISER PIPE NOT TO SCALE
1. **Construction Entrance** – The entrance shall be maintained in a condition which will permit tracking of flow of sediment on public right-of-way. This may require periodic top dressing with additional stone or the washing and removal of existing stone. As conditions demand and repair or cleaning, if any, is necessary, each structure shall be inspected. Silt fences or other sediment control measures installed on roadways or at storm drains must be removed immediately. The use of water trucks, trommels, materials, spreaders, mowers, or tracked vehicles on roadways will not be permitted under any circumstances.

2. **Silt Fence** – The maintenance measures are as follows: (2.1) Silt fences shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. Any required repairs shall be made immediately. (2.2) Close attention shall be paid to the repair of damaged silt fences resulting from end runs and ditches. The repair must be made with new or properly cleaned stone. Prior to the end of the expected usable life and the fence is still necessary, the fabric shall be replaced promptly. (2.3) Silt fence deposits must be removed when the level of deposition reaches one-half of the height of the barrier and (2.4) any sediment deposits remaining in place after the silt fence is no longer required shall be dressed to conform to the existing grade, prepared, and seeded.

3. **Storm Drain Inlet Protection** – The maintenance measures are as follows: (3.1) Structures shall be inspected after each rain and repairs made as necessary and (3.2) structures shall be removed and the area stabilized when the remaining drainage area has been properly stabilized.

4. **Temporary Dewatering Dike** – The measure shall be inspected after every storm and returned to the design dimensions when dry. The storm drain inlet protection is necessary only until the time of permanent stabilization, if such is required.

5. **Temporary Fill Diverter** – The temporary fill diverter shall be removed after the area has been stabilized and the fill removed.

6. **Temporary Sediment Basin** – The temporary sediment basin shall be removed after the area has been stabilized and the fill removed.

7. **Dust Control Measures** – The dust control measures shall be maintained, including the use of water trucks, mowers, spreaders, or tracked vehicles.

8. **Permanent Sediment Storage** – Sediment storage shall be removed after the area has been stabilized and the fill removed.

9. **Soil Stabilization Blankets** – All soil stabilization blankets and matting shall be inspected periodically for proper installation, particularly after significant rainfall. Any erosion and undermining, any dislodgment or failure shall be repaired immediately. If the erosion occurs on breakwaters, dikes, revetments, or other structures, the material shall be repaired. The temporary sediment control measures shall be removed after the area has been stabilized and the fill removed.

10. **Field Drainage** – Matting shall be replaced promptly when the level of deposition reaches one-half of the height of the barrier. Any sediment deposits remaining in place after the silt fence is no longer required shall be dressed to conform to the existing grade, prepared, and seeded.

11. **Street Cleaning** – The maintenance measures are as follows: (11.1) Evaluate access points daily for sediment tracking, (11.2) Track any spills or objects that are not mixed with the sediment, (11.3) unknown spills or objects will not be mixed with the sediment, (11.4) sediment is mixed with other pollutants, it will be disposed of properly.

**VIII. Erosion Control and Storm Sewers**

**Table of Standards**

<table>
<thead>
<tr>
<th>Standard</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1.0</td>
<td>Construction Entrance</td>
</tr>
<tr>
<td>9.2.0</td>
<td>Silt Fence</td>
</tr>
<tr>
<td>9.3.0</td>
<td>Storm Drain Inlet Protection</td>
</tr>
<tr>
<td>9.4.0</td>
<td>Temporary Dewatering Dike</td>
</tr>
<tr>
<td>9.5.0</td>
<td>Temporary Fill Diverter</td>
</tr>
<tr>
<td>9.6.0</td>
<td>Temporary Sediment Basin</td>
</tr>
<tr>
<td>9.7.0</td>
<td>Dust Control Measures</td>
</tr>
<tr>
<td>9.8.0</td>
<td>Permanent Sediment Storage</td>
</tr>
<tr>
<td>9.9.0</td>
<td>Soil Stabilization Blankets</td>
</tr>
<tr>
<td>9.10.0</td>
<td>Sanitary Waste Management</td>
</tr>
<tr>
<td>9.11.0</td>
<td>Storm Drain Inlet Protection</td>
</tr>
<tr>
<td>9.12.0</td>
<td>Street Clearing/Sweeping</td>
</tr>
<tr>
<td>9.13.0</td>
<td>Vehicle and Equipment Fueling</td>
</tr>
<tr>
<td>9.14.0</td>
<td>SWPPP Notification Plan</td>
</tr>
</tbody>
</table>

The Omaha Regional Stormwater Design Manual can be found at [http://www.envirofutures.com](http://www.envirofutures.com).
NOTES:
1. PHASING EXHIBIT IS FOR PLATTING.
2. CONSTRUCTION PHASES MAY DIFFER.