SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as “Agreement”) made this ___ day of _____________, 2012, by and between HUNTINGTON PARK INVESTMENTS d/b/a MIDLANDS PLACE, a Nebraska General Partnership (hereinafter referred to as “DEVELOPER”), LIBERTY COURT LLC, a Nebraska Limited Liability Corporation (hereinafter referred to as “LIBERTY”), MIDLANDS PROFESSIONAL CENTRE LTD, a Nebraska Limited Partnership (hereinafter referred to as “MIDLANDS”) and the CITY OF PAPILLION, a Municipal Corporation, (hereafter referred to as “CITY”).

WITNESSETH:

WHEREAS, DEVELOPER, LIBERTY, and MIDLANDS are the owners of the parcel of land described in Exhibit “A”, attached hereto and herein referred to as the “Development Area”, which area to be developed is within CITY’S zoning and platting jurisdiction; and

WHEREAS, DEVELOPER, LIBERTY, and MIDLANDS have requested CITY to approve a specific platting of the Development Area to be developed; and

WHEREAS, DEVELOPER petitioned to vacate and exchange Olson Drive right-of-way as identified on Exhibit “F” to provide for the realignment of Olson Drive; and

WHEREAS, DEVELOPER proposes to privately finance certain improvements within the Development Area; and

WHEREAS, DEVELOPER desires to construct, install and locate certain improvements within the Development Area; and

WHEREAS, DEVELOPER wishes to connect the system of sewers and water lines to be constructed by the DEVELOPER within the Development Area with the sewer and water system of the CITY; and

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

WHEREAS, the CITY and DEVELOPER desire to set forth in this Agreement their respective understandings and agreements with regard to the development of the Project.
NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1

DEFINITIONS

For the purpose 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 “Improvement” or “Public Improvement” shall mean all construction costs, engineering fees, design fees, attorneys’ fees, inspection fees and 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 the Improvements or the Public Improvements.

B. “Dedicated Street(s)” shall mean those concrete or paved area(s), including curbing, to be constructed, modified or improved within that portion of the Development Area designated as Dedicated Street right-of-way on Exhibit “B”.

C. “Development Area” shall mean the real property situated within the area identified or depicted on Exhibit “A” and related public right-of-way.

D. “Improvements” 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.

E. “Party” shall mean CITY, DEVELOPER, LIBERTY, OR MIDLANDS individually, and “Parties” shall mean the CITY, DEVELOPER, LIBERTY, AND MIDLANDS collectively.

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

G. “Public Improvements” shall mean:

1. All Dedicated Streets identified on Exhibit “B”.

2. All concrete sidewalks to be constructed, modified or improved along any Dedicated Streets and lying within the boundaries of any Dedicated Street right-of-way as identified on Exhibit “B”.

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

4. All “Wastewater Sewers” to be constructed and installed within the boundaries of any Dedicated Street right-of-way within the Development Area or other areas specifically approved by the CITY as shown on Exhibit “D”. Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes and related appurtenances.

5. The “Water Distribution System” to be constructed and installed within the boundaries of any Dedicated Street right-of-way within the Development Area or other areas specifically approved by the CITY as shown on Exhibit “D.”

6. All “Storm Sewers” and “Erosion Control Measures” to be constructed in the Development Area identified on the storm sewer plan (Exhibit “E”) prepared by Thompson, Dreessen, and Dorner, including all necessary storm sewers, inlets, manholes, lines, pipes and related appurtenances.

7. The “Gas Distribution System” to be constructed and installed by Black Hills Energy, Inc. within any Dedicated Street right-of-way within the Development Area or other areas specifically approved by the CITY.

8. The “Lighting System” for any Dedicated Streets to be constructed and installed by the Omaha Public Power District 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 the CITY.

9. The “Electrical Power Service” to be constructed and installed by the Omaha Public Power District within the boundaries of any Dedicated Street right-of-way within the Development Area. 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.

H. “Sewer System” shall mean, collectively, all sewer systems within the Development Area.

I. “Street Improvements” shall mean those Public Improvements described in paragraphs 1(G)(1), (2), (3) and (8).

SECTION 2

AUTHORITY AND DOCUMENTATION
A. The DEVELOPER shall cause all Improvements and Public Improvements to be constructed and installed in accordance with the terms and conditions of this Agreement.

B. DEVELOPER shall abide by and incorporate into all of its construction contracts for Public Improvements the provisions required by the regulations of the City pertaining to construction of public improvements in developments/subdivisions and testing procedures therefore.

C. Prior to commencement of construction of Improvements and Public Improvements, DEVELOPER shall obtain and file of record permanent easements for all sanitary, water and storm sewer lines as determined by CITY’S engineer. Said easements shall be filed with the final plat in a form satisfactory to the CITY’S attorney and CITY’S engineer.

D. At least thirty (30) working days before commencing any work in connection with the Public Improvements, the DEVELOPER shall first:

1. Deliver to the appropriate department(s) of the CITY duly executed copies of any agreement(s) for work required for, or otherwise entered into in connection with the Public Improvements including required bonds and insurance certifications, and all plans for the Public Improvements, including the manner and means of any additional connections required by or for the Wastewater Sewers or Storm Sewers, prepared by Thompson, Dreessen, and Dorner. The specifications and technical terms of all such agreements and plans shall have been received and approved by CITY prior to DEVELOPER’S execution of any agreements for construction or installation of the Public Improvements.

2. The CITY and its departments agree to reasonably cooperate with the 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.

E. Any contracts for the construction or installation of the Public Improvements entered by DEVELOPER shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any claim or matter arising out of, or in any way whatsoever, including without limitation, the cost for 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.

F. The entire cost of all Public Improvements shall be borne by and be at the sole expense of the DEVELOPER. The credit of the CITY shall not be used for engineering, procurement or construction of any betterments or Public Improvements.

G. CITY hereby grants permission to the DEVELOPER to connect its sanitary sewer system and water system to the sanitary system and water system of the CITY
pursuant to the remaining terms and conditions of this Agreement and the terms and conditions of a sewer and water connection agreement of same date between CITY and said DEVELOPER.

SECTION 3

REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. DEVELOPER represents and warrants to the CITY, LIBERTY, and MIDLANDS as follows:

1. DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.

2. DEVELOPER has full power and authority to enter into, deliver and perform its obligations under this Agreement and each of the documents related thereto.

3. 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.

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

5. All Public Improvements shall be constructed, installed, and approved by the appropriate city department and, except as set forth herein, payment shall be made of all applicable fees due to the City of Papillion, including, but not limited to, plan review fees.

6. DEVELOPER shall comply with (a) the terms of this Agreement and (b) the provisions of any agreement submitted to the CITY pursuant to this Agreement, which agreements shall not be amended or assigned without prior written approval of the CITY.

7. DEVELOPER shall defend, indemnify and hold the CITY, LIBERTY, and MIDLANDS harmless from and against any responsibility, claim, damage, loss, liability or obligation resulting or arising from or out of or otherwise occurring in connection with this Agreement and the construction, financing and installation of the Improvements and Public Improvements.
8. DEVELOPER has not employed or retained any company or person, other than a bona fide employee 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 working for the 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 obtain general liability insurance, as well as payment and performance bonds equivalent to the total constructions costs, for the Public Improvements within the Development Area, and shall show proof of such insurance and bonds to the CITY, LIBERTY, and MIDLANDS prior to the commencement of construction.

10. DEVELOPER shall cause CITY to be named as an additional insured under any policy of insurance, including 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. Additionally, DEVELOPER shall cause LIBERTY and MIDLANDS to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by DEVELOPER in connection with the construction or operation of the Public Improvements.

11. All documents, contracts and instruments submitted to CITY now, or at any time in the future, or otherwise entered into by or on behalf of DEVELOPER shall in all material respects be fully authorized, and in all material respects shall be valid, binding and enforceable in accordance with their terms.

B. DEVELOPER acknowledges that neither CITY nor any of its officers, agents or employees:

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

2. owes 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

3. 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, 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 any of them.

SECTION 4
APPORPTIONMENT OF COSTS

A. DEVELOPER and CITY agree that all Improvements and Public Improvements shall be privately financed by DEVELOPER.

B. CITY agrees to waive up to $57,000 in building permit and inspection fees incurred by the DEVELOPER or its designee as a credit for shared improvements as defined within §170-22C. All building permit waiver requests shall be submitted in writing to the Building Department with the permit application. Such written requests must be signed by the DEVELOPER or its designee. The CITY reserves the right to approve or deny each request.

SECTION 5

OTHER OBLIGATIONS

A. DEVELOPER shall undertake such acts, responsibilities and obligations as may be necessary or appropriate to prevent and control adverse impact on any real estate or property beyond the Development Area directly or indirectly caused by, or attributable or related to construction and installation of the Improvements and Public Improvements.

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

C. Watershed Fees. All new building permits will be subject to the Watershed Fee as described in the Papillion Master Fee Schedule and agreed to by the Papillion Creek Watershed Partnership.

D. Olson Drive Easement Vacation. DEVELOPER shall revoke the 1983 easement agreement for the section of Olson Drive between Lots 1 and 2, Huntington Park Replat II filed with the Register of Deeds as MISC 56-628 so it may be replaced by the new permanent ingress/egress easement to ensure that the entire easement area shown on the final plat is dedicated to the same grantees and covered by the same maintenance requirements.

E. Permanent Ingress/Egress Easement. The DEVELOPER will file a prescriptive easement approved by the CITY for the permanent ingress/egress easement identified on Exhibit “B” in favor of the CITY, public, Lot 1, Huntington Park Replat II and Lot 2, Midlands Place.
F. Olson Drive Right-of-Way Exchange. The City of Papillion will exchange the dedicated right-of-way that contains the vacated portion Olson Drive right-of-way as depicted on Exhibit “F” with the DEVELOPER for the new Olson Drive right-of-way depicted on Exhibit “B”. DEVELOPER and CITY agree that the Midlands Place final plat shall not be filed until the land transaction is completed and the deed is filed with the Sarpy County Register of Deeds.

G. Commencement of Construction. The CITY agrees that DEVELOPER may commence the timely and orderly installation of the Public Improvements financed by DEVELOPER following execution of this Agreement pursuant to appropriate provisions of the City of Papillion Code and applicable street vacation ordinance provided that DEVELOPER has:

1. Filed the Midlands Place final plat with the Sarpy County Register of Deeds.

2. Provided proof of private financing or a bond approved by the CITY for the installation of the Public Improvements associated with the realignment of Olson Drive and construction of King Drive.

3. Submitted the written plan for the preservation of access to adjoining properties as required by Section 5, Subsection H(1).

H. Preservation of Access to Adjoining Properties. The CITY and DEVELOPER shall preserve access to Lots 1 and 2, Huntington Park Replat and Lot 1, Huntington Park Replat II during the realignment of Olson Drive through the following measures:

1. Plan to Preserve Access. Prior to the commencement of construction, the DEVELOPER shall submit a written plan to the City Engineer that details the methods that will be used to preserve access to Lots 1 and 2, Huntington Park Replat and Lot 1, Huntington Park Replat II during the realignment of Olson Drive. Said plan must be approved by the City Engineer prior to the letting of any contract for Public Improvements associated with the realignment of Olson Drive and construction of King Drive.

2. Maintenance of Access. The DEVELOPER shall provide access from Washington Street to Lots 1 and 2, Huntington Park Replat and Lot 1, Huntington Park Replat II at all times through the use of alternate routes or a temporary road approved by the City Engineer and Public Works Director prior to the commencement of construction.

3. Private Street Construction. Prior to the removal of the existing Olson Drive, DEVELOPER shall construct the private street that will provide permanent access to Lot 1, Huntington Park Replat II to preserve access from Washington Street to the lots located within Midlands Place, Huntington Park
Replat, and Huntington Park Replat II while the new alignment of Olson Drive is being constructed.

4. Liquidated Damages Clause for DEVELOPER. The DEVELOPER shall include a liquidated damages clause in all contracts required to realign Olson Drive and construct King Drive to mitigate any delays related to the construction of Public Improvements associated with the realignment of Olson Drive and construction of King Drive. Said liquidate damages clause is subject to review and approval by the City Engineer.

5. Contract Review. The CITY reserves the right to review and approve all contracts required for the realignment of Olson Drive and construction of King Drive to ensure that the elements of the plan to preserve access and liquidated damages clauses are included.

6. Plan Review. The CITY reserves the right to modify any plan required for the realignment of Olson Drive and construction of King Drive to ensure that access to Lots 1 and 2, Huntington Park Replat and Lot 1, Huntington Park Replat II is preserved during the realignment of Olson Drive and construction of King Drive.

7. DEVELOPER grants the CITY the right to mitigate any closure of Olson Drive deemed by the CITY to violate the plan to preserve access. DEVELOPER agrees to reimburse the CITY for any costs incurred by the CITY to mitigate any closure of Olson Drive to preserve access to adjoining properties. Any request for reimbursement will be made in writing by the CITY with a detailed account of the costs incurred.

I. Removal of Olson Drive. The DEVELOPER agrees that the existing Olson Drive shall not be removed until the CITY determines that an acceptable connection to Washington Street has been provided from the eastern boundary of the Development Area. Such approval to remove Olson Drive must be obtained in writing from the CITY.

J. Sidewalks. The DEVELOPER, on behalf of LIBERTY AND MIDLANDS, shall install sidewalks with a minimum width of 5’ along all private and public rights-of-way abutting their respective lots. All sidewalks, handicap accessible ramps, and crosswalks shall be designed and constructed in accordance with PROWAG. Sidewalks shown on Exhibit “C” shall be constructed based on the following schedule:

1. The sidewalks abutting the private street located within the permanent ingress/egress easement on Lot 1 shall be installed at the time of construction of the private street.
2. The sidewalks abutting Olson Drive located within the Development Area shall be installed at the time of construction of the new alignment of Olson Drive.

3. The sidewalks abutting King Drive shall be installed at the time of construction of the Public Improvements on King Drive.

4. The sidewalks along Gold Coast Road that are not being installed as part of the 84th Street/Washington Street Reconstruction Project shall be installed at the time of construction of the median and turn lane improvements on Gold Coast Road.

5. The sidewalks along Washington Street shall be installed as part of the 84th Street/Washington Street Reconstruction Project.

K. Maintenance of Detention Facilities. DEVELOPER, its successors, or assigns, shall be responsible for detention facility construction and maintenance in compliance with the Post Construction Storm Water Management requirements of CITY. The CITY shall not have any responsibility for maintenance or repair of any such facility located within the Development Area.

L. Compliance with Statutes and Ordinances. DEVELOPER shall comply with all state statutes and CITY ordinances. DEVELOPER shall also require strict compliance with all state statutes and CITY ordinances 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.

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

N. Construction Obligations. Upon the execution of this Agreement, the DEVELOPER is obligated to construct all Public Improvements contemplated herein. This Agreement shall not in any way be construed as creating any obligation on the part of DEVELOPER to develop the Developed Area or construct any of the Improvements in the event the plans envisioned by the DEVELOPER are not carried out and the approvals obtained from the CITY are withdrawn or terminated.

O. Monument Sign. DEVELOPER agrees to provide a provision in the Midlands Place Mixed Use Development Agreement to reserve one panel on the monument sign located at the intersection of Washington Street and Olson Drive for the CITY’S use to promote keno operations. CITY shall determine the content of said panel. DEVELOPER shall pay for the design, fabrication, and installation of said panel.
P. Temporary Easement. DEVELOPER agrees to dedicate a temporary access easement to CITY and the public over the vacated portion of Olson Drive right-of-way shown on Exhibit “F” should termination of this Agreement be initiated under the provisions of Section 6, Subsection A prior to the installation of the realigned Olson Drive. If DEVELOPER initiates the termination, DEVELOPER shall submit said easement to the CITY for review and approval as part of the DEVELOPER’S written notice to terminate the agreement. If termination is requested by the CITY, DEVELOPER agrees to submit said said easement to the CITY for review and approval within 10 business days of receipt of the CITY’S notice to terminate.

SECTION 6
MISCELLANEOUS

A. TERMINATION OF AGREEMENT. This Agreement shall not be terminated except (1) by the written agreement between the DEVELOPER and CITY; (2) by written notice of termination by the CITY for any material breach or default by any other PARTY which remains uncured thirty (30) days following notice to the respective PARTY specifying such breach or default ("Notice to Cure"), to be effective upon notice of termination; or by the DEVELOPER prior to the commencement of the construction of the public improvements, upon written notice to the CITY that the economy substantially impairs the success of the development. If the type of breach is such that cure has been started and takes longer than 30 days to cure, then as long as the CITY determines substantial progress is being made, then the cure period shall be extended another 30 days or as otherwise agreed to be the CITY and DEVELOPER to allow it to be completed. No termination shall relieve the DEVELOPER of any unperformed obligation required as of the effective date of termination nor any liability which may have then accrued, each of which shall survive such termination. Notwithstanding the foregoing, CITY may terminate this Agreement immediately upon notice without allowing any right to cure upon the recurrence of any material breach or default for which CITY has given a Notice to Cure in the preceding 180 days. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

B. 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, LIBERTY, MIDLANDS, and their respective employees, agents and assigns harmless from and against any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever resulting from any negligence or performance by any of them or their employees, agents, contractors, subcontractors or other representatives under this Agreement, including any failure to perform or properly perform as required by this Agreement, or any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever which may otherwise arise from or out of or may be caused by its breach of or default in any warranty, representations, obligation, requirement, responsibility or other provision of this Agreement or from any unlawful or improper
discharge into the CITY’S sewer system during the term of this Agreement. Without limiting the generality of the foregoing, such indemnity shall include and extend to any claim, injury, loss or damage, or liability or obligation:

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 act, error or omission, including negligence, of CITY;

2. to any person resulting or arising from or out of or otherwise occurring from either a construction contract entered into by (a) DEVELOPER under the terms of this Agreement, or (b) DEVELOPER on behalf of the 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 the CITY, LIBERTY, or MIDLANDS resulting or arising from or out of or otherwise occurring in connection with this Agreement and the construction, financing and installation of the Improvements or any Public Improvements; and

5. to any person’s use or occupancy of any part of the Development Area, including the Improvements or any Public Improvements, and any act undertaken, or agreement entered into, by DEVELOPER in furtherance of this Agreement.

C. 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. This prohibition shall not apply to any assignment which has the same owners of the DEVELOPER or to a successor developer which agrees to perform all of the obligations of the Agreement.

D. WAIVER. 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.

E. GOVERNING LAW. This Agreement shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such provisions may be superseded by applicable federal law regulation, in which case the latter shall apply.

F. ENTIRE AGREEMENT.
   1. This Agreement, and the Exhibits and documents referenced in this Agreement (which are intended to be and hereby are specifically made a part of this Agreement whether or not so stated) express the entire understanding and all
agreements of the PARTIES. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between any of the PARTIES, whether individually or collectively concerning the subject matter hereof.

2. This Agreement may be modified only by a written agreement, executed by all PARTIES; provided that the PARTIES agree to conform this Agreement and all performance obligations hereunder 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 the CITY.

G. **NOTICES, CONSENTS AND APPROVAL.** All payments, notices, statements, demands, requests, consents, approval, 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: Zachary M. Daub
2800 S. 110th Ct. Ste. #1
Omaha, NE 68144

For LIBERTY: Steven Petersen
506 E. Gold Coast Rd.
Papillion, NE 68046

For MIDLANDS Theodore Vasko
500 Windsor Drive
Papillion, NE 68046

With Copy to: Thomas Ackley (for MIDLANDS)
One Pacific Place, Suite 800
1125 S. 103rd St.
Omaha, NE 68124
H. NON-DISCRIMINATION. In performing under this Agreement, no PARTY shall discriminate against any persons on account of disability, race, national origin, sex, age, and political or religious affiliations in violation of any applicable laws, rules and regulations of any governmental agency with jurisdiction over any such matter.

I. MISCELLANEOUS. Unless otherwise specified, all references in this Agreement to Exhibits, numbered paragraphs or Sections shall mean those Exhibits attached to this Agreement, which are incorporated into this Agreement as if fully set out herein, and those numbered paragraphs and Sections of this Agreement.

J. APPROVAL OF PLAT. DEVELOPER acknowledges that CITY’S approval of the Plat, passed and approved by the Papillion City Council on March 6, 2012, is specifically subject to and conditioned on DEVELOPER’S, LIBERTY’S, and MIDLANDS’ execution of and compliance with this Agreement.

K. MIXED USE DEVELOPMENT AGREEMENT. DEVELOPER and LIBERTY acknowledge that CITY’S approval of the Mixed Use Development Agreement, passed and approved by the Papillion City Council on March 6, 2012, is specifically subject to and conditioned on DEVELOPER’S and LIBERTY’S execution of and compliance with this Agreement.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the date and year first above written.

ATTEST: CITY OF PAPILLION, a Municipal Corporation of the First Class

________________________________________
By:____________________________________
HUNTINGTON PARK INVESTMENTS D/B/A MIDLANDS PLACE, a Nebraska General Partnership,

By:________________________________________
   Zachary Daub, Manager

STATE OF NEBRASKA )
   )ss.
COUNTY OF SARPY )

Before me, a notary public, in and for said county and state, personally came ZACHARY DAUB, MANAGER of HUNTINGTON PARK INVESTMENTS D/B/A MIDLANDS PLACE, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be his or her voluntary act and deed on behalf of such corporation.

Witness my hand and Notarial Seal this ____ day of __________________, 2012.

____________________________________
Notary Public

LIBERTY COURT LLC, a Nebraska Limited Liability Corporation,

By:________________________________________
   Steven Petersen, Managing Member

STATE OF NEBRASKA )
   )ss.
COUNTY OF SARPY )

Before me, a notary public, in and for said county and state, personally came STEVEN PETERSEN, MANAGING MEMBER of LIBERTY COURT, LLC, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be his or her voluntary act and deed on behalf of such corporation.

Witness my hand and Notarial Seal this ____ day of __________________, 2012.
MIDLANDS PROFESSIONAL CENTRE, LTD, a Nebraska Limited Partnership,

By: __________________________________________
   Theodore Vasko, General Partner

STATE OF NEBRASKA )
   )ss.
COUNTY OF SARPY )

Before me, a notary public, in and for said county and state, personally came THEODORE VASKO, GENERAL PARTNER of MIDLANDS PROFESSIONAL CENTRE, LTD, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be his or her voluntary act and deed on behalf of such corporation.

Witness my hand and Notarial Seal this ___ day of ________________, 2012.

________________________________
Notary Public
SUBDIVISION AGREEMENT
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LEGAL DESCRIPTION

MIDLANDS PLACE, LOTS 1 THROUGH 8, BEING A REPLATTING OF LOTS 3, 4, 5, 7, 8, 9, 10, AND 11, HUNTINGTON PARK REPLAT, A SUBDIVISION IN SARPY COUNTY, NEBRASKA, AND A REPLATTING OF LOT 2, HUNTINGTON PARK REPLAT II, A SUBDIVISION IN SAID SARPY COUNTY, AND VACATED OLSON DRIVE ADJOINING SAID LOTS, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 7;
THENCE N00°32'52"E (ASSUMED BEARING) 539.59 FEET ON THE WEST LINES OF SAID LOTS 7 AND 2 TO THE NORTHWEST CORNER OF SAID LOT 2;
THENCE S89°24'34"E 280.04 FEET ON THE NORTH LINE OF SAID LOT 2 TO THE NORTHEAST CORNER THEREOF;
THENCE N00°34'28"E 189.99 FEET ON THE EAST LINE OF LOT 1, SAID HUNTINGTON PARK REPLAT II TO THE NORTHEAST CORNER THEREOF;
THENCE N89°59'42"E 799.83 FEET ON THE NORTH LINE OF VACATED OLSON DRIVE TO THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 3;
THENCE S00°26'38"W 396.93 FEET ON THE EAST LINE OF SAID LOT 3 AND ITS NORTHERLY EXTENSION TO THE NORTHWEST CORNER OF SAID LOT 11;
THENCE N89°29'36"E 251.36 FEET ON THE NORTH LINE OF SAID LOT 11;
THENCE S89°18'33"E 13.27 FEET ON THE NORTH LINE OF SAID LOT 11 TO THE NORTHEAST CORNER THEREOF;
THENCE S07°11'25"W 346.67 FEET ON THE EAST LINE OF SAID LOT 11 TO THE SOUTHEAST CORNER THEREOF;
THENCE NORTHWESTERLY ON THE SOUTH LINE OF SAID LOT 11 ON A NON-TANGENT 645.29 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N86°22'00"W, CHORD DISTANCE 75.28 FEET AN ARC DISTANCE OF 75.32 FEET;
THENCE N89°27'11"W 1230.00 FEET ON THE SOUTH LINES OF SAID LOTS 11, 10, 9, 8 AND 7 TO THE POINT OF BEGINNING.
LEGAL DESCRIPTION

THAT PART OF OLSON DRIVE RIGHT-OF-WAY FROM THE WEST LINE OF LOT 2 HUNTINGTON PARK REPLAT II, A SUBDIVISION IN SARPY COUNTY, NEBRASKA TO THE EAST LINE OF LOT 3, HUNTINGTON PARK REPLAT, A SUBDIVISION IN SAID SARPY COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, SAID HUNTINGTON PARK REPLAT II;

THENCE S89°24'34"E (ASSUMED BEARING) 280.04 FEET ON THE SOUTH LINE OF SAID LOT 1 TO THE SOUTHEAST CORNER THEREOF;

THENCE N00°34'28"E 189.99 FEET ON THE EAST LINE OF SAID LOT 1 TO THE NORTH LINE OF SAID HUNTINGTON PARK REPLAT;

THENCE N89°59'42"E 799.83 FEET ON THE NORTH LINE OF SAID HUNTINGTON PARK REPLAT TO THE NORTHERLY EXTENSION OF THE EAST LINE OF SAID LOT 3;

THENCE S00°26'38"W 60.00 FEET ON THE NORTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 3 TO THE NORTHEAST CORNER OF SAID LOT 3;

THENCE S89°59'42"W 684.29 FEET ON THE NORTH LINES OF LOTS 3, 4 AND 5, SAID HUNTINGTON PARK REPLAT TO THE MOST EASTERLY CORNER OF A TRACT OF LAND DESCRIBED IN "PLAT AND DEDICATION FOR STREET WIDENING" RECORDED AS INSTRUMENT 95-22453 OF THE SARPY COUNTY RECORDS;

THENCE SOUTHWESTERLY ON THE EAST AND SOUTH LINES OF SAID "PLAT AND DEDICATION FOR STREET WIDENING" ON THE FOLLOWING DESCRIBED 4 COURSES;

THENCE S45°58'58"W 40.23 FEET; THENCE S00°32'07"W 71.69 FEET;

THENCE S45°32'07"W 109.14 FEET; THENCE N89°24'34"W 289.96 FEET TO EAST LINE OF 84TH STREET;

THENCE N00°32'52"E 46.00 FEET ON THE EAST LINE OF 84TH STREET TO THE POINT OF BEGINNING.

CONTAINING 73655 SQUARE FEET OR 1.69 ACRES MORE OR LESS.