OXBOW WAY
PHASE 2
SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as “Agreement”) made this 7th day of August, 2018, by and between OBC, LLC, a Minnesota limited liability company (hereinafter referred to as “DEVELOPER”), and the CITY OF PAPILLION, a municipal corporation (hereinafter referred to as “CITY”).

RECITALS:

DEVELOPER intends to acquire, but is not obligated by this Agreement to acquire, the parcel of land legally described in Exhibit A attached hereto and included in the definition of Development Area, which area is to be developed is within CITY’s zoning and platting jurisdiction; and

On July 14, 2015, the Development Area was within the zoning and platting jurisdiction of Sarpy County at the time the Sarpy County Board of Commissioners adopted Resolution 2015-265 to approve a Preliminary Plat known as Oxbow Way (the “Oxbow Way Preliminary Plat”), and Resolution 2015-266 to approve a phased final plat for Lot 1 and Outlot A, Oxbow Way (“Phase 1”); and

CITY extended its zoning and platting jurisdiction to include the Development Area via the Papillion City Council’s adoption of Ordinance No. 1716 on July 2, 2015, which became effective on July 17, 2015; and

DEVELOPER has requested CITY to approve a subsequent phased platting of the area to be developed, known as Oxbow Way, as depicted in the Final Plat attached hereto as Exhibit B (“Phase 2”) that CITY deems consistent with the Oxbow Way Preliminary Plat; and

Given CITY’s extension of its zoning and platting jurisdiction over the Development Area, DEVELOPER was required to complete CITY’s change of zone process in order to change the zoning district from AG Agricultural to LI Limited Industrial; and

DEVELOPER and CITY desire to agree on the method of installation and the allocation of expenses for the Public Improvements; and

DEVELOPER and CITY 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 any abutting right(s)-of-way, including S 150th Street.

C. “Development Area” shall mean the real property situated within the area identified or depicted in Exhibit B and all Dedicated Streets.

D. “Final Plat” shall mean the final plan of the plat, subdivision, or dedication of land prepared for filing or recording in accordance with these regulations.

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 the following Public Improvements and contributions to Public Improvements required for development of the Development Area:

1. **S 150th Street Contribution to CITY.** A contribution to CITY for a Proportional Cost Share of the future improvement of S 150th Street abutting the Development Area.

2. **S 150th Street Contribution to Sarpy County.** A contribution to Sarpy County in the estimated amount of $148,188 to reimburse Sarpy County for improvements to S 150th Street abutting the Development Area, including the relocation of the water main within the S 150th Street right-of-way (the "S 150th Street Contribution to Sarpy County"). The actual amount of the S 150th Street Contribution to Sarpy County shall be determined in a separate agreement between DEVELOPER and Sarpy County.

3. **Civil Defense Siren and Storm Warning System.** A civil defense and storm warning system, if necessary.

4. **Dedicated Street Sidewalks.** 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.

5. **Electrical Power Service.** The Electrical Power Service to be constructed and installed by the Omaha Public Power District ("OPPD") 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.

6. **Gas Distribution System.** 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.

7. **Lighting System.** The Lighting System for any Dedicated Streets to be constructed and installed by OPPD within the boundaries of any Dedicated Street right-of-way within the Development Area, including any decorative, ornamental, or other lighting not conforming to CITY standards but which has been specifically approved by CITY.

J. "Sanitary Sewer System" shall mean, collectively, all Sanitary Sewer System components within the Development Area including, but not limited to, all sanitary sewer lines and appurtenances.
K. “Storm Sewer System” shall mean, collectively, all storm sewer system components within the Development Area.

SECTION 2

STANDARDS, AUTHORITY, AND DOCUMENTATION

A. Standards for Private Improvements and Public Improvements. DEVELOPER shall cause all Private Improvements and Public Improvements to be constructed and installed 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, 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, at the time of this Agreement’s execution, 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. 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, 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 that CITY requests copies of any such agreements, permits, or approvals, DEVELOPER shall provide said copies to CITY in a timely manner.

G. Before Commencing Work on Public Improvements. Before commencing any work in connection with any individual Public Improvement, 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 the Development Area;

(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;"
SECTION 3

REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. DEVELOPER hereby represents and warrants to CITY as follows:

K. No Final Payment Until Approved. For any Public Improvement, DEVELOPER shall forward all weekly construction log tests and observation logs for the Public Improvement to the City Engineer. No final payment shall be made to the contractor for said Public Improvement until such final payment has been approved by the City Engineer.

I. Connection to Sanitary and Wastewater System. CITY hereby grants permission to DEVELOPER to connect the Sanitary and Wastewater System of Sanitary and Wastewater Service between DEVELOPER's and System of Sanitary and Wastewater Service between DEVELOPER's and City. CITY shall provide copies of all such agreements, permits, or approvals, DEVELOPER shall provide said copies to CITY in a timely manner.

I. All Necessary Agreements, Permits, and Approvals. Prior to commencing any work within any Public Right-of-Way or any other property owned or controlled by any governmental entity, such as CITY, DEVELOPER shall enter into all necessary agreements and obtain all necessary permits and approvals from all requisite governmental entities, 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. No Recourse Against CITY. Any contracts entered into by DEVELOPER for the construction or installation of the applicable Public Improvements shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any Cost, claim, or matter arising out of or in any way whatsoever. If any 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, the construction of the Public Improvements, or the construction of the Public Improvements.
(1) DEVELOPER is a limited liability company organized under the laws of the State of Minnesota. DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.

(2) DEVELOPER anticipates being the owner of record of the Development Area and upon becoming the owner, shall possess the rights and authority necessary to make decisions affecting the Development Area.

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

(4) DEVELOPER has taken all necessary action to authorize DEVELOPER’s execution, delivery of, and performance under this Agreement, and as such, this Agreement constitutes DEVELOPER’s valid and binding obligation, which is 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, as applicable, for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents. CITY and DEVELOPER hereby acknowledge and agree that no Public Improvements are required to be constructed prior to CITY approval of the Final Plat.

(7) DEVELOPER shall comply with the terms of this Agreement and the provisions of any agreement(s) submitted to CITY pursuant to this Agreement, which agreement(s) shall not be amended or assigned without prior written approval from CITY pursuant to Section 7(E) of this Agreement entitled Assignment.

Subject to Section 7(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 CITY.

(8) 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.
(9) 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.

(10) DEVELOPER shall 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, shall, in all material respects, be fully authorized, valid, binding, and enforceable in accordance with their terms.

(11) 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. Owes any duty to DEVELOPER, or any other person because of any action CITY, 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 any Party to date, or at any time in the future in furtherance of this Agreement, 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.

SECTION 4

APPORTIONMENT OF COSTS

A. Apportionment of Costs. The Entire Cost of all Private Improvements and the Public Improvements shall be borne by, and be at the sole expense of, DEVELOPER. The credit of CITY shall not be used for engineering, procurement, or construction of any Private Improvements, Public Improvements, or any other betterments.
SECTION 5

OTHER OBLIGATIONS

A. Building Permits. Building permits shall not be issued for any building in Phase 2 until DEVELOPER provides confirmation to CITY that DEVELOPER has: (i) executed an agreement with Sarpy County for the S 150th Street Contribution to Sarpy County as defined in Section 1(I)(2) and as required in Section 5(K), (ii) executed any agreement required to establish sanitary and waste water sewer services as required by Section 2E of this Agreement, and (iii) remitted payment of any sewer connection fees due to Sarpy County as required by Section 5(H)(3).

B. Civil Defense Siren and Storm Warning System. If civil defense and storm warning coverage for the entire Development Area is not already available, such sirens shall be installed prior to the issuance of any occupancy permit for any structure built in the Development Area. The number, type, and specifications of said defense sirens shall be determined by the City Administrator in conjunction with the Director of the Sarpy County Civil Defense Agency. The civil defense siren must be capable of sounding the severe weather and attack warning. The Cost for any new civil defense sirens required to serve the Development Area shall be paid by DEVELOPER. If existing coverage is available, DEVELOPER shall pay one hundred percent (100%) of its pro-rata share of the siren Cost based on the areas of coverage as determined by the City Engineer.

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. 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.

E. 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 Private Improvements in the event the plans envisioned by DEVELOPER are not carried out and the approvals obtained from CITY are withdrawn or terminated.

F. Dedicated Street Sidewalks – Timing of Construction. DEVELOPER shall be responsible for the phased construction of the Dedicated Street Sidewalk within S 150th Street right-of-way as follows:
(1) **Phase 1.** DEVELOPER shall cause the construction of the Dedicated Street Sidewalk abutting the existing paved section of S 150th Street in the general location shown on Exhibit C at such time that a building permit is obtained.

(2) **Phase 2.** DEVELOPER shall cause the construction of the Dedicated Street Sidewalk abutting the rural section of S 150th Street at such time that said section of S 150th Street is paved.

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 the CITY prior to recording.

H. **Fees.**

(1) **ASIP.** All new building permits for principal buildings shall be subject to the Arterial Street Improvement Program (ASIP) fee based on the rates established by the Master Fee Schedule in place at the time that the building permit application is made. Any new building permits for an addition to the principal building constructed prior to the execution of this Agreement shall be exempt from ASIP Fees.

(2) **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.

(3) **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.

(4) 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.

(5) Watershed Fee. All new building permits shall be subject to the Papillion Creek Watershed Fee as described in the Papillion Master Fee Schedule at the time of building permit application and as agreed to by the Papillion Creek Watershed Partnership.

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

J. Post-Construction Stormwater Management. DEVELOPER, its successors, and assigns shall be responsible for detention facility and Water Quality and Quantity Control construction and maintenance in compliance with the Post Construction Stormwater Management requirements of CITY. CITY shall not have any responsibility for maintenance or repair of any such facility located within the Development Area.

K. Reimbursement Agreement for S 150th Street Contribution to Sarpy County. DEVELOPER shall enter into an agreement with Sarpy County to establish the terms of the for the S 150th Street Contribution to Sarpy County as defined in Section 1(1)(2).

SECTION 6

OUTLOTS IN PRIVATE OWNERSHIP

A. Maintenance of and Transfer of Title to Future Outlots. In the event of the creation of any future outlot(s) within that part of the Development Area, DEVELOPER shall be responsible for maintaining any future outlot(s) within the Development Area or transferring ownership of said outlot(s) to a business association for maintenance. CITY shall not have any outlot maintenance responsibilities. DEVELOPER shall not construct any building(s) on said outlot(s) and agrees that, at least sixty (60) days prior to closing on the sale, donation, or other transfer of any outlot to any entity other than a business association for maintenance formed for the Development Area, it will provide CITY with notice of such intended transfer and a copy of the written notice DEVELOPER
provided to the transferee stating that no buildings can or shall be constructed on said outlot. DEVELOPER further agrees to pay all property taxes due for any outlot owned by DEVELOPER in a timely manner to prevent outlots from being offered at the Sarpy County tax sale.

SECTION 7

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. Subject to Section 7(S), 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 and 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 7(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. Indemnity. In addition to the indemnity obligations otherwise set forth in this Agreement (which obligations shall survive the expiration or termination of this Agreement), DEVELOPER agrees to 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 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 include and extend to any injury, loss, or damage:

(1) To any agent, employee or subcontractor of DEVELOPER or CITY occurring while they are on any premises owned, operated, or controlled by CITY for any reason
except to the extent such injury is caused by the gross negligence or intentional acts of CITY;

(2) To any person resulting or arising from or out of or otherwise occurring from either a construction contract entered into by DEVELOPER under the terms of this Agreement or DEVELOPER on behalf of CITY;

(3) To any person resulting or arising from or out of or otherwise occurring from a breach of any contract, covenant, representation, or warranty made by DEVELOPER in this Agreement;

(4) To CITY resulting or arising from or out of or otherwise occurring from this Agreement and the construction, financing, and installation of the Private Improvements or any Public Improvements; and

(5) To any person resulting or arising from such person’s use or occupancy of any part of the Development Area, including any Private Improvements or any Public Improvements, to the extent that such injury, loss, or damage is caused by the negligent act, error, or omission of DEVELOPER, lack of performance of the terms of this Agreement, or agreement entered into by DEVELOPER in furtherance of this Agreement.

E. Assignment. 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.

F. 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 other Ordinances.

G. 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.

H. 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.

I. Governing Law. The Parties to this Agreement 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.
J. **Forum Selection and Personal Jurisdiction.** Any lawsuit arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the state or county courts located in Sarpy County, Nebraska or the U.S. District County located in Omaha, Nebraska, as appropriate. Accordingly, the Parties also agree to exclusive personal jurisdiction in said state and county courts located in Sarpy County, Nebraska or the U.S. District Court located in Omaha, Nebraska, as applicable.

K. **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 hereof.

L. **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 amendments 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 and 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, unless all other Parties to this Agreement have been dissolved or cease to exist, as provided herein.

M. **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:  
OBC, LLC  
Attn: Ronda Bayer, Esq.  
5600 North Highway 169  
Minneapolis, MN 55428

With Copy of Notice of Breach or Default to:  
Fredrikson & Byron P.A.  
Attn: John Patterson, Sue Steinwall  
200 S. 6th Street, Suite 4000  
Minneapolis, MN 55402
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.

N. **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.

O. **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 corporation contracting with CITY shall render such contracts voidable by the Mayor or City Council.

P. **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.

Q. **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.

R. **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 instrument.

S. **Effectiveness.** CITY hereby acknowledges that DEVELOPER, as of the time of this Agreement’s execution, does not own fee title to the property described in Exhibit A. Once executed, the effectiveness of this Agreement to bind DEVELOPER and the Development Area is contingent solely and exclusively upon the DEVELOPER acquiring fee simple title to the Development Area and recording of the Final Plat; provided, that nothing in this Agreement shall be deemed to obligate DEVELOPER to so acquire the Development Area.

*(Signatures on following pages.)*
ATTEST:

CITY OF PAPILLION, a municipal corporation of the first class

Nicole L. Brown, City Clerk

By: ____________________________

David P. Black, Mayor

CITY SEAL
DEVELOPER

OBC, LLC,
A Minnesota limited liability company

By [Signature]
Mike Fiterman, President and Chief Executive Officer

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

On this 31st day of July, 2018, before me, a notary public, in and for said county and state, personally came Mike Fiterman, President and Chief Executive Officer of OBC, LLC, a Minnesota limited liability company, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be of such person's voluntary act and deed on behalf of said company.

[Signature]
Notary Public
SUBDIVISION AGREEMENT
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EXHIBITS:

A Plat Legal Description with Metes and Bounds
B Final Plat
C Streets and Walks
Exhibit A
LEGAL DESCRIPTION WITH METES AND BOUNDS
LOT 2, OXBOW WAY

A TRACT OF LAND CONTAINING ALL OF LOT 2, OXBOW WAY REPLAT 1, A
PLATTED AND RECORDED SUBDIVISION IN SARPY COUNTY, NEBRASKA, AND A
PART OF TAX LOT 2, ALL LOCATED IN THE EAST HALF OF THE NORTHWEST
QUARTER OF SECTION 2, TOWNSHIP 13 NORTH, RANGE 11 EAST OF THE 6TH
P.M., SARPY COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED
AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER;
THENCE ON THE SOUTH LINE OF SAID NORTHWEST QUARTER ON AN
ASSUMED BEARING OF S86°52'13"W, 50.00 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING ON SAID SOUTH LINE OF THE NORTHWEST QUARTER
S86°52'13"W, 653.74 FEET; THENCE N14°19'44"W, 342.17 FEET; THENCE
N05°03'57"W, 904.71 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2;
THENCE ON THE WEST LINE OF SAID LOT 2 N10°14'34"W, 167.21 FEET TO THE
NORTHWEST CORNER OF SAID LOT 2; THENCE ON THE NORTH LINE OF SAID
LOT 2 N86°21'33"E, 758.90 FEET TO THE NORTHEAST CORNER OF SAID LOT 2,
SAID CORNER ALSO BEING THE WEST RIGHT-OF-WAY LINE OF 150TH STREET;
THENCE ON SAID WEST RIGHT-OF-WAY LINE OF 150TH STREET S03°38'27"E,
1412.60 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS A CALCULATED AREA OF 1,015,645.01
SQUARE FEET OR 23.316 ACRES MORE OR LESS.